

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.738 of 2022

Arising Out of PS. Case No.-43 Year-2018 Thana- SHRI NAGAR District- Madhepura

SUDARSHAN JHA Son of Late Kameshwar Jha Resident of Village - Bela Saddi, P.S.- Srinagar, District - Madhepura.

... .. Appellant

Versus

1. The State of Bihar
2. Bijendra Jha Son of Late Mahendra Jha Resident of Village - Bela Saddi, P.S.- Srinagar, District - Madhepura.
3. Sitaram Jha Son of Late Mahendra Jha Resident of Village - Bela Saddi, P.S.- Srinagar, District - Madhepura.
4. Kartik Jha Son of Sri Bijendra Jha Resident of Village - Bela Saddi, P.S.- Srinagar, District - Madhepura.
5. Gunjesh Jha Son of Sri Bijendra Jha Resident of Village - Bela Saddi, P.S.- Srinagar, District - Madhepura.
6. Navin Jha Son of Sri Bijendra Jha Resident of Village - Bela Saddi, P.S.- Srinagar, District - Madhepura.

... .. Respondents

Appearance :

For the Appellant : Mr. Kishan Kumar, Advocate
For the Respondent State: Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 06-12-2022

The respondents No. 2 to 6 were charged of commission of the offences punishable under Sections 307/34, 323 and 427 of the Indian Penal Code. By judgment and order dated 27.07.2022, passed by the learned Sessions Judge, Madhepura, in Sessions Trial No. 132 of 2019, they have been acquitted of the charge of offence punishable under Section 307 of the IPC. The

trial court has, however, held the appellant No.5, Gunjesh Jha, guilty of the offence punishable under Section 324 of the IPC. Further, the trial court has held all the said respondents guilty of the offence punishable under Section 323 of the IPC. Furthermore, the trial court has held them guilty of the offence punishable under Section 426 of the IPC instead of 427 thereof.

2. After having convicted the said respondents of the offences punishable under various Sections of the IPC as noted above, the learned trial court has extended them the benefit of the provisions under the Probation of Offenders Act, 1951 ('the Act' for short). The respondent Gunjesh Jha has been directed to be released from judicial custody under Section 4 of the Act on furnishing personal probation bond with one year of surety 10,000/- with the condition that in the mean time he would maintain peace and good behavior up to one year, and in the event the condition of the probation bond is violated, he would appear before the court for imposition of punishment. Rest of the convicts/respondents namely Bijendra Jha, Sitaram Jha, Kartik Jha and Navin Jha have been directed to be released from the judicial custody after due admonition invoking Section 3 of the Act.

3. The said judgment and order of the trial court are under challenge in the present appeal filed by the informant (PW-4) under Section 372(4) of the Cr.P.C.

4. We have heard Mr. Kishan Kumar, learned counsel for the appellant and Mr. Binod Bihari Singh, learned Additional Public Prosecutor of the State.

5. In nutshell, it is the prosecution's case that the private respondents, armed with *lathi*, *dabiya*, *khanti* had come to the informant's house and hurled abuses at him. When it was objected to, the respondent No. 2, Bijendra Jha, exhorted others to kill him and oust him after demolishing his house, acting upon which, respondent No. 5, Gunjesh Jha, assaulted him on his head with *dabiya* with an intention to kill him because of which he became unconscious. Thereafter all the accused persons assaulted him with *lathi*, *danda*, fists and kicks. When the appellant's son Rakesh Kumar came in his rescue, all the accused persons started assaulting him also with *lathi*, *danda*, fists and kicks. Accused Kartik Jha, snatched a golden chain, which his son Rakesh Kumar was wearing. Further, the accused persons damaged the *veranda* of and the wall of his house, whereafter the co-villagers came and the informant was thus rescued.

6. Based on the written information to the aforesaid effect submitted by the informant, Srinagar P.S. Case No. 43 of 2018 came to be registered for the offences punishable under Sections 341, 323, 324, 304, 307, 427, 504 and 506/34 of the IPC. Upon completion of investigation, the police submitted charge sheet against all the accused persons for commission of the offences punishable under Sections 341, 323, 324, 307, 427, 504 and 506/34 of the IPC. Cognizance was subsequently taken of the aforesaid offences on 27.04.2019. Subsequently, all the accused persons were charged of commission of the offences punishable under Sections 307/34, 323 and 327 of the IPC. As the accused persons denied the charges, they were put to trial. At the trial, altogether nine witnesses came to be examined including PW-1, the Doctor, who has prepared the injury report of the injuries sustained by the informant Sudarshan Jha. He had found following injuries on the body of the informant: -

“(i) A sharp cutting bleeding over parietal region of skull measuring 7 cm long and 1 cm deep.

(ii) complaining invisible pain in all over the body.”

He has opined the injury as simple in nature and caused by sharp object and other as hard and blunt substance. He has further identified the

injury report in his pen and signature which has been marked as Ext.1.

7. It is noted that PW-5 and PW-6 came to be declared hostile at the instance of the prosecution as they did not support the prosecution's case. The informant, examined as PW-4, supported the prosecution's case that he was assaulted by the respondent No. 5, Gunjesh Jha, with *dabiya* on his head and after he had fallen down, the accused persons had assaulted him with *lathi*, fists and kicks. He further deposed that the accused persons had assaulted his wife too with fists and kicks. The prosecution's case has also been supported by the son of the informant/appellant PW-3.

8. Noticing the nature of injuries sustained by the appellant/informant, evident from the injury report, and the fact that there was no repetition of blow by the respondent Gunjesh Jha, the trial court has reached a conclusion that no case of commission of offence punishable under Section 307 of the Indian Penal Code is made out. The trial court, however, found truthfulness in the prosecution's case and based on the circumstances emerging from the evidence adduced at the trial, has recorded conviction of the private respondents for commission of offence punishable various Sections of the Indian Penal Code, as

indicated above. The trial court has noticed in its judgment that though PW-4 had deposed in his evidence that when his wife Sulochana Devi (PW-2) had come to rescue him, she was assaulted by all the accused persons. Said Sulochana Devi (PW-2) in her deposition did not say that she too was assaulted. The trial court further noted that the prosecution failed to clearly establish that on the order of Bijendra Jha (respondent No.2) to kill the respondent, respondent Gunjesh Jha had assaulted on his head with *dabiya* due to which he had fallen down.

9. Learned counsel appearing on behalf of the appellant has submitted that the prosecution was able to establish beyond all reasonable doubts, based on the evidence of the prosecution's witnesses, that all the accused persons had come to the house of the informant and that respondent Gunjesh Jha had assaulted him with a *dabiya*, which is a sharp cutting weapon, on the head of the informant because of which the informant had sustained injury. He has submitted that the act of assault was apparently with an intent to kill the informant and, therefore, the prosecution was able to establish commission of the offence punishable under Section 307 of the Indian Penal Code. He has further submitted that the prosecution was also able to establish beyond all reasonable doubts that the informant was assaulted variously by other accused

persons after he had fallen down upon sustaining injury caused with *dabiya* on his head. He has argued that despite there being overwhelming evidence adduced at the trial on behalf of the prosecution to prove commission of the offence punishable under Section 307 of the IPC by all the accused persons, the trial court has acquitted the private respondents of the offence punishable under Section 307 of the Indian Penal Code. He has submitted that the *mens rea* of the accused persons to kill the informant can be inferred from the nature of assault caused by the said private respondents on the person of the informant. The act of private respondents was intended to killing of the informant and, therefore, the finding recorded by the trial court, acquitting the respondents of the offence punishable under Section 307 of the Indian Penal Code is erroneous.

10. We have carefully gone through the impugned judgment and order of the trial court and we have given our thoughtful consideration to the submissions advanced on behalf of the appellant. It is pertinent to note that one sharp cutting injury over parietal region of the skull was found on the informant. The injury, according to the doctor, was simple in nature though caused by sharp cutting object. About the informant complaining invisible pain all over the body, the doctor opined that it was because of the

assault caused by hard and blunt substance. The fact remains that there was no repetition of blow by the sharp cutting weapon by respondent Gunjesh Jha. Had there been any definite intention of the accused persons, they had ample opportunity, according to the prosecution's case itself, to assault him with more aggression. There is no grievous injury sustained by the informant caused by these respondents on any part of the body. The injury has been found to be simple in nature.

11. In our opinion, thus, it can not be held out, based on evidence of the prosecution's witnesses as well as the medical evidence, that the said act of the respondent Gunjesh Jha was done with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death. It is true that the intention of a person to do an act can be gathered from the actual act done by such person. In the present case, the ingredient of intention to kill is lacking because despite having opportunity, the private respondents did not cause further injuries on the person of the informant.

12. Situated thus, we do not find any merit in this appeal. In our considered opinion, based on analysis of the evidence adduced by the prosecution, an offence under Section 307 of the IPC cannot be said to have been established beyond all

reasonable doubts. The view taken by the trial court in its impugned judgment and order does not appear to be ‘not a reasonably possible view’ requiring this Court’s interference.

13. We do not find any merit in this appeal, which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

Pawan-Nishant

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.01.2023
Transmission Date	09.01.2023