

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.160 of 2022

Arising Out of PS. Case No.-13 Year-2004 Thana- NIRMALI District- Supaul

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VASUDEV SAH Son of Late Mishri Lal Sah Resident of Village- Nirmali,
Police Station- Nirmali, District- Supaul

... .. Appellant

Versus

1. The State of Bihar
2. Gopal Sah Son of Late Asarfi Sah Resident of Village- Nirmali Ward No.07,
Police Station- Nirmali, District- Supaul.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Mrityunjay Kumar, Advocate
For the Respondent	:	Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH

SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 22-11-2022

This appeal has been filed under the *proviso* to Section 372 of the Cr.P.C., putting to challenge a judgment and order dated 09.12.2022 passed by the learned Additional Sessions Judge-IVth, Supaul, in Sessions Trial No. 107 of 2005, arising out of Nirmali P.S. Case No. 13 of 2004, whereby the trial court has acquitted respondent No. 2 of the charge punishable under Section 307 of the IPC and has held him guilty of the offence punishable under Section 325 and 323 thereof. Thereafter, the court has granted benefit under Section 4 of the Probation of Offenders Act, 1958 and let off the respondent No.2 upon submission of bond for keeping peace and good behaviour.

The respondent no. 2 was put to trial for the commission of offence punishable under Section 307, 323 and 504 of the IPC read with Section 34 thereof in Sessions Trial No. 107 of 2005. Applying Section 222 of the Cr.P.C., the court of learned Additional Sessions Judge-IV, Supaul, by his impugned judgment and order has convicted the respondent no. 2 for commission of offence punishable under Section 325 of the IPC instead of Section 307 of the IPC. Further, respondent no. 2 has been convicted of the offence punishable under Section 323 of the IPC after holding that the charge of commission of offence under aforesaid Section stood proved beyond all reasonable doubts. After having held respondent no. 2 guilty of the aforesaid offences, considering mitigating circumstances of the nature that the sides were cousins having common lineage and there were long-standing land disputes between them, the trial court, instead of sentencing respondent no. 2 to the imprisonment, directed for his release, invoking Section 4 of the Probation of Offenders Act, 1958.

It is the case of the appellant that the trial court has wrongly convicted the respondent no. 2 for a lesser offence and in view of the criminal background of the respondent no. 2, has incorrectly given him the benefit of the Probation of Offenders Act.

Elaborating the prosecution's case, Mr. Mrityunjay Kumar, learned counsel for the appellant, has submitted that it was clear case of the prosecution, as unfolded in the First Information Report, that relating to certain dispute between the informant (the appellant) and respondent no.2, respondent no. 2 and his family members barged into his (informant's) house. Respondent no. 2 was carrying a *khanti*, with which he gave repeated blows in his head. The occurrence is of 13.05.2004. The charges were framed on 14.07.2006. The injury report of the informant was proved at the trial which disclosed following injuries on the person of the informant: -

*“(i) wound left side of head 1 ½ x 1”
width ¼”*

(ii) Swelling on shoulder joint.

(iii) Bruise mark 3'x1' on the back.

(iv) Pain both heap joint.

(v) Severe bruise mark on both legs

Injuries No. 2 to 5 are simple in nature and caused by hard weapon. Injury No.1 dangerous to life and caused by sharp weapon. This injury report is written by him and bears his signature, which is marked as Ext-2.”

He has submitted that the prosecution's witnesses supported the prosecution's case in their oral evidence adduced at the trial, which is duly corroborated by the medical evidence. He

contends that the doctor has found the first injury to be grievous in nature and, therefore, the learned trial court ought to have held the respondent no. 2 guilty of the offence punishable under Section 307 of the IPC instead of Section 325 of the IPC.

Mr. Mrityunjay Kumar has submitted, with reference to the statement made in paragraph 19 of the present memo of appeal, that the respondent no. 2 is accused in as many as nine cases and, therefore, benefit of Probation of Offenders Act ought not to have been granted by the Court below and instead the trial court should have imposed sentence for imprisonment on respondent no. 2.

We have carefully gone through the impugned judgment and order of the trial court. The trial court has duly discussed the evidence of the witness adduced at the trial. It has recorded its finding based on evaluation of the evidence that there was no intention of the respondent no. 2 to kill the appellant/informant, who happened to be his own cousin. The trial court noted long-standing land dispute between the parties. In that background, the trial court found that the assault was apparently not made by the pointed side of *Khanti* and there was no cogent evidence to establish that there was any repetition of blow by *Khanti*. Accordingly, the trial court recorded the conviction of the

respondent no. 2 for the offences punishable under Section 325 and 323 of the IPC.

Upon perusal of the lower court's records and appreciation of the evidence adduced at the trial, we do not find any legal infirmity in the evaluation of the evidence of prosecution's witnesses, based on which the learned trial court has considered it appropriate to convict respondent no. 2 of the offence punishable under Section 325 of the IPC instead of 307 in the given facts and circumstances that there was no evidence of repetition of blow by *Khanti* and the sharp and the pointed side of the *Khanti* was not found to have been used for assault.

So far as appellant's challenge to grant of benefit under Section 4 of the Probation of Offenders Act, 1958, is concerned, based on the fact that the respondent no. 2 is accused in many criminal cases, we are of the view that the submission in this regard is misconceived. It is an admitted fact that the respondent no. 2 has not been convicted in any criminal case other than the present one. Long-standing land dispute between the appellant and respondent no. 2, who are cousins, are admitted facts. The occurrence is of 2004.

Taking a holistic view of the entire material in the nature of evidence and considering all the facts and circumstances

of the case, in our opinion, the exercise of power under Section 4 of the Probation of Offenders Act by the court below cannot be said to be improper or vulnerable, based on the aforesaid submissions which have been advanced on behalf of the appellant. We do not find any merit in this appeal. The impugned judgment and order passed by the trial court does not warrant any interference.

This appeal is accordingly dismissed.

Before we part with the present judgment, we make it clear that the finding recorded in the present judgment and order is confined to the appellant’s challenge to the impugned judgment and order of the trial court in an appeal under the *proviso* to Section 372 of the Cr.P.C. This order shall in no manner prejudice the case of the respondent no. 2 in any proceeding, where he seeks to question the illegality of the impugned judgment of his conviction.

(Chakradhari Sharan Singh, J)

(Chandra Prakash Singh, J)

Pawan/-

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