

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3740 of 2019

Arising Out of PS. Case No.-269 Year-2016 Thana- BIRAUL District- Darbhanga

VINAY KUMAR JHA @ VINAY JHA Son of Late Ram Avtar Jha Resident
of Village- Hati, P.S.- Biraul, District- Darbhanga.

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. Jaya Devi, Wife of Bhola Paswan, Resident of Village- Hati, P.S.- Biraul,
District- Darbhanga.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Iqbal Asif Niazi
For O.P. No-2	:	Mr. Rikesh Sinha, Adv
		Mr. Dileep Kumar Singh.
For the Respondent/s	:	Mr.Usha Kumari No 1 (App)

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

4 19-02-2020 This appeal under Section 14(A)(1) of the Scheduled
Castes and Scheduled Tribes (Prevention of Atrocities), Act
against the order of cognizance is barred by limitation of 89
days. The delay is explained in I.A. No. 1 of 2019. Hence, the
delay is condoned.

The appellant has challenged the order of cognizance
dated 01.02.2019 passed by the learned Special Judge
Scheduled Castes and Scheduled Tribes (Prevention of
Atrocities) Act, Darbhanga, in SC/ST Case No.-56 of 2016
corresponding to Biraul P.S. Case No. 269 of 2016 whereby
cognizance has been taken for offences under Sections 147, 148,
341, 323, 326, 307, 354, 504 and 506 of the Indian Penal Code
as well as under Section 3(1)(r)(s) of the Scheduled Castes and



Scheduled Tribes(Prevention of Atrocities) Act.

According to FIR all the named accused persons variously armed came and asked the informant to not to put pillars on the referred land and on protest by the informant they committed abuse and assault against the informant. Specific allegation against the appellant Vinay Jha is that he assaulted with lathi causing injury at the head of Maina Paswan. Maina Paswan has supported the aforesaid allegation before the police in para 7 of the case diary. The doctor has found one abrasion on the mid scalp of Maina Paswan.

Learned counsel for the appellant submits that the present false case has been lodged due to old enmity between the parties. The appellant was posted as Branch Manager, in the State Bank of India, Balagam Branch, Ahmadabad and this fact has come during investigation also. The supervising authority did not find the allegation true against the appellant. No case under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is prima facie made out against the appellant and witnesses have not supported any allegation of commission of abuse by the appellant.

Section 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, read with



schedule of the said Act makes it abundantly clear that the offence under Section 323 IPC which is a scheduled offence under the Act is punishable under the Act and the same is apparently made out against the appellant. Hence, it cannot be argued that no offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is made out against the appellant.

The law is well settled that probable defence of the accused can be looked into only at the appropriate stage of the trial and not at the stage of cognizance unless the defence goes to the root of the allegation. The plea of alibi does not go to the root of the allegation. Therefore, in my view this appeal has got no merit. Accordingly, it stands dismissed.

No observation above shall prejudice the mind of the trial Judge while conducting the trial.

(Birendra Kumar, J)

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