

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.666 of 2024

In
CRIMINAL APPEAL (SJ) No.657 of 2015

Arising Out of PS. Case No.-215 Year-2008 Thana- BARAUNI District- Begusarai

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1. Sharwan Mahton Son of Ramhit Mahton Resident of Village - Bihat Sudi Sthan, Police Station - Barauni and District - Begusarai
 2. Janki Devi Wife of Chunchun Mahton Resident of Village - Bihat Sudi Sthan, Police Station - Barauni and District - Begusarai
 3. Raso Devi Wife of Ramhit Mahton Resident of Village - Bihat Sudi Sthan, Police Station - Barauni and District - Begusarai
 4. Reeta Devi Wife of Sharwan Mahton Resident of Village - Bihat Sudi Sthan, Police Station - Barauni and District - Begusarai

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Apurva Kumar, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, Addl. P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

5 04-07-2024 The present appeal has been placed before this Court by virtue of the order dated 16.08.2018 passed by the learned Single Judge of this Court in Criminal Appeal (SJ) No. 657 of 2015.

2. We have perused the order of the learned Single Judge.

3. After hearing learned counsel for the appellants as well as learned APP for the State, we deem it just and proper to



refer back the matter to the learned Single Judge with certain clarities.

4. This appeal arises out of judgment of conviction and the order of sentence dated 07.09.2015 passed by the learned Additional Sessions Judge-IV, Begusarai in Sessions Trial No. 941 of 2008.

5. By the impugned judgment, the learned trial court has held the appellants guilty for committing an offence punishable under Section 323 of the Indian Penal Code (in short 'IPC'). Accordingly, they have been sentenced to undergo simple imprisonment for one year and to pay a fine of Rs. 1,000/- each and in default of payment of fine, they will have to further undergo simple imprisonment for one month.

6. The learned trial judge found that so far as the charges under Sections 307 and 379 IPC are concerned, the prosecution had failed to establish those charges beyond all reasonable doubts, hence, the appellants were not convicted under Sections 307 and 379 IPC.

7. Being aggrieved by and dissatisfied with the judgment of the learned trial court to the extent the trial court acquitted the appellants of the charges framed under Sections 379 and 307/149 IPC, the informant Shankar Das moved this



Court in Criminal Appeal (DB) No. 1059 of 2015 which was placed before the Hon'ble Division Bench of this Court and after hearing learned counsel for the appellant, the Hon'ble Division Bench did not find it fit to admit the said appeal. Hence, Criminal Appeal (DB) No. 1059 of 2015 was dismissed vide order dated 26.02.2016.

8. While considering the said appeal, the Hon'ble Division Bench made certain observations which have been taken note of by the learned Single Judge in the present appeal. The learned Single Judge in his order dated 16.08.2018 recorded in paragraph '7' as under:-

“7. Be that as it may, the judgment of the Division Bench has been passed in absence of the appellants and in my view, the finding recorded under Paras-9 and 10 suggest otherwise than whatever been argued at the end of the appellants on account thereof, it looks appropriate to refer the matter to the Division Bench in order to provide proper adjudication and that being so, the office is directed to list before the Division Bench after obtaining permission from Hon'ble the



Chief Justice.”

9. It is for this reason alone that the present appeal has been placed before this Bench. In order to understand the whole issue we reproduce paragraph ‘9’ and ‘10’ of the judgment of the Hon’ble Division Bench in Criminal Appeal (DB) No. 1059 of 2015 as under:-

“9. It is further noticed by the trial Court that there was no repetition of blows by said Sharwan Mahto and instead, when the wife of the informant was attacked and the informant came to save her, the accused turned around to attack the informant. The learned trial Court has further noticed that P.W.1 (Babli Kumari) has given a version, which is contrary to the version of the prosecution and informant had stated that he was hit in the left leg by the attack of Sharwan Mahto. Several other witnesses, who have come forward to depose on behalf of the prosecution, have clearly stated that there was only one Khanti blow given by the accused Sharwan Mahto. There being no



repetition of blows and there being no intervening circumstances preventing the accused from attacking repeatedly, it could not be said that the accused persons had come with a clear intention of killing the wife of the informant and/or the informant himself. Even the injured (P.W. 5) has not stated that the blow given to her by Sharwan Mahto was with an intention to kill her. The informant's statement also did not disclose any further repetition of blows on his wife and/or on himself. Further-more, there is no material on the record to show that in the aforesaid marpit, there were such injuries, which could have been dangerous to life."

"10. P.W.10, is the doctor, who examined the wife of the informant, and found the injury on her person to be simple like swelling and bruise and had opined that the same was caused by hard and blunt substance. He had, thus, opined that the injuries on Sheela Devi, wife of the



informant, cannot be treated as grievous and/or dangerous for life, and similarly, the injuries on the body of the father of the informant, Debu Das, are also simple in nature. Accordingly, the learned trial Court, upon due consideration of all the facts and circumstances coupled with the findings of the doctor, held that Section 307 of the Indian Penal Code could not be attracted as the main ingredient for constituting the offence was not present. Had the intention to kill been there, the accused, Sharwan Mahto, could have made a second attempt by using Khanti for the second time with the intention of finishing the life of the informant's wife and/or that of the informant; but no such act was done by accused Sharwan Mahto. Thus, the charge, under Section 307 of the Indian Penal Code, was not, according to the learned trial Court, found proved."

10. The learned Single Judge has opined that the judgment of the Division Bench has been passed in absence of



the appellants and in his lordship's opinion the finding recorded under paras '9' and '10' suggest otherwise than whatever been argued at the end of the appellants on account thereof.

11. We are of the considered opinion that there was no occasion to hear the present appellants in course of hearing of Criminal Appeal (DB) No. 1059 of 2015 because the Hon'ble Division Bench on hearing the said appeal did not find it fit to admit the same. Since no order prejudicial to the interest of the present appellants were being passed, the absence of the appellants in the said appeal could not be of any consequence.

12. So far as the findings recorded by the Hon'ble Division Bench in Paragraph '9' and '10' of the judgment are concerned, this court has no *iota* of doubt that the findings and observations of the Court are to be construed only in relation to the subject matter of the appeal. The subject matter of the said appeal was related to the acquittal of the accused persons who are appellants before this Court of the charges framed under Sections 379 and 307/149 IPC. By no stretch of imagination it can be construed that the observations of the Hon'ble Division Bench of this Court in Criminal Appeal (DB) No. 1059 of 2015 could have been subject matter of discussion in the present appeal which is a Single Judge matter as per the Patna High



Court Rules and is to be considered on its own merits.

13. We find that vide order dated 30.11.2015, Criminal Appeal (SJ) No. 657 of 2015 out of which the present appeal being Criminal Appeal (DB) No. 666 of 2024 has been registered, was admitted by the learned Single Judge and the provisional bail granted to the appellants was confirmed.

14. Having given our careful consideration, we are of the opinion that it is a Single Judge matter and is to be considered on its own merit.

15. The Registry shall place it before the learned Single Judge as per roster fixed by the Hon’ble Chief Justice.

16. The Criminal Appeal (SJ) No. 657 of 2015 stands revived.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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