

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.49 of 2014**

Arising Out of PS. Case No.-155 Year-2009 Thana- DURGAWATI District- Kaimur (Bhabua)

Sandeep Gupta @ Sandeep Kumar Gupta and Ors

... .. Appellant/s

Versus

State Of Bihar and Anr

... .. Respondent/s

Appearance :

For the Amicus Curies : Mr. Sanjeev Kumar, Amicus

For the Respondent/s : Ms. Anita Kumari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

Date: 02-05-2025

Heard Mr. Sanjeev Kumar, Amicus for the appellants and Ms. Anita Kumari Singh, learned APP for the State.

2. The present appeal has been filed under Section 11(2) of the Probation of Offenders Act, 1958 challenging the Judgment of conviction and order of sentence dated 24.09.2013 in Sessions Trial No. 386 of 2010 arising out of Durgawati P.S. Case No. 155 of 2009 passed by the learned Adhoc Additional District Judge-I, Kaimur have convicted the appellants under Sections 323, 325, 341 and 504 read with 34 of the Indian Penal Code (hereinafter referred as 'IPC') and sentenced them to furnish the personal bond of Rs. 5,000/- each under Section 4 of the Probation of Offenders Act, 1958 for



maintaining the peace for 3 years and during that period they will keep away from any dispute with informant.

3. The brief facts leading to the filing of the present appeal on the basis of the *fardbeyan* of the informant, is that informant O.P. No.2 was returning to his house after attending the call of nature at 5'o clock in the morning then all the appellants beside their two daughters coming from same family caught him dragged him inside the house and after tiding him assaulted by means of *lathi* and in that transaction it is the accused Sunil Gupta who gave a blow of the edge of the Tangi upon the head causing the cut bleeding injury also besides the other injuries as the accused persons had strong doubt in their mind that it was the informant who used to discharge the latrine at their Darwaja.

4. On the basis of the aforesaid *fardbeyan* of the informant, FIR was lodged and after investigation the charge-sheet was submitted under Sections 323, 324, 307, 341, 342 and 504 read with 34 of the IPC and after taking cognizance the case was committed to the Court of session on 22.09.2010.

5. The prosecution has altogether examined seven witnesses in this case. Out of them, PW-1 Murahua Sha, PW-2 Arvind Gupta, PW-3 Anil Kumar Gupta, PW-4 Sunil



Gupta (Informant), PW-5 Bageshwari Kunwar, PW-6 Vishwanath Sharma (Investigating Officer) and PW-7 Dr. Shanti Kumar Manjhi. Out of these, PW-1 Murah Sah and PW-5 Bageshwari Kunwar have been declared hostile.

6. Learned counsel for the appellants submitted that 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 and from perusal of the evidences adduced on behalf of the prosecution it is crystal clear that the PW-2 and 3 are none but the full brothers of the informant have tried to show themselves as an eye witness to the occurrence and also claimed the because of their presence in the need of the assault, the victim could not get the more injuries but the injury which was sustained by him was sufficient to loose his physical balance and that is why he was firstly taken to the nearest hospital who after given the first aid treatment referred for better care to B.H.U. where the injury sustained upon head though not found caused by the sharp edged Tangi but found grievous in nature and rest two injuries found simple in nature with swelling and abrasion certainly on non-vital part that is on leg and finger.



7. He further submitted that PW-2 and 3 have claimed that they had seen the occurrence in presence of their father but surprisingly enough the father was not examined and more over they also not claimed that they have tried to save the victim which was the natural reaction of any person in such circumstances thus, it can safely been said that actually they were not at all the eye witness to the occurrence. So for the other witnesses are concerned who have been treated as a formal witness and the doctor who did examined the victim did not find any sharp edged cut injury rather caused by the hard blunt object so the suggestion as advanced by the defence that the victim sustained injuries due to sudden fall on the bank of the river where the stones and hard soils were scattered while the victim had gone to attend the call of nature.

8. He admittedly submitted that the parties are co-villagers and neighbors also and in such circumstances they have enmity as per the own statement of the victim and the circumstances itself indicates that the occurrence took place as the spur of the moment even if assuming the case to be true for a moment so in the situation as lying in the case this was the case of clean acquittal but the trial court has convicted the appellants under Sections 323, 326, 341 read with 34 of the IPC sentencing



them to maintain the peace for 3 years coupled with the personal bond when there is every chance of the misuse of the punishment by the informant and his family members in future which inspired the petitioners to file this case before this Hon'ble Court as there is every apprehension of their implication in future because of the dirty politics of neighbors jealousy.

9. Moreover, since the petitioners are in apprehension of their false implication which will certainly go against them for violation of their personal commitment so they pray that this punishment under the Probation of Offender Act will not caused any prejudice to their carrier as the tenure of 3 years is long one and more over there is every chance of their engagement in services either private or government or even for the post of people representative.

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 appellants beyond all reasonable doubts. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the



present appeal should not be entertained.

11. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court. I have thoroughly perused the materials on record as well as given thoughtful consideration to the submissions advanced by both the parties.

12. On deeply studied and scrutinized all evidences, it is evident to note that the intention of the accused was not to kill the injured informant but according to the evidence of all the witnesses, the accused Sunil Gupta did not use the tangi again nor did he use its sharp part. Although he was in a position to do so. Therefore, it cannot be said that the intention of the accused was to kill the injured informant. Thus, from perusal of record, it comes to light that the charge under Section 307 or 307 read with 34 of IPC is not proved against the accused/appellants. But it is clear from the above evidence that the accused/appellants caught the informant, took him to the house, locked him up and beat him and abused him. Due to which the charge under Sections 323 read with 34 and 341 read with 34 of the IPC is rightly proved against them.

13. Further at the same time, the doctor has found two wounds of the injured in the category of grievous



hurt. Therefore, the accused are also guilty under Section 325 read with 34 of the IPC and for appreciating the necessary ingredients required to substantiate a charge under Section 504 of the IPC, a reference in this regard may be made to the judgment of this Court in ***Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44: (2014) 1 SCC (Cri) 715*** wherein the Court discussed the essential ingredients of Section 504 of the IPC. The Court held as follows:

"13. Section 504 IPC comprises of the following ingredients viz.

- (a) intentional insult,*
- (b) the insult must be such as to give provocation to the person insulted, and*
- (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence.*

The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused



abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC.

14. We may also indicate that it is not the law that the actual words or language should figure in the complaint. One has to read the complaint as a whole and, by doing so, if the Magistrate comes to a conclusion, prima facie, that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence, that is sufficient to bring the complaint within the ambit of Section 504 IPC. It is not the law that a complainant should verbatim reproduce each word or words capable of provoking the other person to commit any other offence. The background facts, circumstances, the occasion, the manner in which they are used, the person or persons to whom they are addressed, the time, the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under Section 504 IPC." (emphasis supplied)

14. On the basis of the above circumstances, facts and evidence, this Court comes to the conclusion that the prosecution has been successful in proving its case against the accused/appellants under Sections 323 read with 34, 325 read with 34, 341 read with 34 of the IPC beyond shadow of all reasonable doubt and the appellants are acquitted under Section 504 read with 34 of the IPC as there is no mention of specific



abuse by the appellants and from aforesaid mentioned judgment it is evident to note that to convict under Section 504 of the IPC it is essential that specific mention of abuse must be in specific word, there with the intention to disturb the public peace or to provoke the opposite person to commit any offence.

15. Hence, keeping in view all the materials available on record, it is observed that in the instant case the prosecution has proved the allegation leveled against the appellants beyond shadow of all reasonable doubt. So, the conviction of the appellants is upheld and modified to the extent mentioned above. Accordingly, the present appeal is dismissed.

16. Before parting with this appeal, Secretary, Patna High Court Legal Services Committee is directed to pay Rs. 5,000/- (five thousand) to the learned Amicus Curiae, namely, Mr. Sanjeev Kumar towards honorarium for assisting this Court in the present appeal.

17. Let a copy of first and last page of this judgment be handed over to the advocate Mr. Sanjeev Kumar, learned Amicus Curiae and Office is directed to proceed further in granting honorarium to him which is to be paid by Patna High Court Legal Services Committee.

18. Office is directed to send back the trial court



records and proceedings along with a copy of this judgment to the trial court, forthwith, for necessary compliance, if any.

(Ramesh Chand Malviya, J)

Sunnykr/-

AFR/NAFR	AFR
CAV DATE	N/A
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