

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.237 of 2023

Arising Out of PS. Case No.-39 Year-2012 Thana- ARER District- Madhubani

RIJH KANT MISHRA Son of Late Sonfi Lal Mishra Resident of Village -
Parjuar West Tola, P.S.- Arer, District – Madhubani Appellant
Versus

1. The State of Bihar
2. Parshuram Mishra Son of Subhadra Mishra Resident of village - Parjuar West Tola, P.S.- Arer, District - Madhubani
3. Sundar Kant Mishra Son of Bhaglu Mishra Resident of village - Parjuar West Tola, P.S.- Arer, District - Madhubani

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Ritwik Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Pravin Kumar, Advocate
Mr. Purushottam Kumar, Advocate
For the Respondent/s : Mr. Manish Kumar No2, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 21-06-2023

Respondents No. 2 and 3 were put on trial for the charge of commission of offence punishable under Sections 341, 323, 307, 324 and 504/34 of the IPC. By the impugned judgment and order of the trial court they have been held guilty of the offences punishable under Sections 323, 341, 324/34 of the IPC the trial court has however acquitted them the charge of commission of offence for the offences punishable under Sections 307 and 504 of the IPC by the impugned judgment. The said judgment of the learned Additional Sessions Judge-III, Madhubani dated 11.01.2023 passed in Sessions Trial No. 718 of 2013 (CIS



Registration No. 4594 of 2014) is under challenge in the present appeal referred under Section 372 of the CrPC to the extent the trial court has acquitted the respondents no. 2 and 3 of charge of commission of the offences punishable under Section 307 and 504 of the IPC.

Criminal Appeal (DB) No. 237 of 2023				
Appellant	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Parshuram Mishra	324 of the IPC	R.I. for three years	5,000/-	S.I. for one month
	323 of the IPC	R.I. for one year	1,000/-	S.I. for 15 days
	341 of the IPC	S.I. for one month	500/-	S.I. for seven days
Sundar Kant Mishra	324 of the IPC	R.I. for three years	5,000/-	S.I. for one month
	323 of the IPC	R.I. for one year	1,000/-	S.I. for 15 days
	341 of the IPC	S.I. for one month	500/-	S.I. for seven days

2. All the sentences have been ordered to run concurrently.

3. We have heard Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellant, who happened to be the informant of the concerned Arer P.S. Case No. 39 of 2012. It is the prosecution’s case as disclosed in the first information report that on 14.05.2012 at 7:00-8:00 in the morning, the respondents no. 2 and 3 were trying to forcibly occupy the informant’s land and when objected, they abused the informant and assaulted him with fists and slaps. When the informant raised alarm for his rescue, his son Pramod Mishra (PW-4) came there. Respondent no. 3, thereafter, instigated to kill the informant’s son. Thereafter,



respondent no. 2 hit the informant's son on his head with a *farsa* with an intention to kill him. The informant's son however could save himself by tilting his head and thus the *farsa* hit the shoulder of Pramanand Mishra. It is also alleged in the FIR that Pramanand Mishra fell down because of the injury sustained by him and became unconscious. Respondent no. 3 is said to have snatched a golden chain from his neck.

4. Upon completion of investigation, chargesheet was submitted, whereafter cognizance was taken and the case was committed to the Court of Sessions. As has been noted above, charges were framed for the offences punishable under Sections 341, 323, 307, 324 and 504/34 of the IPC. The respondents no. 2 and 3 denied the charge and they claimed to be tried. At the trial, the prosecution examined altogether seven witnesses including the injured witness (PW-4) and the informant Rih Kant Mishra as PW-3. The prosecution also brought on record documentary evidence in support of the charge. The doctor who had examined the injured witness was examined at the trial as PW-5, who had found following injuries on his person upon examination:-

- 1. Incised wound on head at left parietal side of size 3.25" x 0.5" x 0.5"*
- 2. Scratch wound on left scapula of size 0.25" x 0.25" x 0.5"*



3. Pain in whole body.

5. According to PW-5 all the injuries were in simple in nature.

6. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellant has submitted that the prosecution was able to establish beyond all reasonable doubts commission of offence punishable under Section 307 of the IPC by respondents no. 2 and 3. He has submitted that the trial court has committed a gross error by recording his finding that the essential ingredients to constitute offence under Section 307 of the IPC could not be established at the trial, relying on the medical evidence according to which the injuries sustained by the informant's son were simple in nature. He has submitted that the trial court has not disbelieved the evidence of the witnesses and after having evaluated the evidence of the witnesses, recorded conviction of respondents no. 2 and 3 for commission of the offences punishable under Sections 323, 341, 324/34 of the IPC. There being specific case of the prosecution that repeated blows were given by the respondent no. 3 by *farsa*, merely on the basis that the injuries were found to be simple, the said respondents ought not to have been acquitted of the charge punishable under Section 307 of the IPC.

7. On careful perusal of the impugned judgment which is based on due analysis of the evidence on record, we find that the



finding recorded by the trial court to the extent the same relates to acquittal of respondents no. 2 and 3 of the offences punishable under Sections 307 and 504 of the IPC cannot be faulted with. The finding cannot be said to be patently erroneous requiring this Court’s interference in an appeal under Section 372 of the CrPC.

8. We do not find any merit in this appeal. This appeal is accordingly dismissed. We make it clear that we have examined the correctness of the judgment to the extent the same relates to acquittal of the respondents no. 2 and 3 of the charges punishable under Sections 307 and 504 of the IPC in the present appeal filed on behalf of the informant. Any observation made in this order shall not prejudice the case of respondents no. 2 and 3, if they intend to question the correctness of findings of conviction in an appropriate proceeding in accordance with law.

9. This appeal is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Nishant/Nirmal-

AFR/NAFR	NAFR
CAV DATE	NA
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