

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1351 of 2018

Arising Out of PS. Case No.-130 Year-2012 Thana- BABUBARHI District- Madhubani

Md. Sakhawat @ Sakhavat Miyan @ Sakhaval Miyan, Son of Late Kailu Miyan, resident of village- Khoriya Tol, Barail, P.S.-Babubarhi, District-Madhubani.

... .. Appellant

Versus

1. The State of Bihar.
2. Illiyas @ Md. Illiyas, Son of Md. Makbul, Resident of Village- Khoriya Tol, Barail, Babubarhi, District-Madhubani

... .. Respondents

Appearance :

For the Appellant/s : Mr.Sanjay Kumar Jha, Adv.
For the Respondent/s : Mr. Bipin Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 10-01-2019

1. Heard learned counsel appearing for the appellant as well as learned Additional Public Prosecutor for the State on the point of admission as well as on I.A. No. 3403 of 2018, which has been filed on behalf of the appellant seeking leave to prefer and proceed with the instant appeal.

2. The appellant is informant and victim and his grievance is that the learned trial court convicted the respondent



no. 2 for a lesser offence and has not awarded adequate sentence and, therefore, in our view, the appellant has right to challenge the impugned judgment and accordingly, I.A. No. 3403 of 2018 stands allowed and the appellant is permitted to pursue this criminal appeal.

3. This criminal appeal has been preferred against the impugned judgment dated 08.08.2018 passed by learned Presiding Officer, F.T.C No. 1, Madhubani in Sessions Trial No. 235 of 2013/ 13 of 2018 by which and whereunder the learned trial court convicted the respondent no. 2 for the offence punishable under Section 324 of the I.P.C. and released him on bail on execution of bond to maintain good conduct for two years under the provision of Probation of First Offenders Act. However, the learned trial court acquitted the respondent no. 2 from the charges framed against him for the offences punishable under Section 307 and other minor sections of the I.P.C. and similarly, acquitted the other accused from the charges framed against them.

4. The grievance of the appellant is that the respondent no. 2 had given farsa blow causing injury on his head and the aforesaid fact was proved by the prosecution but in spite of that the learned trial court convicted the respondent no. 2 only for the offence punishable under Section 324 of the I.P.C. and moreover,



awarded him lesser punishment by giving him benefit of Probation of First Offenders Act.

5. Learned counsel appearing for the appellant submits that the prosecution witnesses very clearly stated that it was respondent no. 2 who gave farsa blow causing head injury to appellant and the doctor also proved the injury report but the learned trial court wrongly convicted the respondent no. 2 only for the offence punishable under Section 324 of the I.P.C. instead of convicting him for the offence punishable under Section 307 of I.P.C. and granted him the benefit of Probation of First Offender Act.

6. On the other hand, learned Additional Public Prosecutor supported the impugned judgment arguing that the learned trial court has assigned valid reasons for not convicting the respondent no. 2 for the offence punishable under Section 307 of the I.P.C. He further submits that during course of the trial, the prosecution failed to bring any material to show that respondent no. 2 was a habitual offender and moreover, it is admitted case of the prosecution that the alleged occurrence took place on account of land dispute when a Panchayati was going on and, therefore, the learned trial court rightly released the respondent no. 2 on



probation. He, further, submits that there is no need to interfere into the impugned judgment.

7. Having heard the contentions of both the parties, we went through the record and in our opinion, this appeal can be disposed of on admission stage itself.

8. From perusal of para 18 of the impugned judgment, it would appear that the learned trial court has assigned reasons for not convicting the respondent no. 2 for the offence punishable under Section 307 of the I.P.C. Moreover, the impugned judgment goes to show that appellant sustained only one injury on his head and the other injury i.e. bruise on his back side of lumbar region. Moreover, both the aforesaid injuries were found simple in nature. The nature of the injury goes to show that respondent no. 2 had no intention to commit the murder of the appellant and moreover, nature of aforesaid injury also reflects that respondent no. 2 had no knowledge that the aforesaid injury might have caused death of the appellant and, therefore, in our view, the learned trial court rightly acquitted the respondent no. 2 for the offence punishable under Section 307 of the I.P.C. Admittedly, the respondent no. 2 has been convicted for the offence punishable under Section 324 of the I.P.C. and so far as the sentence order is concerned, we do not think it proper to interfere into the sentence order because



admittedly, there was land dispute between the parties and there was nothing before the trial court to show that respondent no. 2 was a habitual offender. Therefore, we do not find any force in this criminal appeal and accordingly, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

shahzad/-

AFR/NAFR	A.F.R.
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