

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.615 of 2006

1. Md.Isha Nadaf @ Md. Isha son of Ali Hassan Nadaf resident of village-
Chhotki Mahuli P.S.- Jalley District- Darbhanga

2. Anwarul Nadaf @ Md. Anwarul Nadaf son of Nathuni Nadaf, resident of
village- Chhotki Mahuli, P.S.- Jalley, District- Darbhanga

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. M.Nasrul Huda Khan

For the Respondent/s : Mr. A.M.P, Mehta, APP

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 26-04-2024

Heard Mr. Nasrul Hoda Khan appearing for the
appellants as well as Mr. A.M.P Mehta, learned Additional
Public Prosecutor for the State.

2. This appeal has been preferred by the appellants
challenging the judgment of conviction dated 28.06.2006 and
order of sentence dated 29.06.2006 passed by learned
Additional Sessions Judge FTC No. 1, Darbhanga in
Sessions Trial No. 204 of 1998 arising out of Jalley P.S. Case
No. 37 of 1997, whereby and whereunder appellant No.1,
namely, Md. Isha Nadaf and appellant No.2, namely,
Anwarul Nadaf have been convicted for the offence
punishable under Sections 307 and 34 of the Indian Penal



Code and they were sentenced to undergo rigorous imprisonment for 7 years.

3. The prosecution case according to fardbeyan(Ext-3) of Md. Anwar(P.W-12) in short, is that on 16.06.1997 Shafida Khatoon (P.W.-9) mother of this informant, in the morning, she was carrying dung-cake at few distance of her house. In the meantime, a *hulla* was raised that somebody after stabbing her, fled from the place of occurrence and she is lying on the ground. The informant on this *hulla* went there and saw that his mother was unconsciously lying on the ground in injured condition. Thereafter, with the help of others, the informant brought her mother to Jalley Hospital.

4. That on the basis of aforesaid *fardbeyan* of the informant (P.W.-12), namely, Md. Anwar, Jalley Police Station Case No. 37 of 1997 was registered against the accused persons for the offence punishable under Sections 307 and 324 of the Indian Penal Code.

5. After completing the investigation, Investigating Officer has submitted chargesheet against the accused persons. On the basis of evidence during investigation,



cognizance was taken and the case was committed to the Court of Sessions for trial and disposal.

6. Charge has been framed against the appellants. Trial Court explained the charge to the accused(appellants) to which they pleaded not guilty and claimed to be tried.

7. To substantiate the charges levelled against the accused/appellants, altogether 13 witnesses were examined by the prosecution. Out of them, P.W.-1, namely, Jazmun Nisha, P.W.-2 Nagendra Ram, P.W.-3, Bokhu Nadaf, P.W.-4, Sheikh Khalid, P.W.-5, Shamsul Haque, P.W.-6, Pandit Ram, P.W.-7, Chotu Nadaf, P.W.-8, Ajay Kumar Yadav, P.W.-9, Shafida Khatoon, P.W.-10, Manjoor Naddaf, P.W.-11, Md. Iliyas, P.W.-12, Md. Anwar(informant) and P.W.-13 Sadanand Yadav.

8. P.W.-1, Jazmun Nisha is a hearsay witness. She deposed in his evidence that she heard that someone stabbed the Shafida(injured/P.W.-9). Further she deposed that the husband of the injured, namely, Isha(appellant) had taken back the land from her which he had given to her.

9. P.W.-2, Nagendra Ram is a hearsay witness. He deposed in his evidence that he heard about the occurrence



but who stabbed the informant's mother(P.W.-9) is not known to him.

10. P.W.-3, Bokhu Nadaf is hearsay witness. He deposed in his evidence that he heard that appellant Isha and his brother-in-law has inflicted injury to Shafida(P.W.-9). He is not the eye witness of the alleged occurrence.

11. P.W.-4, Sheikh Khalid deposed in his evidence that he heard *hulla* about stabbing. Thereafter, he went there and he saw that Shafida Khatoon was stabbed. He saw four accused persons and out of them these two appellants were armed with dagger.

12. P.W.-5, Shamshul Haque deposed in his evidence that while he was coming from Katra and reached near Supaulia Chowk then he heard *hulla* about the stabbing to the injured. After that, he went there and saw that accused appellants were there and appellant Isha armed with dagger. Injured Shafida Khatoon was in pool of blood and on interrogation, Shafida(injured) told him that appellant Isha and appellant Anawarul have inflicted dagger blow to her.

13. P.W.-6, Pandit Ram deposed in his evidence that he heard that someone stabbed the Shafida(injured/P.W.-



9). Further, he deposed that the husband of the injured, namely, Isha(appellant) had taken back the land from her which he had given to her.

14. P.W.-7, Chotu Nadaf deposed his evidence that he heard about the occurrence. He deposed that injured is deserted wife of appellant Isha and between them, there was bitter relation.

15. P.W.-8, Ajay Kumar Yadav is a formal witness. He has proved the formal FIR exhibited as Ext-1

16. P.W.-9, namely, Shafida Khatoon(injured) deposed in her evidence that on the relevant date of occurrence, she was carrying Gorha(dung-cake) from her Naihar. When she reached near Panni Chaur then appellants Isha and Anawarul were seen armed with dagger. Appellant Isha asked her why she is not leaving his house and when she replied that she will not leave his house then, appellant Isha started abusing her and asked appellant Anawarul to kill her and both the appellants inflicted dagger injury to her causing several injuries on her head, nose, stomach, back, other parts of her body. Her intestine came out due to stabbing and she became unconscious. After two days, she regained her sense



and found herself in D.M.C.H.

17. P.W.-10, namely, Manjoor Naddaf deposed in his evidence that he did not know anything about the occurrence, as such, he turned hostile in his evidence.

18. P.W.-11, namely, Md. Iliyas deposed in his evidence that the injured, namely, Shafida Khatoon is his aunt and he went to meet her at hospital where she said to him that 2-3 boys fled from the place of occurrence after inflicted injury to her.

19. P.W.-12, namely, Md. Anwar (Informant of this case) deposed in his evidence that on the relevant date of occurrence, he heard *hulla* that his mother has been killed and he ran towards *Chauri* and found his mother unconscious in injured condition and he brought her to Darbhanga Hospital. After regaining sense, her mother told appellant Isha(informant's father) and Anawarul(brother of another wife of appellant Isha) stabbed her. He deposed that before brining her to hospital, she was brought to Jalley Hospital. He further deposed that Darogaji made his statement in Jalley hospital.

20. P.W.-13, namely, Sadanand Yadav is a formal



witness. He has proved the fardbeyan exhibited as Ext-3.

21. Learned counsel appearing on behalf of the appellants submitted that entire proceeding leading to present appeal conducted by the trial court is without jurisdiction. Investigating Officer and Doctor of this case were not examined during trial which caused serious prejudice to the appellants. Impugned judgment is purely based on surmises and conjectures. It is further submitted that examination of I.O and Medical Officer is necessary for establishing the occurrence but the learned court below failed to appreciate this vital point. The appellants have falsely been implicated in this case merely because the injured was deserted by Md. Isha(appellant/injured's husband). According to prosecution evidence, the offence under Section 307 of IPC is not proved. There is no intervening circumstances to remain alive the injured by the accused persons/appellants. The intention to kill the injured is necessary ingredient of Section 307 of the IPC and the same has to be proved for convicting the appellants/accused persons under Section 307 of the IPC. The impugned judgment and order of sentence are out and out illegal, bad in law and fit to be set-aside.



22. Learned APP appearing for the state argued that impugned judgment in question is based on cogent and consistent evidence. The prosecution witnesses have supported the prosecution case in their evidence. The defense has failed to discredit the evidence of the prosecution witnesses. He further submitted that the prosecution has been able to prove its case beyond all reasonable doubts, and therefore, learned trial court has rightly convicted the appellants by relying upon the evidence brought on record by the prosecution during trial. Injured, namely, Shafida Khatoon sustained 10 injuries on her person. She sustained 5 incised wounds, four lacerated wounds and one amputation of left finger. It has been contended that minor contradictions and variations in the testimony of the witnesses cannot be a ground to discard their evidence as a whole. Therefore, the judgment and order assailed in appeal requires no interference and appeal is liable to be dismissed.

23. I have gone through the entire prosecution, oral and documentary evidence and carefully considered the rival submissions made on behalf of the appellants' counsel as well as learned APP for the State. In this case, P.W.-9



prime witness, Shafida Khatoon(injured) in her evidence, she deposed that on the relevant date of occurrence, she was carrying dung-cake, in the meantime, appellants came to her and appellant Isha told her to leave his house on this, she replied that she will not leave his house. Thereafter, appellant Isha told to appellant Anawarul to kill her. Thereafter, both the appellants assaulted her by means of dagger causing several injuries on her body and also her intestine came out due to stabbing and she became unconscious. She supported the prosecution case in examination-in-chief. At para- 9, 10 and 11 during cross-examination, she was confronted with her previous statement given during investigation under Section 161 of the Cr.P.C. but these contradictions are not such fatal to the prosecution case. The minor contradictions and variations in the testimony of the witnesses cannot be a ground to discard their evidence as a whole.

24. After scrutinizing all the evidence deposed by the prosecution witnesses along with informant(P.W-12) and injured(P.W.-9), it is established that both accused-appellants involved in this case to commit the crime and assaulted the injured(P.W.-9) due to which injured sustained injuries. The



prosecution proved its case by way of its evidence of the witnesses.

25. Learned counsel for the appellants challenged the judgment of conviction to raise this point that in this case, the treating doctor was not examined. So, the medical report is not proved by the treating doctor rather the medical report was proved under Section 294 of the Cr.P.C. Further submitted on behalf of the appellants that the defense deprived to ask question in respect of contradictions relating to injury report from the Medical Officer who prepared this injury report. Making cross-examination from the doctor is the prime right of the defense. Due to non-examination of the doctor, the defense caused prejudice in respect of nature of injuries and the nature of weapon from which the injuries were caused and the medical report of the injured in respect of injury sustained on her person, not legally proved. Hence, the medical report could not corroborate the prosecution case for proving the offence under Sections 307/34 of the IPC. The necessary ingredients of Section 307 of IPC for intention to kill the injured by the accused persons/appellants, not proved by the prosecution evidence. There is no evidence on



record that the accused persons/appellants assaulted the injured with intention to kill and due to non-examination of the treating doctor, the injury report could not valid to convict the appellants/accused persons.

26. Further contended on behalf of the appellants that the I.O was not examined by the prosecution, whose evidence was vital for determination of the case and the intention of the appellants behind the incident. Due to non-examination of I.O, defense has succeeded to raise the doubt in the prosecution version. The I.O. who recorded the statement of the witnesses under Section 161 of the Cr.P.C., is not cross-examined by the prosecution.

27. I found much force in the contentions raised on behalf of the defense/appellants that due to non-examination of doctor, the medical report in respect of injury which was sustained by the injured, not properly proved. Hence, the ingredients of Section 307 of IPC does not prove against the accused persons/appellants. Only, the offence under Section 323 of the IPC has been proved against the appellants/ accused persons.

28. The Judgment of conviction passed by the



learned trial Court under Section 307/34 of the IPC is fit to be modified. I find and uphold the conviction of the accused persons/appellants under Section 323 of the IPC.

29. In my view, order of sentence is required to be modified. In this case, the appellants had faced ordeal of trial since beginning. This appeal relates to the year of 2006. In this case, the appellants remained in judicial custody for about 8 months.

30. Considering the period of custody and the ordeal of trial faced by the appellants, the appellants are sentenced to period already undergone by them.

31. Accordingly, the instant appeal is hereby dismissed with modification in the judgment of conviction and order of sentence.

(Sunil Kumar Panwar, J)

Shubham/-

AFR/NAFR	NAFR
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