

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.263 of 2024

In
CRIMINAL APPEAL (SJ) No.4928 of 2023

Arising Out of PS. Case No.-18 Year-2009 Thana- BALTHAR District- West Champaran

Salam Gadi, Son of Aminulah Gadi, Resident of Village - Bhawra Parsa, P.S. -
Balthar, District - West Champaran

... .. Appellant

Versus

1. The State of Bihar
2. Gaisul Azam, Son of Idrish Gaddi, Resident of Village - Line Parsa, P.S. -
Balthar, District - West Champaran
3. Idrish Gaddi, Son of Tharu Gaddi, Resident of Village - Line Parsa, P.S. -
Balthar, District - West Champaran
4. Ali Azam Gaddi, Son of Idrish Gaddi, Resident of Village - Line Parsa, P.S. -
Balthar, District - West Champaran

... .. Respondents

Appearance :

For the Appellant	:	Mr. Wasi Ahmad Khan, Advocate Ms. Tooba Hera, Advocate
For the State	:	Mr. Binod Bihari Singh, Addl. P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 06-09-2024

The instant appeal has been directed against the judgment and order dated 03.08.2023 passed by the court of learned Additional Sessions Judge-V, Bettiah, West Champaran in Sessions Trial Case No. 763 of 2013/CIS No.1535 of 2013 arising out of Balthar P.S. Case No. 18 of 2009 by which the learned trial court convicted the respondent nos. 2 to 4 (hereinafter referred to



as ‘respondents’) for the offences under Sections 341, 323 and 324 all read with the Section 34 of the Indian Penal Code (in short ‘IPC’) instead of convicting the respondents for the charged offences under Sections 307 and 504 of IPC both read with Section 34 of IPC and acquitted them for the said charged offences, so, on account of being aggrieved, the appellant who was informant in Balthar P.S. Case No. 18 of 2009 preferred the instant appeal under Section 372 of the Code of Criminal Procedure, 1973 (in short ‘Cr.P.C.’) with a prayer to set aside the judgment and order convicting and sentencing the respondents for lesser offences.

2. Heard Mr. Wasi Ahmad Khan, learned counsel appearing for the appellant and Mr. Binod Bihari Singh, learned Additional Public Prosecutor for the State.

3. We had issued notice to respondent Nos. 2 to 4. From the office notes it would appear that notice for respondent No. 3 has been served personally whereas notices of respondent Nos. 2 and 4 have been served upon their father. As such, we take that the notices have been validly served upon respondent Nos. 2 to 4. However, they have not entered appearance.

Prosecution Story:-

4. As per the informant, Salam Gaddi (PW-5), on 03.11.09 at about 8:30 A.M. his neighbours, Idrish Gaddi, Gaisul Azam Gaddi and Ali Azam Gaddi, the respondents, who had a land



dispute with him, came behind his home at his *Sehan* land and started abusing him. When he told them to not abuse him then the respondents equipped with *farsa*, Iron Rod and *lathi* respectively came and started assaulting him. During that course, the respondent, Idrish Gaddi, inflicted a blow at the head of Jahangir Gaddi which resulted in serious injury to him and consequently, he fell down, after that, the respondent, Gaisul Azam, inflicted an iron rod blow at the head of one Mahboob Gaddi and thereby injured him and then the respondent, Ali Azam Gaddi, started inflicting *lathi* blows indiscriminately due to which his cousin brother sustained serious injury to his one finger. It was further alleged that during the occurrence, the accused/respondent Ali Azam, assaulted at the head of Sakil Gaddi and Aalim Gaddi and thereby injured them and thereafter, the respondent Aalim Gaddi entered into informant's house and took away the ornaments and Rs. 800/- from a box. As per the informant, the alleged occurrence was witnessed by his several co-villagers.

5. The informant's *fardbeyan* (Ext.-A) was recorded at Primary Health Center, Sikta by an A.S.I. of Police, namely, Bishwanath Prasad, on that basis, the formal FIR bearing registration No. 18 of 2009 was registered at Balthar Police Station



for the offences under Sections 341/323/324/307/379/504 read with Section 34 of IPC.

6. After the completion of investigation, the respondents were chargesheeted for the offences under which the FIR was registered. Thereafter, the learned Magistrate took cognizance of the alleged offences and finding the case of the respondents to be triable by the Court of Session, committed the same to the Sessions court.

7. The respondents stood charged for the offences under Sections 341, 323, 324, 307 and 504 all read with Section 34 of IPC and the charges were read over and explained to them in Hindi language to which they denied and claimed to be tried for the charged offences.

8. During the trial, the prosecution examined altogether 10 (ten) persons in ocular evidence who are as under:-

PW-1:- Hazrat Gaddi, an eye-witness

PW-2:- Jahangir Gaddi, an injured witness

PW-3:- Mahboob Gaddi, an injured witness

PW-4:- Md. Hadish Gaddi, an eye-witness

PW-5:- Salam Gaddi, an injured witness

PW-6:- Aalim Gaddi, an injured witness

PW-7:- Sakil Gaddi, an injured witness



PW-8:- Dr. Vashudev Prasad Verma, who examined the injured persons

PW-9:- Prithvi Nath Tiwari, the Investigating Officer

PW-10:- Dr. Srikant Dubey, who examined the injured Mahboob Gaddi and Jahangir Gaddi after they being referred to M.J.K. Hospital, Bettiah

9. In documentary evidence, the prosecution produced and proved the following documents and got them marked as exhibits which are as under:-

Ext.-1:- Signature of one namely, Hadis Gaddi on *fardbeyan*

Ext.-1/A:- Written Application

Ext.-1/B:- Informant's signature upon his *fardbeyan*

Ext.-2/A to 2/D:- Five injury reports issued by Dr. Vashudev Prasad Verma (PW-8)

Ext.-2/E & 2/F:- Injury reports of the injured persons namely, Mahboob Gaddi and Jahangir Gaddi issued by Dr. Shrikant Dubey (PW-10)

Ext.-3:- Formal FIR written and prepared by one, Prithvi Nath Tiwari

Ext.-3/A:- Signature of the Station House Officer (in short 'S.H.O.') upon written and formal FIR



Ext.-4:- Chargesheet

10. After the completion of prosecution's evidence, the statements of the accused/respondents were recorded under Section 313 of Cr.P.C. in which they denied the main circumstance appearing against them from the prosecution's evidences and they claimed themselves to be innocent.

11. The respondents did not give any evidence in their defence.

Arguments on behalf of the appellant:-

12. Mr. Wasi Ahmad Khan, learned counsel appearing for the appellant has argued that the learned trial court committed a grave error in acquitting the respondents for the charged offence under Section 307 read with 34 of IPC as there is sufficient evidence to substantiate the prosecution's allegation as to murderous attempt made by the respondents on the injured persons and in this regard, their injury reports are very relevant. As per prosecution story, the respondent Idrish Gaddi inflicted a *farsa* blow at the head of the injured Jahangir and the same gets corroboration from his injury report as an incised wound in the size of 3 inch x 1/2 inch x 1/4 inch muscle deep over anterior aspect of right side of his head was found and similarly, the injured Mahboob Gaddi also sustained an incised wound on the left side of



his head who was assaulted by the respondent Gaisul Azam and the injuries of both the injured persons are sufficient to prove the respondents' intention to kill both the injured persons at the time of occurrence and all the respondents committed the alleged occurrence in a planned manner with having a common intention to kill all the injured persons. In view of the medical expert's opinion in respect of the injured persons Mahboob Gaddi and Jahangir Gaddi which has been established by the prosecution a fatal sharp edged weapon was used by the respondents in assaulting the injured persons and the same is also sufficient to prove their common intention to kill the injured. During the trial, all the injured persons, who were the most important witnesses of the prosecution, remained consistent to the allegations levelled against the respondents in the FIR and fully supported the prosecution's story and the learned trial court also believed their evidence but convicted the respondents for the lesser offences instead of convicting and punishing them for the charged offence under Section 307/34 of IPC. As such, the impugned judgment is completely perverse and against the provisions of Section 307 of IPC of which all ingredients are fully attracted and proved in the instant matter.



Arguments on behalf of the State:-

13. As mentioned above, no one appears on behalf of respondent nos. 2 to 4 while Mr. Binod Bihari Singh, learned Addl. P.P. for the State is present and he has submitted that the alleged occurrence relates to a free fight and the same occurred in the spur of moment due to a land dispute running in between both the parties and most of the injuries to the injured persons were found superficial in nature, though, two injured persons namely, Mahboob Gaddi and Jahangir Gaddi sustained an incised wound on their vital part of the body but both the injuries were opined to be simple in nature and further the respondents against whom the said injuries were attributed, did not assault the injured repeatedly which is sufficient to prove that they had no intention to kill both the injured. Hence, the trial court's conclusion in holding the respondents to be guilty for the offences under Sections 341, 323 and 324 all read with Section 34 of IPC is proper and correct and there is no need to interfere in the same.

14. We have heard Mr. Wasi Ahmad Khan, learned counsel appearing for the appellant and Mr. Binod Bihari Singh, learned Additional Public Prosecutor for the State and also have gone through the case record as well as the evidences.



15. The first and foremost submission advanced by the appellant's counsel is that in view of the allegations which stood proved and in view of the injuries sustained by the injured persons namely, Mahboob Gaddi and Jahangir Gaddi the alleged offence of 307 of IPC read with Section 34 of IPC for which the respondent nos. 2 to 4 were charged, is clearly made out against them and in this regard, the manner of occurrence and the weapons which were used by the respondents in assaulting both the injured persons and the body part of the injured upon which the respondents inflicted blow by the fatal weapon, are sufficient to prove the offence under Section 307 of IPC and it has been established that the respondents committed the alleged occurrence with common intention, so, their non-punishment for the offence under Section 307 read with 34 of IPC by the learned trial court is completely illegal and perverse.

16. It is a well established law that to justify the conviction for attempt to murder, it is not essential that bodily injury capable of causing death should have been inflicted, although, the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may be inferred or deduced from other circumstances and while convicting for the said offence mainly it is to be seen whether the alleged act, irrespective of its



result, was done with the intention to commit the murder or with the knowledge and under such circumstances that if he by that act caused death of the victim then he would be guilty of murder. In order to ascertain the intention of one and to find out whether his alleged act comes in the purview of attempt to murder or not, the facts and circumstances of every case are very important under which such alleged act has been committed. In this regard, we would like to refer the judgment of Hon'ble Apex Court passed in the case of **Jage Ram And Others vs. State of Haryana** reported in **(2015) 11 SCC 366** in which it was ruled as under:-

“ 12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the



incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

17. The above principle has been followed and reiterated by the Hon’ble Apex Court in the case of **Sivamani and Another vs. State Represented by Inspector of Police** reported in **2023 SCC Online SC 1581** and the relevant observation made in this judgment is as under :-

“ 9. In *State of Madhya Pradesh v. Saleem*, (2005) 5 SCC 554, the Court held that to sustain a conviction under Section 307, IPC, it was not necessary that a bodily injury capable of resulting in death should have been inflicted. As such, non-conviction under Section 307, IPC on the premise only that simple injury was inflicted does not follow as a matter of course. In the same judgment, it was pointed out that ‘...*The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.*’ The position that because a fatal injury was not sustained alone does not dislodge Section 307, IPC conviction has been reiterated in *Jage Ram v. State of Haryana*, (2015) 11 SCC 366 and *State of Madhya Pradesh v. Kanha*, (2019) 3 SCC 605. Yet, in *Jage Ram* (supra) and *Kanha* (supra), it was observed that while grievous or life-threatening injury was not necessary to maintain a conviction under Section 307, IPC, ‘*The intention*



of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent. '1

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, this Court is convinced that the Impugned Judgment of the High Court requires to be interfered with. Admittedly, there is no allegation of repeated or severe blows having been inflicted. Even the injuries on PW1 and PW2 have been found to be simple in nature, which is an additional point in the appellants' favour.”

18. Now, we come to the factual aspects of the present matter.

As per allegation, made in the FIR, on 03.11.2009 in the morning at about 8:30 A.M., respondents came behind the house of the informant and started abusing him which was opposed by him and then the respondent, Idrish Gadi, inflicted a *farsa* blow at the head of Jahangir Gaddi (hereinafter referred to as ‘injured no. 1’) as a result of which, the said injured fell down and then the respondent Gaisul Azam inflicted an iron-rod blow at the head of Mahboob Gaddi (hereinafter referred to as ‘injured no. 2’) and thereafter, the respondent, Ali Azam, started inflicting the *lathi* blows indiscriminately at the prosecution party due to which the



informant's cousin brother (hereinafter referred to as 'injured no. 3') suffered injuries to the finger of his one hand, thereafter, the co-accused Aalim Gaddi (now acquitted) entered into the house of the informant and took away ornaments and Rs. 800/- that were kept in a box.

19. In the instant matter, the most important witnesses of the prosecution are the injured persons. The injured no. 1 was examined as PW-2. He stated in the cross-examination that the land which is under dispute is a path land upon which the respondent, Idrish Gadi, was claiming his right and when he reached at the place of occurrence, he saw that there was hot talk taking place in between his uncle and accused and when he reached there, he was assaulted by the accused. He further stated that the land upon which the occurrence took place, is a path land.

20. The injured no. 2 who was examined as PW-3, deposed in the examination-in-chief that at the time of occurrence he was going to attend the call of nature and then he saw that the accused/respondents were picking up *Gohra* and throwing the same from his land and that act was opposed by his father and cousin brother Jahangir Gaddi (injured no.1) then the accused assaulted the prosecution party by means of *farsa*, iron rod etc. In the cross-examination, he stated that in between both the parties,



there was a land dispute and the land which is in dispute, was purchased by his father. But in his further cross-examination, he stated that he had not seen any document regarding the said sale and could not state the year of purchase of the land. He further stated that the accused were also claiming their right upon the land. The prosecution witness PW-4 deposed that both the sides assaulted each other at the time of alleged occurrence. Here, it is relevant to mention that on behalf of the accused side, Balthar P.S. Case No. 19/2009 was lodged against the prosecution party in which the chargesheet was submitted and the copy of the FIR and chargesheet were filed before the trial court and the same were exhibited as Exhibit 'A' and 'B' which are relevant to the *factum* of free fight in between both the parties as revealed by the prosecution's witness.

21. The prosecution witness PW-5, who is the informant, deposed that in the beginning of the occurrence, the accused first started breaking *Gohra* upon his land and when he objected then the accused assaulted the prosecution party. In the cross-examination, he stated that the land concerned to the place of occurrence, had been purchased by his ancestor through *patta* (lease) and he could produce the relevant documents in this regard. Here, it is important to mention that in order to substantiate the



prosecution party's claim as to their valid possession being over the place of occurrence, no documentary evidence has been brought by the prosecution party and even the informant did not remain consistent to his stand as he stated in the cross-examination that the land concerned to place of occurrence belonged to Bihar Government and he did not know how the same had been purchased. Likewise, PW-6 stated in the examination-in-chief that during the commission of the occurrence, the accused stated and claimed that the land upon which the occurrence took place, belonged to them. In the cross-examination, he stated that he and Sakil (one of the injured) remained under treatment for three days at hospital.

22. Now we come to the injuries of the injured persons.

In the present matter, altogether 5 (five) persons are said to have sustained injuries in the alleged occurrence and their injuries with medical opinion given by the doctor concerned are being reproduced as under:-

Name of the Injured Person:- Sakil Gaddi

Injuries:

1. One Lacerated wound in the size of 1 and half inch x 1/4 inch into skin deep over anterior aspect of left side of head.
2. One Swelling over middle finger of left upper limb.
3. Complain of pain over whole body.



Nature of injuries:- 1, 2 and 3 are simple in nature and caused by H.B.S.

Name of the Injured Person:- Aalim Gaddi

Injuries:-

1. One swelling with abrasion in the size of 1 inch x 1 inch over anterior aspect of middle part of head.
2. Complain of pain over whole body.

Nature of injuries:- Injury No. 1 and 2 are simple in nature and caused by hard and blunt substance.

Name of the Injured Person:- Salam Gaddi

Injuries:-

1. One abrasion in the size of 3 inch x 1 inch over anterior aspect of left side of chest.
2. One swelling in the size of 1 inch x half inch over anterior aspect of right side of head.

Nature of injuries:- 1 and 2 are simple in nature and caused by H.B.S.

Name of the Injured Person:- Mahboob Gaddi,

Injuries:-

1. One incised wound in the size of 1 inch x 1/4 inch x muscle deep over posterior aspect of left side of head.
2. One lacerated wound in the size of 1/4 inch x 1/4 inch with swelling over dorsal aspect of palm of left upper limb.
3. Complain of pain over whole body.

Nature of injury:- injury No. 01 simple in nature and caused by sharp cutting weapons. Injury No. 03 is simple in nature and caused by H.B.S. Nature regarding injury No. 02 has been reserved because patient has been referred to M.J.K. hospital, Bettiah for proper investigation, treatment and report.



Report of injured Mahboob Gaddi:-

Injury No. 2, fracture of fifth metacarpal bone.

Opinion of injury No. 2: Nature of the first aid injury shows fracture of fifth metacarpal bone, so it is grievous. (As per report of MJK Hospital Bettiah.)

Name of the Injured Person:- Jahangir Gaddi

Injuries:-

1. One incised wound 3 and half inch x 1/4 inch muscle deep over anterior aspect of right side of head.

2. Complain of pain of over whole body.

Nature of injuries:-

1. Injury No. 1 simple in nature and caused by sharp cutting object.

2. Injury No.2 is simple in nature and caused by H.B.S.

23. The investigating officer who was examined as P.W.- 9 deposed that the accused/respondent Idrish Gaddi also filed Balthar P.S. Case No. 19/2009 against the prosecution party and the place of occurrence was situated adjacent to the house of the accused Idrish Gaddi and the informant could not produce any document showing his title in respect of the land concerned to the place of occurrence.

24. From the discussion of the ocular evidence of the material witnesses of the prosecution, it is clearly evident that upon the place of occurrence which is a disputed land, on which both the parties were claiming their rights at the time of the alleged



occurrence and the same is said to be the genesis of the occurrence and in the beginning of the occurrence, the accused persons made an attempt to remove *Gohra* from the place of occurrence which was opposed by the prosecution party and thereafter, the occurrence of assault took place. The evidence of the prosecution witnesses clearly shows that the alleged occurrence was not pre-planned and the same occurred in the spur of moment on account of removing *Gohra* from the disputed land by the accused persons. So far as the injuries to the injured persons are concerned, on the person of the injured Sakil Gaddi three simple injuries were found. Upon the person of injured Aalim Gaddi swelling with abrasion and complain of pain over whole body were found and the same were opined to be simple in nature. On the body of the injured Salam Gaddi, one abrasion and one swelling were found and the same were opined to be simple in nature. On the person of injured, Mahboob Gaddi (injured no. 2), one incised wound, one lacerated wound and complain of pain were found. The injury no.1, incised wound in the size of 1" x 1/4" into muscle deep which was found over posterior aspect of left side of head was opined to be simple in nature. The injury no.2 found at the palm of left upper limb was opined to be grievous in nature on account of the fracture to fifth metacarpal bone. The injury no. 3 was opined to be simple in



nature. On the person of the injured Jahangir Gaddi (injured no.1) one incised wound and complain of pain over whole body were found and the same were opined to be simple in nature.

From the above discussion of the injuries of the injured persons, it is evident that most of the injuries were found in the nature of abrasion, swelling and pain and only two injuries being incised wounds were found at the vital part of the body of injured Mahboob Gaddi (injured no.2) and Jahangir Gaddi (injured no.1) but the same were opined to be simple in nature. From the evidence of the injured witnesses it is apparent that none of the respondents inflicted repeated blow at the vital part of the body of the injured Mahboob Gaddi (injured no.2) or Jahangir Gaddi (injured no.1) and the same also gets support from this fact that on the vital part of their body, only one incised wound was found and the same was opined to be simple in nature. If the respondents had an intention to kill the injured persons particularly, Mahboob Gaddi (injured no.2) and Jahangir Gaddi (injured no.1) then they would have definitely assaulted them repeatedly by the fatal weapons but they did not do so which shows that they had no intention to kill them and the alleged occurrence of assault took place in the spur of moment when a dispute arose in between both the parties on account of removing *Gohra* from the place of



occurrence by the accused upon which both the parties were claiming their rights at the relevant time.

25. After having discussed the evidences available on the case record of trial court, we are of the considered view that the alleged occurrence of assault took place in the spur of moment in between both the parties on account of a land dispute, though some fatal weapons were used by the accused in assaulting the prosecution party but the injuries found on the body of the injured persons show that the accused/respondents did not assault any of them repeatedly at the vital part of his body with the fatal weapon and most of the injuries to the injured, were found superficial and in the case lodged by the accused against the prosecution party the police submitted chargesheet and it came out in the evidence of the prosecution witnesses that both the sides scuffled and assaulted each other and the same is also sufficient to draw the inference that none of the respondents had an intention to kill any of the injured persons. As such, in view of the principles laid down by the Hon'ble Apex Court discussed above, the conviction of the respondents for the offences punishable under Sections 323, 324 and 341 all read with Section 34 of IPC by the trial court, is right and proper and the respondents have been rightly acquitted of the offences under Sections 307 and 504 both read with Section 34 of



IPC for which they were charged and this Court finds no reason to interfere in the conclusion of the trial court and there is no merit in this appeal, hence, it stands dismissed.

26. Let the judgment’s copy be sent to the trial court concerned for information and needful.

27. Let the trial court’s records be sent forthwith to the court concerned.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

maynaz/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	20.09.2024
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