

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.318 of 2013**

Arising Out of PS. Case No.-110 Year-2003 Thana- BAHERA District- Darbhanga

1. Phulo Mian @ Md. Phulo, S/o Jiwachh Mian Resident Of Village- Madhopur, P.S- Bahera, District- Darbhanga.
2. Sabir Mian S/o Phulo Mian Resident Of Village- Madhopur, P.S- Bahera, District- Darbhanga.
3. Saiyara Khatoon W/o Phulo Mian Resident Of Village- Madhopur, P.S- Bahera, District- Darbhanga.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Akansha Malviya *Amicus Curiea*
For the Respondent/s : Mr. A.M.P. Mehta, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

Date : 05-12-2024

Heard Ms. Akansha Malviya, learned *Amicus Curiea* for the appellants and Mr. A.M.P. Mehta, learned APP for the State.

2. The present appeal has been filed under Section 374 (2) of Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C') challenging the Judgment of conviction dated 16.03.2013 and order of sentence dated 18.03.2013 passed in Sessions Trial No. 167 of 2005 in connection with Bahera P.S. Case No. 110 of 2003 passed by learned Additional Sessions Judge, Benipur, Darbhanga, whereby and whereunder the appellants have been convicted for



the offence under Sections 341, 323 and 307 of Indian Penal Code and sentenced to undergo simple imprisonment for a period of three months under Section 341 of Indian Penal Code and one year rigorous imprisonment under Section 323 of Indian Penal Code and seven years rigorous imprisonment under Section 307 of Indian Penal Code and further imposed a fine of Rs. 2,000/- each under Section 307 Indian Penal Code and on failure of payment, the appellants will further sentence to rigorous imprisonment for three months, besides appellant no.1, namely, Phulo Mian has been sentenced to undergo rigorous imprisonment for three years under Section 324 of Indian Penal Code and all sentences shall run concurrently.

3. The brief fact leading to the filing of the present appeal on the basis of the *fardbeyan* of the informant, while giving his statement in injured condition at Primary Health Center Bahera on 24.05.2003 at 6.00 AM, told that on 23.05.2003 at about 8:30 PM, while going to the defecate with water, he was going from his house to the fallow field and when he reached the road ahead of his brother Phulo Miyan's house, Phulo Miyan, Sabbir Miyan, Saira Khatun and two unknown other persons together caught the informant. Phulo Miyan, gagging the informant, dragged him inside his house to the



Dakshinwari house and with the intention of killing him, Phulo Miyan slashed the informant's throat with the long knife kept in his waist which hit below his throat, while trying to stop it, the knife entered the knuckle and back due to which the informant fell down, then Sabir Miyan started pressing the informant's neck by kicking him. Saira Khatun also started hitting the informant on his chest. At the same time both the unknown persons were holding the legs of the informant. Phulo Miyan again stabbed the informant in the stomach and when the informant turned to save himself, the knife entered the right side above the thigh of the informant. On hearing the noise made by the informant, the informant's wife came to Phulo Miyan's house to intervene, then Saira Khatun started beating her with a stick. According to the informant, his father Sona Das and cousin Doma Das came running and shouting from behind, then his father was also beaten up and Sabir Miyan snatched the wrist watch Titan worth Rs. 900 (nine hundred) from the informant's hand. On hearing the noise made by the informant, when people from the vicinity came, the appellants fled from there.

4. Further on the basis of the *fardbeyan* of the informant, a case was registered in Bahera PS Case No. 110 of



2003 under Sections 341, 324, 307, 379, 323/34 Indian Penal Code and investigation was carried out. After investigation, a chargesheet was submitted against the accused under Sections 341, 323, 324/34 Indian Penal Code. The learned Additional Chief Judicial Magistrate, Benipur, Darbhanga took cognizance of the and kept the case in his personal file. The case was handed over to the court on 24.05.2005. Thereafter, the case, while being in other courts, was transferred to this court for execution on 19.12.2009. In this case, charges have been framed against the three accused/appellants under Sections 323, 341, 307 and 324 Indian Penal Code on 20.07.2005. After the evidence of the prosecution, in the statement under Section 313 CrPC, the accused have declared themselves innocent and denied having committed any crime.

5. The prosecution examined altogether 12 witnesses to substantiate the charges levelled against the appellants, who are namely, PW-1 Brahmadev Yadav, PW-2, Bhogendra Lal Dev, PW-3 Shamsul Miyan, PW-4 Mohd. Chhote @ Chhotka, PW-5 Vido Das, PW-6 Jalekha Khatun, PW-7 Sone Das, PW-8 Renu Devi, PW-9 Mohd. Ziruddin (Advocate Clerk), PW-10 Dr. Shiv Shankar Jha (Medical Officer), PW-11 Manoj Das (informant) and PW-12, Ram



Kishun Paswan (Investigating Officer).

6. Out of whom PW-1 Brahmadev Yadav, PW-2 Bhogendra Lal Dev, PW-3 Shamsul Miyan, PW-4 Mohd. Chhote alias Chhotka have said nothing against accused and they have been declared hostile by the prosecution.

7. PW-5 Vido Das who lives next to the place of occurrence had also stated in his examination-in-chief supporting the prosecution case that he had recorded the date and time of incident at his house, he went to Phulo's house on hearing the noise and saw Phulo dragging Manoj into the courtyard and stabbing Manoj with a knife and Manoj had injuries on his side, back and right neck due to that knife, his wife who came to save Manoj was also beaten with a stick by the appellants and Phulo's wife hit her on the chest with a stick, Manoj's watch was snatched by Sabir, and Sona Das, Doma Das etc. stopped the fight and gave a statement to the police and identified all the appellants. In cross-examination he had stated that when he came to the place of occurrence, the appellant were taking Manoj to their house by holding him in between, he saw three wounds on Manoj's body, Manoj and his wife were unconscious at that time and there was fighting from both the sides, he did not see any injury on the body of any of the



appellant, he gave a statement to the police three days after the occurrence.

8. PW-6, Zulekha Khatun, in her examination-in-chief also stated that on the date and time of the occurrence, while the informant was going to the defecate, he reached near Phulo Miya's house and saw that Phulo Miya, his wife and some unknown people caught informant and dragged him out of the house, Phulo stabbed him with a knife and injured him, and other appellants also beat him up, and has given statement to the police and identified all the appellants. In his cross-examination, he stated that the beating took place on the bank of the river, and that she had come to the spot after the incident, and that she had not seen the incident herself.

9. PW-7 Sone Lal Das, father of the informant and one of the injured in this case, in examination-in-chief stated that on the date and time of the occurrence, when his son Manoj Das was going to the defecate, the appellant Phulo Miyan caught him and took him to his house and stabbed him on the head, neck, back and arm with a knife, blood oozed from there, on hearing the commotion, he went to the place of incident with his daughter-in-law and he and Renu Devi were also beaten up, the injured were treated at the Behera



Government Hospital, he gave a statement to the police and identified all the appellant. In his cross-examination he had stated that the occurrence took place at 6:00 PM, on reaching the place of occurrence, he saw his son lying unconscious, he remained unconscious for six days, on regaining consciousness, he was talked, the police took his and his daughter-in-law's statement.

10. PW-8 wife of the informant and one of the injured in this case, stated in her examination-in-chief that the incident had taken place six and a half years ago at about 8:00 PM, that while going to the defecate her husband reached near the house of the appellant where Phulo Miyan caught hold of him and dragged him into his courtyard, upon hearing the commotion, she went to Phulo Miyan's house, there Phulo Miyan stabbed her husband with a knife on her husband's neck, hand and cheek and he was hit on the back with a stick by Sabir and his wife, that her father-in-law was also beaten up, from there she went to the hospital with her husband for treatment. She further stated that blood was oozing from her husband's body and she gave a statement to the police and she identified everyone.

10.i. In her cross-examination she had not stated



the day, date, month of the incident, and not stated that the night of the incident was dark, and the distance from the place of incident was two steps but it being her own house, her husband not becoming unconscious due to the assault, he being covered in blood, her husband having marks of assault on his neck, buttocks, the said dagger being one inch wide and 12-13 inches long, the knife was found on the night of the incident.

11. PW-10 Dr. Shiv Shankar Jha, issued the injury report after examining the injuries of the informant and other injured persons, stated in examination-in-chief that on 23.05.2003, he was posted as the Medical Officer in Charge at the Primary Health Centre, Bahera, and on the same day at 11:00 pm, he examined the body of the informant Manoj Das in the external department and found the following injuries on his body: -

- (i) One Sharp Cut injury on left scapular region 1"x14"*
- (ii) One Sharp Cut injury right side of neck ½"x½"*
- (iii) One Sharp cutting injury on right scapularary "x"*
- (iv) One Sharp cut injury right side of hip 1"x4"*
- (v) Swelling on sought sculp right side.*
- (vi) Swelling on right forearm.*



(vii) Complain of pain over the whole body.

11.i. He further stated that the above injuries are of ordinary nature and that wounds number 1 to 4 are caused by sharp weapons and the other three are caused by hard and blunt weapons and all the wounds were caused within 12 hours. He has identified Manoj Das's injury report as Exhibit-2. This medical witness has mentioned about examining the body of Renu Devi wife of Manoj Das at 11.15 pm on the same day and finding the following wounds on her body: -

(i) One lacerated wound on dorsum of right-hand 1"x½"

(ii) One ecchymosis on right upper arm 2"x1"

11.ii. He further stated that both the above injuries were caused by hard and blunt weapons and that they were made within 12 hours of examination. He has identified this injury report as Exhibit-2/1. In the cross-examination, he stated that the examination and treatment of both the injured was done before receiving the requisition from the inspector. The requisition came in the case and he has issued the injury report of both the injured as part of performing government work. He further stated that a total of 3 wounds were found on the body of Renu Devi and none of the wounds were on her vital organs. It



was not possible that the above wounds could have been caused by falling. He further stated that there were no wounds on any vital organs of Manoj Das's body and he became unconscious due to some wound, and that he left both the bodies on the day of examination. Thus, he stated that on the date of occurrence, the informant Manoj Das and the injured Renu Devi had wounds caused by sharp edged weapons and by blunt and hard weapons.

12. PW-11 Manoj Das, informant of the case, has stated in his examination-in-chief that the occurrence took place 8 years and 2 months ago at 8:00 PM at that time he took a pot from his house and went towards the west side of the village, defecated and when he returned, he reached in front of the house of Phulo Miyan (appellant), then Phulo Miyan, Sabir Miyan, Sabara Khatun and two other persons caught him, dragged him to their house and went inside the house and first beat him with a stick. He further stated that in the course of the beating, Phulo Miyan took out a long knife from his waist and slashed it on his neck, thereafter he tried to stop with his hand, then that knife hit the palm inside the wrist of his left hand and the second knife hit his back. The third blow of the knife was given by Phulo on his stomach which hit his thigh while trying to save himself and



he has also told that the fourth blow of the knife hit his left wrist and arm. He further stated that both the appellant tied rope to his hands and legs, beat him and on his screams his wife Renu Devi father Some Das came there and while trying to save him Saira Khatun hit both of them with a stick and Sabir Mian snatched his watch and on his screams the villagers came there and saved their life. He further stated that on that night he and his wife were treated in Behera hospital, the next day he gave his statement (Exhibit-3) in the hospital and his wife's thumb impression was on it, he again gave his statement before the police in the village 5 days after the occurrence and his wife and father gave their statement and he identified all the appellant.

12.1. In his cross-examination he has supported the prosecution case he had stated that he used to work as a laborer with appellant Phulo Miyan till 5-6 months before the incident and he owed him five thousand rupees and this incident happened because of demanding the same money and at the time of the occurrence he was forcibly taken to Phulo Miyan's house and his hands and legs were tied and he did not faint during the occurrence, blood oozed from his whole body and blood was dripping from the place where he was lying on the ground and the said blood oozed from the hands, back, neck and



thigh of him and he was beaten with slaps, punches and dragged for 2-3 *lagga*. He further stated that he saw the wounds on the bodies of his wife and father, that all the injured went to the hospital, he saw wounds at 3-4 places on the back of his wife and father and the stolen Sonata watch was worth Rs.8900, that there was a dispute with Phulo Mian regarding transactions from 4-5 months prior to the incident. He further stated that all the three injured stayed in the hospital for 32 days, and that the police took their statements on the second day of the occurrence. He had further supported the First Information Report and the prosecution case in his examination-in-chief and cross-examination.

13. PW-12 Ram Kishun Das investigating officer stated in his examination-in-chief that on 24.03.2013 he was posted as Assistant Sub Inspector in Bahera Police Station and on the same day at 6:00 AM he recorded the statement of informant Manoj Das in Bahera Primary Health Center in whose presence he found it correct and signed it and Renu Devi gave her thumb impression on it and he has identified his handwriting and signature on that statement as Exhibit-4. He further stated that on the basis of that statement a case was registered and its investigation was taken up, the crime scene was inspected, the



statements of all the witnesses were recorded, it was recorded verbatim in the case diary and the informants statement was recorded again and the crime scene was inspected on the review report of the Sub-Divisional Police Officer Benipur and in the light of the statements of the witnesses and the instructions of the Sub-Divisional Police Officer, a charge sheet was submitted against the above mentioned three accused under Sections 341, 323, 324/34 of the Indian Penal Code and his handwriting and signature were put on the entire case diary (Exhibit-5). During his cross-examination he stated that during the inspection of the place of occurrence on 24.5.2003 at 8.15 AM, he did not meet the informant and any member of his family there and he had recorded statements of witnesses there. Renu Devi had said about stabbing the informant's neck, and she also said that she saw a bandage tied around the neck of the informant and that she had seen wounds on his back. All the witnesses had told him that there was this dispute regarding money transaction.

14. After closure of the prosecution evidence, the appellants were examined under Section 313 of the Cr.P.C confronting them with incriminating circumstances which came in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During this examination, they



admitted that they had heard the evidence of prosecution witnesses against them. But they did not explain any circumstance, though they claimed that the prosecution evidence is false and they are innocent and have been falsely implicated.

15. Learned *Amicus-Curiae* Ms. Akansha Malviya submits that the impugned judgment of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment of conviction and order of sentence from the perusal of the evidences adduced on behalf of the prosecution it is crystal clear that the place of occurrence in this case has not been shown by the prosecution. It has not been established and there is contradiction in the statements of witnesses regarding the place of occurrence. She further submits that after the completion of the investigation, the investigating officer did not submit the charge-sheet under Section 307 Indian Penal Code and submitted the charge-sheet against the accused under Sections 341, 323, 324/34 Indian Penal Code. She further submits that there is no mention of injury on the vital part of the body of any of the injured. Therefore, this case does not come under Section 307 IPC and the learned Additional Chief Judicial Magistrate Benipur, after seeing the case diary, injury report



etc., has taken cognizance of the crime under Section 307 IPC. She also submits that charge has been framed under Section 307 of IPC for all the appellants, where, the specific allegation as regard to assaulted by means of knife is only against the appellant no.1, namely, Phulo Miyan and the allegations against the other appellants have been levelled to cause injuries by means of *lathi* and *danda*. She further submits that the charge framed against all the appellants under Section 307 is not in accordance with law. She further submits that the FIR was lodged after a long delay after the incident, which makes the prosecution case doubtful, whereas it is clear from the perusal of the record that the incident took place on 23.05.2003 at 8.30 pm and after getting injured, the informant and the injured went to Behera hospital for treatment and the next day on 24.05.2003 at 6.00 am, the FIR was lodged on the basis of the statement given by the informant. She also submitted that incident took place at night but no source of light is mentioned by the informant. She further submits that the informant used to work as a laborer with the accused/appellant no.1 Phulo Miyan and as the wages of many months were pending and the informant had repeatedly demanded the wages, the incident was committed against the informant due to the same grudge. The Learned trial Court has



failed to appreciate the evidence it's right perspective and impugned judgment of conviction is bad in law as well as on fact and such to set aside. Learned *Amicus Curiae* further submitted that this appeal is of the year 2013 and occurrence is of the year 2003, where, the appellants have suffered and undergone persistent agony on the account of the same and are struggling for the defence since last 20-21 years. So, the appellants should have been acquitted from the conviction as sentenced against them or period undergone.

16. Learned *Amicus Curiae* has relied upon the judgment of the Hon'ble Apex Court in the case of '*State of Maharashtra v. Kashirao and Ors.*' (2003) 10 SCC 434, where the Apex Court had laid down the essential ingredients required to be proved in case of an offence u/s 307 of IPC. The relevant portion of the judgement reads as under:

"20..... The essential ingredients required to be proved in the case of an offence under Section 307 are:

(i) that the death of a human being was attempted;

(ii) that such death was attempted to be caused by, or in

consequence of the act of the accused,; and

(iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as.

(a) the accused knew to be likely to cause death; or



(b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause

(a) death, or

(b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

17. Further she relied upon the judgment of the Hon'ble Apex Court in the case of *State of M. P. V. Saleem (2005) 5 SCC 554*, where Hon'ble Apex court has categorically held that whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case, Relevant portion of the judgement reads as under:

"16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury...."

In the case of *Hari Mohan Mandal v. State of Jharkhand (2004) 12 SCC 220*, relevant portion of the same



reads as under:

"17. The first injury was certainly on vital part and taking into account the injuries on the various parts of the body, Section 307 IPC has been rightly invoked. The accused has been rightly convicted for offences punishable under Section 307 IPC. However, taking into account the fact that the altercations took place at the time of husking paddy and there was no premeditation or planning of the attack, custodial sentence of five years would meet the ends of justice. It is to be noted that scope for consideration in the appeal was limited to the nature of offence and consequently the sentence.

In the case of **Jai Narain Mishra and Ors. v. State of Bihar (1971) 3 SCC 762**, relevant portion of the same reads as under:

"11.Out of the four injuries which the Medical Officer noted, this injury was of a grievous nature while the other three injuries were simple in nature. Where four or five persons attack a man with deadly weapons it may well be presumed that the intention is to cause death. In the present case, however, three injuries are of a simple nature though deadly weapons were used and the fourth injury caused by Suraj, though endangering life could not be deemed to be an injury which would have necessarily caused death but for timely medical aid. The benefit of doubt must, therefore, be given to Suraj with regard to the injury intended to be caused and, in our opinion, the offence is not one under Section 307 IPC, but Section 326 IPC



His conviction, therefore, under Section 307 IPC is set aside....”

In the case of *Ram Naresh V State of Uttar Pradesh (2010) 15 SCC 252*, relevant portion of the judgement read under:

“10. It has been finally submitted by Mr Kishore that as the incident had happened in the year 1978 and as 32 years had passed on some reduction in sentence may be considered. We find merit in this plea. We, accordingly, reduce the sentence of the appellant from five to three years”.

18. However, learned APP for the State defends the impugned judgment of conviction and the order of sentence submitting that there is no illegality or infirmity in the impugned judgment and order of sentence, because prosecution has proved its case against the appellants beyond all reasonable doubts. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained.

19. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court. I have thoroughly perused the materials on record and aforesaid judgments referred by the *Amicus Curiae* as well as given thoughtful consideration to the submissions



advanced by both the parties.

20. The Hon'ble Apex Court in the case of ***Jage Ram v. State of Haryana*** reported ***in (2015) 11 SCC 366*** the paragraph No. 12 and 13 which are 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.

13. In State of M.P. v. Kashiram [State of M.P. v. Kashiram, (2009) 4 SCC 26: (2009) 2 SCC (Cri)



40: AIR 2009 SC 1642], the scope of intention for attracting conviction under Section 307 IPC was elaborated and it was held as under: (SCC pp. 29-30, paras 12-13)

“12...13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. 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. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.”

21. On deeply studied and scrutinized all evidences, it is evident to note that when the three appellants are involved in the occurrence of an assault and there are some differences in the narration of facts is natural. It is a human nature that when different people narrate the same incident in their own words then some difference and inconsistency occurred. That in itself however, does not prove that the incident



had not occurred. On the date and time of the incident, the accused Phulo Miyan dragged the informant Manoj Das inside his house and with the intention of killing him, he and other accused Manoj Das were seriously injured by stabbing him with knives, sticks etc. and in order to save him, they also beat up the informant's wife and his father who were treated in Baheri Hospital. As the injuries caused to the victim by means of knife, where, several blows was seen upon the body of victim, where, the victim has objected the blow to save himself, which resulted into the injuries upon non-vital part of the body of the victim, where, the Hon'ble Apex Court has held and opined in a case that 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. As the wife of the informant/injured is independent witness, since she



was also present at the place of occurrence and her deposition cannot be discarded on the ground that she is wife of the informant/injured. As the charge has been framed under Section 307 of IPC for all the appellants, where, the specific allegation as regard to assaulted by means of knife is only against the appellant no.1, namely, Phulo Miyan, who is aged about 59 years and as charge has not been framed against all the accused persons/co-appellants under Section 34 of the IPC, where, the allegations against the appellant nos. 2 and 3, who are aged about 39 and 56 years respectively have been levelled to cause injuries by means of *lathi* and *danda*, so the offence under Section 307 of the IPC against appellant nos. 2 and 3 is not proved and the charge frame against appellant nos. 2 and 3 is not in accordance with law. Hence, the judgment of conviction dated 16.03.2013 and order of sentence dated 18.03.2013 passed in Sessions Trial No. 167 of 2005 in connection with Bahera P.S. Case No. 110 of 2003 passed by learned Additional Sessions Judge, Benipur, is hereby modified to the extent that appellant nos.2 and 3, namely, Sabir Miyan and Siayara Khatun respectively are acquitted from the charge under Section 307 of the IPC and the charge framed under Sections 323 and 341 of the Indian Penal Code against appellant nos.2 and 3 is hereby



upheld and affirmed and so far as appellant no.1, namely, Phulon Miya is concerned, the charges against him is upheld and affirmed under Sections 307, 323, 324 and 341 of the Indian Penal Code.

22. The Hon'ble Apex Court, in the case of ***State of U.P. vs Tribhuwan, (2018) 1 SCC 90*** has laid down that, time spent in custody by a convicted person, both as an under-trial and as a convicted person, may be considered as jail sentence awarded to him and he may get the advantage of set-off under Section 428 of Cr.P.C.

23. Hence, keeping in view all the material on record and the observation of the Hon'ble Apex Court, it is observed that in the instant case that the appellants have been in judicial custody for approx 5 months and the appellants have been subjected to a protracted trial which has been going on for almost 21 years. The appellants have struggled for a long time during the trial procedure and the conviction of the appellants is upheld but given the long pendency of the trial and the order suffered by the appellants and there are no adverse report against the appellants about their conduct otherwise the same would have been brought to our notice by learned counsel for the State, so sentence of the appellants is justified to period



undergone and the appellants stands discharged of the liabilities of their bail bonds, if any.

24. Before parting with this appeal, Secretary, Patna High Court Legal Services Committee is directed to pay Rs. 10,000/- (ten thousand) to the learned *Amicus Curiae*, namely, Ms. Akansha Malviya towards honorarium for assisting this Court in the present appeal.

25. Let a copy of first and last page of this judgment be handed over to the advocate Ms. Akansha Malviya, learned *Amicus Curiae* and Office is directed to proceed further in granting honorarium to her which is to be paid by Patna High Court Legal Services Committee.

26. Accordingly, this appeal is partly allowed.

(Ramesh Chand Malviya, J)

S.Katyayan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.12.2024
Transmission Date	10.12.2024

