

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.219 of 2016

Arising Out of PS. Case No.-127 Year-2010 Thana- AAJAM NAGAR District- Katihar

Tarteela @ Tartila Begum Wife of Md. Ashfaque Alam Resident of Village-
Kanhria, P.S.-Azamnagar, Dist.-Katihar, presently residing at Village-
Salmari, P.S.-Azamnagar, Dist.-Katihar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Avanish Kumar Singh, Advocate Mr. Mukul Kumar Singh, Advocate Mr. Kr. Bal Govind Singh, Advocate
For the State	:	Mr. A.M.P. Mehta, APP

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 29-04-2026

Heard learned counsel appearing for the appellant and
learned Additional Public Prosecutors appearing for the State.

2. This appeal has been filed challenging the
judgment of conviction and order of sentence 27.01.2016 passed
by the learned Additional Sessions Judge IV, Katihar in Sessions
Trial No. 100 of 2013 arising out of Azamnagar P.S. Case No.
127 of 2010 whereby and whereunder this appellant has been
convicted for committing offence under Section 326 of the



Indian Penal Code and has been sentenced to undergo rigorous imprisonment for three years with a fine of Rs. 500/- and in case of default of fine, to further undergo simple imprisonment for one month.

3. The prosecution case, in brief, is that on 17.09.2010 at about 10 AM, co-accused Md. Ashfaq Alam, who happens to be husband of this appellant and elder brother of the informant, came and started protesting regarding lodging of a theft case concerning and machine and started removing parts of machine. It is alleged that during altercation, this appellant came and assaulted on the head of informant with *Khanti*.

4. In this case, in order to bring home guilt of this appellant, the prosecution has examined altogether five witnesses. P.W. 1, namely Wahid Rajjak, is son of informant. P.W. 2, namely Sakia Begum, is wife of informant and sister of this appellant. P.W. 3, namely Md. Mustakim, is the informant and injured witness. P.W. 4, namely Dr. Rajeev Nayan Prasad, is the doctor. P.W. 5, namely Paramanand Prasad Singh, is the Investigating Officer.

5. On the other hand, the defence has produced one defence witnesses, i.e., D.W. 1, namely Md. Jiyauddin.



6. After hearing the parties, the learned trial court convicted this appellant and sentenced her, as indicated in the opening paragraph of this order.

7. Learned counsel appearing for the appellant assails the order of conviction and sentence on various grounds. He contends that the impugned order of sentence and conviction are fit to be quashed and set aside on the basis of facts and circumstances. The learned trial court has committed grave illegality in facts and law both. He submits that appellant is none else than own sister-in-law (*Bhabhi*) of the informant and also sister of wife of the informant. As a matter of fact, on account of petty family feud, an altercation took place between the parties. For the same set of occurrence, a counter-case has also been lodged by appellant's side against informant and others. Moreover, there is material contradiction in the statement of the witnesses. Informant, in his written report, alleges that he lost his consciousness upon being hit on his head, however, in his cross-examination, he deposed that he did not lose his consciousness but simply fell on the ground. P.W. 1 who happens to be son of informant, said that this appellant gave repeated blows upon his father, whereas, as per injury report, informant sustained only one injury on his head. P.W. 2, who happens to be



wife of informant, has stated that she has not seen the actual occurrence and she arrived after hearing the noise and thus, is a hearsay witness. It is further contended that as per allegations, both the son of informant and his wife were present at the place of occurrence, however, no one intervened to stop this appellant from assaulting the informant, which is highly doubtful. It is further contended that the *Khanti*, which was used in the alleged occurrence, has not been seized and produced. It is lastly contended that the alleged incident occurred spontaneously in the spur of the moment over a minor dispute and it is alleged that only a single blow was inflicted, with no repetition of the attack. Thus, the prosecution has failed to prove the case beyond reasonable doubts and the trial court has wrongfully convicted this appellant ignoring material contradictions and hence, the appellant is fit to be acquitted.

8. On the other hand, learned Additional Public Prosecutor for the State has submitted that there is no need of any interference in this appeal since the prosecution witnesses have supported the corroborated the prosecution story and there is no reason to differ with the findings of the learned trial court and the judgement of conviction and order of sentence are justified and legal.



9. From going through the rival submissions, evidences and upon perusal of the records, this Court finds that the impugned order of conviction and sentence suffers from material infirmity. In this case, there is material contradiction in the deposition of the witnesses. None of the witnesses have claimed to have seen the alleged occurrence. Moreover, both the parties are close relatives and there is no allegation of repetition of assault and the weapon, which was allegedly used in commission of the offence, has also not been recovered.

10. Thus, in view of the facts and circumstances of the case, as discussed above, it is evident that the prosecution has failed to prove the guilt of the appellant beyond reasonable doubt and thus, the appellant is entitled to be given the benefit of doubt.

11. In that view of the matter, the impugned judgment of conviction and order of sentence dated 27.01.2016 passed by the learned Additional Sessions Judge IV, Katihar in Sessions Trial No. 100 of 2013 arising out of Azamnagar P.S. Case No. 127 of 2010 are hereby set aside with respect to this appellant only.

12. Appellant, above named, is acquitted of all the charges and is discharged from the liability of the bail bonds in



connection with this case.

13. Accordingly, this appeal stands allowed.

14. Interlocutory application/s, if any, also stands disposed off.

(Prabhat Kumar Singh, J)

shashank/-

AFR/NAFR	NAFR
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