

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.457 of 2007

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Gudar Mandal, son of Late Adhar Mandal, resident of Village-Lakhitola Garh
Banali, P.S.-Kaswa, District-Purnea

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Vipul Sinha (Amicus Curiae)
For the Respondent/s : Mr. A.M.P Mehta, A.P.P

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 08-07-2024

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
17.04.2007 passed by the learned Additional Sessions
Judge, F.T.C-VII, Purnea in connection with Sessions
Trial No. 634 of 2004/T.R. No. 141/2006, arising out of
Kaswa Case No. 49 of 2003, whereby and whereunder,
though the appellant was found guilty and convicted for
the offence punishable under Sections 341, 323, 325 of
the Indian Penal Code but he had been released under
Section 4 of the Probation of Offenders Act, keeping in



view the old age and the fact that appellant is not habitual offender and it was the first offence committed by him and on his furnishing bond of Rs. 5000/- with his undertaking that he shall maintain peace and good behavior for a period of one year.

3. The prosecution case as made out from the *fardbyan* (Ext.3) of the informant Kapildeo Pandit in brief, is that the wife of the informant namely Sarla Devi had got a land on settlement from the Government of Bihar which was being ploughed by the appellant/Gudar Mandal on 17.4.2003 at 8 A.M. and when the informant made protest, the appellant started abusing him and ran to assault him, but the informant fled away. It is further alleged that on the same day i.e. 17.04.2003, in the evening at about 7 P.M. when the informant was going to market, all of a sudden, the appellant came having armed with *Garasa* in his hand and gave *Garasa* blow on his head, as a result of which, the informant fell down. When the appellant wanted to give repeated *Garasa*



blow, he was obstructed by an unknown truck driver. It is also alleged that the appellant and his son also assaulted the informant with *lathi*, as a result of which, he sustained fracture injury on his right hand. When the wife of the informant came to his rescue, she too was assaulted by the appellant Gudar Mandal, his wife and son Narayan Mandai. The occurrence is said to have been witnessed by so many persons.

4. On the basis of the aforesaid fardbeyan of the informant, Kasba P.S. Case No. 49 of 2003 was registered against the appellant and after completion of the investigation, charge-sheet was submitted and thereafter cognizance was taken and the case was committed to the Court of Sessions for trial.

5. During the course of trial, altogether six witnesses were examined on behalf of the prosecution.

6. P.W. 1 Kapildeo Pandit is the informant of the case and one of the injured. He has deposed in his examination-in-chief that at the relevant time, while he



was going to market, wife and son of the appellant Gudar Mandal dragged him from the road and assaulted him with *Farsa* on his head. On *hulla*, his family members reached there. They also sustained injury at the hands of the informant. Thereafter, the informant was taken to the hospital for treatment. According to him, the cause of incident is land dispute.

7. P.W. 2, Sarla Devi happens to be the wife of the informant. She has deposed in her examination-in-chief that her husband was assaulted at the hands of the accused while he was going to market. This witness also alleged that accused/appellant also assaulted her. She too has admitted that there is land dispute between her husband and the appellant. She has denied the defence suggestion that this case has been filed only with a view to grab the land of the accused.

8. P.W. 3 Ram Bachan Singh is one of the I.O. of the case. He has proved the formal F.I.R., which has been marked as Ext-1. According to him, his



predecessor, (I.O of the case) had visited the P.O. and recorded the evidence of the prosecution witnesses and he after perusing the case diary, submitted charge-sheet against the appellant/Gudar Mandal Under Sections 341,323,325,307/34 of the Indian Penal Code.

9. P.W. 4, Lakhan Kumar is the son of the informant who has deposed in his examination-in-chief that on the alleged day and time of occurrence, while his father was going to the market, the co-accused persons namely Narayan Mandal, Milan Devi, Anjali Devi and the appellant/Gudar Mandal wrongfully restrained him and assaulted. He further deposed that appellant/ Gudar Mandal assaulted his father with *danda* on his head and on his hand, as a result of which, he sustained fracture injury on his right hand. Co-accused Narayan Mandal also assaulted his father (informant) with *farsa*. When this witness and other family members went to rescue the informant, they too were assaulted by the accused persons.



10. P.W. 5 is Dr. K.S. Mishra, who has examined the injured/informant on 18.04.2003 at Primary Health Centre Kasba. He has found the following injuries on the person of the informant Kapildeo Pandit (P.W. 1).

1. Lacerated wound on head left side measuring 2" x 1/6"x1/8"

2.Swelling right forearm

3.Swelling measuring 2"x1" right foot.

11. According to the doctor(P.W. 5), the injury no.1 was simple in nature caused by hard and blunt substance and injury nos. 2 & 3 were grievous in nature, caused by hard and blunt substance such as *lathi*. He has also the deposed that the two X 'ray plate attached with the medical report shows the fracture injury. He has proved the injury report which has been marked as Ext-2.

12. P.W. 6 Mani Kant Jha is a formal witness and has proved the *fardbeyan* which has been marked as Ext-3.



13. Mr. Vipul Sinha, learned *Amicus Curiae*, in defence of the appellant has submitted that appellant is innocent and he has falsely been implicated in this case. There was previous land dispute between the parties and in order to grab the landed property, this false case has been instituted against the appellant. During the course of trial, one Shyamlal Mehta was examined on behalf of the defence who has proved two rent receipts standing in the name of the appellant bearing Khata No. 63, Khesra no. 79 which has been marked as Ext-A and Ext-A/I respectively. The witnesses have not specifically taken the name of the appellant as the only assailant, rather they also named the son and wife of the appellant. Moreover, all the material P.W.s are closely related to the informant and are highly interested, hence, it is not safe to put reliance on their evidences. Learned *Amicus Curiae* further contended that in this case, the Investigating Officer who has investigated the case, has not been examined. Hence, in the absence of



examination of the Investigating Officer, the place of occurrence was not proved.

14. Considering the rival submissions of the parties, this Court is of the view that learned Trial Court has rightly observed and held that on the alleged day, time and place of occurrence, the appellant along with his family members had wrongfully restrained and assaulted the informant, his wife and his son which has also been corroborated with the medical report of the informant which has been marked as Ext-2. There is no contradiction in the evidences of P.W.s 1, 2 and 4 regarding the date, place and time of the occurrence which proves that occurrence was committed by the accused persons. Their evidences also completely corroborate that appellant assaulted the informant. Hence, the allegation against the appellants under Sections 341, 323 and 325 are fit to be proved.

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 Sections 341, 323 and 325 of the Indian Penal Code. The conviction of the appellant under Sections 323, 341, 325 of the Indian Penal Code is 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)

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AFR/NAFR	NAFR
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