

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.343 of 2020

In
CRIMINAL APPEAL (SJ) No.4844 of 2019

Arising Out of PS. Case No.-1 Year-2000 Thana- HARPUR District- Munger

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SHALIGRAM YADAV, Son of Late Mahavir Yadav, Resident of Village -
Harpur, P.S.- Harpur, District- Munger

... .. Appellant/s

Versus

1. The State of Bihar
2. Shatrughan Yadav, Son of Late Banbari Yadav, Resident of Village - Harpur,
P.S.- Harpur, District- Munger, Bihar
3. Vijay Yadav, Son of Late Banbari Yadav, Resident of Village - Harpur, P.S.-
Harpur, District- Munger, Bihar
4. Ajay Yadav, Son of Late Banbari Yadav, Resident of Village - Harpur, P.S.-
Harpur, District- Munger, Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Sushil Kumar Singh, Advocate
For the Respondent/s : Ms.Abha Singh, 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 : 19-12-2022

This is an appeal under Section 372 of the Code of Criminal Procedure, 1973 assailing the judgment and order dated 16.05.2019, passed by the learned *Ad hoc* FTC-I, Munger in Sessions Trial No. 632 of 2002/ Trial No. 94 of 2017, whereby the respondent No. 2 Shatrughan Yadav has been acquitted of the charge punishable under Section 307 of the



Indian Penal Code and respondents No. 3 and 4 have been acquitted of the charge punishable under Section 307/34 of the IPC. They have been, however, convicted of the offences punishable under Sections 324/34 and 447 of the IPC. Further, considering the mitigating circumstances, instead of sentencing the respondents, the trial court has directed for their release on furnishing probation bond of Rs. 5000/- with two sureties of the like amount each. They have been further directed to appear and receive sentence as and when then were called during six months and with a further direction that, in the meantime, they would maintain peace and good behaviour; exercising power under Section 4 of the Probation of Offenders Act, 1959.

2. We have heard Mr. Sushil Kumar Singh, learned counsel appearing on behalf of the appellant and Ms. Abha Singh, learned Additional Public Prosecutor for the State.

3. The case of the informant (PW-6), as disclosed in his written report before the Officer-in-Charge of Harpur Police Station, Munger, giving rise to Harpur P.S. Case No. 1 of 2000, is that on 02.01.2000 at about 3:00 p.m., he along with his two brothers and two labourers were filling soil in their potato field. He owned a piece of land adjacent to the said field having mustard crop which was being grazed by a shegoat of Banbari



Yadav, late father of respondents No. 2 to 4. The appellant had objected to it, whereupon Banbari Yadav went to his house and thereafter his three sons, who are respondents No. 2 to 4 herein, came armed with *lathi*, *khanti* and surrounded the informant. They, thereafter, assaulted the informant and his brothers with an intention to kill them. On the order of late Banbari Yadav, the respondents had assaulted the informant, his brother Shaligram Yadav and Damodar Yadav, all of whom sustained injuries. The occurrence was witnessed by Ajablal Yadav, Bisheshwar Yadav and Om Prakash Yadav.

4. Based on the said written report, the FIR came to be registered disclosing commission of the offences punishable under Sections 447, 341, 323, 325, 504 and 307/34 of the IPC. The charge-sheet was submitted on 25.05.2002 whereafter cognizance was taken and the case was committed to the court of sessions on 24.09.2002. The charges were subsequently framed for commission of offence under Section 307 of the IPC against respondent No. 2, Shatrughan Yadav and Sections 307/34 and 447 of the IPC against respondents No. 2 to 4. The said private respondents pleaded innocence and claimed to be tried. At the trial, the prosecution examined following 10 witnesses :-

PW-1 – Nandlal Yadav



Pw-2- Shaligram Yadav
PW-3- Sheo Nandan Prasad
PW4- Om prakash Yadav
PW-5- Ajablal Yadav
PW-6- Purushottam Pd. Yadav @ Purushottam
Yadav.
PW-7- Damodar Yadav
PW-8- Dr. Preedep Kumar Jha
PW-9- Diwakar Yadav
PW-10- Pravesh Paswan

5. Out of the aforesaid ten witnesses, PW-3, PW-4, PW-5 and PW-9 came to be declared hostile. It is to be noted that, in the FIR, the informant had stated that the occurrence was witnessed by Ajab Lal Yadaav (PW-5), Bisheshwar Pd. Yadav (not examined) and Om Prakash Yadav (PW-4). Out of these three, two have been declared hostile and the remaining one has not been examined at the trial. The prosecution proved following exhibits :-

Ext. 1- Signature of informant Purushottam Yadav on written report
Ext. 2- Injury report of Purushottam Yadav
Ext. 2/1- Injury report of Damodar Yadav
Ext. 2/2 – Injury report of Shaligram Yadav
Ext. 3- Formal FIR
Ext. 4- Charge sheet
Ext. 5- Page No. 1 to 128 of case diary.

6. After closure of the prosecution's evidence, the statements of the respondents were recorded under Section 313 of the Cr.PC, wherein they took a plea that because of previous enmity a false case had been instituted. They reiterated their



plea of innocence in their statement.

7. It is considered apposite at this juncture to notice the evidence of the Doctor (PW-8), who was posted as a Medical Officer in the Referral Hospital, Tarapur, Munger and had examined the informant Purushottam Yadav (PW-6), Damodar Yadav (PW-7) and Shaligram Yadav (PW-2) which were duly marked as Exhibits 2, 2/1 and 2/2 respectively :-

Injury report of Purushottam Yadav (PW-6)

(i) Incised wound on mid perital part of scalp size 2½ " x ¼ " x ¼ " periortern & exposed but bone intact.

(ii) Swelling of right arm with bruise size 3" x ½ " colour Reddish nature.

(iii) Swelling of Rt forearm size 2" x 1".

(iv) Ind no. of bruise over right shoulder and right scapular region size 4"x ½ " and 3" x ½ ".

(v) Swelling and bruise over right anterior part of thigh 4"x ½ " M.I. - Black mole over right pectoral region.

As per doctor's opinion all the injuries are simple in nature. These may be caused by Hard and Blunt object exception no.1 which may be caused by sharp object. All the injuries were within 12 hrs.

Injury report of Damodar Yadav (PW-7)

(i) Abrasion over right knee joint size ½ " x 1".

(ii) Swelling over right Deltoid region.

In doctor's opinion all the above injury are simple in nature caused by Hard & Blunt object and all the injuries were within 12



hrs.

Injury report of Shaligram Yadav (PW-2)

(i) Horizontal bruise over left side of scapular region at the level of TG Vertebra. Size of bruise 4" x ½ " colour reddish blue.

(ii) Swelling over left knee joints Size 1" x 1".

As per doctor's opinion, all the injuries are simple in nature caused by Hard and Blunt object within 12 hrs.

M.I. - Black mole over right axillary region.

On the identification of doctor injury reports of injured."

8. Evidently thus, from the medical evidence, it transpires that the injured witnesses were found to have sustained simple injuries caused by hard and blunt substance within 12 hours except injury No. 1 on the person of PW-6 Purushottam Yadav, which, according to doctor, might be caused by a sharp object.

9. Considering the nature of the injuries and the evidence of witnesses, the learned trial court has recorded its finding in paragraph 17 as under :-

"On the basis of above discussions, submissions of side concerned and materials available on the record, I find that none of the P.Ws, even PW-8 Doctor have supported the charge u/s 307/34 IPC against all the accused persons and separate charge u/s 307 IPC against the accused Shatrughan Yadav. Thus, I find that the prosecution has failed to prove the charge u/s 307/34 IPC against all the accused persons and charge



u/s 307 IPC against the accused Shatughan Yadav. But the prosecution has succeeded to prove the ingredients of Section 324/34 IPC and Section 447 IPC against all the three accused persons. I find that the prosecution has well established its case beyond shadow of reasonable doubts. Thus, I find and held the accused Satrughan Yada, Vijay Yadav and Ajay Yadav guilty u/s 324/34 and 447 IPC. Accused persons are on bail. Their bail bonds are hereby cancelled and they are taken into custody to be produced in second sitting for hearing on the point of sentence."

10. After having recorded conviction of the respondents No. 2 to 4 for the offences as noted above, the trial court noticed that there was no proof of any previous conviction against the respondents on record. Keeping in mind the background in which the occurrence had taken place, the character of respondents No. 2 to 4, instead of sentencing them to substantial punishment, the trial court considered it just and proper to release them on their entering into a bond by invoking Section 4 of the Probation of Offenders Act, as has been noted at the outset.

11. Learned counsel appearing on behalf of the appellant has argued that it is evident from the case of the prosecution that the accused persons had come variously armed with a premeditation to kill the injured witnesses. He has submitted that at-least one of the respondents i.e. respondent No. 4 Ajay Yadav was carrying *lathi* to which a *khanti* was



attached, which is a dangerous weapon used by him for assaulting the informant and his brothers. In such circumstance, the trial court ought to have held the said respondent guilty of the offence punishable under Sections 307 and 307/34 of the IPC. He has further submitted that, in any event, after having held the respondents No. 2 to 4 guilty of the offences punishable under Sections 307/34 and 447 of the IPC the trial court ought to have imposed appropriate sentence of imprisonment with fine instead of releasing them on probation by invoking Section 4 of the Probation of Offenders Act.

12. We have carefully gone through the impugned judgment and order of the trial court and we have considered the submissions advanced on behalf of the appellant. On close scrutiny of the evidence of the prosecution's witnesses as noted in the impugned judgment, we find lack of intention on the part of the respondents to commit murder of either the informant or his two brothers. This inference we are drawing in the light of nature of the injuries found to have sustained by them, in the medical evidence. In order to prove the commission of offence punishable under Section 307 of the IPC, the prosecution is required to establish the basic ingredient of an attempt to murder. The depositions of the prosecution's witnesses coupled



with the medical evidence in the nature of injury reports, by no stretch of reasoning, suggest that the respondents No. 2 to 4 had an intention to commit murder.

13. We are accordingly of the view that the finding of conviction for commission of offence punishable under Section 324/34 of the IPC, as recorded by the trial court, cannot be said to be unjustified. The maximum punishment for an offence punishable under Section 324 of the IPC is three years with fine. Further, the trial court has held the said respondents guilty of the offence punishable under Section 447 of the IPC, which is punishable for a maximum period of three months.

14. The background in which the occurrence is said to have taken place, as per the case of the informant himself, itself is a mitigating circumstance and the learned trial court, in our considered opinion, has rightly invoked Section 4 of the Probation of Offenders Act, after having found that there was no evidence of any previous conviction of the respondents No. 2 to 4.

15. For the aforesaid reasons, we are of the view that the judgment and order of the trial court does not require any interference in the present appeal preferred under Section 372 of the Cr.P.C.



16. We make it clear that we have considered the present appeal from the perspective of an appeal under the first *proviso* to Section 372 of the Cr.P.C. Any observation made in the present judgment shall not prejudice the case of respondents No. 2 to 4 if they intend to question the legality of the impugned finding of conviction recorded by the trial court in an appropriate proceeding.

17. This appeal is dismissed with the aforesaid observation.

(Chakradhari Sharan Singh, J)

(Chandra Prakash Singh, J)

Rajesh/gauravkr.

AFR/NAFR	NAFR
CAV DATE	NA
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