

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.55 of 2006

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1. Kyamuddin Miya, son of Noor Hassan Miya
 2. Bharan Miya, son of Kyamuddin Miya
 3. Aziz Miya, son of Mahammad Miya
 4. Futun Miya, son of Mahammad Miya

All are resident of village-Gopalpur, P.S.-Naya Gaon, District-Saran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vipul Sinha, *Amicus Curiae*
For the Respondent/s : Mr. Abhay Kumar, APP.

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 19-02-2024

Heard Mr. Vipul Sinha, learned *Amicus Curiae* and Mr. Abhay Kumar, learned A.P.P for the State.

2. The present appeal has been filed against the judgment of conviction and order of sentence dated 22.12.2005 passed by learned Additional District & Sessions Judge, F.T.C-I, Saran at Chapra in connection with Sessions Trial No. 79 of 1999, arising out of Complaint Case No. 126 of 1996, whereby and



whereunder, though the appellants were found guilty for the offence punishable under Section 323 of the Indian Penal Code and appellant Kyamuddin Miya was further convicted under Section 379 of the Indian Penal Code but they had been released under Section 4 of the Probation of Offenders Act, keeping in view the old age and the background in which the complaint was filed and on their furnishing bond of Rs. 2000/- with their undertaking that they shall maintain peace and tranquility and shall appear on each day whenever they are required in the Court.

3. The prosecution case as per the complaint petition is that on 28.01.1996 while the complainant was at her door, all the accused persons came there and appellant Kyamuddin asked her to sign on the compromise petition and on refusal by her, the accused persons assaulted her with bricks and when she fell down, appellant Kyamuddin gave *danda* blow on the stomach of the complainant and snatched an ear-ring



worth Rs. 2500/- from the complainant. The complainant further alleged that due to this occurrence, the pregnancy of the complainant got aborted.

4. The learned Court below, after examining the witnesses and the complainant, took cognizance against the appellants under Sections 323, 379 of the Indian Penal Code. Subsequently Section 313 of the Indian Penal Code was also added in this case.

5. The learned Trial Court, after examining seven witnesses on behalf of the prosecution and none on behalf of the defence has found guilty of the appellants under Section 323 of the Indian Penal Code and appellant Kyamuddin Miya was further convicted under Section 379 of the Indian Penal Code but thereafter released them for maintaining the peace after admonition under Section 4 of the Probation of Offenders Act on their furnishing bond of Rs. 2000/- and imposing certain conditions.

6. P.W. 1 Nurul Haq is the husband of the



complainant, who, in his examination-in-chief has stated that at the time of occurrence, he was working in his field and on hearing *hulla*, he came at the place of occurrence where he saw that all the accused persons are assaulting his wife, the complainant (P.W 4) by *lathi*, *danda* on her hand, legs, stomach, back. His wife sustained injury on her stomach, as a result of which, the pregnancy of his wife got aborted. Though this witness in his cross-examination did not mention the name of the doctor in whose clinic, the treatment of the complainant was done but he had mentioned that complainant was treated by a male doctor. He has also not produced any documentary evidence showing treatment of his wife regarding termination of her pregnancy.

7. P.W. 2, Nand Kishore Singh claims to be the eye witness to the occurrence, who has stated in his examination-in-chief that on the alleged date and time of occurrence, while he was returning from the



field, he saw that accused persons are assaulting to the complainant at her door because she denied to compromise the case. He has stated that appellant Kyamuddin Miya kicked on the stomach of the complainant from his leg, as a result of which, the pregnancy of the complainant got aborted. However, in his cross examination, this witness has stated that while he was coming from the field, he found the complainant in a fallen condition, which completely contradicts this fact that he was an eye witness to the occurrence. He also stated that he learnt from his wife regarding the pregnancy of the complainant.

8. P.W. 3 Fazal Haq is a formal witness who has proved the complaint petition.

9. P.W. 4, Hasina Khatoon is the complainant of the case who has stated in her examination-in-chief that on the alleged date of occurrence, while she was at her door, all the accused persons came and appellant Kyamuddin Miya told to sign on the compromise paper



and when she denied, all the accused persons armed with *lathi*, *danda* started assaulting her. The appellant Kyamuddin Miya intentionally assaulted on her stomach, as a result of which, her pregnancy got terminated. The appellant Kyamuddin also snatched earring of the complainant worth Rs. 2500/-. However, in her cross-examination, she has stated that the accused are agnates and appellant Kyamuddin Miya is her *Bhaisur* and the complainant and accused persons are using same *Aangan*. She further stated that at the time of occurrence, her husband had gone for call of nature and he came after the incidence. The complainant has stated in her cross-examination that she was treated by a lady doctor and regarding pregnancy, no test was done.

10. P.W. 5 Fatma Bibi is the mother-in-law of the complainant who has stated in her examination-in-chief that on the alleged date and time of the occurrence, she was present when the accused persons



came and told to compromise the case and when the complainant denied for compromise, the accused persons started assaulting the complainant by *lathi and danda*. The appellant Kyamuddin Miya assaulted with *lathi* on the stomach of the complainant, as a result of which, her pregnancy got terminated. However, in her cross-examination, this witness has stated that when she came at the place of occurrence, she found the complainant in injured condition which suggests that this witness was not the eye witness to the occurrence. She also claims that accused persons are agnates and they live beside her house.

11. P.W. 6 Shyam Narayan Singh in his examination-in-chief, did not support the prosecution version and he has been declared hostile.

12. P.W. 7, Janardan Kumar Srivastawa is a formal witness.

13. Mr. Vipul Sinha, learned *Amicus Curiae*, in defence of the appellant has submitted that there



was previous enmity between the complainant and the appellants. There is material contradiction in the evidence of witnesses examined on behalf of the prosecution. The complainant and appellants are close *pattidars* as well as agnates and using the same *Aangan* and it is the case of the prosecution that since the complainant denied to compromise the case, the occurrence took place. It is the case of the prosecution that appellant Kyamuddin Miya snatched ear-ring from the complainant but there is no medical evidence to corroborate that complainant sustained any injury on her ear due to snatching of the ear-ring. It is the case of the prosecution that appellant Kyamuddin Miya assaulted with *lathi* on the stomach of the complainant due to which the pregnancy of the complainant got aborted, but there is no documentary proof in this regard to prove that complainant was pregnant at the time of occurrence or she was treated by any doctor regarding her abortion.



14. Considering the rival submissions of the parties, this Court is of the view that learned Trial Court has rightly observed and held that there is no contradiction in the evidences of P.W.s 1, 2, 4 and 5 regarding the date, place and time of the occurrence which proves that occurrence was committed by the accused persons. Their evidences also completely corroborates that appellant Kyamuddin Miya snatched ear-ring of the complainant. Hence, the allegation against the appellants under Section 323 I.P.C and appellant Kyamuddin Miya against 379 are fit to be proved. So far as allegation under Section 313 I.P.C is concerned, there are contradictions in the evidences of P.W.s 1, 4 and 5, as P.W. 1 in his evidence has stated that appellant Kyamuddin Miya kicked on the stomach of the complainant with leg, whereas the complainant P.W. 4 has stated that appellant Kyamuddin Miya assaulted with *lathi* on her stomach. The prosecution has also failed to produce any documentary evidence to



prove that complainant was pregnant at the time of occurrence or she was treated by any doctor regarding her abortion. Hence, the prosecution has failed to prove charges as levelled against the appellants under Section 313 of the Indian Penal Code.

15. This Court does not find any infirmity in the order impugned. No fault could be found with the judgment of the trial court in convicting the appellants under Section 323 of the Indian Penal Code and appellant Kyamuddin Miya under Section 379 of the Indian Penal Code. The conviction of the appellants under Section 323 of the Indian Penal Code and appellant Kyamuddin Miya under Section 379 of the Indian Penal Code are therefore sustained and upheld.

16. This Court expresses the appreciation for the efforts taken by Mr. Vipul Sinha, learned *Amicus Curiae* who had insisted for assisting the Court in the matter. This Court directs the Patna High Court Legal Services Committee to pay to Mr. Vipul Sinha a sum of



Rs. 6000/- (Six Thousands) towards his professional fee
for extending valuable assistance to this Court in
deciding this appeal.

17. Accordingly, the appeal stands dismissed.

(Sunil Kumar Panwar, J)

Shageer/-

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