

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.678 of 2008

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1. Sarvesh Mishra @ Sarvesh Kumar Mishra, aged about 32 years, s/o Ragho Mishra son of Ragho Mishra
 2. Dilip Mishra, aged 30 years, S/o Ragho Mishra
 3. Ghanshyam Mishra @ Ghanshyam Kumar Mishra, aged about 22 years, son of Ragho Mishra
 4. Ragho Mishra, aged about 62 years son of Late Babunand Mishra, All resident of village Vinod Matihania, P.S. Bishwambharpur, Distt. Gopalganj

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

with
CRIMINAL REVISION No. 970 of 2008

YUGAL KISHORE SAH son of Nand Lal Sah, resident of Village-Binod Matihaniya, P.S. Bishambharpur, Distt. Gopalganj

... .. Petitioner/s

Versus

STATE OF BIHAR

2. Ragho Mishra son of Late Babuna Mishra
 3. Sarvesh Mishra son of Ragho Mishra
 4. Dilip Mishra son of Ragho Mishra
 5. Ghanshyam Mishra son of Ragho Mishra
- all (O.P. No. 2 to 5) are resident of village-Binod Matihaniya, P.S. Bishambharpur, Distt. Gopalganj

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 678 of 2008)

For the Appellant/s : Mr. Harendra Prasad Singh

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

(In CRIMINAL REVISION No. 970 of 2008)

For the Petitioner/s : Mr. Amrit Abhijat, Adv.

For Opposite party : Mr. Harendra Prasad Singh, Adv.

For the State : Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 22-04-2024

Both these applications are of the same occurrence .



Hence, both have been heard together and are being disposed off by this common order.

2. Heard Mr. Harendra Prasad Singh learned counsel appearing for the appellants as well as Mr. A.M.P. Mehta, learned Additional Public Prosecutor for the State and further Sri. Amrit Abhijat, learned counsel appearing for the petitioner, Sri Harendra prasad Singh, learned counsel appearing for the opposite party and Ms. Anita Kumari Singh, learned APP for the State.

3. This Criminal appeal has been preferred by the appellants against the judgment and order of conviction dated 5.6.2008 passed by Sri Om Prakash Sinha, Additional Sessions Judge-cum-F.T.C. No. 5, Gopalganj in Session Trial No. 26/2007 and 09 of 2007 arising out of Bishambharpur Police Station Case No. 55 of 2004, convicting the appellant Dilip Mishra and Ghyanshyam Mishra under Section 323 of the Indian Penal Code (for short the 'IPC') , appellant Ragho Mishra under Section 324 IPC, appellant Ragho Mishra, Dilip Mishra and Ghanshyam Mishra u/s 447 of the IPC and appellant Sarvesh Mishra convicted u/s 354 of the IPC. On the point of sentence, trial



court instead of ordering them for imprisonment, giving them the benefit of Probation of Offenders Act, they have been released with a direction to execute Bonds of Rs. 2,000/- with two sureties for maintaining peace and tranquility for one year.

4. The prosecution case in brief is that, the informant, namely, Yugal Kishore Sah (P.W.-5) gave a written report that on 20.11.2004 at about 5.30 a.m. at morning while sister of the informant had gone out to answer the call of nature towards south of her house, accused Sarvesh Mishra caught her hands with intention to commit rape and tossed her on the ground, whereupon, his sister raised alarm. On hearing alarm, Informant went running there. In the meantime, accused Ghanshyam Mishra, Dilip Mishra and Ragho Mishra armed with *farsa* and iron rod came there and till then, informant alongwith his sister reached near his house and soon after reaching the house, accused Ragho Mishra inflicted two *farsa* blow to the informant with intention to kill him, which caused injury on his head and fractured in his finger and he fell down on the ground. In the meantime, mother of the



informant came there to rescue him, who was also beaten up by accused Dilip Mishra with iron rod on her head and accused Ghanshyam Mishra also assaulted Arti Kumari, sister of the informant with iron rod on her head and waist. Thereafter, all the injured brought to the Govt. Hospital Kuchaikote for treatment. Co-villagers, namely, Nand Lal Sah, Prem prakash, Guddu Sah and others have seen the occurrence.

5. On the basis of written report given by P.W.-5, Bishambharpur Police Station Case No. 55 of 2004 was registered against the four accused persons. After completing the investigation, police submitted chargesheet against them. On the basis of evidence during investigation, cognizance was taken and the case was committed to the court of Session for trial and disposal.

6. In this appeal, point for consideration is whether the prosecution is able to prove the charges levelled against the appellants beyond the shadow of reasonable doubt or not.

7. To substantiate the charges leveled against the appellants, altogether eight witnesses were examined



by the prosecution as P.W.-1 Prem Prakash Sah (co-villager/eye witness), P.W.-2 Guddu Sah (co-villager/eye witness), P.W.-3 Arti Kumari (sister of the informant/injured), P.W.-4 Ramsurti Devi (mother of the informant/injured), P.W.-5 Yugal Kishore Sah (informant/injured), P.W.-6 Dr. Om Prakash Lal (doctor), P.W.-7 Subhash Prasad has proved the injury reports of injured and exhibited as 2,2/1 and 2/2), P.W.-8 Ram Prasad Ram (I.O. of the case). From defense side, one witness, namely, Bishwnath Mishra was examined as D.W.-1.

8. P.W.-1 Om Prakash Sah has stated in his evidence that he was at his Gharari land at the time of occurrence. Sister of Yugal Kishore had gone out for nature call and accused Sarvesh Mishra caught her hand with intention of rape and tossed her down. On her crying, her brother went there and took her sister to home. Thereafter, accused Ragho Mishra, Ghanshyam Mishra and Dilip Mishra came at the door and accused Raghav Mishra gave farsa blow on his head with intention to kill him. He gave another farsa blow which



hit his finger. When his mother came there to rescue him, then accused Dilip Mishra gave iron rod blow on her head and unconsciously she fell down. Accused Ghanshyam Mishra gave iron rod blow on the head of Arti Devi, sister of the informant. Thereafter all the injured were brought to the hospital for treatment.

9. P.W.-2 Guddu Sah has stated in his examination-in-chief that at the time of occurrence, he was at the door and on hearing noise, he went towards west and saw that informant's sister Arti Kumar was lying on the ground. Prior to his arrival, informant had arrived there and he saw that accused Sarvesh Mishra was fleeing. Aarti Kumari disclosed that with intention to commit rape, Sarvesh Mishra caught her hand and tossed her down. Thereafter informant with his sister came to the door then accused Ragho Mishra with farsa, Dilip Mishra and Ghanshyam Mishra armed with iron rod came there. Accused Ragho Mishra gave farsa blow upon Yugal Kishore Sah (informant) which hit his finger and broken. His another farsa blow hit on his head. When his mother came there to rescue, accused Dilip gave iron rod blow



on her head. Accused Ghanshyam Mishra gave an iron rod blow on the head and waist of Aarti Devi. Thereafter accused persons fled away from place of occurrence. He with others brought the injured to police station and then hospital.

10. P.W.-3 Aarti Kumari and P.W.4- Ramsurti Devi deposed same thing in their evidence that on the alleged and time of occurrence, Aarti Kumari went out for nature's call then accused Sarvehs Mishra caught her hand with intention to commit rape. On her hulla, her brother (P.W.-5) and Guddu Sah (P.W.2) came there and took her at the door. Thereafter, accused Ragho Mishra with farsa, Dilip Mishra and Ghanshyam Mishra armed with iron rod came to her door and Ragho Mishra gave farsa blow upon Yugal Kishore Sah resulting into his finger broken. He gave another farsa blow on his head. When her mother (P.W.-4) came there to rescue, Dilip Mishra gave iron rod blow on her head and shoulder. Accused Ghanshyam Mishra gave iron rod blow on her head and waist. Thereafter accused persons fled away. Injured were brought to Kuchaikote hospital for



treatment.

11. P.W.-5 Yugal Kishore Sah is informant of the case. He deposed in his evidence that on the alleged date and time of occurrence, his sister, namely, Aarti Kumari went out for nature's call then accused Sarvesh Mishra caught her hand with intention to commit rape. On her hulla, he went there and saw Sarvesh Mishra there then he took his sister at the Sahan. In the meantime, accused Ragho Mishra with farsa, Dilip Mishra and Ghanshyam Mishra armed with iron rod came to her door and Ragho Mishra gave farsa blow upon him twice resulting into his finger broken and head injury. When his mother (P.W.-4) came there to rescue, Dilip Mishra gave iron rod blow on her head and shoulder. Accused Ghanshyam Mishra gave iron rod blow on his sister's head and waist. Thereafter accused persons fled away. Injured were brought to Kuchaikote hospital for treatment. In his cross-examination, he has stated that accused persons have also lodged the case against him. He deposed that one month prior to the occurrence, he had filed a criminal case against Ragho Mishra.



12. P.W- 6 Dr. Om Prakash Lal has examined all the three injured persons. Injured/informant has received four injuries out of which only injury no. 2 is grievous in nature caused by hard and blunt substance. Injured Ramsurti Devi has received three injuries and all are simple in nature caused by hard and blunt substance. Injured Aarti Devi has received two simple injuries caused by hard and blunt substance. P.W.-6 has corroborated the evidence of P.W.-5, 4 and 3 regarding the manner of occurrence and injury. He has proved the injury report exhibited as Ext.2,2/1 and 2/2.

13. P.W.-7 Subhash Prasad is formal witness and proved injury report of Ramsurti Drvi, Arti Devi and Yugal Kishore Sah from the original injury register.

14. P.W.-8 Ram Prasad Rai is the I.O. of the case. He has visited the place of occurrence and recorded the evidence of witnesses and received injury report and found the occurrence true and submitted the charge-sheet. He has proved signature and writing of Satynarayan Ram on F.I.R. as Ext-3. He has also proved endorsement on the application of informant as ext-4. He has been cross-



examined by the defense but defense has got nothing in his cross-examination.

15. D.W.-1 Vishwnath Mishra has proved the complaint petition no. 1551/04 and exhibited as ext-B. He has also proved and exhibited the injury report of Dilip Kumar and Ragho Mishra as Ext. A and A/1 from the defense side.

16. Learned counsel appearing on behalf of the appellants has submitted that evidence of witnesses suffered from serious infirmities and contradictions, which makes their case highly doubtful, totally unreasonable and untrustworthy. P.W.-7 Dr. Om Prakash Lal had examined all the three injured persons and disclosed that all injured persons have received simple injury except injury no. 2 of informant, which is on left index finger and the same in non-vital organ. Allegedly, injured Yugal Kishor Sah are said to have assaulted by means of farsa, whereas doctor opined out of four injuries three are lacerated, bruise and swelling with pain injury to him caused by hard and blunt object. He has received only one sharp cutting injury. He further submitted that



appellant/covinct Ragho Mishra has filed counter case for the same occurrence and in the alleged occurrence, members of both sides have received injuries. On the point of place of occurrence, there are contradictions in the evidence of the prosecution witnesses as there are two place of occurrence first; where accused Sarvesh Mishra had caught hold the hand of informant's sister with intention to commit rape and secondly where accused persons have assaulted the informant, his sister and his mother. P.W. 3 (sister of the informant) are P.W.-4 (mother of the informant) are interested witnesses and their evidence are not trustworthy. As per FIR, accused Dilip Mishra had assaulted to informant's mother on her head by means of iron rod and she fell down unconsciously but no any prosecution witness has deposed in their evidence that either of the injured had got unconscious at the place of occurrence.

17. Learned APP appearing for the state has argued that the impugned judgment in question is based on cogent and consistent evidence, which is adduced by the prosecution witnesses. Doctor proved the injury reports of injured persons



which is exhibited as ext.-2, 2/1 and 2/2. Learned trial court has rightly convicted the appellant Dilip Mishra and Ghanshyam Mishra u/s 323 of the IPC, accused Ragho Mishra u/s 324 IPC and further accused Ragho Mishra, Dilip Mishra and Ghanshyam Mishra u/s 447 IPC and accused Sarvesh Mishra u/s 354 IPC by relying upon the evidence brought on record by the prosecution during trial. Therefore, the judgment and order assailed in this appeal requires no interference and appeal is liable to be dismissed.

18. I have gone through the entire prosecution evidence, documents, exhibits, defense evidence, medical reports in respect of injured persons, which are proved by P.W.-6 (doctor) which are exhibited as Ext. 2, 2/1 and 2/2. Evidence of all the witnesses including the evidence of P.W.-5 (informant) proved the prosecution case in respect of manner of occurrence and place of occurrence.

19. After scrutinizing all the evidences, which are available on record and the impugned judgment of conviction, there is no need of interference in the said judgment. The impugned judgment is delivered on the basis of cogent and consistent evidence and the trial court had



rightly convicted all the appellants. This Court does not find any infirmity in the order impugned. Being the first offence committed by the appellants, trial court released all the appellants after giving them the benefit of Probation of Offenders Act. I find no reason to disbelieve the judgment of conviction passed by the trial court.

20. Accordingly, the instant appeal is hereby dismissed.

21. So far as Criminal Revision No. 970/2008 is concerned, this Revision has been filed by the petitioner (informant/ P.W.-5) for setting aside the Judgment and order of acquittal dt. 5.6.2008 under Sections 307 and 325 of the Indian Penal Code.

11. It is mentioned in para 7 of the petition that eight prosecution witnesses have been examined. In deposition of out of eight prosecution witnesses, five witnesses i.e. P.W.-1, P.W.-2, P.W.-3, P.W.-4 and P.W.-5 have stated undisputed fact that accused Ragho Mishra had caused injuries to the informant by means of farsa, which is grievous in nature . P.W.-1, namely, Prem Prakash Sah has stated in his deposition that the accused Ragho Mishra



assaulted by farsa to Yugal Kishore. P.W.-2 namely, Guddu Sah has stated in his deposition in para-1 of page-4 that Ragho Mishra assaulted to informant by Farsa. P.W.-3, namely, Aarti Devi has stated in her deposition that accused Ragho Mishra assaulted to informant by means of farsa, P.W.-4 Ramsurati Devi stated in her deposition Ragho Mishra assaulted to informant by means of Farsa. The petitioner has sustained grievous injury caused by accused Ragho Mishra, and trial court had acquitted him under Section 307/34 of the Indian Penal Code which is not just and proper.

23. Considering the facts and circumstances of the case and nature of offence, I am of the opinion that convicts/appellants are the first offenders. Some of the convicts are middle age group and no criminal case is pending against them. The judgment of conviction is delivered on the basis of cogent and consistent evidence and the trial court had rightly acquitted the appellants u/s 307 of the Indian Penal Code as from perusal of the evidence it appears that the intention of accused persons was not to kill the informant or any other injured persons because there is no such type of oral



and documentary evidence available on record. Undoubtedly, informant Yugal Kishore Mishra has received grievous injury in left index figure but the radiologist and technician have not been examined by the prosecution to prove the case of fracture. In case of fracture of any part of body, the examination of radiologist is must. Therefore, from the evidence, it appears that prosecution has not been succeeded in proving the charge u/s 307/34 against the accused persons. Being the first offence committed by the appellants, trial court released all the appellants after giving them the benefits of Probation of Offenders Act. I find no reason to disbelieve the judgment of conviction passed by the trial court.

24. Accordingly, this criminal revision stands dismissed.

(Sunil Kumar Panwar, J)

sushma/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.4.2024
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