

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.97 of 2004

1. Mahendra Prasad, son of Late Chirai Prasad
2. Sukhdeo Prasad, son of Suhodar Prasad
3. Lal Bahadur Prasad, son of Mahendra Prasad
4. Bishwakarma Prasad, son of Mahendra Prasad

All are resident of village – Rajpur, Khash, P.S. - Phuwariya, District –
Gopalganj. Appellants

Versus

The State of Bihar Respondent

Appearance :

For the Appellant/s : Ms. Anukriti Jaipuriyar, Amicus Curiae
For the Respondent/s : Mr. A.M.P. Mehta, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 10-07-2024

Heard Ms. Anukriti Jaipuriyar, learned *Amicus Curiae* and Mr. A.M.P. Mehta, learned A.P.P. for the State.

2. The instant memo of appeal has been filed on behalf of the appellants/convicts under section 11(2) of the Probation of Offenders Act, 1958 (hereinafter referred to as the "Act of 1958") (as per decision of Hon'ble Division Bench of this Court vide order dated 28.06.2004, as this matter was referred by Hon'ble Single Judge vide order dated 24.02.2004) against the judgment dated 20.12.2003 passed by learned Additional District & Sessions Judge, Fast Track Court-2, Gopalganj in S. Tr. No. 311/93/48/03 (arising out



of Kuchaikote P.S. Case No. 106/1991), whereby and whereunder the learned trial court held them guilty for the offence punishable under Section 323 of the Indian Penal Code and released them on executing a bond of Rs. 500/- (five thousand) with two sureties of the like amount to maintain peace for a period of two years as provided under Section 4(1) of the Act of 1958 .

3. The brief facts of the case is that on 19.08.1991 at about 6:00 P.M., one Prabhu Chaudhary (PW-2) had given his fard-e-beyan before the officer-in-charge of Sripur O.P. in injured condition that while he was tying she-buffalo and giving food to the animals, all the accused persons came over there variously armed with *tangi*, where Lalbahadur Prasad, son of Mahendra Prasad equipped with *tangi*, Bishwakarma Prasad, son of Mahendra Prasad equipped with *lathi*, Sukhdeo Prasad, equipped with *lathi* and Mahendra Prasad reached there and appellant/accused Lalbahadur Prasad assaulted informant on his head repeatedly thrice causing hand injury from where blood was started to ooze, other accuseds/appellants also assaulted with lathi, when



Paras Chaudhary and others came to save, he also received injuries, whereafter informant alongwith his injured uncle namely, Paras Chaudhary came to Sripur in injured condition. The reason for the occurrence was stated land dispute between the parties.

4. After investigation of this case, police submitted charge-sheet under Section 307, 324, 323 and 341 of the Indian Penal Code and, accordingly, cognizance was taken and the case was referred to the court of learned C.J.M., Gopalganj. The learned trial court framed charges, accordingly against the appellants/convicts.

5. The prosecution altogether examined six witnesses, who are PW-1 Parash Chaudhary, PW-2 Prabhu Chaudhary (informant), PW-3 Janki Prasad, PW-4 Khedaru Ram, PW-5 Suryadeo Prasad and PW-5 and PW-6 is the formal witnesses.

6. After hearing the parties and going through the evidence, learned trial court came to the conclusion that charge under Section 307 of the I.P.C. is not made out against Lal Bahadur Chaudhary and any of the accused



persons, but found allegation proved under Section 323 of the I.P.C., accordingly, learned trial court released the accused persons by taking a lenient view and giving them benefit of provision of Probation of Offenders Act, but order of sentence, as stated above, also has been passed against the appellants.

7. The prosecution has produced and relied upon following documentary evidences as to substantiate its case during trial, which are as under:

Exhibit No(s).	List of documents
Exhibit-1	Fardbeyan
Exhibit-2	Signature of informant on fardbeyan
Exhibit-3	Signature of informant on formal F.I.R.
Exhibit-4	Formal F.I.R.

8. On the basis of evidences/incriminating circumstance during the trial, statement of accused was recorded under section 313 of the Cr.P.C. by explaining evidences/circumstances as surfaced during trial for which they shows their complete innocence and denied all the evidences stated to them.



9. After conclusion of trial, the learned trial court has awarded the sentence as stated hereinabove, being aggrieved of which appellant/convict preferred the present appeal.

10. Hence, the appeal.

11. Ms. Anukriti Jaipuriyar, learned *Amicus Curiae* while assisting the court submitted that all the appellants/ convicts acquitted from the main charge as framed against them i.e. charge under Section 307 of the I.P.C. It is submitted that conviction under Section 323 of I.P.C. is on the basis of same testimony of witnesses, on the basis of which the main charge under Section 307 of the I.P.C. was not accepted by the learned trial court. It is submitted that deposition of prosecution witnesses are full of material contradictions.

12. Learned *Amicus Curiae* also pointed out that the prosecution witnesses are from the same family and, therefore, the conviction are on the basis of interested witnesses. While concluding argument, learned *Amicus Curiae* submitted that mere on the basis of presumption as



no injury required to be proved for establishing a case under Section 323 of the I.P.C., the present conviction was secured. It is also pointed out that this is not a case where injury did not caused.

13. Learned *Amicus Curiae* also submitted that Section 323 of the I.P.C. must be established with its own legal ingredients as available under the Act and not in casual manner as of present. Learned *amicus* further submitted that from perusal of the records of this case, it also appears that Investigating Officer and doctor were not examined during trial of this case and, therefore, F.I.R., place of occurrence and other material facts not appears established during the trial and same is also about injury report.

14. Learned A.P.P. for the State, while opposing the appeal, submitted that the contradictions, as surfaced during the trial, are minor. It is submitted that non-examination of I.O. and doctor does not lead to a conclusion that a case under Section 323 of the I.P.C. is not made out when the informant/injured specifically stated that how they received injuries from respective appellants/convicts.



15. I have considered the arguments as canvassed by learned *Amicus Curiae*, and learned A.P.P. for the State and perused the materials available on the record and the impugned judgment in issue. It would be apposite to reproduce Section 323 of the I.P.C. which reads as under:

"323. Punishment for voluntarily causing hurt.

—Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

16. It also appears that PW-5 and PW-6 both are in formal witnesses and their deposition are of no bearing regarding merit of the present case. Both these two witnesses are Advocate clerks, who identified the handwriting of the then S.H.O. Rajeshwar Sharma and Hardal Baitha and upon their identification, formal F.I.R. and *fardebayan* were exhibited as Exhibit '3' and '4' respectively.

17. From deposition of these two witnesses, it appears that they are not connected in any manner with aforesaid police officers as to identify their handwriting and, moreover, they only identified the handwriting and in this



way it cannot be said that formal F.I.R. and *fardbeyan* were proved during the trial.

18. It appears from *fardbeyan* and formal F.I.R. (Exhibit - 1 and Exhibit-4) that occurrence took place on 19.08.1991 at 5:00 P.M., where PW -1, Paras Chaudhary in his examination-in-chief categorically stated that occurrence is of 18.08.1991 and time was 6:00 P.M. Similarly, PW - 3 Janki Prasad stated in his examination-in-chief that occurrence was between 4:00 to 4:30 P.M. From deposition of aforesaid two prosecution witnesses, date and time of occurrence appears disputed. It further appears from deposition of PW-1 that before his arrival at the place of occurrence, informant/PW-2 had already received injuries, suggesting that he is not the eye witness of the real occurrence. It is also appearing from the deposition of PW-2/Informant namely, Prabhu Chaudhary that at the place of occurrence only he and accused persons were present, which is clearly indicative of the fact that except informant/injured no prosecution witnesses are the eye witness of the occurrence.



19. PW-3 namey, Janki Prasad though claimed that he was the eye witness of the occurrence, but an attention was drawn regarding his previous statement as made during investigation under Section 161 of the Cr.P.C. that he came at the place of occurrence on hearing alarm, where on arrival he saw that blood was oozing from the head of the informant/PW-2 namely, Prabhu Chaudhary. As Investigating Officer of this case could not examined during the trial, the appellants/convicts could not draw contradiction of aforesaid statement during trial and thus convicts were deprived from their valuable right of defence.

20. Now, from aforesaid discussion of witnesses, it appears that sole witness of this occurrence is injured/PW-2/informant, namely, Prabhu Chaudhary.

21. It appears from the impugned judgment that the trial court believed place of occurrence from oral testimony of prosecution witnesses though I.O. of this case was not examined. It further appears that as doctor was not examined during the trial, therefore, learned trial court did not accepted the injury as alleged to be inflicted by '*Tangi*'



to the extent that allegation falls under the purview of Section 307 of the I.P.C., but hold that even without proving the injury report or examination of doctor, the allegation of assault as alleged to be caused by '*tangi*' makes out a case under Section 323 of the I.P.C. This factual appreciation of fact is not appearing convincing for the simple reason that when the injury as alleged to be caused by *Tangi* was disbelieved to make out a case under Section 307 of the I.P.C. merely on the ground of non-examination of doctor, the injury caused by *Tangi* cannot be said to be proved for Section 323 of the I.P.C., which otherwise must stand on its own leg being an independent offence. It would be apposite to reproduce Section 319 and 321 of the I.P.C. which reads as under:

"319. Hurt.—Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

321. Voluntarily causing hurt.—Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt"."

22. From the facial interpretation of Section 319, 321 & 323 of the I.P.C. as mentioned, it appears that the



body pain, disease or infirmity, if caused by a person voluntarily, only in that case, it becomes punishable under Section 323 of the I.P.C.

23. Precisely, evidence as adduced by the prosecution during trial does not inspire confidence, because of the several discrepancies highlighted hereinabove.

24. Accordingly, prosecution has failed to prove its case beyond all reasonable doubts against the appellant/convict also for offence under Section 323 of the I.P.C.

25. Hence, appeal stands allowed.

26. The impugned judgment dated 20.12.2003 passed by learned Additional District & Sessions Judge, Fast Track Court-2, Gopalganj in S. Tr. No. 311/93/48/03 (arising out of Kuchaikote P.S. Case No. 106/1991) *qua* appellants/convicts are set-aside.

27. Accordingly, appellants/convicts are also discharged from the liabilities to furnish a bond under Section 4(1) of Probation of Offenders Act, 1958, as directed. Fine, if any paid, be returned to appellants/convicts



forthwith.

28. LCR of this case along with copy of the judgment be returned to learned trial court, without any delay.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	25.07.2024
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