

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1542 of 2018**

Arising Out of PS. Case No.-56 Year-2010 Thana- TARIYANI CHOWK District- Sheohar

Awadhesh Kumar Jha @ Awadhesh Jha, S/o- Kapildeo Jha, Resident of
Village - Kushhar, P.S. -Tariyani, District – Sheohar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. N.A. Shamsi, Adv.
	:	Mr. Rashid Rais, Adv.
For the Respondent/s	:	Mr. Zeyaul Hoda, APP.

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT**

Date : 06-02-2023

The instant criminal appeal has been filed by the appellant/convict namely Awadhesh Kumar Jha @ Awadhesh Jha against the judgment impugned dated 12.04.2018 convicting the appellant and order dated 12.04.2018 sentencing the appellant by the Court of 1st Additional District and Sessions Judge, Sheohar in Sessions Trial No. 597/2010.

2. By the impugned judgment the appellant has been convicted for the offences punishable under Sections 307, 326, 324, 447 and 341 of the Indian Penal Code (in short I.P.C.) and he has been sentenced to undergo rigorous imprisonment for ten years under Section 307 of I.P.C., further ten years of rigorous imprisonment under Section 326 of I.P.C. with a fine of Rs. 50,000/-, rigorous imprisonment for three years under Section



324 of I.P.C., rigorous imprisonment for three months under Section 447 of I.P.C. and simple imprisonment for one month under Section 341 of I.P.C. and all these sentences of imprisonment have been directed by convicting trial Court to run concurrently. The trial Court directed that the appellant will have to undergo simple imprisonment for two months in the event of default in payment of fine.

3. It is here relevant to mention that the co-accused namely Ram Bali Sahani, did not appear before the trial Court hence he was declared absconder and trial of the appellant was taken up and he was convicted for the above-mentioned offences and the instant appeal is in respect of one accused namely Awadhesh Kumar Jha @ Awadhesh Jha, who has been convicted and sentenced.

4. The substance of the prosecution's case is as follows :-

As per the *Fardbeyan* of the informant, on 15.04.2010 she was asleep with her family members and in the night at about 1:30 – 2:00 A.M. her daughter aged 9 years went outside of her house with her after opening the door of her house in order to attend a call of nature and after relieving, she and her daughter came into the courtyard of their house and sat there for



a while, as at that time there was scorching heat and then the accused persons namely Awadhesh Kumar Jha @ Awadhesh Jha and Ram Bali Sahani and three other suddenly entered into the courtyard of their house and at that time the accused/convict Awadhesh Kumar Jha @ Awadhesh Jha was having a bottle in his hand and all the accused persons started abusing her husband which was objected by her then the accused Awadhesh Kumar Jha @ Awadhesh Jha opened the said bottle and poured it over her and thereafter co-accused Ram Bali Sahani took out a bottle from his pocket and poured the same over the body of her daughter and then she and her daughter started screaming on account of burning of their body and after that her husband came out and then the accused persons snatched *anklet* (payal) from her daughter's leg and thereafter her co-villagers gathered on hearing halla (noise) and after that her husband took her and her daughter to S.K.M.C.H (medical College), Muzaffarpur for medical treatment.

5. On the basis of above-mentioned *Fardbeyan* of the informant, Tariyani P.S. Case No. 56/2010 was registered under Sections 307, 324, 379, 447 and 341 of I.P.C. which set the criminal law in motion and the investigation was started and after that investigation the chargesheet was submitted and



cognizance of the alleged offences was taken by the concerned Judicial Magistrate and thereafter the matter was committed to the Court of Sessions for trial.

6. The appellant was charged for the offences punishable under Sections 307/34, 326/34, 324/34, 341/34, 447/34, 379/34 and 504/34 and the said charge of different heads was explained to him by the trial Court to which the appellant pleaded not guilty and claimed for trial.

7. During the trial, the prosecution produced the following ten witnesses and examined them as under :-

P.W. 1 – Bachchi Devi (eye-witness/informant)

P.W. 2 – Ram Dulari Devi (*Hearsay* witness/Mother-in-law of the informant)

P.W. 3 – Tejan Sah (eye-witness/father-in-law of the informant)

P.W. 4 – Bilash Ram (*Hearsay* witness/co-villager)

P.W. 5– Mithilesh Devi (eye-witness/family member)

P.W.6– Dr. Rajendra Kumar (Official witness /Examined and issued injury reports)



P.W. 7 – Ram Bhajan Sah (*Hearsay*
witness/Family member)

P.W. 8 – Shambhu Sah (eye-witness/Husband of
the informant)

P.W. 9 – Hira Kumari (eye-witness/daughter of
the Informant)

P.W.10– Mundrika Pathak (I.O./ conducted
investigation of the case)

8. In documentary evidence, the prosecution proved
the following documents and got them marked as exhibits : -

Ext. 1 :- Injury report

Ext. 1/1 :- Injury report

Ext. 2:- Signature of one namely Shambhu Sah on
Fardbeyan.

Ext. 3 :- Formal FIR

Ext. 4 :- The writing and signature of concerned
Police Officer in respect of his endorsement of Bachchi Devi.

Ext. 5 : - An endorsement on the *Fardbeyan*.

9. During the trial the prosecution also produced
following articles and got them marked as article exhibits which
are as under :-

Ar. Ext. 1 :- A printed saree in burnt condition.



Ar. Ext. 1/1 :- A petti-coat in burnt condition.

Ar. Ext. 2 :-Baniyan of Hira Kumari in burnt condition.

Ar. Ext. 3 :- Burnt undergarment of one of the victims.

Ar. Ext. 4 :- A bedsheet.

10. After the completion of prosecution evidences the statement of the appellant was recorded under Section 313 of Criminal Procedure Code (in short Cr.P.C.) in which the appellant denied all the circumstances appearing against him from the prosecution evidences and claimed himself to be an innocent person and stated that he was falsely implicated due to enimity. The appellant did not give oral evidence in defence but produced one documentary evidence which was a page of a calendar and the same was marked as 'Ext. A'.

11. After hearing both the sides and perused the evidences available on the case record, the learned trial Court convicted and sentenced the appellant for the offences in the manner mentioned-above.

12. It is submitted by learned counsel for the appellant that the alleged occurrence of pouring Acid on the victim is stated to have taken place in the midnight at the courtyard of the



informant's house but in the FIR the informant did not disclose the means by which she became able to identify the appellant and other named co-accused and the FIR was lodged after inordinate delay of several days which was not explained by the prosecution and in the FIR any motive on the part of the appellant to commit the alleged occurrence was also not mentioned. Further argument is that during the trial no independent witness was produced and examined by the prosecution while as per the prosecution's story several co-villagers gathered at the place of occurrence on hearing halla (noise) and cry of the informant and one prosecution witness P.W. 4 who is *hearsay* witness, did not support the case of the prosecution and during the trial the prosecution did not produce the cogent material and evidence to show and prove that the accused/appellant and co-accused committed the alleged crime on account of denying to take the tuition of informant's daughter and son from the appellant, in fact some other persons poured Acid over the said victims on account of some enmity and thereafter the appellant and named co-accused were falsely implicated. Further argument is that the appellant has spent about five years and six months in jail against the maximum punishment of ten years rigorous imprisonment awarded upon



him under Sections 307 and 326 of I.P.C. and according to his information the appellant has no criminal background and the conviction of the appellant by the trial Court is first conviction.

13. On the other hand learned APP for the State has vehemently opposed and submitted that the allegation made by the informant in her *Fardbeyan* was fully supported by her and her daughter and the same also gets corroboration from the injury reports of both the victims and the evidence of material witnesses completely goes in favour of the prosecution's case and the same was rightly appreciated by the learned trial Court and one co-accused who is named in the FIR remained abscond for a long period and is presently facing trial.

14. Heard both the sides and perused the judgment impugned, evidences available on the case record of the trial Court and also perused the statement of the convict/appellant. Now, the main point for consideration is, whether the prosecution remained successful to prove the allegation of pouring Acid over the body of the victims by the appellant in the manner and time at the alleged place of occurrence as described in the *Fardbeyan* of the informant or not.

15. In the instant matter, the most important witnesses of the prosecution in respect of the alleged incident are the



informant herself and her daughter who were examined as P.W. 1 and P.W. 9 and the prosecution's case completely depends on their evidence. P.W. 1 deposed in the *Examination-in-Chief* that the appellant, co-accused Ram Bali Sahani and some other persons entered into the courtyard of her house and started abusing her husband which was objected by her and then both the named accused who were having bottles in their hands poured it over her and her daughter's body which resulted in burning of their bodies and consequently she started screaming and then her husband, mother-in-law and some other persons arrived and then both the named accused fled away and during that course the co-accused Ram Bali Sahani snatched *anklet* (payal) of her daughter from her leg. The witness claimed to have identified the appellant and co-accused at the time of happening of the alleged occurrence and she proved her *Fardbeyan* and also revealed the reason of the alleged occurrence and according to her, her children including her daughter were given tuition by the appellant which was stopped on account of some wrong behaviour committed by the appellant with her daughter. The witness also described the reason of the delay in lodging the FIR and she supported all the relevant facts mentioned in her *Fardbeyan*. The witness remained firm at her



stand regarding the above discussed allegations and facts in her cross-examination.

16. Likewise, P.W. 9 who is stated to be the daughter of the informant and victim of the alleged occurrence also fully supported the allegations of the FIR in her *Examination-in-Chief* and the time and manner of occurrence and presence of the appellant and co-accused namely Ram Bali Sahani as assailants were fully proved and supported by her. At the time of recording her statement, the said witness showed the signs of burn injury on various parts of her body before the Presiding Officer of the trial Court. The witness was cross-examined at length and the facts stated by her in the cross-examination are not of such a nature as to make her unreliable in respect of the commission of the alleged occurrence and her evidence appears to be credible.

17. So far as the evidence of other private witnesses is concerned, their evidence is also corroborative to the allegations of the FIR and one witness P.W. 4 claimed to have seen the appellant and co-accused Ram Bali Sahani in fleeing position from the house of the informant and the said witness also revealed the same reason of committing the occurrence as stated by one of the victims.



18. P.W. 5, who is stated to be an eye-witness of the alleged occurrence claimed herself to have identified the accused persons in the light of a *Bulb*. P.W. 2 and P.W. 3, who are relatives of the informant also supported the allegations of the prosecution.

19. In the instant matter, the most important evidence is medical evidence which are injury reports of the informant and her daughter and the same were exhibited as Ext.-1 and Ext.-1/1. The Doctor concerned, who examined both the victims opined that Acid burn injuries over the left upper Thigh, Chest, Abdomen, both Knee, Forehead, right Arm and forearm were found to the victim (daughter of the informant) and according to his opinion 25% burn injuries were found on the said victim and the same were opined to be simple in nature. In respect of the burn injuries found on the body of the informant, the said doctor opined that Acid burn injuries over 3/4 Abdomen, neck, upper part of Chest, right side of face, right upper Thigh, lateral side of the right leg and Forehead were found over the body of the informant and according to his opinion, 35 % burn injuries were found over the body of the informant and the same were opined to be grievous in nature. The said medical opinion given by the Doctor concerned, who examined both the victims just after the



commission of the alleged occurrence is completely corroborative to the allegations made by the informant in her *Fardbeyan*.

20. It is here relevant to mention that during the trial, some clothes in burnt condition which were worn by both the victims at the time of alleged occurrence were produced before the trial Court and the same were marked as article exhibits and during the trial P.W. 8, who happens to be the husband of the informant identified the said clothes.

21. In the light of above discussed facts, I am of the considered view that the prosecution succeeded to prove the main allegations described by the informant in her *Fardbeyan* and the trial Court rightly convicted the appellant for the offences punishable under Sections 307, 326, 324, 447 and 341 of I.P.C. and I find no reason to interfere in the said conviction and conclusion made by the convicting trial Court regarding conviction of the present appellant. All the sentences of imprisonment awarded for different offences under different Sections of I.P.C. were directed by the convicting trial Court to run concurrently and accordingly the punishment of imprisonment awarded under Sections 324, 447 and 341 of I.P.C. has completed as the appellant has spent about five years



and six months in jail as per the appellant's counsel's submission and so far as the punishment of ten years awarded upon the appellant in respect of the offences of Sections 307 and 326 of I.P.C. is concerned, the same appears to be at higher end and in view of the facts and circumstances of this case and background of the appellant appearing from the evidences of the prosecution witnesses, this Court is of the opinion that the present period of custody which the appellant has undergone and completed is sufficient to meet the ends of justice and accordingly, the sentence of rigorous imprisonment of ten years awarded upon the appellant by the convicting trial Court for the offences punishable under Sections 307 and 326 of I.P.C. is hereby reduced to the period of custody undergone by the appellant during the trial and from the date of conviction till now, however, the punishment of fine of Rs. 50,000/- awarded upon the appellant will remain unchanged. Accordingly, the appellant is directed to be released forthwith from the jail in respect of the present matter if he has deposited the fine amount of Rs. 50,000/- and his custody is not required in other matter, if he does not deposit the said fine amount then he shall be released after his serving two months of simple imprisonment from the date of receipt of the copy of the judgment of this appeal which



has been awarded by the convicting trial Court in default of payment of fine.

22. In the result, the instant appeal stands dismissed with above modification in the quantum of punishment of imprisonment in the manner mentioned-above in respect of the offences punishable under Sections 307 and 326 of I.P.C. for which the appellant has been convicted and sentenced.

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.02.2023
Transmission Date	17.02.2023

