

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.8 of 2023

Arising Out of PS. Case No.-319 Year-2019 Thana- BRAHMPUR District- Buxar

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Jaganarayan Singh @ Jag Narayan Singh Son Of Late Bhagwan Singh, R/O
Vill.- Chhatwanpur, P.S.- Brahmpur, Distt.- Buxar

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Parijat Saurav, Advocate

For the Respondent/s : Mr. Rajendra Prasad Nat, APP

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 21-03-2023

Heard learned counsel for the petitioner and learned
counsel for the State.

The present criminal revision application has been filed
for setting aside the judgment dated 21.11.2022 passed by
Additional District & Sessions Judge-III, Buxar in Cr. Appeal
No. 90 of 2019 and also the judgment and conviction of
sentence dated 03.10.2019 passed by Addl. Chief Judicial
Magistrate-VI, Buxar in G.R. Case No. 2004 of 2010
(Brahmpur P.S. Case No. 319 of 2010) whereby petitioner was
convicted under Sections 323 and 325 of the Indian Penal Code
and sentenced to simple imprisonment of 4 months under
Section 323 of the Indian Penal Code and simple imprisonment
of 2 years under Section 325 of the Indian Penal Code along

with fine of Rs.2000/- and in default of payment of fine, the petitioner shall undergo imprisonment of 1 month and both sentences shall run concurrently.

Counsel submits that after trial, Addl. Chief Judicial Magistrate-VI, Buxar has convicted the petitioner under Sections 323 and 325 of the Indian Penal Code whereas he has been exonerated from Section 379 and 34 of the Indian Penal Code.

Counsel further submits that originally there were two accused persons. One accused person died during the pendency of the appeal and therefore, the appeal become infructuous against him and in the appeal the order passed by the Addl. Chief Judicial Magistrate-VI has been affirmed. The petitioner after obtaining the surrender certificate has preferred the present criminal revision. Counsel further submits that under two sections he has been convicted and sentenced under section 325 of the Indian Penal Code, he has submitted that the definition of section 325 of I.P.C. has been given in section 320 and the present case is covered under section 320 (Seventh) category which clearly says that *it is applicable only fracture or dislocation of a bone or tooth*. Counsel further submits that for the purpose of confirmation of dislocation of a bone and tooth,

the x-ray report are required but in the present case those reports were never exhibited. As such no conclusiveness has been acquired and as such ingredient of Section 325 of I.P.C. is not present, even then the petitioner has been punished in this section.

After going through the records of the case and argument of the counsel for the petitioner, it is clear that weapons used are there as Ext.1 and Ext. ½ but the confirming report about the fracture or dislocation of a bone or tooth are not there.

In this view of the matter, this Court is of the opinion that ingredient of Section 325 of I.P.C. has not been constituted here but so far as the conclusiveness of Section 323 of I.P.C. is concerned, there are sufficient material in this case about which detail discussion has been made in the court of Addl. Chief Judicial Magistrate-VI as well as by the appellate court.

In this view of the matter, the conviction made under Section 325 of the I.P.C. is hereby set aside and sentenced are also modified but the conviction under Section 323 of I.P.C. is hereby affirmed and this court is of the view that there is no need of change in the sentence of four months granted under Section 323 of the Indian Penal Code.

Counsel for the petitioner further submits that petitioner

was in custody in total for one month only during trial and after conviction.

In this view of the matter, I am not inclined to grant him bail but this criminal revision is hereby disposed off with partial modification in the conviction and sentenced.

With this direction, this criminal revision application is disposed off.

On the question of Probation, this court is not inclined to grant benefit at revisional level directly.

(Dr. Anshuman, J.)

ravishankar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	