

Arising Out of PS. Case No.-208 Year-2014 Thana- PANDAU District- Madhubani

... .. Appellant/s

Versus

- Respondent/s

For the Appellant/s : Mr. Amarnath Kumar, Adv.
Mr. Bipin Kumar, Adv.
For the Respondent/s : Mr. Anita Kumari Singh, APP

2 04-03-2025 Heard Mr. Amarnath Kumar, learned counsel for the
appellant and Mrs. Anita Kumari Singh representing the State.

2. The present appeal has been preferred for:

for setting aside the order dated 19.10.2024 passed by Sri Anjani Kumar Gond, learned District & Additional Sessions Judge-IX, Madhubani in Sessions Trial No. 132 of 2015 (Arising out of Pandaul Police Station Case No. 208 of 2014) whereby and where under the learned Sessions Judge-IX, Madhubani has pleased to acquitted the Respondent No. 2 in offence punishable under Section 341/34, 323/34, 326(A)/34, 304/34 of Indian Penal Code arising out of Pandaul Police station Case No. 208 of 2014.



3. As per the prosecution story, the informant alleged that the respondent no. 2 was running a Jewellery shop and on the date of occurrence, his father was cleaning some dust, it affected him and this led to scuffle. Allegation is that he threw acid on the informant/father of the informant as also a tailor master, which resulted into injuries. Further allegation is that the respondent no. 2 is alcoholic and as such, the FIR was lodged wanting action against him.

4. The police investigated the matter, **charge-sheet** was submitted on **28.01.2015** under Section 341, 323, 326(a), 504/34 of the IPC. Thereafter, the **cognizance** was taken under Section 341, 323, 326(A), 504 of the IPC on **30.01.2015**, **charges framed** on **18.07.2015**. However, while the respondent no. 2 was exonerated of the charges under Sections 326(a)/34 and 504/34 of the IPC, was convicted under Section 341/323/34 of the IPC. Accordingly, vide an order dated 19.10.2024, under Section 3 of the Probation of Offenders Act, 1958, after the admonition, the respondent no. 2 was let off.

5. Aggrieved, the present appeal.

6. It is the case of the appellant that when the prosecution witnesses supported the FIR theory that acid was thrown on the informant's side, the Trial Court was not justified



in exonerating him of the said charges. Further, they were also abused in the public but again Section 504/34 was dropped. In that background, an interference is required as the acquittal under Section 326(a) and 504 of the IPC is injustice to the appellant.

7. Mrs. Anita Kumari Singh represent the State and she has taken this Court to the findings of the learned Trial Court to show that:

(i) firstly, the injury on the person of the victim has/have been found to be simple in nature;

(ii) the original documents relating to the said injuries were not presented before the appropriate Medical Officer nor opinion taken;

(iii) It was informed to the Court in course of examination/cross examination by the Medical Officer that the said injury can also occur due to sprinkling of hot water.

8. She submits that as such, when the appropriate medical documents were not presented for an opinion and the second theory was also there that it could be due to sprinkling of



hot water coupled with the fact that the injury was found to be simple in nature, Section 326(a) of the IPC was rightly dropped in the present case.

9. She further submits that so far as Section 504 of the IPC is concerned, again, while the case of the informant was that they were abused, no specific word/statement was put forward in course of deposition, in that backdrop, the learned Trial Court was justified in dropping Section 504 of the IPC.

10. Learned APP further submits that so far as assaulting the victim by hands/fist is/are concerned, the Court came to the conclusion that the same has been proved beyond doubt and in that background, the appellant was convicted under Section 341 and 323/34 of the IPC. She further submits that when both the Sections of the IPC clearly defines the imprisonment below two years and the respondent no. 2 had no criminal antecedent, naturally, the **Section 3 of the Probation of Offenders Act, 1958** (henceforth, for short '**the Act**') will come into play.

11. **Section 3 of the Probation of Offenders Act, 1958** read as follows:

***3. Power of Court to release
certain offenders after admonition-***



When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.

12. Learned APP, as such, submits that the order needs



no interference and the appeal is fit to be dismissed.

13. Having heard the parties and perusing the records, the opinion of this Court is completely in line with the submissions put forward by learned APP. The learned Trial Court has given reasons why Section 326(a) as also Section 504/34 of the IPC is/are not applicable in the present case. The injury was found to be simple in nature and there is/was two opinion that it could also be due to the sprinkling of hot water. Thus, he rightly observed that the prosecution could not prove the applicability of Section 326(a) of the IPC against the respondent no. 2.

14. Further, so far as abuse part is concerned, the Court averred that nothing specific was recorded as to what kind of abuse words were used against the informant/family members. In that background, it rightly came to the conclusion that Section 504 of the IPC has also not been proved.

15. So far as the conviction under Section 341, 323/34 of the IPC are concerned, naturally, when the aforesaid Sections prescribe imprisonment below two years and the respondent no. 2 had no criminal antecedent, **Section 3 of 'the Act'** came into play which was extended to him by the learned Trial Court.

16. In that background, there is no merit in the appeal,



it fails and is accordingly, dismissed.

17. Before parting, this Court would like to put on record its word of appreciation for Mr. Amarnath Kumar, learned counsel appearing for the appellant for the assistance rendered in the matter.

(Rajiv Roy, J)

Vijay Singh/-

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