

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.380 of 2007

1. Awadhesh Paswan, son of Bhulan Paswan
 2. Mahendra Paswan son of Rajpati Paswan
 3. Rajpati Paswan @ Rampati Paswan, son of Chhathu Paswan
 4. Nanhak Paswan @ Surendra Paswan @ Nanhak
- All are residents of Village-Bara Kala, P.S.-Kothi (Imamganj), District-Gaya

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vipul Sinha, Amicus Curiae
For the State	:	Mr. Ram Chandra Singh, APP.

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 14-05-2024

Heard Mr. Vipul Sinha, learned *Amicus Curiae* and Mr. Ram Chandra Singh, learned A.P.P for the State.

2. The present appeal has been filed against the judgment of conviction and order of sentence dated 28.03.2007 passed by learned Additional Sessions Judge, F.T.C-V, Gaya in connection with Sessions Trial Nos. 289 of 2004/671 of 2004, arising out of Kothi P.S. Case No. 15 of 2003, whereby and whereunder the appellants Rajpati Paswan and Nanhak Paswan were found guilty for the offence under Section 323 of the Indian Penal Code and they were given the benefits of Section 4(1) of the Probation of Offenders Act and



released after furnishing a probation bond of Rs. 5000/-with two sureties of the like amount under Section 4(1) of the Probation of Offenders Act. So far as appellants Mahendra Paswan and Awadhesh Paswan are concerned, they were found guilty and convicted for the offences punishable under Section 326 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of five years.

3. The prosecution case as per the F.I.R is that the land of the informant lies just by the side of the land, belonging to appellant Rajpati Paswan. On the alleged date of occurrence, at about 11 A.M, the informant along with his nephew Pritam Singh had gone to see water in the field and he saw that the appellants were cutting ridge for which the informant made objection, as a result of which appellant Awadhesh Paswan started abusing the informant. Subsequently, appellant Awadhesh Paswan gave order to Rajpati Paswan, Mahendra Paswan and Nanhak Paswan to



assault and kill the informant. Upon this, appellant Rajpati Paswan, Mahendra Paswan and Nanhak Paswan started to assault the informant with *lathi* and *kudal*. The appellant Mahendra Paswan assaulted Pritam Singh by *Kudal* and due to which injury was caused to him upon his head and he fell down on the ground and appellant Nanhak Paswan assaulted the informant with *lathi* and due to that the informant got several injuries upon his person and fell down on the ground. On raising alarm, when his cousin Pramod Singh came to rescue him, appellant Awadhesh Paswan also caused assault to him on his head by means of *Tangi* and due to that he got serious injuries upon his person. When the villagers Pankaj Kumar Singh, Vivek Kumar Singh and others came there, the accused persons fled away. The Injured Pramod Paswan and Pritam Singh were taken to Imamganj Government Hospital for their treatment but they were referred for better treatment at Varanasi.



4. On the basis of the aforesaid fardbeyan of the informant, Kothi P.S. Case No. 15 of 2003 was registered against the accused persons including the appellants and after completion of the investigation, charge-sheet was submitted and thereafter cognizance was taken 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 Suresh Singh has deposed in his examination-in-chief that at the time of occurrence, he was grazing the animals. He went at the place of occurrence and saw that all the appellants were abusing the informant and Pritam Singh. They started assaulting the informant and Pritam Singh by *lathi*, *khanti*, *kudal*, *tangi*. The appellant Mahendra Paswan assaulted Pritam Singh on his head whereas appellants Rajpati Paswan and Nanhak Paswan had assaulted with *lathi* to the informant Randhir Singh. When Pramod



Singh and Sushil Singh came to the rescue, the appellant Awadhesh Paswan assaulted with *tangi* on the head of Pramod Singh, as a result of which, he sustained injuries.

7. P.W. 2 Bishun Paswan has deposed in his examination-in-chief that he had gone to demand tractor from Pritam Singh at his field to plough his land. This witness has stated that when he reached on the place of occurrence, he saw that appellants were abusing Pritam Singh and Randhir Singh because informant and Pritam Singh asked them about the reason of cutting the ridge. This witness has also stated that appellant Awadhesh Paswan is a Chaukidar of Kothi Police Station. He has specifically stated that on the instigation of appellant Awadhesh Paswan, Mahendra Paswan caused assault to Pritam Singh by means of *Kudal* at his head, Nanhak and Rajpati Paswan assaulted Randhir Singh by means of *lathi*. When Pramod Singh came to rescue then Awadhesh



Paswan also caused Tangi blow at his head. During cross examination, this witness has stated that his village is situated about one kilometer away from the village of the informant.

8. P.W. 3 Jagat Bhuiya has deposed in his examination-in-chief that at the time of occurrence, he was driving the tractor in the field of Pritam Singh. This witness has categorically stated that appellant Awadhesh Paswan caused assault to Pramod Singh by means of *Tangi*, appellant Mahendra Paswan caused assault to Pritam Singh upon his head by means of *Kudal* and Rajpati Paswan and Nanhak Paswan assaulted Randhir Singh by means of *lathi*. During cross-examination, this witness has stated that he is a labour of Pritam Singh on monthly payment of Rs. 1500/-. This witness has also stated that on the date of occurrence, he was ploughing the field by the tractor at about 100 yards away from the place of occurrence.

9. P.W. 4 Randhir Kumar Singh is the



informant of the case who has stated in his examination-in-chief that on 24.07.2003 at about 11:00 A.M while he along with Pritam Singh had gone to see water in the field he saw the accused persons in their field who were cutting the south ridge of the field of the informant. Pritam Singh made objection and thereupon appellant Awadhesh Paswan started to abuse them. After hearing *hulla*, Pramod Singh and two other persons came there and they also forbade them not to abuse. In the meantime, appellant Awadhesh Paswan instigated others to assault them. Thereafter, appellant Mahendra Paswan with intention to kill Pritam Singh gave a *Kudal* blow upon his head and due to the said injury he fallen down on the ground. The appellants Nanhak Paswan and Rajpati Paswan caused assault to the informant by means of *lathi* and *danda*. When Pramod Singh tried to rescue them, appellant Awadhesh Paswan also caused assault to him by means of *Tangi* upon his head and due to that he fallen down



on the ground. They also caused assault to them by means of fists and slaps. Thereafter, Pramod Singh and Pritam Singh were admitted in Imamganj Hospital and subsequently Pramod Singh was referred for better treatment at Varanasi. During cross examination, this witness has stated that tractor was ploughing in his field and some labourers namely Jagat Bhuiyan, Sheo Dayal Bhuiyan, Patru Bhuiyan and others were digging the land. This witness has admitted that Rahjpati Paswan had filed a case against him. This witness has denied that this false case was instituted only to save skin from the case instituted by the accused persons.

10. P.W. 5 Pramod Kumar Singh is one of the injured who has supported the informant and other injured on the point of manner of occurrence, place of injuries and weapon used by the accused persons and also the genesis of the occurrence. This witness has categorically stated that when he tried to rescue Pritam Singh and Randhir Singh, appellant Awadhesh Paswan



also caused assault to him by means of *Tangi* and he was admitted in the Imamganj Government Hospital from where he was referred to Varanasi. During cross examination, this witness has stated that he has no concern with the affairs of Randhir Singh but has concern with the agricultural work and Randhir Singh. This witness has specifically stated that he did not see any injury upon the accused persons and they had filed criminal case against the informant and others prior to lodging of the present case on the same day.

11. P.W. 6 Pritam Singh is also one of the injured of the occurrence who has deposed in his examination-in-chief that he had gone to the field along with P.W. 4 to see the water. This witness has stated that the land of Rajpati Paswan is situated adjacent south to his land and Mahendra Paswan, Rajpati Paswn, Nanhak Paswan and Awadhesh Paswan were working in their field and also cutting the ridge of the field of the informant. When he made objection in this regard, they



started to abuse them. After hearing the altercation and abusing words Pramod Singh (P.W. 5) and other persons reached there. When this witness forbade accused persons not to abuse them, on the instigation of appellant Awadesh Paswan, appellant Mahendra Paswan caused assault at his head by means of *Kudal* and because of that injury, he fallen down on the ground. When the villagers started to gather there, the accused persons fled away. During cross examination, this witness has stated that Pramod Singh is his uncle and he is separated in mess and business. Randhir Singh is also his uncle who is also living separately from him.

12. P.W. 7 is Dr. Nikhil Kumar Rohtagi who has examined the injured on 24.07.2003 at Primary Health Centre Imamganj. He has found the following injuries on the person of the informant Randhir Kumar Singh

(i) Swelling on right hand 2" x ½"



(ii) Chest pain

Both the injuries were found to be simple in nature caused by hard and blunt substance.

He has also examined Pritam Singh and found the following injuries on his person.

(i) Lacerated wound 3" x ½" over left occipital and perittal region (bone junction).

(ii) Body ache.

Injury No. 1 is grievous in nature and caused by sharp cutting weapon. It may be caused by spade (Kudal). Cut mark below left eye.

The doctor has also examined injured Pramod Kumar Singh and found the following injuries on his person:-

(I) Lacerated wound 3" x 1" over right perittal bone.

(2) Body ache.

Injury No. 1 is grievous in nature caused by sharp cutting weapon such as Tangi.



13. P.W. 8 Vikramaditya Singh is the hearsay witness and simply saw the injuries upon the injured when he came back to the house.

14. P.W. 9 Suresh Prasad Singh is the Investigating Officer of this case who has proved the place of occurrence as the field of Rajpati Paswan and stated in his examination-in-chief that he found removal of the grass towards southern ridge of the informant's field. This witness has also stated that he recorded the statement of Pramod Singh when he came back from Varanasi after treatment. This witness has also stated that he also investigated Kothi P.S. Case No. 14/2003 which was lodged by Rajpati Paswan against the informant and others of this case. This witness has also stated that he did not inquire from the doctor who referred Pramod Singh to Varanasi but he saw the paper of the said fact. This witness has asserted that he found some cutting ridge on the place of occurrence. Thus from the scrutiny of the evidence



of this witness, it appears that this witness has placed the place of occurrence as the field of Rajpati Paswan and also saw the cutting of south ridge of the field of the informant. Although some of the witnesses had stated that occurrence took place in the field of the informant but the said version is quite natural because of the lands of the informant and accused persons are adjacent to each other. The I.O. has found the field of accused persons over which occurrence took place and these contradictions are not material in the circumstance of the case.

15. On the other hand, the defence has also examined Dr. Nikhil Kumar Rohtagi and found the following injuries on the person of the injured Rajpati Paswan.

(a) Lacerated wound $\frac{1}{2}$ " x $\frac{1}{4}$ " at junction of perital bone.

(b) Lacerated wound $\frac{1}{2}$ " x $\frac{1}{4}$ " over right calcanium bone.

(c) Abrasion $\frac{1}{4}$ " over right fingure



(d) Body ache.

(e) Swelling $\frac{1}{2}$ " over right and left elbow joint.

All the injuries are simple in nature caused by hard substance, may be lathi.

16. The injured Munni Devi wife of Rampati Paswan has also been examined and the doctor has found the following injuries on her person.

(a) abrasion $\frac{1}{2}$ " at the right perital bone

(b) abrasion $\frac{1}{4}$ " below left eye

(c) Abrasion $\frac{1}{2}$ " below right elbow.

(d) Body ache.

All the injuries are simple caused by hard and blunt weapon such as lathi.

17. The injured Surendra Paswan, son of Rampati Paswan was examined and the doctor has found the following injuries:-

(1) Abrasion $\frac{1}{2}$ " over right thigh and pain

(2) Swelling $\frac{1}{2}$ " x $\frac{1}{4}$ " over left elbow

(3) Body ache.

All the injuries are simple in nature caused by hard and blunt weapon such as lathi.

18. The injured Mahendra Paswan son of



Rampati Paswan has also been examined and the doctor has found the following injuries on his person.

(1) Pain at left leg

(2) Pain at right arm

(3) Backache

All the injuries were found to be simple in nature caused by hard and blunt substance.

19. The doctor (D.W. 2) has deposed that he had also examined the injured Randhir Kumar Singh, Pritam Singh, Pramod Kumar Singh and on the person of Pramod Kumar Singh I found grievous injuries and referred him for better treatment to Varanasi.

"Abrasion and swelling may be caused due to other reasons than assault. Body ache is not apparent injury rather it is the feeling of the patient. Swelling may be caused by insect biting. Victimized area (wound) is always surrounded by swelling. I did not find upon any injured wound surrounded by swelling. I have not mentioned in the report that lacerated wound have any blood clot or not."



20. Mr. Vipul Sinha, learned *Amicus Curiae*, in defence of the appellants has submitted that appellants are innocent and they have falsely been implicated in this case. There is long standing dispute between the parties and at earlier point of time, the appellants' side had also lodged a criminal case against the informant's side. The entire proceeding leading to the present appeal conducted by the trial court is without jurisdiction and the trial court has completely failed to appreciate the medical evidence made by the prosecution. 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. There is counter version of the occurrence also and the appellants' side have also lodged Kothi P.S. Case No. 14 of 2003 against the informant's side under Sections 147, 148, 149, 323, 324, 307/34 of the Indian Penal Code. 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 which has stated that lacerated wound is generally caused by hard and blunt substance. There was no X-ray report before him and only on clinical observation, he found fracture. This witness (P.W. 7) had not found any external or internal injury upon the chest of the injured and stated that cause of chest pain may be in so many reasons. He has further stated that swelling may also be caused by insect biting. Thus, from the deposition of P.W. 7, it would be very clear that the case of the prosecution has not been supported by the injury reports of the injured persons.

21. 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 *Amicus Curiae* 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 reports 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.

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

23. 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.

24. Sections 325 and 326, like the two Sections immediately preceding, provide the ordinary punishment and punishment under certain aggravating circumstances of the offences mentioned thereunder. The two latter Sections apply to the case of causing "grievous hurt" and the immediately preceding two Sections to the case of 'hurt'.

25. 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.”

26. Some hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined



in Section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly.

27. Some hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in Section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly.

28. The expression "any instrument which, used as a weapon of offence, is likely to cause death" has to be gauged taking note of the heading of the Section. What would constitute a 'dangerous weapon' would depend upon the facts of each case and no



generalization can be made.

29. 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. As was noted in a case reported in the case of State of U.P. v. Indrajeet Alias Sukhatha reported in (2000(7) SCC 249), there is no such thing as a regular or earmarked weapon for committing murder or for that matter a hurt. Whether a particular article can *per se* cause any serious wound or grievous hurt or injury has to be determined factually. At this juncture, it would be relevant to note that in some provisions e.g. Sections 324 and 326 expression "dangerous weapon" is used. The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous



or deadly weapon or not. That would determine whether in the case Section 325 or Section 326 would be applicable.

30. The doctor (P.W.7) had prepared the injury reports of the injured on behalf of the informant's side. However, during cross examination, he has stated that the lacerated wound is generally caused by hard and blunt substance. There was no X-ray report before him and only on clinical observation, he found fracture. P.W. 7 has further deposed that *Kudal* is a pointed weapon and he has not seen *Kudal* as yet. This witness has also stated that there are so many reasons of chest pain and he did not find any external or internal injury upon the chest of the injured which is completely not in consonance with the ingredients of Section 326 I.P.C as discussed above. The doctor has mechanically mentioned the injuries to be grievous in nature without explaining the reason in respect of gravinous of the injuries which were found



on the persons of injured namely Pritam and Pramod and in the absence of any X-ray report, the injuries were marked to be grievous in nature. The injury reports are not in consonance with the prosecution evidence. There are major contradictions in the prosecution evidence in respect of the place where the injured sustained injuries. Moreover, both the parties were on inimical terms from before and out of a spur, the occurrence took place where both sides sustained injuries.

31. Considering the discussions made above, this Court finds that at best the case is made out against the appellant Nos. 1 and 2 namely Awadhesh Paswan and Mahendra Paswan under Section 323 of the Indian Penal Code. The prosecution has failed to prove the charge under Section 326 of the Indian Penal Code against the appellant Nos. 1 and 2.

32. Thus, in view of the facts and circumstances of the case and the evidence as



discussed above, I hold the appellant Nos. 1 and 2 namely Awadhesh Paswan and Mahendra Paswan guilty under Section 323 of the Indian Penal Code and convicts them thereunder. In this case, the appellant Nos. 1 and 2 had faced ordeal of trial since year 2004. This appeal relates to year 2007. In this case, the appellant Nos. 1 and 2 had remained in jail for about one year.

33. Considering the period of custody as well as ordeal of trial, the appellant Nos. 1 and 2 namely Awadhesh Paswan and Mahendra Paswan are sentenced to the period already undergone by them. The appeal stands dismissed with aforesaid modification of judgment of conviction and order of sentence.

34. This Court upheld and sustains the order of the learned Court below with regard to appellant Nos. 3 and 4 namely Rajpati Paswan @ Rampati Paswan and Nanhak Paswan @ Surendra Paswan @



Nanhak who were found guilty under Section 323 of the Indian Penal Code but they were released after giving the benefits of Section 4(1) of the Probation of Offenders Act on furnishing a probation bond of Rs. 5000/- each with two sureties of the like amount.

35. This Court expresses the appreciation for the efforts taken by Mr. Vipul Sinha, learned *Amicus Curiae* who had insisted for assisting the Court in the matter. This Court directs the Patna High Court Legal Services Committee to pay to Mr. Vipul Sinha a sum of Rs. 7000/-(Seven Thousands) towards his professional fee for extending valuable assistance to this Court in deciding this appeal.

36. Accordingly, the appeal stands dismissed with the aforesaid modification in the sentence.

(Sunil Kumar Panwar, J)

Shageer/-

AFR/NAFR	NAFR
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