

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.321 of 2014

Arising Out of PS. Case No.-58 Year-2007 Thana- PARSABAZAR District- Patna

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1. Shashi Bhushan @ Monu, Son of Sri Ram Hri Ram
 2. Sonu Kumar Son of Sri Ram Hari Ram
 3. Arbind Singh @ Arbind Kumar Son of Sri Ram Hari Ram
 4. Shakuntala Devi Wife Sri Ram Hari Ram, All resident of village- Kurthaul Gayatri Nagar P.S.- Parsa Bazar, Dist.- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Manju Devi, W/o Ram Asre Prasad R/o vill - Kurthol Gayatri Nagar, P.S. - Parsa Bazar, Distt. - Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Surendra Kumar Singh, Advocate Mr. Raj Dular Sah, Advocate Mr. Praveen Prasad, Advocate
For the State	:	Mr. Nand Kishore Prasad, APP
For the Informant	:	Mr. Sunil Kumar Dubey, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 29-02-2024 The instant revision is directed against the judgment and order dated 27th January, 2014 passed in Criminal Appeal No. 78 of 2014 by the learned Additional District and Sessions Judge Vth Court, Patna, whereby and whereunder, the learned court of appeal affirmed the order of conviction and sentence under Section 323/448 of the IPC passed by the trial court against the petitioners. The appellate court, however, acquitted the petitioners of the charge under section 504 of the IPC. Thus, the judgment and order passed in GR Case No. 4141 of 2007



corresponding to PS Case No. Parsa Bazar 58 of 2007 was partly affirmed. The appellate court also considering the nature and manner of occurrence granted benefit of Section 3 of the Probation of the Offenders Act and the petitioners were released on due admonition.

2. The order of conviction passed against the petitioners in the court of appeal under Section 323/448 of the IPC is under challenge in the instant revision.

3. It is submitted by the learned advocate for the petitioners with reference to the First Information Report, which was lodged on 6th September 2007 by one Manju Devi, that the landed property of the informant and one Shakuntala Devi are situated adjacent to each other. It is alleged that the said Shakuntala Devi constructed his building without leaving any space which required to be left vacant under the relevant municipal laws. It is also alleged that she constructed a house and mainly constructed the roof of the said house extending the area of the roof over the land of the informant. The informant raised objection but, the accused namely, Shakuntala Devi did not pay any heed to such objections on the ground that she is an employee of the Office of the SDO and she would be able to cause any harm to the informant and his family members. It is



alleged in the FIR that on 6th September 2007, the said Shakuntala Devi employed masons to raise construction over the extended portion of her roof. When the informant objected, the said Shakuntala Devi and her sons Arvind, Shashi@ Monu and Sonu assaulted the informant. It is also stated by her that one Baby Kumari and Meena Kumari saw the incident. The incident took place when the male members of the house of the informant were not present. They also threatened the informant for dire consequences and cautioned her that the accuse would also grab the property of the informant.

4. Over the said information, the above mentioned police case was registered, police took up the case for investigation and on completion of investigation submitted charge-sheet against the petitioners under Section 323/448/504 of the IPC.

5. The learned advocate for the petitioners submits that the prosecution failed to prove the charge under Section 323 and 448 of the IPC. It is also submitted by him that in order to prove a charge under Section 323 of the IPC, it is required to be proved by the informant as well as the injured that the accused persons caused bodily pain, disease or infirmity to the informant/injured within the meaning of Section 319 of the IPC.



In the instant case, the informant did not say that she received bodily pain or infirmity or disease due to the alleged assault of the petitioners, therefore, basic ingredients of Section 323 have not been proved. The trial court as well as the court of appeal were wrong in holding the petitioners guilty for committing offence under Section 323 of the IPC.

6. With regard to the charge under Section 448 of the IPC, it is submitted by him that there is absolutely no allegation that the petitioners went to the house or land of the informant with criminal intention. The entire incident which took place happened on the extended portion of the roof of the accused Shakuntala Devi. Therefore, both the courts below committed material irregularity, if not illegality in assessment of evidence and holding *inter alia* that the accused persons committed offence under Section 448 of the CrPC.

7. The learned advocate for the informant, on the other hand submits that in the FIR it is clearly stated by the informant that he was assaulted by one Shakuntala Devi and her sons. Therefore, the charge under Section 323 of the IPC was proved beyond any shadow of doubt. It is also contended by the learned advocate for the informant that in order to prove the charge under Section 323 of the IPC, it is not necessary to



examine any doctor. Even a simple hurt that causes bodily pain of the injured is punishable under Section 323 of the IPC.

8. On perusal of the lower court's record, it is ascertained that prosecution examined as many as 7 witnesses during the trial of the case. The informant stated in her FIR that one Baby Kumari and Meena Kumari are the eye-witnesses of the occurrence. The said Meena Kumari was examined as PW-2. Baby Kumari has not been examined by the prosecution during the trial. On perusal of the evidence of PW-2, i.e., Meena Kumari@ Meena Devi, it is ascertained that when the incident took place, she was in her house and from her house she saw that Shakuntala Devi and her three sons, namely, Arbind, Sonu and Monu came to the roof and assaulted her and her son Laddu with the help of bamboo stick. In the FIR, the defendant complainant did not said that they were assaulted by bamboo stick. Therefore, the story of assault by bamboo stick is a subsequent exaggeration on the part of the prosecution. It is found that dispute between Shakuntala Devi and the informant has been going on for long over landed property. All the injured witnesses stated that they were assaulted by the accused persons/petitioners. However, the evidence on record is absolutely silent to the effect that due to such assault that the



petitioners caused bodily pain or infirmity or disease to the injured persons. There is a thin line of difference between causing hurt and criminal force in criminal force. In criminal force, there may not be any bodily pain or infirmity. But while establishing a charge under Section 323, the prosecution must prove that the injured persons received bodily pain, infirmity or disease. In the absence of such evidence, it is not possible to hold that the accused persons committed an offence under Section 323 of the IPC.

9. For the reasons stated above and in view of the fact that the evidence on record is absolutely silent over the ingredients of causing hurt, the petitioners are entitled to be acquitted of the charge under Section 323 of the IPC. Regarding Section 448 of the IPC, there is absolutely no evidence of criminal trespass against the petitioners. Therefore, both the courts below committed a jurisdictional error in holding the accused persons guilty for committing offence under Section 448 of the IPC.

10. In view of the above discussion, the judgments and orders of conviction and sentence passed by the trial court and affirmed by the court of appeal for commission of offence under Section 323/448 of the IPC are quashed and set aside.



11. The accused persons are acquitted of the charge and discharged from their respective liabilities of bail bonds and sureties, if any.

12. The instant revision is accordingly allowed on contest. However, there shall be no order as to cost.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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