

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4789 of 2023

Arising Out of PS. Case No.-25 Year-2008 Thana- JALE District- Darbhanga

Jitendra Prasad Mahto Son Of Late Bal Krishna Mahto Resident Of Village-
Doghra Ps- Jalley, Distt- Darbhanga

... .. Appellant/s

Versus

1. The State of Bihar
2. Ravindra Prasad Mahto Son Of Late Bal Krishna Mahto Resident Of Village- Doghra, Ps- Jalley, Distt- Darbhanga
3. Chandrabhusan @ Vimal Mahto Son Fo Late Kishori Mahto Resident Of Village- Doghra, Ps- Jalley, Distt- Darbhanga
4. Kiran Devi Wife Of Chandrabhushan Mahto @ Vimal Mahto Resident Of Village- Doghra, Ps- Jalley, Distt- Darbhanga
5. Shashi Bhushan Mahto Son Of Late Kishori Mahto Resident Of Village- Doghra, Ps- Jalley, Distt- Darbhanga

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Bindhya Keshri Kumar, Sr. Advocate
	:	Mr. Neeraj Kumar Alias Sanidh, Advocate
For the Respondent/s	:	Mr. Syed Ashfaque Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

6 23-01-2025 Heard Mr. Bindhya Keshri Kumar, learned Senior

Counsel for the appellant Mr. Syed Ashfaque Ahmad, learned

APP for the State.

2. The present appeal has been preferred against the

Judgment of conviction and sentenced dated 27.07.2023 passed

by Additional Sessions Judge I, Darbhanga in S.Tr. No.

412/2010 arising out of Jalley P.S. Case No. 25/2008 whereby

and whereunder learned Judge was pleased to acquit

respondents no. 4 and 5 for offences under section 308, 323, 341



and 504 of I.P.C. and respondent no. 1 and 2 have been convicted under section 323 and 341 of I.P.C but learned judge considering the respondents being first offenders giving this benefit released the respondent No. 1 and 2 in light of under section 3 of Probation of offender Act 1958.

3. As per the prosecution story, the informant who is the present appellant alleged that his wife had gone to old house to offer prayer for Lord Basuki where his own brother (respondents herein) as also their wife firstly abused and later Ravindra Prasad Mahto and Chandra Bhushan Mahto @ Vimal Mahto (respondent no. 2 & 3 respectively) assaulted by bamboo stick causing injury on her head. The informant appellant was also assaulted causing injury as the locals arrived they were saved and this led to the F.I.R. The occurrence has been attributed to the land dispute.

4. The investigation took place followed by submission of charge-sheet and the learned Trial Court took note of the fact that:

- (i) they are family members;*
- (ii) the place of occurrence is the ancestral house;*
- (iii) Chandra Bhushan Mahto who has been alleged to have assaulted was also injured;*
- (iv) there was no pre-meditation on conspiracy*



angle;

(v) they were not armed at the beginning of the occurrence and at the heat of the moment picked up the bamboo stick lying there.

5. In that background, the learned Trial Court hold that there was no deliberation or intention to assault or to commit murder either of the informant and/or his wife, in addition the medical report shows the injury to be simple in nature and not dangerous to life. The complainant too had only nature of abrasion and as such, the commission of offence under section 308 of the Indian Penal Code was not made out.

6. Though the learned Trial Court held that the respondents are guilty of committing offence under section 323 and 341 of the Indian Penal Code, the Trial Court on the point of sentence held that convict Ravindra Mahto is a very frail person having ill health and is about eighty years of age while another convict Chandra Bhushan Mahto is also in his sixties, they do not have criminal antecedents and come from humble background, the trial has continued for 13 long years and they are not involved in any other offence after that.

7. In that background, the Court held that they be given a chance to serve the society as better human being and accordingly, they were released on admonition under section 3



of the Probation of Offender Act 1958 (henceforth for short 'the 1958 Act') and further directed to be released on personal bond.

8. Aggrieved the present petition.

9. It is the case of the petitioner through the learned Senior Counsel that admittedly, the occurrence took place, the injury was on the head and as such, they should not have been convicted under minor sections. Further, once the conviction took, place instead of sending them to jail, they were let free under 'the 1958 Act'. In that background, the same is fit to be interfered with after issuing notice to the respondents.

10. Learned APP submits that the order in question is perfect and needs no interference.

11. This Court has gone through the facts of the case and the submission of the parties. The Trial Court as recorded above has given reasons why the conviction took place under section 323 and 341 of the Indian Penal Code, the injury was found to be simple in nature, there was no pre-meditation, the respondents were not armed initially and only picked up the bamboo stick lying nearby and as such, it rightly arrived at the conclusion that they are not found guilty under section 308 and 504 of the Indian Penal Code. Further, beside Ravindra Mahto and Chandra Bhushan Mahto, against others namely Kiran Devi



and Shashi Bhushan Mahto no case is made out.

12. Accordingly, it convicted Ravindra Mahto and Chandra Bhushan Mahto under section 323 and 341 of the Indian Penal Code.

13. Again, so far as the applicability of ‘the 1958 Act’ is concerned, the learned Trial Court gave its reason inasmuch as while Ravindra Mahto was looking frail in his 80s, Chandra Bhushan Mahto was also 60 years of age at the time order was passed, 13 long years took to conclude the trial, in between, there was nothing on record to show that they again committed any occurrence and in that background, the order seems to be fully justified. The purpose of the Court is to better the convict so that he can serve the society and not to stack them in the jail at the drop of the hat.

14. There is no merit in the petition. Accordingly, the appeal stands dismissed.

(Rajiv Roy, J)

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