

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.622 of 2023

Arising Out of PS. Case No.-24 Year-2016 Thana- SURSAND District- Sitamarhi

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Janki Das @ Jangali @ Jangali Das Son Of Bhola Das R/O Village- Radhaur,
P.S.- Sursand, District- Sitamarhi

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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with

CRIMINAL APPEAL (SJ) No. 516 of 2023

Arising Out of PS. Case No.-24 Year-2016 Thana- SURSAND District- Sitamarhi

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1. Rakesh Das Son Of Buddhu Das Resident Of Village - Radhaur, P.S.-
Sursand, District - Sitamarhi.
 2. Fekhu Das @ Fekan Das Son Of Buddhu Das Resident Of Village -
Radhaur, P.S.- Sursand, District - Sitamarhi.
 3. Pankaj Das Son Of Buddhu Das Resident Of Village - Radhaur, P.S.-
Sursand, District - Sitamarhi.
 4. Buddhu Das Son Of Bhola Das Resident Of Village - Radhaur, P.S.-
Sursand, District - Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with

CRIMINAL APPEAL (SJ) No. 656 of 2023

Arising Out of PS. Case No.-24 Year-2016 Thana- SURSAND District- Sitamarhi

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Raj Deo Das Son Of Ram Briksh Das R/O Village- Radhaur, P.S.- Sursand,
District- Sitamarhi

... .. Appellant/s

Versus



The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 622 of 2023)

For the Appellant/s : Mr. Radheshyam Sharma, Advocate

Mrs. Smiti Bharti, Advocate

For the State : Mr. Anand Mohan Prasad Mehta, APP

(In CRIMINAL APPEAL (SJ) No. 516 of 2023)

For the Appellant/s : Mr. Radheshyam Sharma, Advocate

Mrs. Smiti Bharti, Advocate

For the State : Mr. Mukeshwar Dayal, APP

(In CRIMINAL APPEAL (SJ) No. 656 of 2023)

For the Appellant/s : Mr. Radheshyam Sharma, Advocate

Mrs. Smiti Bharti, Advocate

For the State : Mrs. Abha Singh, APP

**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT**

Date : 09-02-2026

All three appeals are taken up together as they arise out of the same trial bearing Sessions Trial No. 533 of 2017, arising out of Sursand P.S. Case No. 24 of 2016.

2. The prosecution case, as emerging from the FIR, is that altercation took place on account of property dispute in which the appellants and other five co-accused, who were later on found innocent by the police and not sent up for trial, assaulted the informant and his wife and son by *baans*, *balla* and *danda* (which are made of bamboos). Subsequently, the informant was taken to local Primary Health Centre and thereafter, he was referred to Sadar Hospital, Sitamarhi and died after few days.



3. During trial, the charge was framed under Sections 341, 323, 504 and 304 read with Section 34 of the Indian Penal Code against all the appellants and after trial, all the appellants were found guilty under Sections 341, 323, 304 Part II and 504 read with Section 34 of the Indian Penal Code and they have been sentenced to R.I. for one month under Section 341 IPC, R.I. for one year under Section 323 IPC, R.I. for ten years and fine of Rs. 10,000/- under Section 304 Part II IPC and R.I. for two years under Section 504 IPC. All the sentences are directed by learned Trial Court to run concurrently and fine was directed to be realized in favour of the victim. Learned Trial Court has also directed D.L.S.A., Sitamarhi to pay compensation to the victim as per Section 357A Cr.PC.

4. During trial, altogether 14 witnesses were examined who are as follows : (i) P.W.-1, Lakhindra Ram, (ii) P.W.-2, Jivachi Devi, (iii) P.W.-3, Rinku Devi, (iv) P.W.-4, Sabindra Das, (v) P.W.-5, Asiya Devi, (vi), P.W.-6, Nandan Mahto, (vii) P.W.-7, Kiran Das, (viii) P.W.-8, Navin Sahani, (ix) P.W.-9, Tapsi Das, (x) P.W.-10, Dr. R.P. Sahai, (xi) P.W.-11, Gariman Yadav, (xii), P.W.-12, Awadesh Pathak, (xiii) P.W.-13, Dr. Anil Shandil and (xiv) P.W.-14, Dr. Sakil Anjum.

5. The following documents were also exhibited



during trial : (i) P1 – Injury report of Gudari Das, (ii) P2 – Charge Sheet No. 149 of 2016, (iii) P2/1 – Charge Sheet No. 116 of 2016, (iv) P3 – Postmortem Report and (v) P4 – Injury report of Gudari Das proved by Dr. Sakil Anjum.

6. Heard learned counsel for the appellants and learned APP for the State.

7. Learned counsel for the appellants submits that the manner of the occurrence clearly shows that there was never intention by the appellants to cause death. The appellants have allegedly used *baans, balla and danda*, which are not dangerous arms. Secondly, as per allegation, altercation took place in course of property dispute and occurrence has occurred during the spur of the moment and there is no deliberation or intention on the part of the appellants to cause death.

8. He further submits that as per the injury report, as emerging from the postmortem report, there was only simple injury on knee and hand and there was no grievous injury, nor any fatal injury caused by the appellants even as per the best case of the prosecution. The following injury was found on the person of the victim : Swelling on the left knee, measuring 1” x 1”, swelling with abrasion of left hand ¼” x ¼” incise. Both injury are simple in nature caused by hard and blunt substance.



There was also complaint of pain in abdomen and hence, the victim was referred to Sadar Hospital for further investigation where he died. As per the postmortem report, cause of death has been described as abdominal injury. It is also mentioned in the postmortem report that there was surgical mid line laparotomy wound of length 14 cm, location at 10 cm below, Xiphoid process and 9 cm above pubic symphysis with supra cubic colostomy back an drench tube in left side mid abdomen lumbar region. On exploration there was pus in abdominal cavity with adhesion of intestine and me sentry and abdominal viscera which was pale and full of pus. There was surgical repair of intestine visualized at one place and no other repair was visualized due to adhesion and pus.

9. Learned counsel for the appellants further submits that there is nothing on record to show that the surgery done in the stomach was subsequent to the altercation. The postmortem report suggests that this surgery was done much prior to the occurrence and finding of the postmortem report shows that the victim had septicemia out of that surgery and hence, the alleged occurrence has nothing to do with the death of the informant.

10. As per the material on record, the best case of the prosecution is that the appellants have caused simple injury on



knee and hand of the victim as per which maximum liability of the appellants is under Section 323 IPC and they have been already in custody for more than three years since 18.11.2022 and even prior to the judgment of conviction, they had spent six months in jail. Hence, even after conviction of the appellants under Section 323 IPC, they are required to be set at liberty. He also submits that for the injury caused, D.L.S.A., Sitamarhi is already directed to pay compensation as per Section 357A Cr.PC and the appellants belong to SC/ST community and they are too poor to pay any fine and they have already spent in custody for more than what is required under Section 323 IPC. Hence, the fine is also liable to be set aside.

11. Learned APP for the State fairly accepts that there is nothing on record to show that the surgery, which has been found in the postmortem report, has been done subsequent to the occurrence and he also accepts that as per the apparent injury, as caused by the appellants, is simple in nature which was caused by hard and blunt substance as per the postmortem report. As such, the appellants are liable to be convicted for the injury caused by them. However, he submits that there is no illegality or infirmity in the impugned judgment and the appeal is liable to be dismissed.



12. I considered the submissions advanced by both the parties and perused the material on record.

13. I find that as per the postmortem report, there is simple injury on the knee and hand of the informant caused by hard and blunt substance which is found to be simple in nature. I also find that there is no proof that the surgery was done subsequent to the occurrence. Hence, the surgery has nothing to do with the alleged occurrence and the manner of causing assault also shows that there was no intention on the part of the appellants to cause death. They have used *baans*, *balla* and *danda* which are made of bamboos and they are not dangerous arms.

14. I also find that the prosecution has not proved the connection between the injury caused by the appellants and the death of the victim. In such situation, benefit of doubt must go to the accused for want of sufficient evidence to show that the victim has died of the injury caused by the appellants. As such, for the simple injury caused by the appellants, the appellants are liable to be punished under Section 323 IPC. Hence, the appellants are found to be guilty under Section 323 IPC, but they have already spent more than 3 years and maximum punishment for the offence under Section 323 is one year.



15. Hence, the present appeal is allowed in part convicting the appellants under Section 323 IPC, but acquitting them of all other charges.

16. In view of the maximum punishment under Section 323 IPC being one year and the appellants being already in custody for more than three years, the appellants are directed to be set at liberty forthwith and order of fine is also set aside. D.L.S.A., Sitamarhi is also directed to ensure that the victim or his legal heirs get compensation as per law and if it not paid, it must be paid within one month.

(Jitendra Kumar, J)

Shoaib/-

AFR/NAFR	NAFR
CAV DATE	N/A
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