

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.59 of 2020

Arising Out of PS. Case No.-204 Year-2010 Thana- JAKKANPUR District- Patna

Umesh Kumar Singh, Son of late Ram Sharan Singh, Resident of Mohalla-
Postal Park Indra Nagar ,Road No. 6, P.S.- Jakkanpur, Distt - Patna.

... .. Appellant

Versus

1. The State of Bihar.
2. Rajendra Thakur, son of late Shatrughan Thakur, Resident of Mohalla-
Postal Park, Indra Nagar, Road No. 6, P.S.- Jakkanpur, Distt - Patna.
3. Shishir Kumar @ Dablu Kumar, Son of Rajendra Thakur, Resident of
Mohalla - Postal Park, Indra Nagar, Road No. 6, P.S.- Jakkanpur, Distt -
Patna.
4. Pramod Kumar Thakur, Son of Rajendra Thakur, Resident of Mohalla -
Postal Park, Indra Nagar Road No. 6, P.S.- Jakkanpur, Distt - Patna.

... .. Respondents

Appearance :

For the Appellant : Ms. Bela Singh, Advocate

For the Respondents : None

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 21-01-2020

Heard Ms. Bela Singh, learned counsel for the
appellant.

2. This appeal under the proviso to Section 372 of
the Code of Criminal Procedure has been preferred by the
appellant challenging the judgment dated 04.12.2019 passed by
the learned Additional Sessions Judge-X, Patna in Sessions Trial
No.1194 of 2011 by which respondent nos. 2 to 4 have been



acquitted from charges under Sections 341, 379, 427 and 504 read with 34 of the Indian Penal Code and convicted them for the lesser offence under Section 323 of the Indian Penal Code in place of charge under Section 307 of the Indian Penal Code and extended them the benefit of Section 3 of the Probation of Offenders Act.

3. While arguing the case, learned counsel for the appellant has filed certified copy of the FIR, charge sheet and deposition of witnesses. Let the same be kept on record.

4. With consent of the learned counsel for the appellant, we have taken up the appeal for hearing on merit.

5. Learned counsel appearing for the appellant submitted that the judgment impugned is bad in law as also on facts. The same is against the materials available on record of the case. The appellant and his family members were assaulted by respondent nos. 2 to 4 with intention to kill them but erroneously the trial court did not convict them for the offence punishable under Section 307 of the Indian Penal Code and convicted them for a lesser offence under Section 323 of the Indian Penal Code. She contended that the witnesses examined on behalf of the prosecution during trial had proved the case beyond reasonable doubt and the finding of the trial court that



the case under Section 307 could not be proved is absolutely erroneous.

6. The prosecution case, in brief, according to the written report of one Umesh Kumar Singh submitted to the Officer-in-Charge of Jakkanpur police station on 25.08.2010 at 8:15 a.m. is that on 25.08.2010, at 7:50 a.m., his neighbour Rajendra Thakur was throwing the waste towards the house of the informant after cleaning the chamber of drainage. When he protested, he threatened to kill. It is further stated that when he went there, the accused persons, namely, Rajendra Thakur, Pramod Thakur and Dablu Kumar armed with *khanti* came there and Rajendra Thakur assaulted with brick resulting into injury in his head. It is said that when his son, namely, Suraj Kumar came there to rescue him, then Dablu Kumar assaulted him with *khanti* resulting injury in the head. He also assaulted with *khanti* on right thigh of his son as a result of which he fell down. It is further stated that when his sister came, accused Pramod Thakur assaulted her with screw driver resulting into injury in her hand. It is said that all accused persons took away the golden ear ring of his sister. They broke the glass of the window of his house by throwing bricks. It is stated that the occurrence was seen by the neighbours and the other members of the family had also



received injuries.

7. The motive attributed for causing occurrence is land dispute between the parties and the accused persons are not accepting the decision given by the respectable persons of the locality and wanted to construct chamber in his land.

8. On the basis of the aforesaid written statement of the informant Umesh Kumar Singh, a formal FIR vide Jakkanpur P.S. Case No.204 of 2010 dated 25.08.2010 was registered under Sections 341, 323, 324, 307, 379, 504 and 427 read with 34 of the Indian Penal Code against the accused Rajendra Thakur, Pramod Thakur and Dablu Kumar and investigation was handed over to the Sub-Inspector, Jai Prakash Singh.

9. On completion of investigation, charge sheet was submitted against all three named accused persons under Sections 341, 323, 324, 307, 379 and 427 read with 34 of the Indian Penal Code.

10. Since the offence under Section 307 of the Indian Penal Code is triable by the Court of Sessions, after complying with the mandatory provision of Section 207 of the CrPC, the case was committed to the Court of Sessions for trial.

11. The trial court framed charges under Sections



341, 307, 379, 427 and 504 read with 34 of the Indian Penal Code.

12. In order to prove the charges, the prosecution examined altogether nine witnesses. They are PW-1 Rajeev Kumar (son of the informant), PW-2 Umesh Kumar Singh (informant and injured), PW-3 Dr. Anuradha (the doctor who examined the injured), PW-4 Suraj Kumar (son of the informant and injured), PW-5 Munna Kumar (neighbour of the informant), PW-6 Rinku Kumari (daughter of the informant), PW-7 Brahamsheela Devi @ Paramsheela (wife of the informant), PW-8 Sunita Devi (sister of the informant and injured) and PW-9 Jai Prakash Singh (investigating officer of the case).

13. PW-1 Rajeev Kumar has stated in his evidence that at the date and time of occurrence, accused Rajendra Thakur was cleaning the chamber and throwing the garbage on the land of the informant and when his father protested, accused Rajendra Thakur assaulted him with brick resulting into injury in his head. In the meantime, when his younger brother Suraj Kumar also came there, then accused Dablu Kumar assaulted him with *khanti* resulting into head injury and also injury in the right thigh. He has further deposed that when his *Bua* Sunita Devi came there, accused Pramod Thakur assaulted her with



screw driver resulting into injury in her wrist. While being assaulted, her ear ring was lost. He has stated that Pramod Thakur vandalised and broken the front glass of his house by throwing brick. He went together with father and other injured persons to police station and from there, they were taken to Gardanibagh hospital for treatment. All the three injured were treated and their wounds were stitched. He stated in cross-examination that blood had fallen on the cloth of his father.

14. PW-2 Umesh Kumar Singh is the informant of the case. He has stated that the occurrence took place at about 7:30-7:45 a.m. on 25.08.2010. He has more or less corroborated the prosecution case as narrated in the FIR. However, he deposed that Sunita Devi told him that accused persons have snatched her ear ring. He has deposed that in the hospital, he came to know that glass of window of his house were also broken by the accused persons. In cross-examination, he has stated that blood had fallen on ground and also on his cloth and cloth of his sister. The police had seized the blood stained clothes. They had also seized broken glass.

15. PW-4 Suraj Kumar has also corroborated the prosecution case as narrated in the FIR. However, he has deposed that golden ear ring of Sunita Devi fell down and the



same was taken away by the accused Pramod Thakur. He has stated that when he and his family members were going to the police station, they were abused and glass of window of the house was broken by the accused persons. He has also stated that his father was wearing *Ganji* on the date of occurrence and his blood stained *Ganji* was seized by the police. He stated that his cloth was also drenched with blood and the police had seized it.

16. PW-5 Munna Kumar has stated that at the date and time of occurrence, he was in his house and was eating his food and he came out of his house after hearing the noise then saw that there was some quarrel between Rajendra Thakur and Darogajee. He has further deposed that Rajendra Thakur assaulted Darogajee on his head with brick resulting into injury in the head. He has stated that when younger son of the Darogajee, namely, Suraj Kumar came in rescue, the accused persons assaulted him with *khanti* resulting into injury in his head. He has further stated that accused persons assaulted the sister of Darogajee.

17. PW- 6 Rinku Kumari has stated that at the date and time of occurrence she was in the balcony of garage and accused Rajendra Thakur was constructing drainage and



throwing the garbage in front of her garage and also constructing drainage in her land. When her father protested, quarrel started and she came out from the balcony. However, in the meantime, accused Rajendra Thakur assaulted her father with brick resulting into injury in his head. She has further deposed that when her brother Suraj Kumar came, the accused persons assaulted him with *khanti* resulting into injury in his head. She has further deposed that when her Bua, Sunita Devi came there, she was also assaulted with screw driver by Pramod resulting into injury in her hand. She has further deposed that accused persons snatched ear ring of Sunita Devi and also damaged the glass of the house. She has stated that the wounds sustained by the three injured were stitched by doctor during treatment.

18. PW-7 Brahamsheela Devi @ Paramsheela Devi has also supported the prosecution case as alleged in the FIR. However, she has deposed that all the accused snatched the ear ring of Sunita Devi.

19. PW-8 Sunita Devi has stated that at the date and time of occurrence she was in her house and Rajendra Thakur was encroaching the land of Umesh Kumar Singh by extending the chamber. When Umesh Kumar Singh protested,



accused Rajendra Thakur assaulted him with brick resulting head injury. When his younger son went to rescue, accused Dablu Kumar assaulted him with *khanti* on the head and thigh. When she went to rescue, accused Pramod Thakur assaulted her with screw driver resulting injury in her hand. She has not stated anything about snatching of her ear ring.

20. It is reiterated that PW-1 Rajeev Kumar, PW-2 Umesh Kumar Singh, PW-4 Suraj Kumar, PW-6 Rinku Kumari and PW-8 Sunita Devi have stated in their deposition that all the three injured had sustained bleeding injuries. The wounds sustained by them were stitched by the doctor in the hospital. They have also stated that blood had fallen on their clothes and also on earth and the police had seized their blood stained clothes.

21. PW-9 Jai Prakash Singh is the investigating officer of the case. He has stated that he had received injury report of injured persons, inspected the place of occurrence, recorded the statement of witnesses and finding the allegations to be true, filed charge sheet before the court against the accused persons. He admitted in cross-examination that he did not seize any cloth of the injured. He did not mention in the diary that clothes of the injured were marked with blood.



22. PW-3 Dr. Anuradha, Medial Officer, Gardanibagh, who had examined the injured persons, has deposed that on 25.08.2010, she examined the injured Umesh Kumar Singh and found on his person one lacerated wound 1x2” x 1/8” x skin deep in occipital area of head. She has further deposed that that on the same date she also examined Sunita Devi, wife of Ram Sharan Singh and found one lacerated wound 1/2” x 1/8” x skin deep in posterior area of right forearm. She has further deposed that on the same day she also examined Suraj Kumar, son of Umesh Kumar Singh and found one lacerated wound 1/2” x 1/8” x skin deep left ear in the temporal part of head and, bruise about 1/2” x 1/8” above right knee point. She has stated that all the injured had sustained simple injuries caused by hard and blunt substance.

23. In cross-examination, she has admitted that the injuries found on the person of the injured could have been caused either due to fall or due to collision with any hard substance.

24. The trial court having discussed the evidence adduced on behalf of the prosecution in detail recorded its finding in paragraph nos. 18 to 23 of the judgment, which is reproduced hereinunder:-

“18. From the perusal of the written report



of the occurrence (Ext.1), it appears that there is land dispute between the parties and on the date and time of occurrence, it has been alleged that accused persons were throwing garbage from the chamber of drainage. It appears that there was no wrongful restraint as defined in section 339 of the IPC. The witnesses produced on behalf of prosecution also did not whisper about the wrongful restraint in their oral evidence. Therefore, I am of the opinion that the prosecution has failed to prove the charge u/s 341 of the IPC.

19. So far as charge u/s 379 of the IPC is concern, it appears that, as per written report of the occurrence, accused persons took away the ear ring of the sister of informant. The informant as PW 2 has stated in para 4 of his chief examination that Sunita Kumari told him that her ear ring was snatched. Sunita Kumari has also come as PW 8 for her oral evidence but she did not even whisper about the theft of her ear rings. Therefore, I am of the considered opinion that the prosecution has failed to prove the charge u/s 379 of the IPC.

20. As per prosecution case, the accused persons break the glass of window of the house of the informant. The informant as PW 2 has stated in para 5 of his chief



examination that, he got the information that accused persons have break the glass of window of his house when he reached hospital, meaning thereby he does not seen the occurrence himself. PW 1 has stated that Pramod Thakur broken the glass of the house by throwing brick. He has stated that, after that, he went to Jakkanpur police station. PW 4 Suraj Kumar is son of the informant and victim of the case. He has stated in para 3 of his chief examination that, when they were going to police station, accused persons abused them and also broken the glass of window of his house. PW 5 Munna Kumar is the eye witness of the occurrence but he did not say about the breaking of the glass of the house of informant. PW 7 Brahamsheela Devi is the wife of the informant but she did not say about the breaking of the glass of her house in her chief examination. PW 8 Sunita Devi is sister of the informant and alleged to be eye witness of the occurrence but she also did not whisper about the break of glass in her chief examination. From the perusal of the oral evidence of the witnesses, it is crystal clear that, after the alleged occurrence, the informant along with other injured witnesses went to police station and from there, they were sent to hospital.



PW 2 who is informant of this case, has stated that he did not see that accused persons are breaking the glass of his house rather he came to know this fact when he was in hospital. In this connection, the evidence of PW 9 Jay Prakash Singh, I.O. of the case is very important. In para 4 of his examination, he has narrated the place of occurrence. From the perusal of para 4 of his chief examination, it appears that he did not say anything about the break of glass of the house of the informant. Considering the facts discussed above it appears that the prosecution has failed to prove the charges u/s 427 of the IPC.

21. So far as the charge of Section 307 of the IPC is concern, it appears that as per written report of the occurrence, accused Rajendra Thakur assaulted the informant with brick resulting head injury, accused Dablu Kumar assaulted Suraj Kumar on the head and the right thigh with khanti resulting injury in the head, accused Pramod Thakur assaulted the sister of informant Sunita Kumari with screw driver resulting injury in her hand. From the perusal of the evidence of Dr. Anuradha (Ext.3), Medical Officer, Gardanibagh, it appears that informant Umesh Kumar Singh received injury in his head which was found as simple and was



caused by hard and blunt substance (Ext. 2), the injury on the person of Sunita Devi was also found as simple in nature and caused by hard and blunt substance (Ext.2/1), the injuries on the person of Suraj Kumar was also found as simple and caused by hard and blunt substance. PW 9 who is I.O. of the case has stated in para 20 and 21 of his cross examination that, he did not find the blood stained cloth in the case diary. He has also stated that he did not seize the cloth of the injured. From the perusal of the written report of the occurrence as well as oral evidence adduced on behalf of injured persons, it is crystal clear that there was no repeated blow on the person of the victims and moreover, the injuries found on the person of the victims are simple in nature. Therefore, in my opinion, the prosecution has failed to prove the charge u/s 307 of the IPC. However, in my opinion, the accused persons are guilty for the offence u/s 323 of the IPC.

22. From the perusal of the written report of the occurrence it appears that at the date and time of occurrence, the accused persons were throwing garbage on the land of the informant and when protested, the accused persons abused the informant and also assaulted the informant and their



family members. From the perusal of the oral evidence it appears that there is land dispute between the parties and alleged occurrence took place due to land dispute. There is nothing on the record to show that there was any intentional insult within intent to provoke breach of peace, hence, I am of the opinion that the prosecution has not been able to prove the charge u/s 504 of the IPC.

23. Considering the facts, I am of the opinion that the prosecution has been able to prove the ingredients of section 323 of the IPC only against the accused persons. Therefore, I find and hold guilty the accused persons namely Rajendra Thakur, Shishir Kumar @ Dablu Kumar and Pramod Thakur for the offence u/s 323 of the IPC. The convicted persons are hereby taken into custody and their bail bonds has been cancelled. Put up for hearing on the point of sentence after lunch.”

25. The trial court has recorded that there is no allegation of any wrongful restraint as defined under Section 339 of the Indian Penal Code and in absence thereof, the charge under Section 341 cannot be held to be proved.

26. As far as Section 379 of the Indian Penal Code is concerned, the trial court has recorded that as per the



informant, the accused persons took away the ear ring of the sister of the informant, but the sister of the informant who deposed as PW-8 has not whispered a word about theft or snatching of her ear ring. Apart from the reason assigned by the trial court, we find that there is no consistency in the deposition of the witnesses examined during trial on the point of theft. Some of them have stated that the ear ring of Sunita Devi fell down during occurrence of offence and was lost. Some others pointedly said that it was Pramod Thakur who snatched the ear ring and some others said that all the accused persons snatched the ear ring of Sunita Devi.

27. In view of these inconsistencies in the evidence as also the fact that the victim Sunita Devi whose ear ring is alleged to have been snatched has herself not whispered a word about theft or snatching of her ear ring, in the opinion of this Court, the trial court rightly acquitted the accused persons from the charge under Section 379 of the Indian Penal Code.

28. As far as Section 427 of the Indian Penal Code is concerned, the trial court has discussed the evidences led during trial. It has found that there is no consistency in the evidence of the prosecution witnesses. It has also recorded that PW-9 Jai Prakash Singh, the investigating officer of the case,



has narrated the place of occurrence and has also stated that he visited the place of occurrence, but he did not utter a word about any damage done to the glass of house of the informant.

29. In view of the inconsistency incoherence in the evidence of the witnesses on the point of damage done to the glass of the house of informant and in view of the complete silence by the investigating officer in this regard, we are of the view that the trial court rightly acquitted the accused persons from the charge under Section 427 of the Indian Penal Code.

30. The only other section under which the charge was framed against the accused persons is 307 of the Indian Penal Code. The trial court has noticed that the medical evidence does not corroborate the case of the prosecution as narrated in the FIR and the ocular testimony of the injured and other witnesses examined on behalf of the prosecution. The doctor, who had examined the injured persons had found that injuries sustained by them were all simple in nature. All the injuries were caused by hard and blunt substance. In cross-examination, the doctor has opined that the same could have been caused even due to fall on the ground or collision with any hard substance. Though the witnesses have stated that the injured persons had sustained injuries which were stitched by



the treating doctor, the doctor has not corroborated the said part of the evidence. The witnesses have also stated that blood had fallen on the clothes and also on the place of occurrence but the investigating officer did not support the said part of the story narrated by the witnesses. On the contrary, the investigating officer has admitted in cross-examination that he did not find blood stain on the place of occurrence and did not mention regarding seizure of the blood stained clothes during investigation. The manner in which the occurrence is alleged to have taken place, it is evident that there was no intention of the accused persons to kill the injured.

31. Section 307 of the Indian Penal Code prescribes punishment for the offence of attempt to murder. In order to prove the charge under Section 307 of the Indian Penal Code, the prosecution is required to prove:-

- (i) that the death of human being was attempted;
- (ii) that such death was attempted to be caused by, or in consequence of, the act of the accused;
- (iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as (a) the accused knew to be likely to cause death; or (b) was sufficient in



the ordinary course of nature to cause death;
or the accused attempted to cause such
death by doing an act known to him to be so
imminently dangerous that it must in all
probability cause (a) death, or (b) such
bodily injury as is likely to cause death.

32. It is true that to justify a conviction under Section 307 of the Indian Penal Code, it is not essential that bodily injury capable of causing death could have been inflicted. However, the intention or knowledge, which is necessary to constitute murder must exist in order to arrive at a conclusion that the prosecution has proved its charge under Section 307 of the Indian Penal Code.

33. We find that there is complete lack of material to support the ingredients of the offence under Section 307 of the Indian Penal Code in the instant case.

34. Thus, the trial court rightly chose not to convict the accused persons under Section 307 of the Indian Penal Code and convicted them for a lesser offence under Section 323 of the Indian Penal Code.

35. In view of the discussions made above, we are of the opinion that the impugned judgment passed by the trial court calls for no interference in appeal by this Court. The judgment of the trial court is based on sound and cogent



reasoning.

36. The appeal lacks merit. It is dismissed,
accordingly.

(Ashwani Kumar Singh, J.)

(Partha Sarthy, J.)

Sanjeet/-

AFR/NAFR	NAFR
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