

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.501 of 2024

In
CRIMINAL APPEAL (SJ) No.1206 of 2024

Arising Out of PS. Case No.-114 Year-2019 Thana- SIKANDRA District- Jamui

Surendra Yadav, S/O Late Tunha Yadav, R/O Village and P.O- Bhullo, P.S-
Sikandra, Distt.- Jamui.

... .. Appellant

Versus

1. The State of Bihar
2. Bhim Yadav, S/O Tunha Yadav, R/O Village and P.O- Bhullo, P.S- Sikandra,
Distt.- Jamui.
3. Sharvan Yadav, S/O Tunha Yadav, R/O Village and P.O- Bhullo, P.S-
Sikandra, Distt.- Jamui.
4. Bablu Yadav, S/O Bhim Yadav, R/O Village and P.O- Bhullo, P.S- Sikandra,
Distt.- Jamui.
5. Chunni Devi, W/O Bablu Yadav, R/O Village and P.O- Bhullo, P.S-
Sikandra, Distt.- Jamui.
6. Rina Devi, W/O Sharvan Yadav, R/O Village and P.O- Bhullo, P.S- Sikandra,
Distt.- Jamui.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Sanjay Kumar Mishra, Advocate Mr. Ashok Kumar, Advocate
For the State	:	Mr. B.B. Singh, APP
For the Resp Nos. 2 to 6	:	Mr. Amar Prakash, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 21-02-2025

Heard learned counsel for the appellant, learned
Additional Public Prosecutor for the State and learned counsel for
respondent nos. 2 to 6.

2. This appeal has been preferred by the
victim/informant, under proviso to Section 372 of the Code of



Criminal Procedure, 1973 (in short 'CrPC') (now Section 413 of the Bhartiya Nagrik Suraksha Sanhita (in short 'BNSS')) for setting aside the judgment and order dated 23.12.2023 and 02.01.2024 respectively passed by learned Additional District & Sessions Judge-IV, Jamui (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 255 of 2021 arising out of Sikandara P.S. Case No. 114 of 2019. By the impugned judgment and order, the learned trial court has held that the prosecution failed to prove their case as alleged for the offences punishable under Sections 148, 307, 341, 354-B and 506/149 of the Indian Penal Code (in short 'IPC') even as the learned trial court, on the other hand, held the respondents guilty of committing the offences punishable under Sections 147, 323, 325/149 IPC but sentenced them only with the period undergone and by imposing a fine amount.

Prosecution Case

3. The prosecution case is based on a written application under the signature of the informant Surendra Yadav (PW-2) in which he has alleged as under:-

“On 05.05.2019 at 07:30 AM, the accused persons, namely, (1) Bhim Yadav (2) Bablu Yadav, (3) Chunni Devi, (4) Sharvan Yadav, (5) Sonu Kumar and (6) Rina Devi armed with



farsa, iron rod, *khanti* and *danda* entered into the house of the informant with an intention to kill, attacked the family members of the informant. Bhim Yadav (respondent no. 2) assaulted Rajkumari Devi, wife of the informant on her head repeatedly by *farsa* as a result whereof his wife started bleeding profusely from her head and after being injured, she fell down. Bablu Yadav (respondent no. 4) slammed him down on the earth and assaulted him repeatedly as a result whereof he suffered torn injuries at three places on his head and his entire body was not working because of the assault given to him by lathi. Chunni Devi and Rina Devi both assaulted his wife, who was lying unconscious, by lathi. On hearing *hulla*, his neighbours started assembling but Sharvan Yadav having a revolver in his hand threatened all of them saying that if anybody would come to rescue them then they would be killed. Sonu was standing on the '*rasta*' having a *lathi* in his hand and he was also taking side of Sharvan Yadav. When the daughter of the informant Chandni, who was already ill, came to save them then they assaulted his daughter, pressed her neck with an intention to kill whereafter his daughter fell down and became unconscious then all the accused persons started assaulting her by *danda* and when they thought that she has died then they left. After



some time, son of the informant came home after taking his tuition then he took all of them to police station. ”

4. On the basis of the written application, Sikandara P.S. Case No. 114 of 2019 dated 05.05.2019 was registered under Sections 341, 323, 448, 307, 354(B), 147, 148, 149 and 506 IPC. The occurrence took place at 07:30 AM and the formal FIR has been registered on the same day at 12:05 PM.

5. After investigation, police submitted a chargesheet bearing no. 149 of 2021 dated 29.06.2021 in which the Investigating Officer (I.O.) found that there are sufficient materials to proceed against the six named accused persons. After submission of chargesheet, the learned Magistrate took cognizance of the offences vide order dated 13.07.2021 and on finding that the case is triable by a court of sessions, committed the records to the court of sessions vide order dated 21.09.2021.

6. In the court of Sessions, the accused persons were explained the charges which they denied and claimed to be tried. They were charged for committing offences punishable under Sections 147, 148, 307, 341, 149, 323, 354-B, 325 and 506/149 IPC. On perusal of the charges available on the record, it is found that respondent nos. 2 to 6 were charged apart from other Sections, one under Section 307/149 IPC.



7. In course of trial, the prosecution examined as many as eight witnesses and exhibited five documents. The defence examined three witnesses and exhibited three documents. The list of witnesses and the documentary evidences adduced on behalf of the parties are being provided hereunder in a tabular form:-

List of Prosecution Witnesses

PW-1	Rajkumari Devi
PW-2	Surendra Yadav
PW-3	Dr. Ravindra Kumar
PW-4	Dhruv Kumar
PW-5	Rajesh Kumar
PW-6	Chandani Kumari
PW-7	Gautam Buddha
PW-8	Yugjit Kumar

List of Exhibits on behalf of Prosecution

Ext. P-1/PW-2	Signature of informant on written application
Ext. P-2/PW-3	Writing and Signature of doctor on injury report of Rajkumari Devi
Ext. P-3/PW-3	Writing and Signature of doctor on Injury report of Surendra Yadav
Ext. P-4/PW-5	Writing and Signature of the I.O. Rajesh Kumar on Charge-sheet
Ext. P-5/PW-7	Signature of S.H.O. Rajya Vardhan Kumar on Formal FIR

List of Defence Witnesses

DW-1	Kishori Yadav
DW-2	Deepak Kumar



DW-3	Rameswar Yadav
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List of Exhibits on behalf of Defence

Ext. D-1/court	C.C. of ordersheet dated 06.05.2019 to 13.04.2022 in Sikandara P.S. Case no. 115/19
Ext. D-2/court	C.C. of FIR in Sikandara P.S. Case No. 115/19 from Bholu Yadav against Surendra Yadav and Others
Ext. D-3/court	C.C. of Chargesheet in Sikandara P.S. Case No. 115/19

Analysis of the Evidences

8. In this case, Rajkumari Devi (PW-1) and Surendra Yadav (PW-2) are the two injured witnesses. As per the written application of PW-2, the accused persons entered into the house of the informant at 07:30 AM. They were armed with *farsa*, iron rod, *khanti* and *danda*. They attacked on the family of the informant. Bhim Yadav is said to have assaulted Rajkumari Devi, wife of the informant on her head repeatedly by *farsa* as a result whereof his wife started bleeding profusely from her head and after being injured, she fell down. The informant (PW-2) has further stated that Bablu Yadav slammed him down on the earth and assaulted him repeatedly as a result whereof the informant (PW-2) suffered torn injuries at three places on his head and his entire body was not



working because of the assault given to him by lathi. He has further stated that Chunni Devi and Rina Devi both assaulted his wife by lathi. On hearing hulla, his neighbours started assembling but Sharvan Yadav having a revolver in his hand threatened all of them saying that if anybody would come to rescue them then they would be killed. Sonu was standing on the *rasta* having a lathi in his hand and he was also taking side of Sharvan Yadav. He further stated that when his daughter Chandni who was already ill came to save them then they assaulted his daughter, pressed her neck with an intention to kill whereafter his daughter fell down and became unconscious then all the accused persons started assaulting her by danda and when they thought that she has died then they left. After some time, his son came home after taking his tuition then he took all of them to police station.

9. In course of evidence, Rajkumari Devi (PW-1) has deposed that Bhim Yadav had assaulted her by farsa on her head 3-4 times whereafter she had fallen down and became unconscious. She has further stated that when her husband Surendra Yadav came to save her then Bablu Yadav assaulted him by lathi. In her examination-in-chief, this witness has supported her case. She has stated that her treatment was done at Jamui and Sikandara. In her cross-examination, she has stated that the informant and the



accused are brothers and they reside in separate houses. She has given description of her residential house. She has stated that all the accused persons came to her house and started assaulting. She along with her husband and daughter had raised hulla whereafter the villagers came. She has stated that she had become unconscious, her husband and daughter were assaulted and blood had spread in a distance of two feet. Blood had fallen in the courtyard of the house. She has stated that blood had fallen on the clothes and her husband had suffered injuries on his head at three places and had also suffered assault on his body. She has stated that she had not gone to her house and was living in Jamui since the day of occurrence. She denied the suggestion that Bhim Yadav had lodged a case against her husband and only in order to save herself in the said case, she was falsely deposing.

10. Surendra Yadav (PW-2) is another injured who has also supported his prosecution case. He has stated that when he went to save his wife then Bablu Yadav slammed him down and assaulted him mercilessly by lathi and danda. He could not find that how many lathi he was assaulted by. This witness has been cross-examined. He has stated that he had lodged one case against the accused about 21 years ago because Bhim Yadav was keeping evil eyes on his wife. In the said case, the accused persons had



been acquitted. He has stated that he was living separately with his brothers for last twenty years and they have no unity in business. This witness has stated that when the accused persons came into his house, he was sitting in the hall and the door was open. He has stated that first of all his wife was assaulted and when he went to save her then he was slammed down on the earth. This witness has stated that he had suffered several injuries on his body, on his both legs, both hands and on the back as a result whereof, he could not move for a month. This witness has stated that Daroga Ji had recorded his statement in the police station. He has stated that with regard to this occurrence, Bablu had lodged a case against him in which he had not appeared.

11. Dr. Ravindra Kumar (PW-3) had been working in the Primary Health Center, Sikandra. He had examined Rajkumari Devi (PW-1) and Surendra Yadav (PW-2) and found the following injuries on their body:-

“Rajkumari Devi (PW-1)”

“(i) An injury over left side head measuring 2.5” × 1/2” × 1/2” in dimension.

(ii) An injury over right hand index finger, pain and tenderness/ swelling.

(iii) Generalised bodyache.

Mark of identification – A mole mark over right hand and a wound scar over face (near left angle of mouth).

X-ray report (Sadar Hospital, Jamui):- Plate No.4519/10992, 10992, 10992, 10992 (10992 plate no. Right hand index finger).



X-ray skull (AP & lat.), lower back-AP shows no bony lesion but X-ray right hand shows fracture of shaft of index finger.

Type of injury-injuries are caused by hard blunt substance

Opinion – All above injuries are caused by hard blunt substance and the nature of injury is grievous.

Surendra Yadav (PW-2)

(i) An injury over head left side above left ear measuring 1" $\times$ 1/2" $\times$ 1/2" in dimension.

(ii) Several injuries noted over head right side as:-

(i) 1" $\times$ 1/4" $\times$ 1/4" in measurement

(ii) 1/2" $\times$ 1/4" $\times$ 1/4" in measurement

(iii) 1 1/2" $\times$ 1/2" $\times$ 1/2" in measurement

(iii) Bodyache

Mark of Identification- A cut scar over back side of left thigh.

Type of injury – injury is caused by hard blunt substance.

Opinion – All above injuries are caused by hard blunt substance and nature of injury is simple.

X-ray report (Sadar Hospital, Jamui):-

shows X-ray skull (AP/lateral), X-ray left knee (AP/lateral) and X-ray (lower back (AP) shows no any bony lesions."

12. He has proved their injury reports as Exhibit 'P-2' and Exhibit 'P-3' respectively. In his cross-examination, he has stated that all injuries mentioned in the injury report of both injured persons are possible due to fall on the ground. He has stated that both injured persons had been discharged on the same day after half an hour.

13. Dhruv Kumar (PW-4) is the Sub-Inspector of Police who has stated that he had taken up the responsibility of investigation on 29.08.2019. He was transferred on 25.12.2020 whereafter he had handed over the investigation to the Officer-in-



Charge-cum-Sub Inspector Sadashiv Sah of Sikandra Police Station (not examined).

14. Rajesh Kumar (PW-5) is another Sub-Inspector of Police posted at Sikandra Police Station on 15.04.2020. He had taken over the investigation of this case by order of the Officer-in-Charge of the Police Station. He had recorded the progress report obtained from the Sub-Divisional Officer, Jamui in the case diary. He had submitted the chargesheet against Bhim Yadav, Sharvan Yadav, Bablu Yadav, Chunni Devi, Sonu Kumar and Rina Devi. He has proved the chargesheet which has been marked Exhibit 'P3/PW-5'. In his cross-examination, he has stated that he had no personal knowledge of this case.

15. Chandni Kumari (PW-6) is the daughter of the informant who has stated that the occurrence took place at about 07:00 AM when she was in her house. She has stated that in her house, her mother, father and younger brother Sanoj and Yugjit were there but Yugjit had gone to take tuition. She has stated that Prabhu Yadav had assaulted her mother by farsa, Bablu Yadav had assaulted her father by lathi and Sonu had assaulted her father by lathi. Bhim had assaulted by farsa and Sharvan was standing with a revolver. She has stated that Chunni Devi and Rina Devi had assaulted her mother and when she went to save her, then Bablu



Yadav caught hold of her by her neck and slammed her down and stood on her chest whereafter she became unconscious. In paragraph '4' of her deposition, she has stated that the occurrence took place in the courtyard of her house. Her statement was recorded by police one day after the occurrence. She has further stated in her cross-examination that Bablu was armed with lathi and she had made this statement before police.

16. Gautam Buddha (PW-7) is the I.O. of the case who had taken up the responsibility of investigation of this case by order of the Officer-in-Charge Rajvardhan Kumar. He has proved Exhibit 'P5'. In course of investigation, he had inspected the place of occurrence and recorded statement of the witnesses. He has stated that the place of occurrence is the *kachchi* road going to the house of the informant from the southern PCC road. This has been objected to by the prosecution. He had arrested accused Bhim Yadav and Bablu Yadav and had obtained the injury report of Rajkumari Devi and Surendra Yadav and had entered the same in the case diary. In his cross-examination, he has stated that with regard to the occurrence of the same day, Bablu Yadav had lodged a Sikandra P.S. Case No. 115 of 2019. He was not aware when the said FIR was sent to the court. He has stated that he had gone to the place of occurrence and inspected the same and according to



him, the place of occurrence is a private road outside the house. He has stated that he did not find any blood at the place of occurrence and the informant had not given blood stained cloth to him. He had also not demanded the clothes. He had recorded statement of Rajkumari Devi. She has not stated in her statement as to whether she had come in conscious condition or in unconscious condition in the police station. He has stated that the requisition for the injury report of Rajkumari Devi was issued by the Officer-in-Charge. This witness has further stated that there was prior enmity between the parties but he has not recorded on this point that what kind of enmity was there. Rajkumari Devi had not stated that Bhim Yadav had assaulted 3-4 times by farsa on her head and she had become unconscious. She had not made a statement that Surendra Yadav came to save her then Bablu Yadav had assaulted him by lathi.

17. We find from the statement of the I.O. in paragraph '7' that the defence has tried to take a contradiction from him with regard to the statements of PW-1 but it is evident from the deposition of Rajkumari Devi (PW-1) that when she was being examined, the defence did not invite her attention towards her previous statement made before police, therefore, what has been stated by the I.O. (PW-7) in paragraph '7' of his deposition cannot



be taken as a contradiction obtained with respect to the deposition of PW-1.

18. Yugjit Kumar (PW-8) is the son of the informant who was not present at the time of the occurrence in the house. It appears that he is not an eye witness to the occurrence and from his cross-examination, it further appears that his statement was not recorded before the police.

19. The defence has also examined three witnesses. Kishori Yadav (DW-1) has supported the prosecution case. This witness has given a statement that Surendra Yadav, Jagjit Yadav, Rajkumari Devi and Chandni Devi, all had done *marpit* and Bablu Yadav was beaten. He has further stated that they assaulted Surendra Yadav by the backside of the *tangi* on his head. We find from the deposition of DW-1 that his statements are not coherent and even as he says that Bablu was assaulted and he was treated by Doctor, the arrest memo of Bablu shows that there was no injury on his body. The defence has not brought on record any injury report of Bablu.

20. Deepak Kumar @ Rakesh Yadav (DW-2) has come as a defence witness and he has stated that Bablu Yadav, Chunni Devi and Bhim Yadav had received injuries. He has stated that both sides had land dispute. In his cross-examination, this witness



has stated that accused persons were present at the place of occurrence but they had not received any assault. This witness has stated that he had not received any summon from the court and had been brought to depose in court by Bablu Yadav and he was saying whatever he was told by Bablu Yadav.

21. Rajesh Yadav (DW-3) is another defence witness who has stated that Bablu Yadav had received injury on his head and when his wife Chunni Devi went to save him then she was assaulted by Rajkumari Devi and Chandni Devi. Surendra Yadav had lodged a false case against Bhim Yadav, Bablu Yadav and others. He had not received any notice from the court and had come to depose at the instance of Bhim Yadav and Sharvan Yadav. This Court finds that even though this witness says about the injury of the defence side, no injury report at all has been proved by the defence.

22. The accused persons were examined under Section 313 Cr.PC and in their statement while denying the materials brought by the prosecution, they pleaded innocence.

Findings of the Learned Trial Court

23. The learned trial court has held that the place of occurrence is the house of the informant. It has been also held that the prosecution had been able to prove its case under Sections



325/149, 323/149 and 147 IPC and hence, the accused are liable to be convicted under Sections 147, 323, 325/149 IPC but at the same time, learned trial court held that the prosecution failed to prove their case as alleged for the offence punishable under Sections 148, 307, 341, 354B and 506/149 IPC.

24. The learned trial court has, however, taken a view that the offences punishable under Sections 354-B/149, 307/149, 341/149 and 506/149 IPC have not been proved beyond all shadow of reasonable doubts. It has also been held that the accused persons came with common object armed with weapons, force and violence were used by unlawful assembly, therefore, any member of it, acting in prosecution of the common object would be liable for the offence punishable under Section 147 IPC but as per Section 148 IPC when act of rioting took place with deadly weapon only such act would attract the offence punishable under Section 148 IPC. In the opinion of the learned trial court, the accused persons came armed with *farsa*, *khanti*, iron rod and *danda* but injuries as caused would be showing no use of sharp-cutting weapon like *farsa* or *khanti* and the nature of injuries showing also no use of iron rods and moreover, it appears use of *lathi*, *danda* which may not be taken as a deadly weapon as



mentioned in Section 148 IPC, hence, in this case, Section 148 IPC would not be attracted.

Submissions on behalf of the Appellant

25. Learned counsel for the appellant has assailed the impugned judgment on various grounds. It is submitted that in this case prior enmity between the parties is fully established. The place of occurrence is the house of the informant. The learned trial court has held that the occurrence has taken place inside the house of the informant. The date, time and place of occurrence are, thus, fully established.

26. The grievance of the informant-appellant is that the learned trial court has acquitted the respondent nos. 2 to 6 of the charges under Sections 148, 307, 341, 354-B and 506/149 IPC. In his submissions, in this case, the evidences available on the record would fully establish the prosecution case and so far as Section 307 IPC is concerned, it stands attracted on the face of the consistent and reliable evidence of the two injured witnesses, namely, PW-1 and PW-2. The fact that the injuries found on the body of PW-2 are simple in nature would not be a ground to say that the offence under Section 307 IPC would not be attracted. Further, Section 341 IPC would also be attracted for the reason that the accused persons entered into the house of the informant



and assaulted him and his family members inside the house by wrongfully restraining them. The wrongful restraint in the opinion of learned counsel may take place inside the house also.

27. It is further submitted that the evidence of Rajkumari Devi (PW-1) would also prove that a case under Section 354-B IPC is made out. In her deposition, PW-1 has stated that she was assaulted 3-4 times on her head by Bhim Yadav using *farsa* and she had fallen down on the earth whereafter she had become unconscious.

Submissions on behalf of Respondent nos. 2 to 6

28. On the other hand, learned counsel for respondent nos. 2 to 6 would submit that the impugned judgment does not suffer from any infirmity. The learned trial court has rightly appreciated the entire evidence on the record. It has been held that no injury by sharp-cutting weapon was found on the body of Rajkumari Devi (PW-1). Her ocular evidence that she was inflicted 3-4 times *farsa* blow on her head has not been corroborated by the injury report (Exhibit 'P-2'). It is further submitted that there is no statement in her deposition that the accused persons had used criminal force with intent to disrobe her. She has not stated that any of these respondents had acted with an intention of disrobing



or compelling her to be naked, therefore, the ingredients of Section 354-B IPC would not be attracted.

29. It is further submitted that the charge under Section 307/149 IPC and other Sections of the IPC were framed but on perusal of the Charge Memo dated 08.10.2021, it would appear that the accused persons were not charged for assaulting Surendra Yadav (PW-2) who is the informant of this case. There was no charge for committing attempt to murder of Surendra Yadav (PW-2) and a bare perusal of the charge memo would show that the trial court had framed a charge under Section 307/149 IPC against the accused persons saying that they had in prosecution of the common object of the unlawful assembly in prosecution of the common object upon Rajkumari Devi intentionally caused grievous injury on the person of the accused-victim, in such circumstance that if by that act he would have caused death of the said victim, he would have been guilty of that murder. There is no whisper in the charge that the accused persons had intentionally caused hurt to Surendra Yadav (PW-2) in a manner as envisaged under Section 307 IPC.

30. Learned counsel submits that so far as the intentional assault said to have been caused upon Rajkumari Devi (PW-1), learned trial court found that Rajkumari Devi (PW-1) had suffered



three injuries: (i) in the left side of the head measuring 2.5cm×1/2cm×1/2cm in dia, (ii) right hand index finger pain and tenderness and (iii) body pain. Injuries were caused by hard and blunt substance. The injuries were grievous in nature, however, on finding that these injuries were caused by hard and blunt substance, the learned trial court held that it would attract the offence punishable under Section 325/149 IPC and convicted all the accused for the same offence. The learned trial court found that the injuries were not sharp cut injuries and allegation about assault with *farsa* on Rajkumari Devi (PW-1) was not being proved. In such circumstance, the learned trial court has rightly acquitted the accused persons of the charge under Section 307/149 IPC.

31. It is further submitted that the learned trial court has not committed any error in taking a view that the charge under Sections 148, 341/149 and 506/149 could not be proved by the prosecution.

Submission on behalf of the State

32. Learned Additional Public Prosecutor for the State has endorsed the submissions of learned counsel for respondent nos. 2 to 6 but at the same time, it is submitted that the charge framed by the learned trial court seems defective inasmuch as in the Charge Memo dated 08.10.2021, there is no mention of the



assault caused on Surendra Yadav (PW-2) and the injuries suffered by him. The materials on the record in form of chargesheet and the case diary were available before the learned trial court and it appears that while the trial court has mentioned the name of Rajkumari Devi (PW-1) as one who had been allegedly intentionally caused grievous injuries, the name of Surendra Yadav (PW-2) has not been mentioned in the charge memo. This is a defect in the charge memo and for that reason, it appears that the case of Surendra Yadav as disclosed in the FIR and found true in course of investigation could not be considered in accordance with law. It is pointed out that Section 464 CrPC provides that if the Court of Appeal is of the opinion that a failure of justice has occasioned due to error/omission or irregularity in the charge, the Appellate Court may order that a charge be framed and the trial be recommended from the point immediately after framing of charge and in the case of an error, omission or irregularity in the charge, direct a new trial to be held upon charge framed in whatever manner it thinks fit.

33. Learned Additional Public Prosecutor would, further, submit that this Court being a Court of Appeal may take an appropriate view of the matter keeping in view the aforementioned provision together with the provision as contained under Section



386 CrPC (now Section 427 of BNSS) wherein an Appellate Court hearing an appeal from an order of acquittal reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be or find him guilty and pass sentence on him according to law.

Consideration

34. We have heard learned counsel for the appellant, learned Additional Public Prosecutor for the State and learned counsel for respondent nos. 2 to 6 as also perused the trial court's records.

35. In this case, it is apparent on the face of the record that learned trial court has convicted respondent nos. 2 to 6 for the offence under Sections 147, 323, 325/149 IPC and they have been sentenced with the period undergone and fine of Rs.1000/- Rs.5000/- and Rs.1000/- each respectively. The respondent nos. 2 to 6 have not appealed against the said conviction and sentence. They have accepted the judgment to that extent.

36. Under proviso to Section 372 CrPC, a victim has a right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. In the present case, the informant-appellant is aggrieved by and dissatisfied with the



judgment of the learned trial court because the court has acquitted the accused of the charges under Sections 148, 307, 341, 354-B and 506/149 IPC and have convicted them for a lesser offence. It is evident from the discussions made in the impugned judgment that the place of occurrence in this case is the house of the informant. The accused persons entered into the house of the informant on the given date and time and assaulted PW-2 and his wife (PW-1). It is true that PW-1 claimed that she was assaulted by Bhim Yadav on her head by *farsa* 3-4 times but her ocular evidence has not been corroborated by the injury report (Exhibit 'P-2'). She has claimed that she was also assaulted by other accused by *lathi*. The injuries found on the body of PW-1 were caused by hard and blunt substance, and that has been proved, therefore, the learned trial court has convicted the accused persons of the offence under Section 325/149 IPC. This has not been appealed against, therefore, we need not enter into any discussion on the merit of the said finding of the learned trial court which resulted in conviction of the accused under Section 325/149 IPC. So far as charge under Section 354-B/149 IPC is concerned, we have found force in the submission of learned counsel for respondent nos. 2 to 6 that the evidence of PW-1 would not show that she was assaulted with an intention of disrobing or compelling her to be naked. So, in our



considered opinion, the learned trial court has not committed any error in acquitting respondent nos. 2 to 6 under Section 354-B IPC.

37. So far as the charge under Section 323/149 IPC is concerned, it appears that the learned trial court has held that all accused persons named in this case and who faced the trial in this case for forming unlawful assembly and assaulted Surendra Yadav, his wife and his daughter Chandni Kumari and by that they voluntarily caused hurt to them and hence, prosecution has proved their case as alleged for the offence punishable under Section 323 IPC. We have found from the charge memo that the charge under Section 323/149 IPC was framed in the following words:-

“That you, on or about the same day of same time at same place voluntarily caused hurt to Rajkumari Devi in prosecution of the common object and thereby committed an offence punishable under Section of the 323/149. ...”.

38. It is evident from the charge memo that it talks of only the hurt caused to Rajkumari Devi and not to Surendra Yadav and Chandni Kumari. It is evident that there is a clear omission and error in framing of charge by the learned trial court.

39. We further find from the judgment of the learned trial court that while considering as to whether charge under Section 307/149 IPC is made out or not, the learned trial court has discussed the injuries found on the body of PW-1 and PW-2 both.



Learned trial court seems to have proceeded to consider these evidences on the record to prove this charge taking as if the accused persons are facing charge for intentionally assaulting PW-1 and PW-2 both but the fact remains that the charge memo by which charge under Section 307/149 IPC has been framed, does not mention the name of Surendra Yadav (PW-2) who claims to have been brutally assaulted repeatedly by Bablu Yadav (Respondent no. 4) and had suffered several injuries on his head. We quote the charge framed under Section 307/149 IPC as under:-

“.... That you, on or about the same day of same time at same place you along with accused persons in prosecution of the common object of the unlawful assembly in prosecution of common object upon Rajkumari Devi intentionally caused grievous injuries on the person of the accused-victim under such circumstances that if by that act you have caused the death of the said victim you would have been guilty of murder and thereby committed an offence punishable under 307/149 of the Section Indian Penal Code.”

40. It is evident that no charge was explained to the accused persons for committing intentional hurt and causing injuries on the person of the informant (PW-2), in such circumstance, this Court is of the considered opinion that the plea of the informant-appellant before this Court that the learned trial court has committed grave error in acquitting the accused persons



of the charge under Section 307/149 IPC and it has resulted in travesty of justice seems to be justified. Since no charge has been framed by the learned trial court in respect of the assault and hurt caused upon Surendra Yadav (PW-2) and respondent nos. 2 to 6 had no opportunity to defend themselves against any such charge, it would not be possible for the Appellate Court to take a view as to the guilt of respondent nos. 2 to 6 of the charge under Section 307 IPC or 307/149 IPC, as the case may be.

41. Section 464 CrPC reads as under:-

“464. Effect of omission to frame, or absence of, or error in, charge. – (1) No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may, –

- (a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge;
- (b) in the case of an error, omission or irregularity in the charge, direct a new trial to



be had upon a charge framed in whatever manner it thinks fit;

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.”

42. We also reproduce Section 386 CrPC hereunder:-

“386. Powers of the Appellate Court. – After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may –

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction –

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c) in an appeal for enhancement of sentence



- (i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or
 - (ii) alter the finding maintaining the sentence, or
 - (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;
 - (d) in an appeal from any other order, alter or reverse such order;
 - (e) make any amendment or any consequential or incidental order that may be just or proper; Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement;
- Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.”

43. It is evident on a bare reading of Section 464 CrPC that no finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges but where in the opinion of the court of appeal a failure of justice has in fact been occasioned thereby, the court of appeal may in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommended from the point



immediately after the framing of the charge. Clause (b) of Sub-Section (2) of Section 464 CrPC clearly provides that in the case of error, omission or irregularity in the charge, the appellate court may direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

44. In the present case, while we do not intend to make any comment on the judgment of the learned trial court in respect of the charges proved by the prosecution, we are of the considered opinion that an omission to frame a charge under Section 307 IPC for the intentional assault and hurt caused to Surendra Yadav (PW-2) has resulted in failure of justice. We, therefore, in exercise of our appellate power, direct the learned trial court to frame a charge under all such Sections in which respondent nos. 2 to 6 have been acquitted and after framing of charges for the intentional assault and hurt caused to Surendra Yadav (PW-2), learned trial court shall proceed from the stage on the point immediately after the framing of the charge.

45. To that extent the impugned judgment acquitting the accused persons of the charges under Sections 148, 307, 341, 506/149 IPC is set aside. We would not interfere with the acquittal under Section 354-B IPC. The accused persons-respondent nos. 2 to 6 are directed to surrender in the court below within a period of six weeks from today.



46. Since respondent nos. 2 to 6 were on bail, on their surrender, they would be enlarged on bail on furnishing proper sureties to the satisfaction of the learned trial court. If they do not turn up within the prescribed period, the learned trial court shall take coercive steps to procure their presence.

47. This appeal stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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