

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.675 of 2019

In
CRIMINAL APPEAL (SJ) No.1174 of 2019

Arising Out of PS. Case No.-90 Year-2005 Thana- BRAHMPUR District- Buxar

Sanjay Kumar Chaubey Son of Late Sarba Nand Choubey Resident of
Village- Gosaipur, Hathilpur, Police Station- Brahmpur, District- Buxar.

... .. Appellant/s

Versus

1. The State of Bihar
2. Ram Niwas Chaubey Son of Late Dinanath Chaubey Resident of Village-
Gosaipur, Hathilpur, Police Station- Brahmpur, District- Buxar.
3. Jai Prakash Chaubey Son of Shree Niwas Chaubey Resident of Village-
Gosaipur, Hathilpur, Police Station- Brahmpur, District- Buxar.
4. Shankar Bhagwan Chaubey Son of Shree Niwas Chaubey Resident of
Village- Gosaipur, Hathilpur, Police Station- Brahmpur, District- Buxar.
5. Akhilesh Chaubey Son of Shree Niwas Chaubey Resident of Village-
Gosaipur, Hathilpur, Police Station- Brahmpur, District- Buxar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Parijat Saurav
For the Respondent/s : Mr. Syed Ashfaque Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 18-01-2020

Heard Mr. Parijat Saurav, learned counsel for the
appellant.

2. Learned counsel for the appellant has supplied us
a certified copy of the First Information Report, charge-sheet,
deposition of witnesses recorded during trial and the statement
recorded under Section 313 of the Cr.P.C.

3. Let the same be kept on record.



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

5. This appeal under proviso of Section 372 of the Code of Criminal Procedure has been filed by the appellant for setting aside the part of the judgment dated 14.12.2018 passed by the Fast Tract Court-II, Buxar in Sessions Trial No. 380 of 2006 arising out of Brahmpur P.S. Case No. 90 of 2005 registered under Sections 341, 323 and 504/34 of the Indian Penal Code whereby the Trial Court has convicted the respondent nos. 2 to 5 for a lesser offence under Section 323/34 of the Indian Penal Code in place of the charge under Section 307/34 of the Indian Penal Code and acquitted them under Sections 504 and 341 of the Indian Penal Code.

6. Mr. Parijat Saurav, learned counsel appearing for the appellant fairly submitted that as far as the acquittal under Sections 504 and 341 of the Indian Penal Code is concerned, there is lack of material, and therefore, he would not put much stress on acquittal recorded by the Trial Court under those provisions. However, he contended that as far as charge under Section 307 read with Section 34 of the Indian Penal Code is concerned, there were sufficient materials to convict the respondent nos. 2 to 5, and in any circumstance, if the



conviction was to be recorded for a lesser offence, it ought to have been under Section 325 read with Section 34 of the Indian Penal Code as the injured PW-1 Ashok Kumar Chaubey had sustained grievous injury over his head caused by lathi and not under Section 323/34 of the Indian Penal Code. He submitted that the ocular testimony proved the case of grievous injury beyond doubt and the doctor, who examined the injured also corroborated the ocular testimony by deposing that the injured Ashok Kumar Chaubey had sustained grievous injury. On these submissions, he submitted that the findings recorded by the Trial Court are perverse. Thus, the part of the order whereby the Trial Court has convicted the respondent nos. 2 to 5 for lesser offence is fit to be set aside.

7. We have carefully perused the certified copy of the FIR and deposition of witnesses during trial.

8. The case of the prosecution is based on the written statement of the appellant submitted to the Officer-in-charge of Brahmpur Police Station on 23.04.2005 at 08:00 AM wherein he has stated that on 23.04.2005 at 08:00 AM while he was standing at the door of his house, his neighbour Ram Niwas Chaubey arrived and started putting peg in front of the wall of his house. When he objected, Ram Niwas Chaubey started



abusing him and called his three sons, namely, Jai Prakash Chaubey, Akhilesh Chaubey and Shankar Bhagwan Chaubey, who came armed with lathi. When his cousin Ashok Chaubey came to intervene and resolve the issue, Ram Niwas Chaubey also picked up danda and all the four accused started assaulting him and his cousin Ashok Chaubey. The accused Jai Prakash Chaubey assaulted Ashok Chaubey on head with lathi, as a result of which, he sustained fracture injury and started bleeding. Other three accused, namely, Ram Niwas Chaubey, Shankar Bhagwan Chaubey and Akhilesh Chaubey also indiscriminately assaulted him with lathi and when he tried to save his head, he sustained injuries on his back.

9. On the basis of the aforesaid written report, the police instituted Bhagwanpur P.S. Case No. 90 of 2005 under Sections 341, 323, 504/34 of the Indian Penal Code against Ram Niwas Chaubey, Shankar Bhagwan Chaubey, Akhilesh Chaubey and Jai Prakash Chaubey and took up investigation.

10. On completion of investigation, a report under Section 173(2) of the Cr.P.C. was submitted against all the four accused persons vide Charge-sheet No. 146 of 2005 under Sections 341, 323, 307 and 504/34 of the Indian Penal Code.

11. After the police report under Section 173(2) of



the Cr.P.C. was submitted, the learned Chief Judicial Magistrate, Buxar took cognizance of the offences under Sections 307/34, 323, 341 and 504 of the Indian Penal Code.

12. After supplying of police papers under Section 207 Cr.P.C. of the Code of Criminal Procedure, the case was committed to the Court of Sessions, Buxar.

13. The learned Sessions Judge transferred the case to the Fast Tract Court-II, Buxar. The Trial Court framed charges for the offences punishable under Sections 307/34, 323, 341 and 504 of the Indian Penal Code against all the four accused persons.

14. As the accused persons did not plead guilty, the trial commenced.

15. During trial, altogether 11 witnesses were examined on behalf of the prosecution. However, no oral evidence was adduced on behalf of the defence.

16. After closure of the evidence on behalf of the prosecution, statement of the accused persons were recorded under Section 313 of the Cr.P.C. and the case was placed for argument.

17. On completion of argument, the Trial Court acquitted the accused persons for the offences under Sections



504 and 341 of the Indian Penal Code. However, it came to the conclusion that the charge under Section 307 read with Section 34 of the Indian Penal Code was not proved, but the prosecution had been able to prove its case beyond reasonable doubt for the offence punishable under Section 323/34 of the Indian Penal Code. Accordingly, the Trial Court convicted the accused persons for a lesser offence under Section 323/34 of the Indian Penal Code and sentenced them with a fine of Rs. 1000/- each.

18. Now, the only point for consideration is as to whether the prosecution had succeeded in proving its case either under Section 307 read with Section 34 of the Indian Penal Code or for a lesser offence under Section 325 read with Section 34 of the Indian Penal Code.

19. It would be pertinent to note here that PW-3 Paras Nath and PW-4 Anjor Tatwa did not support the prosecution case. Hence, at the request of the prosecution, they were declared hostile.

20. PW-6 Shashi Bhushan Mishra, PW-7 Deo Muni Singh and PW-11 Basukinath Kumar are formal witnesses. They have proved certain documents during trial.

21. PW-1 Ashok Kumar Chaubey is an injured witness and also cousin brother of the injured informant PW-5



Sanjay Kumar Chaubey. PW-2 Ram Ashray Chaubey is the father of injured Ashok Kumar Chaubey. Thus, the two injured, namely, PW-1 Ashok Kumar Chaubey and PW-5 Sanjay Kumar Chaubey and father of PW-1 Ram Ashray Chaubey are the eyewitness of the occurrence. They all belong to one family and are close relatives.

22. PW-10 Dhananjay Sahu, Assistant Sub Inspector is the first Investigating Officer and PW-2 Ram Pratap another Additional Sub Inspector is the second Investigating Officer of the case.

23. The two injured and father of the injured Ashok Kumar Chaubey have stated in their deposition during the trial that the accused persons mercilessly assaulted them with lathi. They all have stated that accused Jai Prakash Chaubey assaulted Ashok Kumar Chaubey on his head, as a result of which, Ashok Kumar Chaubey got fracture injury over his head.

24. In this background, the appellant has pleaded that the Trial Court ought to have convicted the accused persons either under Section 307/34 of the Indian Penal Code or for a lesser under Section 325/34 of the Indian Penal Code as they all had a common intention and the injured Ashok Kumar Chaubey had sustained grievous injury on a vital part of his body.



25. In order to appreciate the submission of the learned counsel for the appellant, when we look to the medical evidence, we find that PW-9 Dr. Akhilesh Kumar has stated in his deposition that he being the Medical Officer of P.H.C. Raghunathpur had examined Ashok Kumar Chaubey on 23.04.2005 at 11:10 AM and found following injuries on his person:-

(I) A swelling size 3 cm x 3 cm on middle of the scalp and one cut injury of size 2 cm x ½ cm x skin deep towards left side of the head.

(II) A mild swelling on the dorsal part of the left hand.

(III) A mild swelling on the dorsal part of the right hand.

26. He has deposed that Ashok Kumar Chaubey was advised X-ray of skull to be conducted at Sadar Hospital, Buxar. He kept his opinion reserved with respect to injury no. 1 until receipt of X-ray report with Plate. The other two injuries were found simple in nature caused by hard and blunt substance.

27. He further deposed that on the same day at 11:00 AM, he had examined the injured Sanjay Kumar Chaubey and found following injuries.

(I) Complaint of pain in whole body.



(II) Two linear bruise 10 cm x ½ cm. horizontal on right side of back and three linear bruise 8 cm x ½ cm vertically on left side of back. The injured was advised X-ray of chest to be conducted at Sadar Hospital, Buxar.

28. He found injury no. 1 simple in nature caused by hard blunt substance. However, he kept his opinion reserved with respect to injury no. 2 until receipt of X-ray report from Sadar Hospital, Buxar.

29. He has further deposed that on receipt of the X-ray report of the injured Ashok Kumar Chaubey, he found the injury no. 1 to be grievous in nature. In cross-examination, he has stated that his opinion is based on the report of X-ray. He has further deposed that he has not mentioned the time of receiving X-ray report and the name of messenger from whom he received the X-ray report. He has further stated that he is posted at Raghunathpur P.H.C. whereas the X-ray report and Plate is of Sadar Hospital, Buxar. He denied the defence suggestion that the report is manufactured one.

30. The Trial Court having appreciated the ocular evidence and the medical evidence doubted the story of the prosecution in respect of grievous injury caused to Ashok Kumar Chaubey on the basis that the doctor who conducted the



radiological test on the skull of the Ashok Kumar Chaubey was not examined. The Trial Court also doubted the veracity of the X-ray plate and the opinion given about that as it was not known who had brought the X-ray plate and report from the Sadar Hospital, Buxar to the P.H.C. at Raghunathpur where PW-9 Dr. Akhilesh Kumar was posted. Since the opinion of PW-9 was based on the report of X-ray and the X-ray plate and neither the X-ray plate nor the opinion was properly proved by the prosecution during trial, the Trial Court convicted the accused persons for the offence punishable under Section 323/34 of the Indian Penal Code as the story of causing simple injury on the person of the informant and the injured Ashok Kumar Chaubey was duly corroborated.

31. On appreciation of evidence, we do find that there was no material before the Trial Court, on the basis of which, it could have come to the conclusion that an attempt in order to commit murder was made by the accused persons. In absence of such evidence, we are of the opinion that the Trial Court rightly decided not to convict the accused persons under Section 307/34 of the Indian Penal Code.

32. As far as Section 325 of the Indian Penal Code is concerned, it prescribes punishment for voluntarily causing



grievous hurt. The word “grievous hurt” is define under Section 320 of the Indian Penal Code which reads as under:-

“320. Grievous hurt.- The following kinds of hurt only are designated as “grievous”:-

First.-Emasculation.

Secondly.- Permanent privation of the sight of either eye.

Thirdly.- Permanent privation of the hearing of either ear.

Fourthly.- Privation of any member or joint.

Fifthly.- Destruction or permanent impairing of the powers of any member or joint.

Sixthly.- Permanent disfiguration of the head or face.

Seventhly.- Fracture or dislocation of a bone or tooth.

Eighthly.- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

33. As the prosecution failed to prove beyond reasonable doubt that either of the injured had sustained any grievous injury by leading cogent evidence, we are of the opinion that there was no occasion for the Trial Court to have recorded conviction for the offence under Section 325 read with Section 34 of the Indian Penal Code.



34. In that view of the matter, we see no merit in this appeal. The findings of the Trial Court are based on proper appreciation of facts and law.

35. Accordingly, the appeal being devoid of any merit is dismissed.

(Ashwani Kumar Singh, J)

rohit/-

(Partha Sarthy, J)

AFR/NAFR	NAFR
CAV DATE	NA
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