

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.486 of 2017

Arising Out of PS. Case No.-348 Year-2014 Thana- MAJHAULIA District- West Champaran

Samina Khatoon Daughter of Abdul Wahab Resident of Village Jaukatiya ,
Police Station- Majhauriya, District- West Champaran.

... .. Appellant/s

Versus

1. The State of Bihar.
2. SK. Salauddin Son of late SK. Maksud.
3. Tanvir Alam Son of Sk. Salauddin.
4. Nausad Begum Wife of SK. Salauddin.

All are resident of Village- Jaukatiya, SK. Toli, Police Station-
Majhauriya, District- West Champaran.

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 1351 of 2017

Arising Out of PS. Case No.-348 Year-2014 Thana- MAJHAULIA District- West Champaran

Tanvir Alam Son of Sheikh Salauddin, Resident of Village- Jaukatiya Sheikh
Toli, P.S.- Majhauriya, District- West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 486 of 2017)

For the Appellant/s : Mr. Anant Kumar Mishra, Adv.

For the Resps. 2 & 4 : Mr. Hemant Ray, Adv.

Mr. Umesh Chandra Verma, Adv.

(In CRIMINAL APPEAL (SJ) No. 1351 of 2017)

For the Appellant/s : Mr. Hemant Ray, Adv.

Mr. Umesh Chandra Verma, Adv.

For the Respondent/s : Mr. Shyed Ashfaque Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 18-09-2023

The appellant/Samina Khatoon in Cr. Appeal (DB)

No. 486/2017 has challenged the judgment of the Trial



Court, acquitting the respondent nos. 2 and 4, namely, Sk. Salauddin and Nausad Begum of all the charges and convicting respondent/Tanvir Alam for a lesser offence of 324 IPC instead of 307 IPC. She is represented by Mr. Anant Kumar Mishra, learned Advocate. Mr. Hemant Ray, learned Advocate has appeared on behalf of respondent nos. 2, 3 and 4. Simultaneously, Mr. Hemant Ray, learned Advocate, has appeared on behalf of appellant/Tanvir Alam in Cr. Appeal No. 1351/ 2017 and has assailed the judgment and order of conviction, holding the appellant/Tanvir Alam to be guilty under Section 324 of the I.P.C. and having sentenced him to undergo R.I. for two years.

2. Though an appeal involving conviction of less than ten years is posted before a Single Judge but considering the fact that appeal against acquittal in a case instituted for the offence under Section 307 was posted for consideration before the Division Bench, the case of appellant/Tanvir Alam has also been placed



alongside for consideration.

3. Both the appeals have been heard together and are being disposed of by this common judgment.

4. The victim/appellant [in Cr. Appeal (DB) No. 486/ 2017] namely Samina khatoon had lodged the First Information Report vide Majhauriya P.S. Case No. 348 of 2014 on 15.10.2014 alleging that the respondents/ Sk. Salauddin, Nausad Begum and appellant/Tanvir Alam entered her house at 12:45 PM on 10.10.2014 and appellant/Tanvir Alam assaulted her by knife. All the accused persons took away the trousseau which was being shown to the villagers by her mother. The cause of occurrence as stated by the victim is the refusal of the family to settle the case which was lodged by her father/P.W.4 against the appellant/Tanvir Alam.

5. On the basis of the aforementioned *fardebayan* statement, the case was lodged for offences under Sections 341, 323, 324, 307, 379, 504, 506 and 34 of the I.P.C.



6. The police after investigation submitted charge sheet against the respondents for offences under Sections 307 and other allied sections of the I.P.C.

7. The Trial Court after having examined six witnesses on behalf of the prosecution, acquitted the respondents viz. Sk. Salauddin and Nausad Begum but convicted their son, namely, Tanvir Alam for the offence under Section 324 of the I.P.C. vide judgment dated 17.03.2017 passed in Sessions Trial No. 494 of 2015. By order dated 17.03.2017, only appellant/Tanvir Alam was sentenced to undergo imprisonment for two years.

8. The learned Advocate for the appellant/Samina Khatoon (P.W.2) has submitted that the Trial Court was not justified in recording conviction under Section 324 IPC only when the appellant/Tanvir Alam had given repeated knife blows, causing four grievous injuries on the person of the victim. In this manner, the learned Advocate has submitted that the Trial Court has completely misdirected himself in



adjudging the guilt of the respondents. He has further submitted that merely because only related witnesses stood in the witness box, the Trial Court was not justified in disbelieving them. Additionally, it has been argued that the motive for committing the crime was very clear and had been established by the prosecution. The father of the victim, namely, Abdul Wahab (P.W.4) had earlier lodged a case against appellant/Tanvir Alam vide Majhauriya P.S. Case No. 46 of 2012 dated 19.02.2012 under Sections 341, 323, 451, 379, 504 and 506 of the I.P.C. which the respondents wanted it to get settled. Since such request was refused by the family of appellant/Samina Khatoon, this occurrence has taken place.

9. As opposed to the aforementioned contentions, the learned Advocate appearing for the respondents in Cr. Appeal (DB) No. 486 of 2017 and for the appellant in Cr. Appeal No. 1351 of 2017 has submitted that the Trial Court never disbelieved the deposition of four witnesses,



viz. P.Ws. 1 to 4 which included the parents of the victim and the victim herself or else no conviction would have been recorded against the appellant/Tanvir Alam under Section 324 of the I.P.C. He has further argued that according to the victim (P.W.2), several persons were sitting in the house when the occurrence took place. This presupposes that those visitors also as they were all neighbours, may have tried to prevent the occurrence from happening. Neither have they been cited as witnesses nor anyone of them has come forward to support the prosecution case. All that the Trial Court has said that enmity cuts both ways. For enmity, a person could be falsely implicated but to avenge enmity, assault may be perpetrated. This, by no stretch of imagination, could be stated to be a proposition which is not acceptable under the law to invite any interference by the superior court.

10. We have examined the deposition of witnesses in great detail. The victim (P.W.2) has



supported the prosecution case in its entirety. However, we have found that in some respects, she has tried to improve upon her case. In her *fardbeyan* statement, she has only referred to her mother and has stated that she was showing the articles purchased for dowry of P.W.2 to her neighbours. In the *fardbeyan*, she had but not mentioned anything about the presence of her parents viz. Shabnam Arra and Abdul Wahab (P.Ws.3 and 4) as also her brother Taufique Alam (P.W.1).

11. True it is that it may not be necessary for an eye-witness and a victim to name all the persons present near the place of occurrence but, in a case of this kind where the assault takes place in the house of the victim who has spoken about the presence of many persons in the house at that time, missing out on the presence or absence of her parents and brother assumes some significance. If not for anything else, then for evaluating whether the parents and brother of the victim could be believed to be the eye witnesses to the occurrence.



12. Be that as it may, with respect to the allegation of assault, P.W.2 has said nothing which would in any manner discredit her eye witness account. A victim would not unnecessarily implicate an innocent person. The evidence of the Doctor viz. P.W.5 clearly confirms that the victim was assaulted with knife repeatedly. She has received four injuries, two of which have been opined to be grievous. Such injuries cannot be said to be self inflicted. In that case, if there is no one else on whom the blame was put, it is very difficult for the respondents and appellant/Tanvir Alam to be believed that the entire story of the assault by knife by Tanvir is false.

13. The father of the victim had earlier lodged a case about which we have referred to in the preceding paragraphs. The consistent evidence of P.Ws. 1 to 4 is that the occurrence took place for the refusal of the family to compound the case against the appellant/Tanvir Alam.

14. We at one point of time also looked into the



fact whether the appellant/Tanvir's action reflected any evidence of his being a jilted lover. But no, there is no evidence to that effect. However, the accusation against appellant/Tanvir Alam in the FIR vide Majhauriya P.S. Case No. 46 of 2012 lodged by the father of the victim, the allegation is of house trespass and theft.

15. In this context, our attention was drawn to Ext.-A filed on behalf of the defence which is a communication by the Medical Officer of the Bettiah Jail to the Superintendent, informing him that Tanvir Alam continues to be mentally sick. He was on medication from before and because of his situation worsening in the jail, he would require better treatment, perhaps at Ranchi.

16. The Trial Court appears to have rejected such document on the ground that it was of an anterior date to the date when the offence is said to have been committed. We do not find any fault with the Trial Court not believing in Ext.-A and holding that the appellant had been mentally ill when he had attacked the victim for two



reasons; the exception to insanity has to be proved and the proof is not extendable to only medical ground. The proof has to be legal and contextual as propounded under the M'Naghten rule (pronounced and sometimes spelled as Mc Naughton). That every man is presumed to be sane. To establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing the offence, the accused was labouring under such a defect of reason, from the disease of the mind, as not to know the nature and quality of the act he was doing; or if he did know it, that did not know that what he was doing was wrong.

17. Mere sluggish mind would not be enough. When the Court rejected Ext.-A on the ground of such communication having been made after the occurrence, the Court must have been looking for legal evidence to give the benefit of insanity to the appellant. On that score, we do not intend to criticize the judgment at all.

18. That the parents of Tanvir though have



been named by the victim and her parents as having accompanied their son when the occurrence took place, we agree with the reasoning of the Trial Court that no specific accusation had been levelled against them.

19. The Trial Court was rightly of the opinion that because of the earlier case and the dispute between the family of the appellant and the victim, there could be a possibility of the false implication of the parents of appellant/Tanvir, which cannot completely be overlooked or excluded. Rightly therefore, the benefit of doubt was given to the respondents who are the parents of Tanvir Alam.

20. As we have noted earlier, it was Tanvir only who had inflicted knife blows on P.W.2. The knife blows proved to be grievous, inviting the mischief of Section 324 of the IPC. Appellant/Tanvir has been convicted under Section 324 IPC.

21. The conviction of appellant/Tanvir is also not required to be interfered with. However, looking at



the totality of the circumstances, the manner in which the occurrence is said to have taken place; lack of any independent witnesses, no effort made by the prosecution to prove the link between any demand of the accused persons of compounding of Majhauriya P.S. Case No. 46 of 2012 and the nature of injuries which though were found to be grievous but not life-threatening and most importantly, the mental health of appellant/Tanvir even though it would be deemed to be a post accusation development, we are of the view that interest of justice would be met if the sentence of two years against appellant/Tanvir is reduced to the period that he has already undergone in custody. The records reveal that he has remained in jail for approximately nine months. We say so also for the other reason that the occurrence took place approximately nine years ago.

22. Thus, the appeal of the victim/Samina Khatoon (Cr. App. (DB) No. 486 of 2017) is dismissed.

23. The appeal of Tanvir Alam (Cr. App. No.



1351 of 2017) is also dismissed but with modification in the sentence whereby a sentence of two years for the offence under Section 324 IPC has been reduced to the period which the appellant/Tanvir Alam has already undergone.

24. The records further reveal that the appellant was granted provisional bail by the Trial Court which was confirmed by the High Court.

25. The appellant/Tanvir Alam is discharged of the liabilities of the bail bonds.

26. Both the appeals stand disposed of accordingly.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

rishi/shahzad

AFR/NAFR	AFR
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