

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1604 of 2022

Arising Out of PS. Case No.-177 Year-2010 Thana- ROSERA District- Samastipur

ARUN SAH @ ARUN SAO S/o Narayan Sah @ Narayan Sao R/o village-
Laxmipur, Ward No. 18, P.S.- Rosera, District- Samastipur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Suraj Narain Yadav, Adv. Mr. Ranjeet Kumar Yadav, Adv. Mr. Ugresh Kumar, Adv. Mr. Rudra Deo, Adv.
For the Respondent/s	:	Mr. Syed Ashfaque Ahmad, APP
For the informant	:	Mr. Sanjeet Kumar, Adv. Mr. Pranav Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

29-01-2025

Heard Mr. Suraj Narain Yadav, learned counsel for the appellant, Mr. Syed Ashfaque Ahmad and Mr. Sanjeet Kumar, learned counsel representing the informant.

*2. The present appeal has been filed against order dated 06.04.2022/13.04.2022 passed by the court of Rajiv Ranjan Sahay, Additional Sessions Judge-1, Samastipur in Sessions Trial No. 562 of 2011 arising out of Rosera PS Case No. 177 of 2010 by which the appellant has been convicted and sentenced to undergo **rigorous imprisonment for seven years under sections 307/34 of the Indian Penal Code** (for short 'the IPC') and a fine of Rs. 5,000/- . In default of payment of fine simple imprisonment for six months. He has*



further been sentenced to simple imprisonment for 01 year under section each for the offence under sections 504, 506/34 IPC. The sentences are to run concurrently.

3. As per the prosecution story, the informant, **Umesh Shah (PW 3)** gave *Fardbeyan* at Rajeshwar Hospital, Patna on 18.09.2010 at 1730 hours narrating therein that on 16.09.2010 at about 6:00 AM, when he went to have a cup of tea at a Tea Shop of one Narain Das, his agnates (**appellant**) with his son, **Ranjan Sah**, wife, **Sushila Devi** and mother, **Laxminia Devi** armed variously arrived there. Further, upon order of this appellant, Ranjan Sah gave *Farsa* blow on the head of informant causing injury. Thereafter, the allegation is that this appellant (Arun Sah) gave *Khanti* blow causing fracture on his left arm and knee while mother and wife of this appellant gave iron rod blows.

4. As the locals arrived, they retreated. The informant was unconscious and regained consciousness only to find himself at Rajeshwar Hospital, Patna. There he gave the *Fardbeyan*, as stated above.

5. The reason has been assigned that a few days ago, Gopal Sah had lodged a case against Arun Sah and he was a witness to it. Those present at the tea-shop included **Manoj**



Sah, Chandrabali Paswan, Gopal Sah, Sunil Kumar and others. This led to the First Information Report.

6. The police investigated the matter whereafter charge-sheet was submitted on 30.11.2010 under sections 323, 325, 307, 504 and 506/34 of the IPC *vide* **Charge-sheet No.232/2010** against the accused persons. The court thereafter took cognizance in the matter and this resulted into rolling of the trial. The charges were framed on 18.01.2013.

7. The prosecution in support of its case, produced seven witnesses who are as follows:-

i). **PW1- Gopal Sah,**

ii). **PW2- Manoj Kumar Sah,**

iii). **PW3- Umesh Sah (informant),**

iv). **PW4- Md. Ashif,** the Assistant Sub-Inspector of Police and the Investigating Officer,

v). **PW5- Dr. Kamrul Hoda,** the Doctor of Nalanda Medical Colleg Hospital, Patna who visited Rajeshwar Hospital, Patna on the request of the said hospital and examined the informant,

vi). **PW6- Dr. Prashant Kumar,** the Medical Officer of Sub-divisional Hospital, Rosera and

vii). **PW7- Sunil Kumar** who has seen the



occurrence.

8. PWs 1 and 2, namely, Gopal Sah and Manoj Kumar Sah respectively were present at the tea-shop with the informant having tea. According to them, their respective houses are nearer to the said tea-shop and naturally, they were present at the spot. They have fully supported the prosecution story as also the assault by the accused persons including this appellant. Gopal Sah (PW1) is the person who a few days ago had lodged a case in which the injured PW3 (informant, Umesh Sah) was a witness. According to them, infuriated by that, appellant and his family members brutally assaulted the informant.

9. PW-3 is the informant himself and he has fully supported the prosecution story. The PW3 has narrated his ordeal as also the injuries that he suffered which included head injuries and the fractures in his left arm/leg.

10. PW-4 is the Investigating Officer who recorded the statements of the witnesses and procured the injury report of the informant from Sub-divisional Hospital, Rosera besides recording the statement of the informant.

11. PW-5 is Dr. Kamrul Hoda who visited the Rajeshwar Hospital, Patna and found following injuries on the



person of the informant:-

“1. injury was examined by Dr. G.K. Sharan, Neuro surgeon

2(A) both bones of left hands were broken

2(B) Tibia was also broken on right hands

Identification Mark: Red Massa was found below side of chest

Opinion:- He has found injuries was serious for which all description was from Rosera Hospital.

12. Similarly, PW-6, Dr. Prashant Kumar, the Medical Officer of Sub-divisional Hospital, Rosera examined Umesh Sah initially and found following injuries:-

“1. Disruption of left arm with swelling clinically fracture

2. Swelling of knee joint 4Cm. x 8Cm. (defused swelling)

3. Lacerated wound on scalp frontal area size 4Cm. x 1.5Cm. In bone deep

4. Swelling right joint 4Cm.x2Cm.

5. Multiple abrasion on back

M/I old scar on right gluteal region

T/O Less than six hours

Weapon used-Hard and blunt substances

Nature of Injury -Patient was referred to Sadar Hospital, Samastipur/PMCH Patna. So final opinion may be obtained from that center. This injury report in his pen and signature which is exhibited as Ext. 3/1 on his identification.

13. PW7 is Sunil Kumar. According to him, he was also having tea at the tea-shop of Narain Das when the alleged occurrence took place. He also supported the prosecution story.



14. The exhibits marked in the trial are as follows:-

“LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	1	Entire Fardbeyan
2	1/1	Endorsement on Fardbeyan
3	2	Formal FIR
4	3	Injury Report
5	3/1	Injury Report
6	4 to 4/6	X-ray Plate of Umesh Sah
7	4/7	X-ray report
8	5	C.T. Scan Report
9	6	Discharge Summary”

15. It is to be noted that the trial commenced only with regard to Arun Sah and Laxminia Devi. Mr. Syed Ashfaq Ahmad, learned APP submits that since the appellant’s son was juvenile, his case was bifurcated. Further, the order in question does not throw light on the case of the wife of Arun Sah, namely, Sushila Devi nor the learned counsel for the appellant is able to answer on this point.

16. The defence of the appellant was complete denial of the entire episode with further submission that since the case of Gopal Sao subsequently got dismissed, there was no occasion to assault the agnate, Umesh Sah and only due to the land dispute, the family members have been implicated.

17. The learned Trial Court thereafter having



recorded the statement including the informant, Medical Officer as also the Investigating Officer and having gone through different exhibits on record including the injury reports found consistency there in the FIR *vis-a-vis* the Doctors' report of Sub-Divisional Hospital as also Rajeshwar Hospital, Patna. The Court, as such, came to the definite conclusion that the prosecution has been able to prove its case beyond doubt against the appellant. Accordingly, *vide* an order dated 06.04.2022, it found the **appellant, Arun Sah** guilty of the charge under Sections **307/34, 504,506/34 of the IPC** while Laxminia Devi was found guilty under Sections 325/34, 504,506/34 of the **IPC**. They were taken into custody and later, *vide* an order dated 13.04.2022, the sentence passed was as under:-

“Accordingly in the given facts and circumstances of this case, and taking into account details of this case and the resultant findings mentioned above, the convicts Arun Sah and Laxminia Devi in connection with this criminal case arising out of Rosera P.S. 177/2010 are sentences as follows:

(i) The convict Arun Sah is awarded a sentence rigorous imprisonment for 7 years and also a fine of Rs. 5,000 (Five thousand only) for the offence u/s 307/34 IPC. In case of default in payment of fine, the convict shall under go for 6 months simple imprisonment in addition to the said sentences.



(ii) The convict Arun Sah is further awarded a sentence of simple imprisonment for one year each for the offence u/s-504 and 506/34 IPC.

(iii) It is cleared that all the sentences shall run concurrently and the period already undergone in custody by this convict in connection with the present case, if any; shall be set off as per the provisions U/s 428 Cr.p.c.

The convict Laxminia Devi has given benefit of Section-4 of Probation and offender Act and she has to execute bond to maintain peace for one year.

18. Aggrieved by the said order, the present appeal.

19. Mr. Suraj Narain Yadav, learned counsel for the appellant submits that admittedly, both the appellant and the informant are agnates and there is land dispute between them. The reason assigned behind the occurrence that he was a witness to a case lodged by Gopal Sah has to be disbelieved inasmuch as the said case was later dismissed. In fact, the appellant had lodged a case against Gopal Sah. Thus, they were interested witnesses. It has further been submitted that the injuries are there but who assaulted the informant, the same could not be ascertained by the learned Trial Court beyond reasonable doubt and in that background, the conviction/sentence is fit to be set aside. The submission is that



though for a month, he was in custody earlier between 09.11.2010 to 22.12.2010, after his conviction, he is continuously in jail since 06.04.2022 and thus has completed around three years of sentence.

20. Mr. Ahmad, learned counsel representing the State, on the other hand, opposes the submissions put forward by the learned counsel for the appellant and submits that the entire prosecution story stands proved, fully supported by injury reports.

21. Having gone through the facts of the case and the materials on record as also the submissions of the parties, the fact remains that besides the informant who was assaulted, Gopal Sah and Manoj Kumar Sah, eyewitnesses appeared in the trial and supported the prosecution story. The assault theory is fully corroborated with the injury reports that has come on record both by the Rajeshwar Hospital, Patna as also by the Sub-Divisional Hospital, Rosera. Further, PW6, Dr. Prashant Kumar who was posted as the Medical Officer of **Sub-Divisional Hospital, Rosera** and **PW5, Dr. Kamrul Hoda** who visited the **Rajeshwar Hospital, Patna** have narrated that they examined the injured, Umesh Sah. The FIR injuries are found incorporated in the injury reports of Sub-Divisional



Hospital, Rosera and Rajeshwar Hospital, Patna. The appellant gave ‘Khanti’ blow to the informant causing fracture on his left arm and knee.

22. The learned Trial Court has recorded the facts in details which included the depositions of the witnesses. The exhibits too are on record. In that background, this Court is convinced that the Trial Court arrived at the right conclusion that the appellant is guilty of assault/injuries that were inflicted on PW5/Informant, Umesh Sah.

23. This takes the Court to only one conclusion. The appeal lacks merit. Accordingly, ordered.

24. The appeal stands dismissed.

(Rajiv Roy, J)

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