

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.626 of 2022**

Arising Out of PS. Case No.-497 Year-2015 Thana- MUZAFFARPUR TOWN District-
Muzaffarpur

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VICKY KUMAR S/o Kameshwar Prasad Gupta R/o village- Madanpur, P.S.-
Kalyanpur, District- East Champaran, at present R/o Mohalla- Jai Prakash
Nagar, Koluha, Paigambarpur, Bairiya, P.S.- Ahiyapur, District- Muzaffarpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv
For the State : Mr. Abimanyu Sharma, APP
For the Informant : Mr. Purushottam Sharma, Adv

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 02-12-2023

1. Heard Mr. Ajay Kumar Thakur, the learned Advocate for the appellant and Mr. Abhimanyu Sharma, the learned APP for the State. The informant has been represented by Mr. Purushottam Sharma, the learned Advocate.
2. The sole appellant has been convicted under



Sections 326, 506, 324, 354 and 307 of the Indian Penal Code vide judgment dated 08.07.2022 passed by the Additional District & Sessions Judge-XII, Muzaffarpur in Sessions Trial No. 599/2015 arising out of Muzaffarpur Town P.S. Case No. 497/2015 and by order dated 14.07.2022, he has been sentenced to undergo R.I. for life, to pay a fine of Rs. 10,000/- and in default of payment of fine, to suffer further imprisonment of six months for the offence under Section 307 IPC; R.I. for six years, to pay a fine of Rs. 5,000/- and in default of payment of fine, to suffer six months imprisonment for the offence under Section 354 IPC; R.I. for two years with a fine of Rs. 2,000/- and in default, imprisonment for four months for the offence under Section 324 IPC. No separate sentence has been awarded under Section 326 IPC. For the offence under Section 506 IPC, the appellant has been awarded a



sentence of one year rigorous imprisonment with a fine of Rs. 1,000/- and three months additional imprisonment in default of payment of fine. The sentences have been ordered to run concurrently.

3. The victim (PW6), a student of I.Sc., is alleged to have been stabbed multiple times by the appellant in her house. According to the F.I.R. lodged by the victim herself a day after the occurrence in the hospital on 07.07.2015, the appellant had come to her house on 06.07.2015. She acted as a good host and offered snacks and water to him. While she was about to go upstairs to inform her father on telephone about the arrival of the appellant, the appellant closed the door from inside and attempted to outrage her modesty. Sensing some foul play, the victim tried to prevent the appellant from doing so. This infuriated the appellant, who stabbed her a number of times. The victim was also dragged by her hair and



pressed against the kitchen wall. She shouted for help which attracted the attention of very many persons, who arrived at the place of occurrence. She was taken to Prashant Hospital for treatment but before she had left the house, she had instructed and requested the persons who had assembled at her house for not letting the appellant go as he had inflicted such injuries on her. She had to remain hospitalized for about ten days. Most of the injuries suffered by her were grievous in nature.

4. On the basis of the afore-noted statement made by her in the hospital before the Sub - Inspector of Town Police Station on 07.07.2015, Muzaffarpur Town P.S. 497/2015 was registered for investigation for the of fences under Section 354, 324, 326, 307 and 506 IPC.
5. The police after investigation submitted chargesheet against the appellant and he was put



on trial.

6. The Trial Court, after having examined fifteen witnesses on behalf of the prosecution and one on behalf of the defense, convicted and sentenced the appellant as aforesaid.
7. Mr. Thakur, the learned Advocate has submitted that though there are corresponding injuries on the person of the victim, who herself has deposed that she was assaulted by the appellant; but the time of arrest of the appellant from the house of the victim suggests something else than what has been narrated by the victim.
8. The appellant, apparently, was arrested on 07.07.2015 by the I.O. (PW8) from the house of the victim. The deposition of other witnesses would reveal that the appellant was kept confined in the house while the victim was taken to hospital for treatment. Under which circumstances, the appellant was kept in confinement in the house of



the victim remains unknown. It has been shown to us from the records that the police had reached the place of occurrence only on the day of occurrence i.e. on 06.07.2015. Had it not been the case, there would not have been any seizure on that day. Ext. 1 is the seizure list, which is dated 06.07.2015. From the afore-noted seizure list, one can find that one steel knife measuring approximately 18 cms. and a mobile telephone was seized. The seizure list was signed by Munna Kumar (PW1), who in his deposition has also stated about such seizure by the police on 06.07.2015 only. If this be so, there would have been no necessity of showing the arrest of the appellant on 07.07.2015.

9. We have examined the evidence of the Investigator in some detail. There does not appear to be any confusion that according to him, the arrest was made in 07.07.2015. In that case, either it was a slip of tongue or there was some



confusion in the mind of the I.O. (PW8).

10. We tend to agree with the submission of the State Counsel that if the record shows that the seizure was made on 06.07.2015, then, it is in no way difficult to infer that police had reached the place of occurrence on the same day. However, the very fact that I.O. (PW8) has suggested a different date of the arrest of the appellant, definitely puts a question mark on the deposition of Investigator; but that by itself would not make the case completely doubtful.

11. The mother of the victim was not present at the place of occurrence. According to the victim, she had gone to the school to teach. She has been examined as PW5 at the trial. She is very specific in her deposition that she was informed by a local person about an occurrence of stabbing of her daughter some one. She immediately proceeded to Prashant hospital but



was not allowed to meet her daughter. She then came back to her house and from outside of her house, she peeped inside the window of the house and found that the appellant was sitting there. This, therefore, again gives us the impression that the appellant was confined in the house of the victim with the aid of the locals who had arrived on the shouts of the victim.

12. Taking all these statements together, it appears that the I.O. has wrongly stated about the arrest of the victim. Such confusion has also arisen because of report of medical examination of the appellant also. The appellant is said to have been bit by the victim while trying to extricate herself from the stranglehold, in his hand and chest. Cut injuries were found on the fingers and arms of the appellant. He appears to have been examined by the Doctor on 08.07.2015. There does not appear to be any serious discrepancy in the date of the



medical examination of the appellant except for the fact that the Doctor, who had examined him, namely, doctor Abhishek Tiwary (PW12) claims to have examined the appellant on 06.07.2015. The investigation reports, however, indicate that the requisition for the examination of the appellant was filed on 08.07.2015 and the report of PW12 is also dated 08.07.2015.

13. Mr. Thakur, however, urges that in view of the statement made by the doctor (PW12) of his having examined the appellant on 06.07.2015, the injuries noted in the report dated 08.07.2015, therefore, cannot be believed. The injuries may have been different which may not have been in sync with the ocular testimony of the victim herself. According to his suggestion, there might have been some injuries on the person of the appellant because he was attempted to be confined in the house of the victim by many persons of the



locality. Specific cut marks on specific body parts of the appellant was deliberately brought on record in order to provide a verisimilitude of the allegations made in the F.I.R. and during the Trial.

14. Apart from this, it has been an attempt of the appellant to establish that the parties were known to each other from before. Had it not been the true, the victim, in an injured condition while giving her fardbeyan would not have given the exact residential address of the appellant, who is a resident of different district. Even otherwise, the victim and other witnesses have stated that there was some relationship between the parties. Perhaps the father of the victim was a customer of the father of the appellant, who ran a jewellery shop in the locality.

15. Was there any marriage proposal between the parties ?

16. Was there any dissent on the part of either



of the parties ?

17. Nothing is known about it.
18. Thus, it would be difficult for us to come to a conclusion that the act of assault was an act of a jilted lover or a person who could not suffer the denial of a relationship. In either case, the victim would not have been stabbed so many times. Did the appellant harbour the intention of outraging the modesty of the victim? Does not appear to be so despite the averment of the victim in her fardbeyan that the appellant had made some overtures giving an idea to the victim that perhaps her dignity would be outraged. Precisely for this reason, she had protested. The door of the room also was closed by the appellant. The appellant is said to have used a knife which he was carrying with him.
19. Mr. Thakur has argued that from the seizure list itself, it would appear that it was a big



kitchen knife measuring about 18 cms. which could not have been carried by person in his pocket. Even otherwise, the seizure list does not depict that there was any blood stains on it. This makes the report of the forensic expert about the weapon being smeared with blood is rendered insignificant.

20. What then would have had been the occasion for using a kitchen knife ? Was the appellant attacked or attempted to be thrown out from the house ? Was any force used for his not having consented to marry the victim ? We do not know as the evidence is incomplete with respect to these aspects of the matter. It appears to be rather strange that if the appellant did not have an evil eye on the victim and was received by the victim well in her house, he would stab the victim for no good reason.

21. In any view of the matter, it was nobody else who had caused such injuries on the



victim.

22. The victim also cannot be completely disbelieved specially when she had to undergo treatment for about ten days in the hospital.

23. According to the learned counsel appearing for the informant, she was completely disfigured and, therefore, her academic pursuits were put to a complete stop. There is no evidence on record to indicate that there was any house burglary where somebody else could have caused such injuries on the victim who was alone in the house.

24. Thus, for all practical purposes, it appears that the appellant was the perpetrator of the crime. We say so for the reason that the appellant was seen in the house of the victim by her mother, PW1 and many others, who had come on the call of the victim.

25. The narration of the victim about her



shouting for help attracting the attention of many persons, who came and took her to hospital and she also made a request to such persons not to allow the appellant to leave the place, appears to be very logical. But the nature of injuries on the victim, though many in number, does not appear to be inflicted with the intention of causing her death. There appears to be no immediate cause for the appellant to attack the victim for ending her life. Even if it were, it does not get reflected from the trial proceedings.

26. For these reasons that the conviction of the appellant under Section 354 and 307 of the IPC is unjustified for the reason of paucity of evidence in that connection.

27. The conviction of the appellant under Sections 324, 326, and 506 of IPC is, however, sustained.

28. Looking at the age of the appellant at



the time of the occurrence and the circumstance which do not reflect the exact intention of the appellant especially of his intention of killing the victim, we have deemed it appropriate to alter the sentence to one for the period of custody, which he has already undergone.

29. The appellant shall, however, be required to pay the fine imposed upon him under all the counts.

30. We have been informed that the appellant is in jail since the date of his arrest and thus has served for more than eight years.

31. The appellant is directed to be released from jail forthwith, unless his detention is required in any other case.

32. The appeal is thus partially allowed.

33. Let a copy of this judgment be communicated to the Superintendent of concerned jail for record and compliance.



34. Let the records of this case be also
returned to the concerned Trial Court.

(Ashutosh Kumar, J)

(Nani Tagia, J)

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AFR/NAFR	NAFR
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