

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2 of 2006

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Dinesh Prasad, Son Of Late Satya Narayan Prasad. Resident Of Mohalla-
Mahadewa, P.S- Ara Town, District- Bhojpur.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Vipul Sinha (Amicus Curiae)

For the Respondent/s : Mr. B.M.P. Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 02-05-2024

Heard Mr. Vipul Sinha, learned *Amicus*
Curiae on behalf of the appellants and Mr. B.M.P. Sinha,
learned A.P.P for the State.

2. This appeal has been preferred by the
appellant Dinesh Prasad, being aggrieved and dissatisfied
with the judgment of conviction, dated 23rd December,
2005 and order of sentence, dated 24th of December,
2005 passed by the learned Additional District &
Sessions Judge, (F.T.C. V), Arrah in Sessions Trial No.
123/1994, arising out of Arrah (Town) P.S. Case No.
329 of 1992, whereby and where-under appellant is
convicted under Sections 341 and 307 of Indian Penal



Code and awarded sentence to undergo simple imprisonment for 1 month for the offence punishable u/s 341 of Indian Penal Code and rigorous imprisonment of 10 years and to pay a fine of Rs. 3,000/- and in default of payment of fine he shall further undergo simple imprisonment for one year for the offence punishable u/s 307 of Indian Penal Code. However, all the sentence have been ordered to run concurrently.

3. According to prosecution case, on 17th day of December, 1992, at about 11 A.M., the informant's younger brother Sunil Kumar went to demand the rupees, which the accused had borrowed from him two years back, at his ornament shop, situated near Bari Masjid. When he reached at the shop, accused Dinesh Prasad refused to pay the money and started abusing and exchange of words was going on then one Vijay Kumar Srivastava informed the informant about the occurrence between them. Then, the informant went running there and he saw that accused Dinesh Prasad



assaulted his brother with iron rod. He sustained injury and fell down and the elder son of Dinesh Prasad assaulted him with lathi. Seeing the *marpit*, the informant raised alarm. Several people of vicinity assembled there. Elder son of accused took out the gold chain from the neck and Rs. 350 from pocket and escaped from there.

4. On the basis of said *Fardbeyan*, instant case was registered and investigation was taken up. After completion of the due investigation, chargesheet was submitted against the accused/appellant. Accordingly, cognizance was taken against the appellant. Ultimately, this case was committed to the Court of Sessions for trial and disposal.

5. Defense of accused/appellant was total denial of the charge and claim to be tried.

6. The point of consideration in this appeal is whether the prosecution is able to prove the case under Sections 307 and 341 of Indian Penal Code in view of evidence adduced by the prosecution evidence.



7. To substantiate the charge levelled against the accused person, altogether 9 witnesses were examined on behalf of the prosecution.

8. P.W. 1 Vijay Kumar Singh, P.W. 2 Baijnath Prasad, P.W. 3 Madhusudan Prasad Gupta and P.W. 4 Laxman Chourasia, did not support the prosecution version and shown their ignorance about the occurrence as such they have been declared hostile.

9. P.W. 5 Madan Kumar Rahi (informant of this case) said in his evidence that injured Sunil Kumar is his younger brother. He deposed that on 17th day of December, 1992, at about 11 A.M., his brother went to shop of the accused, which was situated at Bari Masjid Chowk to demand money. The accused did not pay him money and started abusing. One Vijay Kumar Srivastava came by cycle and inform him about the occurrence, at his shop, then he went running to the shop of accused and saw that accused assaulted his brother Sunil Kumar with iron rod on his head and he fell down. Blood started



oozing out and thereafter, accused snatched gold chain from his neck and son of the accused also took out some rupees from the pocket of his brother. His son also assaulted with lathi on arm of his brother. He was subjected to cross-examination by the defence, in respect of manner, genesis, place and time of the occurrence but nothing major surfaced to discard the prosecution evidence.

10. P.W. 6 Sunil Kumar Gupta who is alleged to be injured has said in his evidence about the occurrence, genesis and manner of occurrence. Accused Dinesh Kumar assaulted on his head by means of iron rod and also gave three-four blows of iron rod on his left side. He became full of blood. This witness was also subjected to lengthy cross-examination by the defence but nothing major surfaced to discard his evidence. Minor contradictions, discrepancies and inconsistency in the testimony of the injured (P.W. 6) were also found but on the point of factum of manner and place of occurrence,



he firmly stood in his cross-examination. He fully corroborated the prosecution case.

11. P.W. 7 Dr. Rajiv Raman has proved the injury report of the injured (P.W. 6). He opined that injury number 1 is grievous in nature and injury number 2 is simple in nature.

12. P.W. 8 Anil Kumar is formal witness who has proved the formal F.I.R. (Marked as ext. 4) and Fardbyan of the informant (Marked as Ext. 5).

13. P.W. 9 Saryu Pandey has proved the Case Diary (Marked as Ext. 6)

14. Mr. Vipul Sinha, learned *Amicus Curiae*, in defence of the appellant has assailed the judgment of conviction and order of sentence passed by learned trial Court and submitted that the same not according to law. No case under Section 307 of Indian Penal Code is made out in view of evidence adduced by the prosecution rather at best, offence under Section 323 of Indian Penal Code is made out because there was no intervening



circumstance to prevent the accused from committing murder.

15. *In contra*, learned A.P.P. submitted that the judgment of conviction and order of sentence, which has been challenged by this appeal, is based on cogent and consistence evidence which is adduced by the prosecution and the same is sustainable and the instant appeal is fit to be dismissed.

16. I have gone through the entire case records, oral and documentary evidence adduced on behalf of the prosecution as well as defense. I have also consider the rival submissions made on behalf of the respective parties. After going through the entire evidence of the witnesses, nothing major contradiction and discrepancies have been elicited. Specifically, informant (P.W. 5) and injured (P.W. 6) supported and corroborated the prosecution case. The defence has not caused prejudiced. So, non examination of I.O. will not affect any way, in view of consistent and cogent evidence of



the informant.

17. In this appeal, point of consideration is whether the prosecution is able to prove the charge for the offence under Section 307 of Indian Penal Code or not. To substantiate the charge for the offence punishable under Section 307, the prosecution has to prove:

(i) that the accused did an act.

(ii) that the act was done with intention or knowledge and under such circumstances to cause a bodily injury as the accused knew to be likely cause death or that such bodily injury was in the ordinary course of nature to cause death, or that the accused attempted to cause such death by doing an act known to him to be so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death.

(iii) that the accused had no excuse for



incurring the risk of causing such death or injury

18. From perusal of the injury report, it is apparent that the doctor has opined two injuries as sustained by the injured. Injury no. 1 is grievous in nature and injury no. 2 is simple in nature. In my view, there was no intervening circumstance to prevent the accused from committing murder and these injuries are not such due to which there is an apprehension of death of the injured. Only lacerated wound and bruise have sustained by the injured. There is no incessant assaulting by the accused. In my view, the appellant has not assaulted the injured with intention to kill him. The doctor has not explained properly that these injuries are fatal and likely to be dangerous and sufficient to commit death of the injured.

19. In my view, the prosecution has failed to prove the case for offence u/s 307 of Indian Penal Code. The prosecution succeed to prove the case for the



offence u/s 325 of Indian Penal Code. Hence, the appellant is found and hold guilty for the offence punishable under Section 325 and 341 of Indian Penal code and hereby convicted.

20. From perusal of the case record and office notes, it is evident that the appellant remained in judicial custody as under trial prisoner and as convict in connection with the case for more than 9 months.

21. As far as order of sentence is concerned, appellant is facing the ordeal of trial from beginning and this appeal relates to year 2006.

22. Keeping in mind overall view of the matter, appellant is sentenced to undergo rigorous imprisonment for the period during which he remained in jail as under trial prisoner and as convict in connection with this case.

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



24. Mr. Vipul Sinha, learned *Amicus Curiae* was appointed to represent the appellant/ accused. I put on record the words of appreciation for able assistance rendered by him in arriving this Court at the proper conclusion in deciding the instant appeal. The Patna High Court Legal Services Committee is hereby directed to pay a sum of Rs. 7,000/- (rupees seven thousand only) to Mr. Vipul Sinha, towards his professional fee.

(Sunil Kumar Panwar, J)

Nirajkrs/-

AFR/NAFR	NAFR
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