

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1103 of 2024

In
CRIMINAL APPEAL (SJ) No.968 of 2022

Arising Out of PS. Case No.-352 Year-2011 Thana- RAMNAGAR District- West Champaran

Aftab Alam, Son of Md. Quamar Reyaz, R/O Village- Manguraha, P.S.- Jogia
Ram Nagar, Dist.- West Champaran.

... .. Appellant

Versus

1. The State of Bihar
2. Afroz Sai, Son of Nurhasan Sai, R/O Vill.- Manguraha, P.S.- Ram Nagar,
Dist.- West Champaran.
3. Kamrod Sai, Son of Nurhasan Sai, R/O Vill.- Manguraha, P.S.- Ram Nagar,
Dist.- West Champaran.
4. Nausad Sai, Son of Harun Sai, R/O Village- Manguraha, P.S.- Ram Nagar,
Dist.- West Champaran.
5. Ziaul Haque Sai, Son of Harun Sai, R/O Village- Manguraha, P.S.- Ram
Nagar, Dist.- West Champaran.
6. Safroz Sai, Son of Harun Sai, R/O Village- Manguraha, P.S.- Ram Nagar,
Dist.- West Champaran.

... .. Respondents

Appearance :

For the Appellant	:	Mr. N. A. Shamsi, Advocate
For the State	:	Mr. Sujit Kumar Singh, Addl PP
For the Resp Nos. 2 to 6	:	Mr. Manoj Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 11-02-2025

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

2. The present appeal against acquittal has been filed
against the judgment dated 06.12.2021 passed by learned 1st



Additional Sessions Judge, Bagha (West Champaran) in Sessions Trial No. 725 of 2013 (Registration No. 4686 of 2014) arising out of Ram Nagar P.S. Case No. 352 of 2011 whereby and whereunder the accused-Respondent No. 2 to 6 were convicted under Sections 448/34 and 323/34 of the Indian Penal Code (in short 'IPC'). Safroz Sai, accused-respondent no.6 was also convicted under Section 324 IPC and Ziaul Haque Sai, accused- respondent no. 5 was convicted under Section 325 IPC. All the accused – respondent nos. 2 to 6 were acquitted of the charges under Sections 307, 379, 341, 504 read with Section 34 IPC and they all have been given the benefit of Probation of Offenders Act.

Prosecution Case

3. The prosecution case is based on the written application of Md. Safi (PW-1). In his written application (Exhibit '1'), he has stated that on 18.12.2011 (Sunday) at 12:00 PM Afroz Sai (respondent no. 2) was throwing cow dung on his land in front of his door to which his wife, namely, Arjun Nesha told Afroz Sai not to do so but Afroz Sai started abusing her and on his call his brothers Firoz Sai, Kamrod Sai (respondent no. 3), Safroz Sai (respondent no. 6) and Ziaul Haq Sai (respondent no. 5), Naushad Sai (respondent no. 4) armed with '*bakhua*' and '*danda*' formed an unlawful assembly and all of them, with an intention to kill his



wife ran towards her, she also ran towards her house and entered into the house. Thereafter, the accused persons entered into her house and started assaulting her. Ziaul Haq assaulted on her hip with '*danda*' and Firoz Sai assaulted on her head with '*bakhua*' as a result of which she fell down. When the informant and his grand son Shoib came to save her, Naushad Sai took Rs.1000/- from Shoib and also assaulted him. On hulla, when people came, the accused persons fled away. Thereafter, the informant took his wife to the hospital for treatment.

4. On the basis of the written application, a formal FIR was registered being Ram Nagar P.S. Case No. 352 of 2011 dated 18.12.2011. After investigation, police submitted chargesheet being Chargesheet No. 378 of 2012 dated 18.12.2011 against all the accused – Respondent Nos. 2 to 6 showing Firoz Sai absconder.

5. Learned Magistrate took cognizance under Sections 448, 341, 323, 324, 325, 379, 307, 504/34 IPC vide order dated 24.01.2013. Finding that the offences of which cognizance was taken by the learned Magistrate are triable by the court of Sessions, the learned Magistrate committed the records to the court of Sessions *vide* order dated 06.10.2015. Accordingly, on receipt of the records, the learned trial court on 11.06.2014 framed the



charges under Sections 323, 307, 324, 325, 379, 341, 448, 504 read with Section 34 IPC against respondent nos. 2 to 6. Charges were explained to them which they denied and claimed to be tried.

6. In course of trial, the prosecution examined as many as twelve witnesses and exhibited several documents. The defence examined only one witness, namely, Hasan Emam and exhibited several documents. The list of prosecution witnesses and documents exhibited on behalf of prosecution and defence are mentioned hereinbelow in tabular form:-

List of Prosecution Witnesses

PW-1	Md. Safi (informant)
PW-2	Md. Shoib
PW-3	Arjun Nesha (wife of the Informant)
PW-4	Kamrool Hoda
PW-5	Manoj Sah
PW-6	Shekh Meghu
PW-7	Aftab Alam
PW-8	Gausul Azam @ Gyasuddin
PW-9	Bhagwan Pandey (I.O.)
PW-10	Dr. Kiran Shankar Jha
PW-11	Ramnath Sah
PW-12	Ramprit Yadav (I.O.)

List of Exhibits on behalf of Prosecution

Exhibit ‘1’	Signature of the informant on written application
Exhibit ‘2’	Signature of S.H.O. Krishnandan Jha on written application
Exhibit ‘3’	Writing and Signature of Dr.Kiran



	Shankar Jha on the injury report of Arjun Nesha
Exhibit ‘3/1’	Writing and Signature of Dr.Kiran Shankar Jha on the injury report of Md. Shoib
Exhibit ‘4’	Injury report of Md. Shoib
Exhibit ‘4/1’	Injury report of Arjun Nesha

List of Exhibits on behalf of Defence

Exhibit ‘A’	Sale deed and signature of witnesses on it
Exhibit ‘A/1’	
Exhibit ‘B’	Evidence of Shekh Meghu in Case No. GR-273/87
Exhibit ‘C’	Ordersheet of TR-1646/12
Exhibit ‘D’	FIR, Ramnagar P.S. Case No. 112 of 2012
Exhibit ‘F’	Chargesheet, Ramnagar P.S. Case No. 112 of 2012

Findings of the Learned Trial Court

7. Learned trial court after analyzing the evidences found that all the accused persons have assaulted the informant’s wife and his grand son in their house. Learned trial court after taking the evidence of PW-1 (informant), PW-4, PW-5, PW-7 and PW-8 found that respondent no. 5 assaulted the informant’s wife (PW-3) by lathi resulting in fracture of her hip joint which is corroborated by the evidence of doctor (PW-10). PW-10 found the injury grievance in nature caused by hard and blunt object.



8. Learned trial court considered the provision of Sub-Section (4) of Section 320 IPC and found that the prosecution has been able to prove the case for fracture of the joint of the body. Learned trial court found that prosecution has not been able to prove its under Section 341 and 504 IPC. Further, learned trial court found the evidences of prosecution witnesses are contradictory for making out a case under Section 379 IPC

9. Learned trial court, after considering all the evidences available on the record found that all the accused-persons with common intention entered into the house of the injured, namely, Md. Shoib and wife of the informant Arjun Nesha and assaulted them. Hence, learned trial court held that the prosecution has been able to prove the guilt of the accused-respondent nos. 2 to 6, hence, they are convicted for the offences under Sections 448/34 and 323/34 IPC. Further, Safroz Sai, accused-respondent no.6 was also convicted under Section 324 IPC and Ziaul Haque Sai, accused-respondent no. 5 was convicted under Section 325 IPC. Whereas all the accused – respondent nos. 2 to 6 were acquitted of the charges under Sections 307, 379, 341, 504 read with Section 34 IPC and they have been given the benefit of Probation of Offenders Act.

Submissions on behalf of the Appellant

10. Learned counsel for the appellant submits that the prosecution has examined altogether 12 witnesses and all have



supported the prosecution case and there is no inconsistency or contradiction in their evidences. It has been duly proved that the occurrence took place in front of the house of the informant on the given date and time of occurrence in which wife of the informant was seriously injured and taken to hospital. Learned counsel submits that the learned trial erred in acquitting the respondent nos 2, 4 and 6 of the charges under Sections 307, 379, 341, 504 read with 34 IPC though learned trial court found that the occurrence had taken place and all the accused persons assaulted the wife of the informant in her house with deadly weapon.

11. It is further submitted that learned trial court committed error of law, even after holding all the accused guilty for the offences under Sections 448/34 and 323/34 IPC, and held Safroz Sai, accused-respondent no.6 guilty of the offence under Section 324 IPC and Ziaul Haque Sai, accused- respondent no. 5 guilty of the offence under Section 325 IPC, has given them benefit of the Probation of Offenders Act.

Submissions on behalf of the Respondents

12. Learned counsel for the respondents submits that learned trial court has passed a well reasoned judgment after considering the evidences available on the record. It is submitted that all the prosecution witnesses have stated that the quarrel broke



out all of a sudden and there is no material to show that the occurrence took place in a pre-planned manner. Learned counsel submits that the alleged weapons used by the accused persons are normally found in the house of an agriculturist. Learned counsel submits that though the wife of the informant was assaulted on her head but she had sustained only one injury on her scalp. There was no repetition of blow by either Safroz Sai or Ziaul Haque.

13. Referring to medical evidence, learned counsel submits that the Doctor (PW-10) had examined the injured Md. Shoib who had sustained a simple injury on his right shoulder and Arjun Nesha who had sustained an incised wound of 2"x1/2"x scalp deep on right frontal parietal region of her head which caused head injury which is the only injury suffered by her on her scalp. She had also suffered injury on the left hip joint which was fractured. Learned counsel submits that learned trial court has already convicted Safroz Sai for the offence committed under Section 324 IPC and Ziaul Haque for the offence under Section 325 IPC. All the accused persons have been convicted for the offence punishable under Sections 448/34 and 323/34 IPC.

14. Learned counsel submits that it is a case of land dispute between the parties and the quarrel broke out all of a sudden without any planning for commission of the offence and



the weapon used are the normal agricultural equipment which are available in the house of an agriculturist. These facts clearly establish that there was no intention or knowledge on the part of the accused persons to cause ultimate harm to the informant and his family members and as such, learned trial court has rightly appreciated the evidences available on the record. Learned counsel submits that the prosecution has failed to bring on record any materials to show that the accused-respondents were involved in any offence prior to the present case and learned trial court has rightly given them benefit of Probation of Offenders Act.

Consideration

15. Having heard learned counsel for the appellant, learned Additional Public Prosecutor for the State and learned counsel for the accused-respondent nos. 2 to 6 as also on perusal of the records, we find that the genesis of the occurrence in the present case is a land dispute between the parties, they are on litigating terms for last several years and on the date of occurrence i.e. 12.02.2011 when Afroz Sai (Respondent No.2) was throwing cow dung in front of the house of the informant, the informant objected to the same saying that it was his '*rasta*'. The wife of the informant asked Afroz Sai (Respondent No.2) not to do so whereupon Afroz Sai assaulted her by lathi and Ziaul Haque



assaulted on her head by a '*bakhua*' as a result whereof, she started bleeding.

16. All the prosecution witnesses have stated that the quarrel broke out all of a sudden. The prosecution has not led any evidence to show that the occurrence took place in a pre-planned manner. The kind of weapon used by the accused persons are normally kept in the house of an agriculturist and it further appears that the wife of the informant was though assaulted on her head but she had sustained only one injury on her scalp. There was no repetition of blow by either Safroz Sai or Ziaul Haque.

17. We further find that the Doctor (PW-10) had examined the injured in the Primary Health Center at Ramnagar on 18.12.2011 at 02:40 PM. Md. Shoib who is an injured in this case had sustained a simple injury on his right shoulder. Arjun Nesha had sustained an insized wound of 2"x1/2"x scalp deep on right frontal parietal region of her head which caused head injury. This is the only injury suffered by her on her scalp. She had also suffered injury on the left hip joint which was fractured. Learned trial court has already convicted Safroz Sai for the offence committed under Section 324 IPC and Ziaul Haque for the offence under Section 325 IPC. All the accused persons have been



convicted for the offence punishable under Sections 448/34 and 323/34 IPC.

18. Section 307 IPC reads as under:

“307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to ¹[imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.— ²[When any person offending under this section is under sentence of ¹[imprisonment for life], he may, if hurt is caused, be punished with death.

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued. A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of ³[the first paragraph of] this section.

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servant to place it on Z's table. A has committed the offence defined in this section.”

1. Substituted by Act 26 of 1955, S.117 and Sch., for “transportation for life” (w.e.f. 1-1-1956).

2. Inserted by Act 27 of 1870, S. 11.

3. Inserted by Act 12 of 1891, S. 2 and Sch. II.



19. It is well settled that to bring home a case under Section 307 IPC, it is not essential that bodily injury capable of death should have been inflicted and it would have been sufficient if there was present an intention coupled with some overt act in execution thereof. What is important to take note of is that it is only when an overt act is done with an intention or knowledge and in such circumstances that if by that act, death is caused, the assailant would be held guilty of murder. There are catena of judgments on this point and the test to determine the intention of the accused is to be gathered from various circumstances like motive, the circumstances under which the occurrence took place, weapon used and at which body part injury was caused, the nature of injury and severity of blows are the other facts which are to be looked into.

20. On a complete reading of the evidences available on the record, we find that it is a case of land dispute between the parties and the quarrel broke out suddenly. There was no planning for commission of the offence and the weapon used are the normal agricultural equipment which are available in the house of an agriculturist. We are unable to take a view that intention or knowledge on the part of the accused is proved from the evidences on the record.



21. In the circumstances, we find no error in appreciation of the evidences by the learned trial court.

22. This appeal has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

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CAV DATE	
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