

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5611 of 2019

Arising Out of PS. Case No.-60 Year-2019 Thana- JAMHOR District- Aurangabad

VINOD MEHTA Son of Mahesh Mehta Resident of Village - Raghunathpur,
P.S.- Jamhor, District- Aurangabad

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (SJ) No. 451 of 2020

Arising Out of PS. Case No.-60 Year-2019 Thana- JAMHOR District- Aurangabad

1. GUDDU KUMAR S/o Indradeo Mahto Resident of Village- Timal Bigha,
P.S.- Jamhore, Distt- Aurangabad (Bihar)
2. Fulendra Kumar @ Fulendra Mahto S/o Indradeo Mahto Resident of
Village- Timal Bigha, P.S.- Jamhore, Distt- Aurangabad (Bihar)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (SJ) No. 550 of 2020

Arising Out of PS. Case No.-60 Year-2019 Thana- JAMHOR District- Aurangabad

TILESHWAR MAHTO Son of Ram Dheyman Mehta @ Ram Dheyman Mahto
Resident of Village - Tamil Bigha, P.S.- Jamhore, Distt - Aurangabad (Bihar)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (SJ) No. 5611 of 2019)
For the appellant Ms. Akansha Malviya, Amicus Curiae
For the Respondent/s : Mr.Syed Ashfaque Ahmad
(In CRIMINAL APPEAL (SJ) No. 451 of 2020)



For the Appellant/s : Mrs.Leelawati Kumari
For the Respondent/s : Mr.Binod Bihari Singh
(In CRIMINAL APPEAL (SJ) No. 550 of 2020)
For the Appellant/s : Ms.Leelawati Kumari
For the Respondent/s : Mr.Abhay Kumar

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY
ORAL JUDGMENT
Date : 05-08-2025**

Heard the learned counsel for the appellants, the learned APP Mr. Syed Ashfaque Ahmad for the State and also Ms. Akansha Malviya, learned *amicus curiae* appearing for the appellant Vinod Mehta in Cr. Appeal (SJ No. 5611 of 2019).

2. The present appeals have been preferred against the judgment of conviction and order of sentence dated 19.11.2019 and 28.11.2019, passed by the learned Sessions Judge, Aurangabad in Sessions Trial No. 198 of 2019, arising out of Jamhore P.S.Case No. 60 of 2019, whereby the appellants were convicted under Sections 395 and 307/34 of the IPC and sentenced to undergo R.I. for 10 years and fine of Rs. 5000/- each, and in default of payment whereof, they were further directed to undergo R.I for six months under section 395 of the IPC. The sentences were directed to run concurrently.

3. The informant/injured of the case is Milosz Koza, 22 years, who is a citizen of Poland (Europe). He was on his visit to Gaya and in that course he proceeded from Varanasi and came to Pandit Deendayal Upadhyay Junction and boarded



a train for Gaya Junction. He boarded at Anugrah Narayan Railway Station mistaking it to be Gaya Junction. After some time, he came to know that it was not Gaya Junction. He was tired and wanted to take rest. He proceeded to a temple by the side of the railway tracks. After walking some distance at around 10.30 p.m., three miscreants taking iron rods etc in their hands, followed him. He apprehended from their gestures that their intention was to rob him. Thereafter, the miscreants attacked him with iron rods, sticks etc. He started running to save his life. Some other miscreants also followed him and all of them assaulted him. Meanwhile, the police vehicle came at the spot. Some accused persons were apprehended. The police verified the names and addresses of the arrested persons namely Vinod Mehta (appellant), Mirtunjay Kumar, Guddu Kumar (appellant) and Tileshwar Mahto (appellant). During interrogation, they disclosed that Fulendra Kumar (appellant), Satyendra Sao, and Mukesh Sao fled away before arrival of the police. The informant/victim was brought to the hospital by the police and was given treatment.

4. The *fardbayan* of the informant was recorded in injured condition during course of treatment in the hospital which is Ext.1. On the basis of the *fardbayan* of the informant,



Jamhore P.S.Case No. 60 of 2019 was registered on 18.05.2019 under Sections 341, 323, 307 and 393/34 of the IPC. The investigation was carried out and charge-sheet no. 56/19 was submitted by the investigating authorities on 22.05.2019 under Sections 341, 323, 307 and 393/34. After taking cognizance, the learned Magistrate committed the case to the court of sessions. Two co-accused persons namely, Surendra Mahto and Mukesh Sao remained absconding, as such, their cases were separated. The charges were framed against the present four appellants and one co-accused Mirtunjay Kumar on 24.05.2019 under Sections 395 and 305/34 of the IPC. The accused persons pleaded not guilty and claimed to be tried.

5. Thereafter, co-accused Mirtunjay Kumar was held juvenile and his case was separated from the present trial, vide order of the learned trial court dated 30.05.2019, as such only these four appellants were put on trial and were awarded sentence as indicated above.

6. In order to prove its case, the prosecution examined altogether 10 witnesses.

7. P.W.1 is the informant himself. He deposed that on 17.05.2019, he was travelling from Varanasi to Gaya. He boarded the train for Gaya at Pandit Deendaya Upadhayay



Junction. He deboarded from the train, but he came to know that it was not Gaya Junction. He walked around 100 metres from the station where he saw a temple. In the meantime, at about 11.00 p.m. in the night, 3-4 miscreants started following him. He started running. Meanwhile, one of them, caught hold of his bag-pack and snatched the same. Thereafter, another miscreant hit him at his leg by a stick. Other two also assaulted him by iron rods. He fell on the ground. Other miscreants came their with sticks and weapons and started assaulting him. This witness started running, but he fell down in the field. Thereafter 6-8 miscreants started assaulting him by sticks and rods. Meanwhile, the police patrolling party came there and brought him to the hospital. This witness stated further that he was not able to stand on his feet. He stated that had the police not come there, the miscreants would have eliminated him. The accused persons who were arrested by the police disclosed their names. The police recovered the belongings of this witness snatched by the miscreants and also recovered iron rods and sticks from the accused persons. The accused persons had destroyed his laptop and mobile set. He was brought to the hospital by the police for treatment. This witness has also stated that he rendered his statement before the Magistrate under Section 164 of the CrPC



and he identified his signature on his statement (Ext.1/1 and 1/2. This witness has stated that all the five accused persons who had beaten him and tried to rob of his belongings, were present before him in the dock at the time of his deposition. This witness identified all of them.

During his cross-examination, this witness has stated that the miscreants did not assault him by sharp-cutting weapons. They assaulted him on his four-head. He stated that the police recovered his clothes and other belongings and also iron rods and sticks. He stated that the police had disclosed the names of the accused persons who were the local residents.

8. P.W.2 Ritesh Kumar Pandey, is a constable, who was a member of the patrolling party. He deposed that on 17.05.2019 between 11.00-11.30 night, they were on patrolling duty on the occasion of election. They went to Raghunathpur Road, where they saw some miscreants assaulting a foreign national. Four miscreants were apprehended by the police, but others managed to flee away. *Lathi* and *Khanti* (iron rod) were recovered from their possession. The arrested accused persons disclosed their names as Tileshtar, Vinod, Mirtunjay and Guddu. They also disclosed the names of the accused persons who fled away as Fulendra and this witness could not recall the



names of other co-accused persons, who are said to have fled away. He stated that the foreign national was brought to the hospital for treatment and seizure list was prepared in respect of *sticks* and *khanti*. This witness identified the appellants who were present in the dock. During his deposition, this witness has stated that the miscreants were assaulting the foreign national near a field in Raghunathpur village. *Lathi*, sticks and iron rods were recovered from their possession. The seizure list was prepared at the police station. He stated that because it was a night, the persons of the vicinity did not come there. According to his deposition, the foreign national had suffered injuries on his face, hands etc. The articles belonging to the foreign national snatched by the accused persons were handed over to him.

9. PW 3 Laldeo Ram is local *chowkidar*. He was also accompanying the patrolling party. He saw the miscreants assaulting a foreign national. The police rescued him. The arrested accused persons disclosed their names as Vinod, Guddu, Mirtunjay and Tileshwar. Some miscreants became successful in fleeing away. This witness identified the accused persons in the dock. The four persons arrested from the place of occurrence were present in the dock and were identified by this



witness

10. PW 4 ASI Sohan Kumar Singh is also a member of the patrolling party. He deposed that he was on patrolling duty with the SHO Shamim Ahmad and other constables. They went to Raghunathpur road and saw some miscreants assaulting a foreign national beside the road. Four miscreants were apprehended namely Vinod, Mirtunjay, Guddu and Tileshwar and others fled away. The arrested miscreants disclosed the names of fled away miscreants as Fulendra, Satyendra and Mukesh. The miscreants had badly assaulted the foreign national and his *fardbayan* was recorded in injured condition after regaining his consciousness. During course of investigation, the appellant Fulendra was arrested on 20.05.2019, according to the statement of this witness. This witness also identified the accused persons present in the dock

During his cross-examination, this witness has stated that when the patrolling party proceeded ahead from the *Thana*, an entry was made in the register, but he could not say the exact time as to when the entry was made in the register. The police party proceeded from the police station at 9.30 p.m.. This witness has stated further that he did not prepare the seizure list, but the SHO himself had prepared the seizure list. According to



the version of this witness, although he could not count the injuries present on the person of the informant, but he had suffered injuries all over his body. In presence of this witness, no paper was prepared in the police station.

11. PW 5 Abinash Kumar Pandey is also a member of the patrolling team, This witness has stated that at 10.30 when they reached near Raghunathpur Road, some miscreants were assaulting a foreign national and were snatching his belongings. The patrolling party apprehended four accused persons and other miscreants fled away taking the benefit of darkness. A *lathi* and *khanti* were recovered from the possession of the arrested accused persons and the seizure list was prepared. The apprehended accused persons disclosed their names as Vinod Mehta, Guddu Kumar and Tileshwar Mahto. This witness identified the accused persons in the dock. He stated that Fulendra was arrested from the bus-stand on 20.05.2019.

During his cross-examination, this witness has stated that the accused persons could not notice the presence of the police vehicle. Some miscreants fled away taking advantage of darkness. The foreigner was lying in the field. This witness could not recall whether the seizure list of blood or soil was



prepared or not.

12. PW 6 is Dr. Nagendra Prasad Sharma. He examined the injured and found six following injuries on his person:-

“Injury no.-1. Lacerated injury on left side of lateral part of left to eye about 4" upward-downward direction, 1 cm in width and 1 cm in depth.

Injury no-2. Blood stain nostril.

Injury no.-3. Blackening and echymosis in left eye with swelling and reddish eye. Vision was alright.

Injury no.-4. Lacerated injury over left forearm. Size 2 cm x ½ cm x ½ cm x-ray advised for both forearm.

Injury no.-5. Lacerated injury over right leg. Size 2 cm x 1.5 cm x 1.5 cm

Injury no.-6. Bruises on body multiple in number in arm, forearm, thigh and leg.”

13. According to the opinion of Dr. Nagendra Prasad Sharma, all the injuries were caused by hard and blunt substance. There was no fracture injury. All the injuries were simple in nature. Those injuries might have been caused by *lathi*, *danda* or blunt part of *khanti*. This witness has stated that the injured who was in serious condition, was brought to the hospital by the police. Due to timely and proper treatment, the



injured recovered. The injury report is marked as Ext.2.

In his cross-examination, this witness has stated that no injury was found over the vital part of the body and all the injuries were simple in nature and were not dangerous to life.

14. PW7 Harihar Mehta and PW 8 Tribhuwan Kumar are the seizure list witnesses.

15. PW 7 Harihar Mehta stated that the police recovered *khanti* and *lathi* from the possession of the accused persons who were assaulting the foreign national. This witness signed the seizure list. He identified his signature Ext.3 on the seizure list.

During his cross-examination, he has stated that he did not see the occurrence but saw the recovered articles

16. Tribhuwan Kumar, P.W.8 identified his signature on seizure list which is Ext. 3/1, but during his cross-examination, this witness retracted from his first version in examination-in-chief and stated that *lathi* and *khanti* were not recovered in presence of this witness. He also did not go through the seizure list and on asking of the police he put his signature thereon.

17. PW 9. Shamim Ahmad is the head of the



patrolling party. He he is also the I.O. of the present case. He recorded the *fardbayan* of the informant and thereafter he registered the formal FIR. The formal FIR (Ext.9) is in the handwriting of Munshi Sanjay. He submitted the charge-sheet (Ext.10), after finding the case to be true against the accused persons.

During his cross-examination, this witness has stated that the seizure list was not prepared after registering the formal FIR. He also stated that there is no signature of Munshi Sanjay on formal FIR.

18. PW 10 Sri Manoj Kumar is a Judicial Magistrate, who recorded the statement of the informant under Section 164 of the CrPC on 20.05.2019. He identified his signature on that statement, which has been marked as Ext.11. The statement under Section 164 of the CrPC has been marked as Ext.12.

In his cross-examination, this witness has stated that while jotting down the statement under Section 164 of the CrPC, he saw the injuries on the person of the injured.

19. In addition to the above noted depositions of the prosecution witnesses, the following documents have been exhibited on behalf of the prosecution:-



Ext.1	Signature of the informant Milosz Koza on the <i>fardbayan</i>
Ext.1/1 & 1/2	Two signatures of Milosz Koza on the <i>fardbayan</i>
Ext.2	Injury report of the Milosz Koza
Ext.3 to 3/1	Signature of witness Harihar Mehta and Tribhuwan Kumar on seizure list
Ext.4	Seizure list
Ext.5	<i>Fardbayan</i> of Milosz Koza
Ext.6	Statement of accused Guddu Kumar
Ext.7	Para-359-361 of Station Diary entry
Ext.8	Shadow Register of <i>Malkhana</i>
Ext.9	Formal FIR
Ext.10	Chargesheet no. 56/19
Ext.11	Certificate regarding identity of witnesses
Ext.12	Statement of Milosz Koza u/s 164 CrPC
Ext.13	Certificate issued prior to statement

20. The appellants were questioned under Section 313 of the CrPC in order to enable them to explain the incriminating materials appearing against them in evidences during the course of trial. They denied the incriminating materials appearing in evidences and pleaded their innocence.

21. Neither any witness was examined on behalf of the defense, nor any documentary evidence was adduced.

22. Ms Akansha Malviya and Mrs. Leelawati Kumari, the learned counsels for the appellants have submitted that a number of infirmities and contradictions are there in the statement of the prosecution witnesses. They have submitted



that no any independent witness has been examined by the prosecution. They have also submitted that P.W.7 and 8 are the witnesses of seizure list of the iron rod and sticks, which are said to have been recovered from the possession of the appellants, but P.W.7 Harihar Mehta, during his cross-examination, has stated that he did not see the occurrence, but saw the recovered articles/belongings, whereas P.W.8 Tribhuwan Kumar although identified his signature on seizure list but he stated in his cross-examination that he did not go through the seizure list and on asking of the police, he put his signature thereon. The learned counsels have also submitted that from perusal of the evidences of the prosecution, it clearly transpires that the intention of the accused persons was not to kill the informant, as such, the conviction and sentence under Section 307 of the IPC is not sustainable in the eye of law. The injuries on the person of the informant are simple in nature, caused by hard and blunt substance/object. They have further submitted that P.W.2 has deposed that the seizure list was prepared in the police station, whereas P.W. 4 has stated that no paper was prepared in the police station. The further submission of the learned counsels is that there is no source of identification whereas it has been mentioned in the FIR that taking the benefit



of darkness, some co-accused persons became successful in fleeing away.

23. The learned APP for the State Mr. Syed Ashfaq Ahmad has submitted that the appellants brutally assaulted an innocent foreigner and snatched his belongings when he was on his visit to Gaya. The appellants Vindo Mehta, Guddu Kumar and Tishwar Mahto were arrested at the spot by the police and the appellant Fulendra Kumar was arrested after three days of the occurrence from the bus-stop. The *lathi* and *khanti* by which they assaulted the foreign national were recovered and produced in court at the time of hearing. The robbed articles/belonging were recovered from the possession of the accused persons and were handed over to the informant. The learned APP has also submitted that it was night, when the occurrence took place and no person of the vicinity was present at the spot which is the reason that in the present case there is no independent witness. He submitted further that if the entire evidence of the prosecution is scrutinized, it proves the prosecution case beyond all reasonable doubts. There is no reason for false implication of the appellants. The learned APP has next submitted that, although there are some minor contradictions in the evidences of the prosecution, but this is the



normal phenomenon.

24. I have perused the impugned judgment of the trial court and carefully perused the lower court records. I have also given my thoughtful consideration to the rival submissions advanced on behalf of the parties.

25. The informant, who is a citizen of Polland, while travelling to Gaya, was brutally assaulted by the appellants and other co-accused persons. Three of the appellants were arrested at the place of occurrence. The looted articles/belongings were recovered from their possession. The Doctor P.W.6, who examined the informant, found six injuries on his person. The statement of the informant was recorded in injured condition while he was under treatment in the hospital. The informant and the witnesses identified the appellants in the dock. Although there is some minor contradictions in depositions of the witnesses, but those contradictions do not go to the root of the matter. If the prosecution evidence is seen in its entirety, the prosecution case cannot be discredited. The commutative study of the evidences adduced on behalf of the prosecution corroborates the prosecution case. So, there is no doubt at all that the occurrence happened with the informant, nor there is any doubt about the involvement of the appellants



in that occurrence.

26. So far as the conviction and sentence under Section 307 of the IPC is concerned, in my view, that is not sustainable, for the reason that the Doctor, P.W.6 has stated that he did not find injuries on vital part of the body of the injured. The injuries were simple in nature, and not dangerous to life. Had the appellants any intention to kill the informant, they would have assaulted him on vital part of his body. It appears that the dominant intention of the appellants was not to kill the informant, but only to rob his belongings/articles.

27. So far as the conviction of the appellants under Section 307 of the IPC is concerned, it is converted into the conviction under Section 323 of the IPC, and the sentence of imprisonment of ten years under Section 307 of the IPC is converted into one year under Section 323 of the IPC. So far as the conviction under Section 395 of the IPC is concerned, the offence has been proved against the appellants beyond all reasonable doubts, as such, I do not find any infirmity in their conviction under Section 395 of the IPC.

28. The appellants were awarded ten years imprisonment, but considering that they have remained in custody for near about six years and three months, the period of



sentence awarded to the appellants is modified to the extent of the period of sentence already undergone by them.

29. The appellants are directed to be released forthwith, if not wanted in any other criminal case, in connection with Sessions Trial No. 198 of 2019 arising out of Jamhore P.S.Case No. 60 of 2019. They are discharged from the liability of bail bonds.

30. The appeals are partly allowed accordingly.

31. This Court appreciates the valuable and able assistance to the Court rendered by Ms.Akansha Malviya, the learned amicus curiae, representing for the appellant Vinod Mehta in Cr. Appeal (SJ No. 5611 of 2019.

(Nawneet Kumar Pandey, J)

HR/-

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