

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1313 of 2018**

Arising Out of PS. Case No.-44 Year-2003 Thana- MORO District- Darbhanga

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Roshan Khatoon @ Roshan Bibi, Wife of Md. Mustafa Resident of
Godaipatti, P.S. Maro, District-Darbhangha

... .. Appellant/s

Versus

1. The State of Bihar
2. Md. Taufique Son of Md. Yunus Resident of Khodaipatti, P.S.-Moro,
District-Darbhangha.
3. Md. Rahmat Son of Md. Yunus Resident of Khodaipatti,P.S. Moro,Distt.-
Darbhanga

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Tkahur, Adv. Mr. Shashank Shekhar, Adv.
For the Respondent/s	:	Mr. Ajay Mishra, APP

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 18-06-2019

Heard learned counsel for the appellant as well as
learned Additional Public Prosecutor for the State on the point of
admission and in our view, this criminal appeal can be disposed of
on admission stage itself.

2. The grievance of the appellant is that the learned
Trial Court failed to convict the respondents no. 2 and 3 for the
offence punishable under Section 307 of the Indian Penal Code,



especially, in the circumstance when almost all the eye witnesses very clearly stated that the respondents no. 2 and 3 assaulted her by deadly weapons with an intention to commit her murder.

3. Learned counsel appearing for the appellant submits that almost all the prosecution witnesses in one voice, specifically, stated that respondents no. 2 and 3 assaulted the appellant by means of *Farsa* and knife but the learned Trial Court completely ignored the above stated claim of the prosecution witnesses and convicted the respondents no. 2 and 3 only for the offence punishable under Section 323 of the Indian Penal code and gave them benefit of Section 4 of the Probation of Offenders Act which is not in accordance with law.

4. On the other hand, learned Additional Public Prosecutor drew our attention towards the statement of P.W.-9 who proved the injury report of the appellant and submitted that the injury found on the person of the appellant completely demolishes the prosecution case. Learned Additional Public Prosecutor further, submits, that moreover, even if the injuries found on the person of the appellant are taken into consideration, then also no case under Section 307 of the IPC is made out.

5. Having heard the contentions of both the parties, we went through the impugned judgment. It would appear from



perusal of the impugned judgment that the learned Trial Court vide impugned judgment dated 11.09.2018 passed in Sessions Trial No. 70 of 2006 convicted the respondents no. 2 and 3 for the offence punishable under Section 323 of the IPC and released them on furnishing bail bonds of Rs. 5,000/- under Section 4 of the Probation of Offenders Act for keeping peace and good behaviour for a period of one year. The impugned judgment also goes to show that the appellant claimed in her fardbeyan that the respondents no. 2 and 3 assaulted her by means of *Farsa* and knife respectively but the injury report of appellant does not support the aforesaid claim of the appellant. Moreover, only simple injuries were found on the person of the appellant. No doubt, to attract the offence of Section 307 of the Indian Penal Code, the injury is not essential but if the prosecution comes with specific case that the victim has sustained injuries, then, in that event, the injuries play an important role to judge as to whether offence under Section 307 of the IPC is made out or not. In the present case, the appellant sustained simple injuries and taking note of the above stated facts, the learned Trial Court came to conclusion that the prosecution could not succeed to prove the offence of Section 307 of the Indian Penal code. Therefore, in our view, there is no need to interfere



into the impugned judgment. Accordingly, this Criminal Appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

Sushma/prakash

AFR/NAFR	AFR
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