

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.973 of 2006

Md.Kasim, son of Late Md. Manir, resident of Village-Sukhasan (Haqpara)
P.S.-Saharsa, District-Saharsa

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Nafisuzoha, Advocate
For the Respondent/s : Mr. S.A. Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 13-05-2024

Heard Mr. Nafisuzoha, learned counsel for the
appellant and Mr. S.A. Ahmad, learned A.P.P for the
State.

2. The present appeal has been filed against
the judgment of conviction and order of sentence dated
18.11.2006 passed by learned Additional Sessions
Judge, F.T.C-VI, Saharsa in connection with Sessions
Trial Nos. 288 of 2002, arising out of Saharsa P.S. Case
No. 338 of 2001, whereby and whereunder the appellant
Md. Kasim was found guilty for the offence under



Section 326 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of one year and six months and to pay a fine of Rs. 1000/- and in default of payment of fine, the appellant was further directed to undergo a simple imprisonment for a period of four months.

3. The prosecution case as per the fardbeyan (Ext-1) of the informant Md. Irfan (P.W. 6) recorded at the emergency ward of Saharsa Sadar Hospital on 08.12.2001 at 9:30 A.M. is that at about 7:30 A.M on the same very day, while the informant was placing wooden beans, all the F.I.R named accused including the appellant variously armed came there and they forbade him and when the informant and his nephew made protest, the appellant Md. Kasim assaulted with *Farsa* on the head of the informant, as a result of which, he sustained head injuries, became unconscious and fell on the ground. Thereafter, all the F.I.R named accused persons assaulted him with *lathi, danda*. The accused



persons also assaulted father of the informant namely Md. Usman and his cousin brother Md. Unus.

4. On the basis of the aforesaid fardbeyan of the informant, Saharsa P.S. Case No. 338 of 2001 was registered against the accused persons including the appellant under Sections 448, 341, 323, 324, 307, 34 of the Indian Penal Code. After completion of the investigation, charge-sheet was submitted under the aforesaid Sections and thereafter cognizance was taken by learned Chief Judicial Magistrate, Saharsa and the case was committed to the Court of Sessions for trial.

5. During the course of trial, altogether nine witnesses were examined on behalf of the prosecution.

6. P.W. 1 Md. Ayub has deposed in his examination-in-chief that at the time of occurrence, the informant (P.W. 6) was constructing house on his land when all the accused persons armed with deadly weapons came and started abusing the informant. The appellant Md. Kasim was having *Farsa* on his hand. The



appellant stopped the informant to construct house for which the informant made protest, whereupon the appellant assaulted with *Farsa* on the head of the informant, as a result of which he sustained head injuries and fell on the ground. The other accused persons assaulted with *lathi* and *danda* to the informant and when the father and cousin brother of the informant came to his rescue, they were also assaulted by the accused persons. The informant was thereafter taken to the police station from where he was taken to the hospital for treatment. In his cross-examination, this witness has deposed that informant is his cousin brother. This witness has further deposed that he was on inimical term with the accused from before as the mother of one of the accused Md. Sattar had filed a complaint case bearing Complaint Case No. 413(c) of 2001 against him.

7. P.W. 2 Md. Badruddin has deposed in his examination-in-chief that at the time of occurrence, he was at his house and he went at the PO after hearing



noise and saw that all the accused persons having arms were protesting the informant from making construction on his thatched house and when the informant protested, appellant assaulted with *Farsa* on his head as a result of which, he became unconscious and fell on the ground. The other accused persons also assaulted father and cousin brother of the informant when they came to rescue him. In his cross-examination, this witness has deposed that there is a land dispute between the parties and he is agnate of the informant.

8. P.W. 3 Md. Makto has deposed in his examination-in-chief that at the time of occurrence, he was going for labour work when he saw the occurrence. This witness has not specifically alleged against the appellant that he assaulted with *Farsa* to the informant, though he has deposed that appellant was having *Farsa* on his hand. In his cross-examination, this witness has deposed that the accused persons have also filed a case against him.



9. P.W. 4 Md. Yunus has deposed the same deposition as deposed by the P.W.s 1 and 2. In his cross-examination this witness has deposed that both sides were inimical from before and a *panchayati* was also held with regard to the ownership of the land in question.

10. P.W. 5 Md. Usman is the father of the informant (P.W. 6) who has deposed in his examination-in-chief that at the time of occurrence, he was cutting the trees at his land and the informant was constructing thatched house at his land when all the accused persons having arms came and told the informant (P.W. 6) to stop constructing thatched house and when the informant protested, this appellant assaulted with *Farsa* on his head as a result of which, he became unconscious and fell on the ground. The other accused persons also assaulted P.W. 5 and cousin brother of the informant when they came to rescue him. In his cross-examination, this witness has deposed that there is a dispute with



regard to the ownership of the land in question between the parties.

11. P.W. 6 Md. Irfan is the informant of the case who has deposed in his examination-in-chief that on 08.12.2001 at about 7:30 A.M while the informant was placing wooden beans at his land, all the F.I.R named accused including the appellant variously armed came there and they forbade him to do so and when the informant and his nephew made protest, the appellant Md. Kasim assaulted with *farsa* on the head of the informant, as a result of which, he sustained head injuries, became unconscious and fell on the ground. Thereafter, all the F.I.R named accused persons assaulted him with *lathi, danda*. The accused persons also assaulted his father namely Md. Usman(P.W. 5) and his cousin brother Md. Unus.

12. P.W. 7 Dr. Dilip Kumar Sinha has examined the informant and found one incised wound on left side of scalp 6" x1"x bone deep which was of six



hours of age and according to his evidence, after the opinion of surgeon, the injury was grievous in nature as there was fracture of skull bone.

13. At the time of evidence of P.W. 7, the prosecution has not made the original injury report of Md. Irfan (informant/P.W. 6) available for his evidence and he seems to have deposed on the basis of the photo-copy of the said injury report. The evidence of aforesaid photo copy of the injury report has been marked as Ext-X. During his cross-examination, P.W. 7 had deposed that except the aforesaid injury, no other injury had been found by him on any part of the body of the injured. He has also accepted that he has deposed on the basis of photo-state copy of the injury report in which there is overwriting on his signature.

14. P.W. 8 Bishwanath Singh is the Investigating Officer of this case who has deposed that on the instruction of the Officer-in-charge, he went to the hospital but did not record the statement of the



injured informant (P.W. 6) as he was not in a condition to record his statement. He, thereafter, went to the place of occurrence over which the thatched house of the informant was there. He deposed that both the parties claims the P.O. He took the statement of witnesses Md. Ayub and Md. Unus. This witness had deposed that the house of the informant (P.W. 6) was at a distance of 300 yards from the P.O. He had not found any blood at the P.O and he also did not find any damage to the thatched house situated at the P.O. He further deposed that he had arrested the accused Md. Kasim, Asfaque, Kamal and Moti from their houses. He had found swelling and scratch injuries on the hydrocil of accused Kalam @ Kalamuddin and sent him for medical treatment to the Sadar Hospital, Saharsa. P.W. 8 has contradicted the entire evidence-in-chief of P.W. 2 by saying that he had not stated before him in his statement what he has deposed in the Court. He had also contradicted the evidence of P.W. 3 and P.W. 4.



15. P.W. 9 Md. Iliyas is a formal witness.

16. On the other hand, the defence has also examined Dr. Dasrath Prasad Gupta (D.W.1) and found the following injuries on the person of the injured Md. Kamal.

(a) Abrasion $\frac{1}{4}$ " x $\frac{1}{4}$ " at the base of little finger and right hand dorsally.

(b) Abrasion $\frac{1}{4}$ " x $\frac{1}{4}$ " on dorsum of right hand.

(c) Abrasion $\frac{1}{2}$ x $\frac{1}{4}$ " on right index finger

(d) Incised wound 3" x $\frac{1}{4}$ " x $\frac{1}{4}$ " on pubic physis region.

Injury Nos. 1, 2, 3 are caused by hard and blunt substance and injury No. 4 is caused by sharp cutting weapon. All the injuries are simple in nature.

17. Mr. Nafisuzoha, learned counsel appearing on behalf of the appellant has submitted that appellant is innocent and he has falsely been implicated in this case. The P.O land belongs to the appellant's side upon which the members of the prosecution party encroached and



began to put thatched house which was protested by Md. Kalam upon which he was assaulted by the informant's side. They had also assaulted Safida Khatoon and damaged the household articles which is closed to the P.O and if the injury was sustained by P.W. 6, it was sustained in course of defending the property of the appellant's side. The doctor (D.W-1) had also found injuries on the person of Md. Kamal which has not been explained by the prosecution witnesses. In such circumstances, the prosecution has failed to prove its case beyond reasonable doubt that in what manner and situation the prosecution party members sustained injuries. Learned counsel has further submitted that during investigation at the P.O, the Investigating Officer had not found any blood-stain nor any blood-stain cloths were found or seized from the P.O as it is the specific case of the prosecution that the appellant assaulted with *Farsa* to the informant, as a result of which he sustained head injuries, became unconscious and fell on the



ground. There is long standing dispute between the parties and in the background of land dispute, the occurrence took place. The alleged occurrence took place between the parties at the spur of the moment in which members of both sides have received injuries due to land dispute. 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, whereas the independent witnesses were not examined by the prosecution which creates doubt over the authenticity of the prosecution version. In the entire prosecution evidence, the evidence of the doctor (P.W. 7) is to be looked upon who has deposed that the prosecution has not made the original injury report of Md. Irfan (informant/P.W. 6) available for his evidence and he seems to have deposed on the basis of the photo-copy of the said injury report.

18. 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 appellant as well as learned A.P.P, this Court finds that the essential ingredients to prove the charge under Section 326 of the Indian Penal Code is missing in the injury report of the injured prepared by the Doctor (P.W. 7) as well as the evidence of P.W. 7 adduced at the time of his examination-in-chief.

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

20. Section 326 provides that whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any corrosive substance, or by means of any explosive substance, or by means of any substance which is deleterious to the human body to



inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and also with a liability to pay a fine.

21. 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.”

22. The heading of the Section provides some insight into the factors to be considered. The essential ingredients to attract Section 326 I.P.C are : (1) voluntarily causing a hurt; (2) hurt caused must be a grievous hurt; and (3) the grievous hurt must have been caused by dangerous weapons or means.

23. The doctor (P.W.7) had prepared the injury report of the injured informant (P.W. 6). However, during cross examination, he has accepted that he had deposed on the basis of photo-state copy of the injury report in which there is overwriting of his signature. He has also deposed further that after examining the injured, the opinion of surgeon was obtained regarding the injury and on the opinion of that surgeon he had mentioned fracture in the injury report



of the informant (P.W. 6). Hence, the evidence of the doctor appears to be corroborative with the ocular evidence. According to the prosecution evidence, the informant had sustained injuries by means of Farsa which was inflicted by the appellant Md. Kasim. The Doctor (P.W. 7) who had proved the injury report of the informant (P.W. 6) has deposed that the informant (P.W. 6) had sustained one incised wound on left side of scalp 6"x1" bone deep. The Doctor (P.W. 7) has further deposed that the injury was grievous in nature as there was fracture of skull bone. The injury report is in consonance with the prosecution evidence. There are minor contradictions in the prosecution evidence in respect of the place and the manner of the occurrence where the injured sustained injuries. However, these contradictions does not suggest to discredit the trustworthy of the prosecution witnesses. Hence, the prosecution has succeeded to prove the charge under Section 326 of the Indian Penal Code against the



appellant.

24. This Court does not find any infirmity in the order impugned. No fault could be found with the judgment of the trial court in convicting the appellant under Section 326 of the Indian Penal Code. The conviction of the appellant is, therefore sustained and upheld.

25. However, keeping into account the nature of accusation, the circumstances under which the case was lodged, the period of custody of the appellant, the age of the appellant and other factors, this Court is of the view that ends of justice would be sufficiently met, if the sentences imposed upon the appellant is modified and reduced to the period which the appellant has already undergone in custody.

26. The sentences imposed upon the appellant is therefore modified and reduced to the extent of the period already undergone by him in custody.

27. Accordingly, the appeal stands dismissed



with the modification in the sentences as discussed
above.

(Sunil Kumar Panwar, J)

Shageer/-

AFR/NAFR	NAFR
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