

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.77 of 2018

Arising Out of PS. Case No.-2093 Year-2006 Thana- SIWAN COMPLAINT CASE District-
Siwan

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Jitendra Bhagat Son of Ram Barai Bhagat, Resident of Village- Titira, Police
Station- Mairwa, District- Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Kailash Singh, son of Jagarnath Bhagat, Village Titira, P.S. Mairwa, District
Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Neeraj Kumar @ Sanidh with
Mrs. Priyanka Singh and
Mr. Raghav Prasad, Advocates

For the State : Mr. Jharkhandi Upadhyay, APP

For the Informant : Mr. Ajay Kumar Pandey with
Mr. Chandan Kumar, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 25-07-2019

Heard learned counsel for the petitioner; learned APP for
the State and learned counsel for the opposite party no. 2.

2. The petitioner has moved the Court under Sections
397 and 401 of the Code of Criminal Procedure, 1973 against the
judgment dated 16.10.2017 passed by the Additional Sessions
Judge-II, Siwan in Criminal Appeal No. 38 of 2006 by which the
judgment and order of conviction and sentence dated 19.07.2016
passed by the Judicial Magistrate, 1st Class, Siwan in Complaint
Case No. 2093 of 2006/Tr. No. 1896 of 2016 has been affirmed.



3. The petitioner along with three others was accused in Complaint Case No. 2093 of 2006 filed by the opposite party no. 2 under Sections 147,148, 341,323, 324, 307, 447 and 504/34 of the Indian Penal Code. Pursuant to cognizance, charge was framed under Sections 174, 148, 323, 324 and 447 of the Indian Penal Code. The trial resulted in conviction of the petitioner under Sections 323 and 324 of the Indian Penal Code only whereas the other three co-accused were acquitted of all charges. The petitioner was accordingly sentenced to rigorous imprisonment for one year each for offence committed under Sections 323 and 324 of the Indian Penal Code which were directed to run concurrently.

4. Learned counsel for the petitioner submitted that the complaint case was filed on 18.12.2006 for an alleged occurrence on 13.06.2006 after six months for which there is no satisfactory explanation. It was submitted that the complainant had stated both in the complaint petition as well as during trial in his deposition that the police had recorded his *fardbeyan* but the same was never brought on record. Learned counsel submitted that the accused have also filed Mairwa PS Case No. 75 of 2006 under Sections 147, 341, 323, 324, 307, 447 and 504 of the Indian Penal Code for the same incident. Learned counsel submitted that though as per the complaint and the initial deposition of the complainant under



solemn affirmation he has stated that he received knife blow on the arm and the eyelid but in the examination before the Court during trial he has restricted the infliction of blow to the hand. Learned counsel submitted that even with regard to the ownership of the land in question, the same was of Jaleswar Rai who had sold it to Biajnath Choube who, in turn, executed the sale deed in favour of the accused. Learned counsel produced before the Court copy of the *fardbeyan*, which was purportedly recorded by the police at Sadar Hospital, of the complainant and it was submitted that the complainant had suppressed such fact by not bringing it on record. However, he submitted that since the same was not brought on record before the Court below, he would not rely much on such document but had produced it before the Court only to indicate that the contention of the complainant that nothing happened on his *fardbeyan*, was incorrect, as the same was forwarded to the concerned police station for action and, thus, it was the duty of the complainant to state such fact and also bring the *fardbeyan* on record. Learned counsel summed up his argument by submitting that the petitioner has remained in custody for over a month and the Court may modify the sentence to payment of fine.

5. Learned APP and learned counsel for the opposite party no. 2-complainant submitted that the order of the trial Court



in Complaint Case No. 2093 of 2006 is fully discussed and based on evidence available before the Court. It was submitted that the complainant omitting to indicate that the petitioner had inflicted knife blow on his eyebrow could not be fatal to the prosecution for the reason that all other witnesses have stated with regard to such act of the petitioner relating to the blow on the eyelid and most importantly, the medical report corroborates such injuries, both on the eyelid as well as on the hand. It was submitted that the delay has also been explained in the sense that the consistent stand is that the complainant had made a statement before the police which was recorded as *fardbeyan* at the Hospital and thereafter no information was given to him for which he cannot be held responsible. Learned counsel submitted that the fact that there was a counter case also by the accused shows that the incident took and injuries also proved that the accused were offensive. Learned counsel further submitted that the stand that Jaleswar Rai was the owner of the land was denied by the witnesses and that the land was *gairmajarua* land on which the accused had no right in law.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application.



7. Though, learned counsel for the petitioner has been able to show some variations in the deposition of the complainant before the Court, as compared to the stand taken in the complaint petition and the statement on Solemn Affirmation before the Court, but taking a pragmatic and overall view, such omission cannot disprove the prosecution case. Moreover, the very fact that though the complaint case was filed for punishing the accused under Section 307 of the Indian Penal Code also, but the Court did not take cognizance under the said section and charge was not framed under such section, which was not challenged by the complainant before the appropriate forum. Thus, if the Court had believed infliction of knife wound above the eyelid, it may have taken cognizance under Section 307 of the Indian Penal Code and not doing so indicates that such part has not been accepted by the Court. This view of the Court is quite reasonable, justified and based on cogent material and is plausible.

8. With regard to the delay, the Court would only observe that once any person gives statement to the police to lodge FIR or conduct any investigation, from that moment onward, the onus is on the police/investigating agency to move forward with the investigation, in accordance with law. Thus, if the complainant got no information or cooperation from the police, he having filed



the complaint cannot be debarred or held disentitled from consideration of the same on merits, moreso, when he was admitted in a Government Hospital where the medical examination was done which corroborates the injury with the manner described in the complaint and the deposition of the witnesses. Further, as copy of the so called *fardbeyan* recorded of the complainant at the Sadar Hospital by the police, which has been produced by learned counsel for the petitioner himself, without relying on the same or taking it into consideration for any other purpose, at least this much is corroborated and also accepted and admitted by the petitioner that the complainant did get his statement recorded by the police at the relevant time in the Hospital. This further fortifies the circumstances that once the complainant had recorded his statement before the police at the relevant time itself, the onus was on the police to move ahead and do the needful and them not doing anything in the matter, the petitioner filing the complaint cannot be faulted.

9. Coming to the final submission of learned counsel for the petitioner that he has suffered imprisonment for over a month, the Court finds that as the matter is basically relating to on the spur clash due to land dispute between the neighbours in which the title of the land has not been proved before the Court in favour of any



of the parties and there is also a counter case, coupled with the fact that no major injuries have been suffered by the complainant or his brother, the Court feels inclined to modify the sentence to the period undergone and fine of Rs. 5,000/- under each section.

10. Accordingly, the application stands disposed off upholding the conviction with modification in the sentence to the period already undergone by the petitioner and subject to payment of Rs. 5,000/- each under Sections 323 and 324 of the Indian Penal Code, i.e, Rs. 10,000/- total. Such fine be paid to the opposite party no. 2-complainant within one month from today and receipt showing such payment be filed in the Court below. The petitioner stands discharged of the liabilities of his bail bonds.

(Ahsanuddin Amanullah, J)

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