

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.599 of 2006

1. Amarnath Gupta, son of Sri Sarju Prasad Gupta
2. Shanti Devi, wife of Amarnath Prasad Gupta
3. Sharita Devi, daughter of Amarnath Prasad Gupta
4. Lalita Devi, daughter of Amarnath Prasad Gupta
5. Kamleshwar Kumar Gupta @ Kamleshwar Prasad Gupta, son of Amarnath Prasad Gupta
All are residents of Village-Thakurganj, Police Station-Thakurganj, District-Kishanganj

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. N.K. Agrawal, Sr. Adv Mr. Arvind Kumar, Adv Mr. Kumar Rajdeep, Adv
For the State	:	Mr. A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 22-07-2024

Heard the parties.

2. The present appeal has been filed against the judgment of conviction dated 29.07.2006 and order of sentence dated 31.07.2006 passed by learned Additional District & Sessions Judge, F.T.C-III in connection with Sessions Trial No. 82 of 1998/Tr. No. 02/2003, arising out of Thakurganj P.S. Case No. 31 of 1997 registered under Sections 147, 148, 149, 323,



324, 307, 326, 447 of the Indian Penal Code and while awarding the sentence, learned Trial Court directed all the appellants to undergo rigorous imprisonment for one year for the offence punishable under Section 147 I.P.C. The learned Trial Court further sentenced all the appellants to undergo rigorous imprisonment for one months for committing the offence under Section 447/34 of the I.P.C. The appellants Amarnath Prasad Gupta, Shanti Devi and Kamleshwar Prasad Gupta were further sentenced to undergo rigorous imprisonment for five years and fine of Rs. 3000/- each for committing the offence under Sections 307/149 I.P.C and in default of payment of fine, they were further sentenced to undergo simple imprisonment for three months. The appellants Lalita Devi and Sarita Devi were also sentenced to undergo rigorous imprisonment for two years and fine of Rs. 2000/- each for committing the offence under Sections 307/149 of the I.P.C and in default of payment of fine, they were further sentenced



to undergo simple imprisonment for two months. The appellant Amar Nath Gupta was further sentenced to undergo rigorous imprisonment for five years for committing the offence under Section 326 I.P.C. All the sentences were directed to run concurrently.

3. The prosecution case in short, is that, about 1½ to 2 months prior to the occurrence, the informant Sukhdeo Mali, Gobardhan Singh and Khirish Lal Ganesh had purchased 10 *katha* of land from the land owner namely Sawarmal Agarwal by registered sale deeds. It is further alleged that on 09.03.1997 at about 8:15 A.M, they were constructing the house on the purchased land, in the mean time, all the F.I.R named accused persons including the appellants namely Amar Nath Prasad Gupta, Shanti Devi (wife of Amar Nath Pd. Gupta), Lalita Devi, Sarita Devi and Kamal Prasad, daughters and sons of Amar Nath Prasad Gupta, armed with *lathi*, *danda*, *Farsa* came there and claimed that this land belongs to them and they would not allow



them to construct the house on the said land. When the informant told them that they have purchased the said land, on which all the accused persons assaulted them by means of *lathi, danda and Farsa*. In the mean time, appellant Shanti Devi handed over the bottle of acid to her husband Amarnath Gupta, who sprinkled the acid on Khirish Kumar Ganesh and Gobardhan Singh with intention to kill them, as a result of which, they received grievous injuries on their body. When the other witnesses rushed to save them, the appellant Amarnath Gupta sprinkled the acid on the body of other persons also. On *hulla*, other persons of the locality assembled there and saved them. Thereafter, the injured were taken to the hospital for their treatment from where injured Khirish Kumar Ganesh and Gobardhan Singh were referred to Siliguri Hospital, seeing their serious condition.

4. On the basis of the aforesaid *fardbeyan* of the informant Sukhdeo Mali, Thakurganj P.S. Case No.



31 of 1997 was registered against the F.I.R named accused persons including the appellants 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 twelve witnesses were examined on behalf of the prosecution.

6. P.W. 1 Membati is the wife of Gobardhan Singh (P.W. 8) and P.W. 2 Heera Devi is the wife of Sukhdeo Mali, informant(P.W. 10) who have deposed in their examinations-in-chief that their husbands (P.W. 8), Sukhdeo Mali (P.W. 10) and Khirish Lal Ganesh (P.W. 9) had purchased a piece of land and when they went to construct a house over the land, all the F.I.R named accused persons came armed with *lathi*, *bhala* and forbade them to construct the house and when the informant made protest, the appellant Shanti Devi took a bottle of acid to the appellant Amarnath Gupta who sprinkled the acid upon the informant (P.W. 10) Khirish



Kumar Ganesh (P.W. 9), as a result of which, both received acid injuries. The injured were thereafter taken to the hospital for their treatment.

7. P.W. 3 Raj Kumar Singh is the son of Gobardhan Singh (P.W.8) who has deposed in his examination-in-chief that his father and P.W. 9 and P.W. 10 had purchased a piece of land from a resident of Siliguri and when they went to construct a house over there, all the F.I.R named accused persons including the appellants came armed with *lathi*, *bhala* and forbade to construct the house. He further deposed that appellant Shanti Devi handed over a bottle of acid to the appellant Amarnath Gupta who sprinkled the acid upon his father Gobardhan Singh (P.W. 8), Khirish Kumar Ganesh (P.W. 9) and his sister Arti Devi (P.W. 7), as a result of which, they sustained acid injuries. The injured were thereafter taken to the hospital for their treatment.

8. P.W. 4 Pawan Kumar Singh and P.W. 5



Shambhu Lal Singh have deposed in their examinations-in-chief that Gobardhan Singh, Khirish Kumar Ganesh and Sukhdeo Mali had purchased a piece of land from a resident of Siliguri and when they went to construct a house over there, all the F.I.R named accused persons including the appellants came armed with lathi, *danda*, *khanti* and obstructed to construct the house. They further deposed that appellant Shanti Devi handed over a bottle of acid and a glass to the appellant Amar Nath Gupta who sprinkled the acid upon Gobardhan Singh (P.W. 8) and Khirish Kumar Ganesh, as a result of which, they sustained acid injuries. These witnesses had also sustained acid injured.

9. P.W. 6 Rajendra Ganesh has deposed in his examination-in-chief that there was a land dispute between the appellant Amar Nath Gupta and Khirish Kumar Ganesh, Sukhdeo Mali and Gobardhan Singh. He further deposed that he heard that P.W.s 8, 9 and 10 had sustained acid injuries. This witness does not



appear to be the eye witness.

10. P.W. 7 Arti Devi is the daughter of Gobardhan Singh (P.W. 8) who has deposed in her examination-in-chief that her father and uncle had purchased a piece of land from Sawarmal Agarawal and when they went to construct a house over there, all the F.I.R named accused persons including the appellants came armed with *lathi*, *bhala* and forbade to construct the house. She further deposed that appellant Shanti Devi handed over a bottle of acid to the appellant Amar Nath Gupta who sprinkled the acid upon his father Gobardhan Singh (P.W. 8) and other persons and when she went to rescue her father, she also sustained acid injuries. The injured were thereafter taken to the hospital for their treatment.

11. P.W. 8 Gobardhan Singh and P.W. 9 Khirish Kumar Ganesh are the purchasers who had purchased a piece of land along with the informant Sukhdeo Mali (P.W. 10) from Sawarmal Agarawal. On



the alleged date and time of occurrence, when they went to construct a house over the purchased land, all the F.I.R named accused persons including the appellants came armed with *lathi*, *bhala* and forbade to construct the house. They further deposed that when they told that it is the purchased land and they will construct the house over there, the appellants started assaulting them with *lathi*, *danda*. It is further deposed that thereafter, appellant Shanti Devi handed over a bottle of acid to the appellant Amarnath Gupta who sprinkled the acid upon them. The informant (P.W. 10) and Arti Devi (P.W. 7) also sustained acid injuries. The injured were thereafter taken to the hospital for their treatment.

12. P.W. 10 Sukhdeo Mali is the informant of this case who has deposed in his examination-in-chief that about 7-8 years ago (i.e. 09.03.1997) at about 8:15 A.M, he along with Gobardhan Singh and Khirish Kumar Ganesh(P.Ws. 8 and 9) had gone to construct



the house with *Chhappar* on 10 katha of land which was purchased from Sagarmal Agarwal. In the mean time, all the F.I.R named accused persons including the appellants armed with *lathi*, *danda* and *farsa* reached there and made protest, not to construct the house, on which they replied that they had purchased the said land through registered sale deeds. Therefore, they will construct their house. P.W. 10 has further deposed that thereafter the accused persons started assaulted them. It is further deposed that thereafter, appellant Shanti Devi took a bottle of acid from her house and handed over to appellant Amarnath Gupta, who sprinkled the acid on the body of Khirish Kumar Ganesh (P.W. 9) and Gobardhan Singh (P.W. 8) with an intention to kill them. As a result of which, they sustained grievous injuries on their person. The informant (P.W. 10) has further deposed that on *hulla*, witnesses Hira Devi (P.W.2), Nembati Devi (P.W.1), Pawan Kumar Singh (P.W.4) Raj Kumar Singh (P.W.3), Arti Devi (P.W.7)



and others reached there and saw the occurrence. Thereafter, the accused persons fled away from there. He further deposed that thereafter he along with co-villagers took the injured persons Khirish Kumar Ganesh(P.W. 9) Gobardhan Singh (P.W 8) to Thakurganj Hospital for their treatment, where the police came and recorded the *fard-beyan* (Ext.2). The condition of injured person Gobardhan Singh and Khirish Kumar Ganesh was found serious. Therefore, they were referred to Medical College, Siliguri for their treatment, where they were admitted and treated about 10 to 12 days which fact was corroborated by the other prosecution witnesses.

13. The injured persons namely Sukhdeo Mali (P.W. 10), Gobardhan Singh (P.W. 8), Khirish Kumar Ganesh (P.W. 9), Membati(P.W. 1), Pawan Kumar Singh (P.W. 4) and Arti Devi (P.W. 7) have been examined by the Doctor on the said day i.e. 09.03.1997 in between 9 A.M. to 10 A.M. i.e. just after about 1



hour of the alleged occurrence at P.M.C; Thakurganj and the Doctor he found the following injuries (Ext.1 to 1/E) on the persons of injured persons.

14. On the person of Gobardhan Singh (P.W. 8), the doctor has found the following injuries:-

(i) Burn on left of thoarasic region on both sides i.e. in front and behind.

(ii) Burn wound on left arm

The above injuries are caused by acid and simple in nature.

15. The Doctor has found following injuries on the person of Khirish Kumar Ganesh(P.W. 9)

(i) Burn wound on whele face.

(ii) Burn wound on both eye ball.

The above injuries are caused by acid and injury no. (i) is simple in nature and the opinion was reserved about injury no. (ii) and the patient was referred to North Bengal Medical College, Siliguri due to seriousness.

16. The Doctor has found the following



injuries on the person of Sukhdeo Mali

(i) Swelling bruise 2" x 1" on right scapula.

(ii) Multiple spot of burn on in-front of chest.

Injury nos. (i) & (ii) are caused by hard and blunt substance and by acid respectively. All injuries are simple in nature,

17. The Doctor has found the following injury on person of Membati Devi (P.W. 1)

(i) Burn wound on right arm.

The above injury is caused by acid and simple in nature.

18. The Doctor has found the following injuries on the person of Pawan Kumar Singh (P.W. 4)

(i) Burn wound on pinna and lobule of left ear.

The above injury is caused by acid and simple in nature.

19. The Doctor has found the following injuries on the person of Arti Devi (P.W. 7)

(i) Multiple burn spot on face.

(ii) Multiple burn spot on abdomen.



(iii) Multiple burn spot on right arm.

The above injuries are caused by acid and all are simple in nature.

20. Learned senior counsel appearing on behalf of the appellants has submitted that a false and concocted story has been prepared against the appellants to grab the property of the appellants which was in the constructive possession of the appellants. The informant claims that he along with Khirish Lal Ganesh (P.W. 9) and Gobardhan Singh (P.W. 8) had purchased the land in question through registered sale deed from Sawarmal Agarwal on 25.01.1997 but much before executing the said property in favour of the informant and others, said Sawarmal Agarwal had executed an agreement to sale (Ext-A) with regard to the said property in favour of Mukesh Kumar Gupta and Kamlesh Kumar Gupta, both sons of appellant Amarnath Gupta. The appellants have filed the documents which have been marked as Exhibit-A to G-5 respectively to



show that with regard to the said land, the above cases were pending before the respective courts in which the appellants claim their possession over the said land.

21. Learned senior counsel has further contended that the Investigating Officer and the Doctor have not been examined in this case. Hence, in the absence of non-examination of the Doctor, the injuries have not been proved and there is nothing on the record on the basis of which it can safely be said that injuries sustained by the injured may have a fatal effect on the lives of the injured whereas, in the absence of examination of the Investigating Officer, the place of occurrence was not proved. Both the parties were inimical with each other from before and the alleged occurrence took place between the parties at the spur of the moment. 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. The appellants' side namely Shanti Devi,



Lalita Devi and Amarnath Gupta have also sustained injuries which has been mentioned in details in the impugned judgment. Moreover, the injury reports of the injured of the informant's side suggest the injuries to be simple in nature.

22. *In contra*, learned A.P.P appearing on behalf of the State has submitted that the judgment of conviction and order of sentence to the convicts/appellants is based on consistent oral and medical evidences. It is alleged that convicts/appellants had assaulted the informant's side. It is the specific case of the prosecution that appellant Shanti Devi handed over a bottle of acid to the appellant Amarnath Gupta who sprinkled the acid on Khirish Kumar Ganesh (P.W.9), Gobardhan Singh (P.W 8), Sukhdeo Mali (P.W. 10), Membati Devi (P.W. 1), Pawan Kumar Singh (P.W. 4) and Arti Devi (P.W. 7), as a result of which they sustained serious acid injuries. There is no need of any interference with the judgment of conviction and order



of sentence of the Court below. The present appeal has no force and is fit to be dismissed and the judgment of conviction and order of sentence as against the appellants is fit to be sustained.

23. I have gone through the entire case records, oral and documentary evidence adduced on behalf of the prosecution during trial and considering the submissions raised on behalf of the learned counsel for the appellants as well as learned A.P.P for the State, this Court finds that in the background of land dispute, the occurrence took place where both sides sustained injuries. Much prior to the registration of sale deed by the informant's side, the appellants have executed an agreement to sale from Sawarmal Agarwal and a title suit was also pending between the appellant and Sawarmal Agarwal. The Injury reports of the informant's side suggests the injuries to be simple in nature. In this case, the Investigating Officer and the Doctor who had examined the injured have not been



examined. In this case, all the prosecution witnesses have supported the prosecution case in respect of manner, place and time of occurrence. They proved the manner of occurrence and explained about the injuries sustained by the witnesses. In my view, the prosecution case is not fatal due to non-examination of the Investigating Officer. In this case, the treating doctor who had prepared the injury reports of the injured has not been examined. The injuries sustained by the injured is fatal or not is to be proved by the evidence of the Doctor.

24. Moreover, the essential ingredients to prove the charge under Section 307 of the Indian Penal Code are missing for proving the charge under Section 307 I.P.C, three ingredients are essential (1) that the death of human being was attempted (2) that such death was attempted to be caused by, or in consequence of the act of the accused (3) that such act was done with the intention of causing death or that



death was done with the intention of causing such bodily injury as (a) the accused knew to be likely to cause death (b) or was sufficient in ordinary course of nature to cause death.

25. In this case, from perusal of the oral and documentary evidence, it is apparent that there is no accusation of any assault by any sharp cut weapon or repetition of blow as against the convicts/appellants. From perusal of the injury report of the injured, it appears that all the injured sustained simple injuries. There was no allegation of repetition of blow against any of these appellants. There was no intention to kill any person of the informant's side. No inference could be gathered that the appellant Amarnath Gupta had any intention to kill any person of the informant's side who is specifically alleged to have sprinkled acid on the persons of the injured.

26. After scrutinizing the oral and medical evidence, this Court is of the view that the prosecution



has failed to prove the charge as against the appellants under Section 307 of the Indian Penal Code.

27. This Court also finds that the essential ingredients to prove the charge under Section 326 of the Indian Penal Code is also missing in the injury reports of the injured. The treating doctor has not been examined in this case to prove the injury report.

28. Section 326 deals with the offence of voluntarily causing hurt by dangerous weapons or means.

29. Grievous hurt" has been defined in Section 320 of the Indian Penal Code which read as follows:

"320 Grievous Hurt – The following kinds of hurt only are designated as "grievous"-

First – Emasculation.

Secondly- Permanent privation of the sight of either eye.

Thirdly – Permanent privation of the hearing of either ear.

Fourthly – Privation of any member



or joint.

Fifthly – Destruction or permanent impairing of the powers of any members or joint.

Sixthly – Permanent dis-figuration of the head or face.

Seventhly – Fracture or dislocation of a bone or tooth.

Eighthly – Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

30. Some hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in Section 320 must be strictly proved, and the eighth



clause is no exception to the general rule of law that a penal statute must be construed strictly.

31. Considering the discussions made above, this Court finds that the prosecution has failed to prove the charge as against the appellants under Sections 307/149 of the Indian Penal Code and also under Section 326 I.P.C as against appellant Amarnath Gupta.

32. Thus, in view of the facts and circumstances of the case and the evidence as discussed above, I hold the appellants guilty under Section 147, 447/34, 323 of the Indian Penal Code and convicts them thereunder. In this case, the appellants had faced ordeal of trial since year 1998. This appeal relates to the year 2006. In this case, the appellant Nos. 1 and 2 had remained in jail for more than a year and appellant Nos. 3 and 4 had remained in jail for about 16 days as also appellant No. 5 had remained in jail for about 9 months.

33. Considering the period of custody as well



as ordeal of trial, the appellants are sentenced to the period already undergone by them.

34. The appeal stands dismissed with the aforesaid modification of judgment of conviction and order of sentence.

(Sunil Kumar Panwar, J)

Shageer/-

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