

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.166 of 2016**

Arising Out of PS. Case No.-150 Year-2012 Thana- PUPRI District- Sitamarhi

1. Md. Sahabuddin S/o Md. Zabbar
2. Md. Zahid S/o Abdul Sattar
3. Amina Khatoon W/o Md. Zahid
4. Tarannum Khatoon W/o Md. Sagir, All R/o Village- Birauli, P.S.- Pupri, District- Siwamarhi

... .. Appellants

Versus

1. State of Bihar
2. Samina Khatoon W/o Jannat Hussain, R/o Village- Birauli, P.S.- Pupri, District- Sitamarhi

... .. Respondents

Appearance :

For the Appellants : Mr. Dinesh Jha, Advocate
Mr. Abhineet, Advocate
For the State : Mr. Z.Hoda, APP

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

Date : 22-10-2024

The present appeal has been preferred against the impugned judgment of conviction and order of sentence both dated 27.02.2016, whereby all the four appellants have been acquitted of charge under Section 307 of the Indian Penal Code but convicted under Section 341, 323 and 504 of the Indian Penal Code and two appellants Md. Shahabuddin and Md. Zahid have also been found guilty under Section 324 of the Indian Penal Code and they have been sentenced to undergo imprisonment for one month under Section 341 of the Indian Penal Code and to undergo imprisonment of one year under Section 323 of the Indian Penal Code and imprisonment of two



years under Section 504 of the Indian Penal Code. Two Appellants Md. Shahabuddin and Md. Zahid have also been sentenced to rigorous imprisonment for three years under Section 324 of the Indian Penal Code and they have been also directed to pay fine of Rs. 5,000/- each and in case of default to pay the fine, they have been also directed to undergo additional rigorous imprisonment for three months. All the sentences were directed to run concurrently.

Prosecution case.

2. The prosecution case as emerging from the written report given by the informant, Shamima Khatoon is that at about 5:00 PM in the evening on 24.08.2012 when she had gone to the house of one Md. Mushtaque to ask for money, at that time itself the Appellant Md. Shahabuddin came out from his house and started abusing her and asked why she had gone to that *mohalla*. When she prohibited him from abusing, the Appellant, Md. Zahid, Md. Sagir Naddam, Amina Khatoon and Tarannum Khatoon also came out of their house and started hitting her by fist and legs. After seeing that the informant was being beaten, her cousin Md. Dablu and Md. Maqsood Alam came to save her. They were also assaulted by the Appellants. Md. Sahabuddin and Md. Zahid hit Md. Dablu on his head by iron rod. Md.



Sahabuddin, Md. Zahid and Md. Sagir Naddam also assaulted her brother Md. Maqsood Alam by *chhura* causing injury on his head and they also assaulted him by iron rod on his arm. Md. Zahid and Amina Khatoon snatched chain from her neck and golden ear ring from her ear and *payal* from leg.

Factual background.

3. On the basis of the aforesaid written report, Pupri P.S. Case No. 150 of 2012 was registered against five accused persons including the Appellants for the offence punishable under Section 341, 323, 324, 379, 504, read with Section 34 of the Indian Penal Code.

4. After cognizance, the case was committed to the Court of Sessions and the Court of Sessions has framed charge against four accused persons including the Appellants under Section 341, 323, 504 and 307 read with Section 149 of the Indian Penal Code and later on the case of Md. Sagir was separated by the order dated 29.10.2015. The charge was read over to the accused which they pleaded not guilty and claimed to be tried. Hence, trial started.

5. During trial, altogether six prosecution witnesses were examined. P.W.-1 is Md. Jannat Hussain, who is father of the Informant. He is a chance witness. He reached the place of



occurrence on *hulla*. P.W.-2 is Md. Maqsood Alam, who was also injured in the occurrence. P.W.-3 is Md. Dablu who had also got injured in the occurrence. P.W.-4 is Shamima Khatoon, who is the informant herself and also received some injury. P.W.-5, Phooldeo Chaudhary, who is the I.O of the case and P.W.6 is Shri. Krishna Kumar Jha, who had examined all the victims of the case, namely, Maqsood Alam, Md. Dablu and Shamima Khatoon. In his examination, he has found incised wound of the size of 6 cm x 1 cm x 1 cm on occipital region, besides bruise on other parts of his body. After examination of Md. Dablu, P.W.-6 has found lacerated wound measuring 12 cm x 2 cm x 2 cm on scalp besides bruise on other parts of his body. After examination of Shamima Khatoon, P.W. 6 has found bruise on her person.

Statement under Section 313 Cr.PC

6. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.PC confronting them with incriminating circumstances which came in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During this examination, they admitted that they had heard the evidence of prosecution witnesses against them. But they did not explain any



circumstance, though they claimed that the prosecution evidence is false and they are innocent and have been falsely implicated.

Findings of the Trial Court.

7. Learned Trial Court after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment of conviction and order of sentence whereby the appellants have been found guilty and sentenced accordingly.

8. I Heard learned counsel for the Appellants as well as learned APP for the State.

Submissions of the parties.

9. Learned counsel for the Appellants submits that the impugned judgment of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned Trial Court has not applied its judicial mind and erroneously passed the judgment of conviction and order of sentence. He further submits that the non-official witnesses are close family members and hence, they are interested and not reliable. He has also submitted that the testimony of the non-official witnesses are full of contradictions. He also submits that there is contradictions between the ocular evidence as well as medical evidence. He also submits that Section 324 is not applicable in



the alleged facts and circumstances and most importantly, he also submits that even after the judgment of conviction is upheld, all the Appellants are entitled to get benefit of Section 4 of the Probation of Offenders Act.

10. However, learned APP for the State defends the impugned judgment of conviction and the order of sentence submitting that there is no illegality or infirmity in the impugned judgment and order of sentence, because prosecution has proved its case against the appellant beyond all reasonable doubts and he has been appropriately sentenced.

11. I have thoroughly perused the materials on record and given thoughtful consideration to the submissions advanced by both the parties.

Appreciation of the evidences and finding of this Court

12. I find that altogether six witnesses were examined. Out of them, three witnesses are injured witnesses, namely, P.W.-2, P.W.-3 and P.W.-4, who is also the informant and P.W.-1 is a close family member of the Informant being father of the informant. She had also reached the place of occurrence on *hulla* and he has also seen the occurrence.

13. It is settled principle of law that the testimony of any family member of the victim cannot be discarded only on



account of his/her relationship with the victim. At most, the Court is required to be cautious while appreciating the evidence of such witnesses. Moreover, it is also settled principle of law that the status of injured witnesses stand on different footing. Their evidence cannot be easily discarded unless there are compelling reasons. Moreover, after perusal of the evidence on record, I find that there is no major contradictions and discrepancies in their evidence going to the root of the prosecution case. They are also consistent in their evidence. Hence they are trustworthy. Moreover, I find that as per the medical evidence, one of the victims has received incised injury and one of the victims has received lacerated wound. I also find that they have committed the *actus reus* in furtherance of their common intention. Hence, learned Trial Court has rightly convicted all the Appellants under Section 341, 323 and 504 of the Indian Penal Code and two Appellants Md. Shahabuddin and Md. Zahid additionally under Section 324 of the Indian Penal Code.

14. However, in view of the aforesaid facts and circumstances of the case, all the Appellants deserve to be given the benefit as provided under Section 4 of the Probation of Offender Act. They are already on bail. Accordingly, they are



directed to enter into a bond without any surety to appear and receive sentence when called upon during two years from today and in the meantime, they are directed to keep peace and be of good behaviour. After entering into this bond, they would be discharged from their liabilities under their bail bond.

15. However, in view of Section 5 of the Probation of Offenders Act, the victims Md. Maqsood, Md. Dablu and Shamima Khatoon are entitled to get compensation from the Appellants. Hence, Md. Shahabuddin and Md. Zahid are directed to pay Rs. 7,000/- each to the victims towards compensation, whereas Amina Khatoon and Tarannum Khatoon are directed to pay Rs.3,000/- each to the victims towards their compensation. Out of the compensation amounts payable by the Appellants, Md. Maqsood and Md. Dablu would get Rs.8,000 each and rest amount of Rs. 4,000/- would go to Shamima Khatoon.

16. Accordingly, the present appeal is part allowed, upholding the conviction but modifying the sentence.

17. In view of Section 12 of the Probation of the Offenders Act, 1958, the Appellants shall not suffer any disqualification on account of the conviction in the present appeal.



18. The record of the case be returned to the Trial Court forthwith.

19. Interlocutory application/s, if any, also stand disposed of.

(Jitendra Kumar, J.)

Chandan/-

AFR/NAFR	NAFR
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