

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.961 of 2019

Arising Out of PS. Case No.-17 Year-1997 Thana- KATORIYA District- Banka

Muneshwar Das Son of Late Ramlal Das Resident of Village- Kaljhar, Police Station- Katoriya, District- Banka.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Mukherjee, Adv Mr. Ganesh Sharma, Adv
For the Respondent/s	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 25-11-2024 Heard learned counsel for the appellant and learned APP for the State.

2. The present appeal has been preferred against the judgment and order of conviction dated 06/02/2019 passed by learned District & Sessions Judge, Banka in Sessions Trial No. 663 of 2012/Trial No. 92 of 2019 (arising out of Katoria P.S. case No. 17/1997) whereby and whereunder convicted the appellant sentenced to undergo Rigorous imprisonment for a period of three years u/s 307 of Indian Penal Code and a fine of Rs. 5,000/-. In default of payment of fine, he has to further undergo S.I. for one month.

3. The prosecution case is that on 06.02.1997, the goat of informant entered in wheat field of appellant. It is further



alleged that when informant went to remove his goat from wheat field then Muneshwar Das (appellant), Nandlal Das, Raj Kumar Das and Fuliya Devi came, abused and assaulted him on his head by '*lathi*', '*danda*' due to which, he got injured. It is further alleged that on *hulla*, wife of informant came to rescue the informant, who was also assaulted by Raj Kumar Das by '*lathi*' on her shoulder and she fell down there. Thereafter, Muneshwar Das (appellant) assaulted on the hand of informant causing fracture of his hand.

4. On the basis of fard-beyan of the informant Katoria P.S. case No. 17/97 was registered under sections 341, 323, 325, 504 of I.P.C. and after investigation, charge sheet was submitted and thereafter, cognizance has been taken on 23.05.2012 under sections 341, 323, 307, 504/34 of Indian Penal Code and committed the case committee to the court of Sessions for commence trial.

5. Learned counsel for the appellant submits that during trial, altogether 5 witnesses have been examined before trial court and they are as follows:-

- (i) P.W.-1 is Govind Yadav (hostile)
- (ii) P.W.-2 is Shankar Das (hostile),
- (iii) P.W.-3 is Bhola Yadav (hostile)



(iv) P.W.-4 is Panchu Das (informant of this case) and

(v) P.W.5 is Dr. M. N. Lal (who examined the informant/injured).

6. He further submits that from perusal of the evidence of the witnesses, it appears that there was dispute regarding grazing the wheat crops of appellant by she-goat of informant.

7. From perusal of deposition of independent witnesses, it appears that they did not support the prosecution and declared hostile.

8. The appellant has been convicted only deposition of informant (P.W.-4) and P.W.5 (Doctor). Investigating officer of this case has not been examined in the trial. He further submits that wife of informant namely Roshani Devi, who was also injured in this case has not been examined in the trial.

9. Mr. Jharkhandi Upadhyay, learned counsel appearing for the State has submitted that PW-4 is the injured witness who has supported the prosecution case and P.W.5 is the doctor who has examined the injured witnesses and has supported the prosecution case. Therefore, the non-examination of Roshni Devi, one of the injured and non-examination of the I.O. of the case will not falsify the prosecution case and the



conviction and sentence of the appellant should not be interfered by this Court.

10. I have considered the arguments of learned counsel appearing for the appellant and learned counsel appearing for the State and have gone through the evidence of PW-4 and PW-5. PW-4 has stated that on account of grazing by the goat of the agricultural field of the defence, the said occurrence had taken place and the appellant has assaulted the two victims by '*lathi*' causing injury in the head and fracture in the hand of PW-4. The doctor has also supported the injury. From the evidence of PW-2, it appears that the occurrence has taken place due to sudden provocation on account of grazing of goat. The occurrence and the injury cannot be denied once the doctor has deposed and proved the injury sustained by Roshani Devi also. PW-4 is the injured witnesses. In these circumstances, the only question which has to be considered is as to whether the offence under Section 307 of the IPC is made out against the appellant or not.

11. From the manner of occurrence, no offence under Section 307 of the IPC is made out. The occurrence has taken place because of grave and sudden provocation. Section 335 of the IPC reads as follows:



335. Voluntarily causing grievous hurt on provocation. - *Whoever [voluntarily] causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.*

12. On the evidence of PW-4, PW-5 and the injury, I am of the view that the appellant can be convicted for the offence committed under Section 335 and he is sentenced to undergo imprisonment of six months and pay a fine of Rs. 2,000/-. In case, the appellant fails to pay the fine, he will undergo further imprisonment of 15 days.

13. The present appeal is partly allowed with the above modification in the conviction and sentence as mentioned above.

(Sandeep Kumar, J)

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