



Presented on : 03-09-2009
Registered on : 03-09-2009
Decided on : 27-03-2023
Duration : 13 years, 6 months, 24 days

S.T. Case No. –303 of 2011

FORM – A

In the Court of Addl. Distt. & Sessions Judge-IIInd, Begusarai.	
Present – Sunil Kumar Verma	
Date of Judgment-24.03.2023	
S.T. Case No. – 303 of 2011, C.I.S. no. 4726 of 2013	
(Details of FIR/Crime and Police Station	
Naokothi P.S. case no. 98 of 2009	
Informant	Krishanandan Mahton
Represented By	Shri Manoj Thakur, Ld. Addl. P.P.
Accused persons	1.Surendra Mahton ,2. Rajesh Mahton and 3. Bishnudeo Mahton.
Represented By	Shri Rajkumar Mahton , Ld. Advocate.

FORM – B

Date of offence	02.09.2009
Date of First Information Report	02.09.2009
Date of Charge-Sheet	01.12.2010
Date of Framing of Charge	15.07.2013
Date of Commencement of Evidence	15.07.2013
Date on which Judgment is reserved	17.03.2023
Date of Judgment	24.03.2023
Date of sentencing Order, if any	N.A.

Accused Persons Details

Ran k of Acc used	Name of Accused	Date of Arrest	Offence charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 428 of Cr.P.C.
A1	Surendra Mahton aged about 44 years son of Bishunudeo Mahton, village-Rajakpur, P.S. Naokothi, District Begusarai.		341,323,324, 325,307/34 of IPC	Convicted u/s 325 & 341 IPC	1. For Sec. 325 I.P.C.the convicted is sentenced with Two years simple imprisonment and also a fine of Rupees 5000/- 2. For Sec. 341 I.P.C. the convicted is sentenced with 15 days simple imprisonment.	
A2	Bishnudeo Mahton aged about 76 years, son of late Tengar Mahton, resident of village- Rajakpur, P.S. Naokothi, Distt. Begusarai.		341,323,324, 325,307/34 of IPC	Acquitted		



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A3	Rajesh Mahton aged about 42 years son of Bishundeo Mahton, resident of village- Rajakpur, P.S. Naokothi, Distt. Begusarai.		341,323,324, 325,307/34 of IPC	Acquitted		

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. Prosecution

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Chandan Kr. Mahton	Other witness.
P.W.2	Nand Lal Mahaton	Other witness
P.W.3	Harinandan Mahton	Other witness
P.W.4	Suresh Poddar	Other witness
P.W.5	Krishanandan Mahton	Informant.
P.W.6	Dr. Dipak Kumar Singh	Doctor
P.W.7	Gayatri Devi	Wife of the informant.
P.W.8	Poonam Bharti	Daughter of the informant.
P.W.9	Balanand Jha	I.O.
P.W.10	Sashikant Sinha	I.O.

FORM B LIST OF DEFENCE Witnesses If any,

Rank	Name	Nature of evidence (Eye witness, Police witness, Expert, Medical witness, Panch witness, Other Witness)
D.W.1	Bhushan Mahton	Other witness.
D.W.2	Ram Sewak Paswan	Other witness
D.W.3	Arvind Mahton	Other witness.
D.W.4	Prem Kumar	Other witness.
D.W.5	Dr. Lalit Kumar	Other witness.
D.W.6	Ashok Mahton	Other witness.
D.W.7	Anandi Paswan	Other witness.
D.W.8	Pran Paswan	Other witness.
D.W.9	Vidyanand Mahton	Other witness.
D.W.10	Kudush Miya	Other witness.
D.W. 11	Brajesh Kumar	Other witness.



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C. Court Witnesses, If any,

Rank	Name	Nature of evidence (Eye witness, Police witness, Expert, Medical witness, Panch witness, Other Witness)
Nil	Nil	Nil
Nil	Nil	Nil

List of Prosecution /Defence/Court/Exhibit

A. Prosecution

Sr. No	Exhibit Number	Description
1.	Ext.1	Signature of Krishanandan Mahton on written report
2.	Ext.1/1	Signature of writer.
3.	Ext.1/2	Signature of SHO. Formal FIR.
4	Ext.2	Injury report of Krishnandan Mahton.
5	Ext.2/1	Injury report of Gayatri Devi.

B. Defence

Sr. No	Exhibit Number	Description
1	Ext. A	C.C. of Order sheet of ABA no. 852/2022
2	Ext. B	C.C. of Order Sheet of Bakhri P.S. 317/2021
3	Ext. C	C.C. of F.I.R. of Bakhti P.S. 137/2021
4	Ext. Q	C.C. of Deposition(PW-1) in G.R. 2684/09
5	Ext. R	C.C. of Charges of G.R. no. 2684/09

C. Court Exhibits

Sr. No	Exhibit Number	Description
1	Nil	Nil
2	Nil	Nil

D. Material Objects:

Sr. No	Exhibit Number	Description
1	Nil	Nil
2	Nil	Nil

JUDGMENT

1. The accused persons namely 1. Surendra Mahton, 2. Rajesh Mahton and 3. Bishnudeo Mahton have been charged for the offence u/s 341,323,324,325,307 read with Sec. 34 of IPC.
2. The prosecution case is based on the FIR on the basis of the written report of the informant Krishanandan Mahton alias Aghori Mahton alleging therein that on 02.09.2009 at about 6.00 A.M. the informant went to his neighbour Surendra Mahton for demanding Rs. 10,000/- (ten thousand) which was dues to him for carrying soil by tractor, upon this Surendra



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Mahton abused the informant and asked his brother and father to bring Farsa and lathi, then Bishundeo Mahton brought Farsa and lathi and given Farsa to Surendra Mahton and Surendra Mahton has given Farsa blow on the head of the informant causing his head torn. Again, Bishundeo Mahton has given lathi blow on the hand of the informant causing fractured in the finger. Rajesh Mahton has given lathi blow on the head of Pradeep Kumar, the son of the informant, causing his head swell, when the wife of the informant namely Gayatri Devi came to rescue, the accused persons have also thrashed her and disrobed her.

3. The present case was registered on the written report of the informant U/s- 341,323,324,325,307/34 of IPC and after completion of the investigation, the police had submitted charge-sheet under aforesaid sections against the above named accused in the court of learned CJ.M, Begusarai, who had taken cognizance of offence under aforesaid sections against the above named accused persons accordingly on 05.01.2011 and committed the case to the court of Session on 22.02.2011. The learned Sessions Judge, Begusarai had transferred the case record to this court on 24.03.2021 for trial and disposal. The charges U/s 341,323,324,325,307 read with Sec. 34 of IPC. were framed against the above named accused persons on 15.07.2013 which were explained to them in Hindi to which they denied and pleaded not guilty and had claimed to be tried.

4. In their statement u/s 313 Cr.P.C. the accused persons have stated that they have not committed any offence and they are innocent.

5. Now the point for determination in this case is as to whether the prosecution has been able to bring home the charges levelled against the above named accused persons beyond the shadow of all reasonable doubts or not?

6. The prosecution has produced altogether ten witnesses and they are P.w.1 Chandan Kumar Mahton, P.W.2 Nand Lalan Mahton, P.W.3 Hari Nandan Mahton, P.W.4 Suresh Poddar, P.W.5 Krishnandan Mahton, P.W.6 Dr. Dipak Kumar Singh, P.w.7 Gayatri Devi, P.w.8 Poonam Bharti, P.W.9 Balanand Jha ASI and P.w.10 Shashikant Sinha.

7. The prosecution has also produced the following exhibited documents i.e. Ext.1 the written report, Ext.2 and 2/1 injury report of the informant and his wife. Ext.1/1 formal FIR, Ext.1/2-endorsement of the FIR.

8. The defence has produced altogether 11 witnesses, they are D.W. 1 Bhushan Mahton, D.W.2 Ram Sewak Paswan, D.W.3 Arvind Mahton, D.W.4 Prem Kumar, D.W.5 Dr. Lalit Kumar, D.W.6 Ashok Mahton, D.W.7 Anandi Paswan, D.W.8 Pran Paswan, D.W.9 Vidyanand Mahton, D.W.10 Kudush Miya and D.W.11 Brajesh Kumar.

9. The defence has also produced the following exhibited documents i.e. Ext. A- C.C. of Order sheet of ABA no. 852/2022, Ext. B- C.C. of Order Sheet of Bakhri P.S. 317/2021, Ext. C- C.C. of F.I.R. of Bakhti P.S. 137/2021, Ext. Q- C.C. of Deposition(PW-1) in G.R. 2684/09 and Ext. R- C.C. of Charges of G.R. no. 2684/09.



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FINDINGS

10. P.W.1, P.W.2, P.W.3 and P.W.4 have turned hostile and in their cross-examination nothing important came.

11. P.W.5 Krishanandan Mahton is the informant himself. He has stated that on 02.09.2011 at about 6.00 A.M., when he went to the home of Surendra Mahton for demanding Rs. 10,000/- which was dues as tractor fare , then Surendra Mahton started abusing and said how dare you to demand money in such early morning I will teach you a lesson, then he asked his father to bring stick and Farsa upon this the father of Surendra namely Bishundeo Mahton , brought Farsa and stick and given Farsa to surendra Mahton, Surendra Mahton has given Farsa blows on the head of the informant and it started bleeding from the both sides then Bishundeo Mahton have given a stick blow on the head of informant's son Pradeep causing his head swell, Rajesh Mahton has thrashed the wife of the informant with fist blow and throw her on middle of the road and undressed her. P.W.5 has proved the written report as Ext.1.

In cross-examination P.W.5 has stated that he is not accused in any case but only one title case is pending. He again stated that Dilip Mahton is his son but he does not know that Dilip is accused in murder case. He again stated that he does not remember that he is accused in case lodged by the accused Bishundeo Mahton as Naokothi P.S. case no. 41 of 1992. He further stated that he is accused in Manoj murder case Naokothi P.S. case no. 6 of 2000. He again stated that he does not know that he is accused in a rape case lodged by Sakuntala Devi as SC/ST P.S. case no. 14 of 1992. He again stated that he is accused in Samsa Diyara firing case Naokothi P.S. case no. 19 of 2007. He again stated that his son Dilip Mahton is in jail but he does not know whether he is convicted or not. He again stated that he does not remember whether he has gone to jail or not.

12. P.W.6 Dr. Deepak Kumar Singh is medical officer of Bakhri PHC who has examined the injured. He has stated that on 09.09.2009, he examined Krishanandan Mahton and found following injury on his body.

(i) lacerated wound 3" x ½" on left temporal side of scalp.

(ii) swelling and tenderness on right wrist –joint 2" x 1".

Both the injuries causing by hard blunt and object, age of injuries –within six hours nature of injuries no.1 was simple, and injury no.2 was found grievous. X-Ray of injury no. (ii) fracture of head of 5th metacarpal bone of right-hand wrist.

He has also examined Gayatri Devi and found no injuries on her person.

He also proved both the injury report as Ext.2 and 2/1 respectively.

In his cross-examination P.W.6 has stated that injured Krishanandan Mahton conscious at the time of examination.

13. P.W. 7 Gayatri Devi has stated that the incident happened eight years ago at about 6.00 A.M. At that time her husband went to the home of Surendra Mahton for demanding money she also followed her husband, there Surendra Mahton started abusing and broke the head of the informant by Farsa. She again stated that Bishundeo Mahton has given lathi blow on the head of



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informant causing his hand broken. She again stated that Rajesh Mahton has thrown her and tore Sari and cloth when her son Pradeep came to rescue the accused persons also thrashed him with lathi.

In her cross-examination PW7 has stated that she has got injuries on front of back and whole body and also on forehead. She again stated that he has not given statement to Daroga Jee that Bishundeo Mahton has struck her husband of Farsa.

14. P.W.8 is Punam Bharti who is the daughter of the informant. She has stated that on 02.09.2009 at about 6.00 A.M. the informant went to the house of Surendra Mahton for recovery of money due as tractor fare, upon this Surendra Mahton got furious and started abusing thereafter, Bishundeo Mahton, the father of Surendra Mahton, and Rajesh reached having Farsa and lathi, Bishundeo handed over the Farsa, then Surendra Mahton has hit the informant on forehead, Bishundeo has hit the informant with lathi causing the finger of the informant broken. She further stated that when her brother came to rescue Surendra also thrashed him with lathi and turned the cloth of P.W.7. In her cross-examination she has stated that she went in the year 2009 to the home of Surendra Mahton 4-5 times, at that time there was no dispute with Surendra Mahton. She further stated that in Rajakpur there were many people's home and until she resided in Rajakkpur her family had no dispute with any villager.

15. P.W.9 Balanand Jha is the I.O. of this case. He has stated that on 02.09.2009 he assumed the charge of investigation in Naokothi P.S. case no. 98 of 2009, thereafter he inspected the place of occurrence, prepared injury requisition and sent the injured to hospital, thereafter he entered statement of Gayatri Devi, Hari Nandan Mahton, Chandan Kumar, Puam Bharti, Suresh Poddar, Nand Lal Mahton in case diary. He has proved the formal FIR as Ext.1 and 1/1 and endorsement of FIR Ext.1/2.

In his cross-examination he has stated that in Naokothi P.S. case no. 108 of 2009 Krishanandan Mahton was accused and C.S. was submitted against him u/s 341,323,504/34 IPC and Sec. 3(X)(XI)(XV) SC/ST Act. He has further stated that Gayatri Devi (P.W.7) has not stated that Gayatri Devi (P.W.7) has not stated that when she reached at the door of Surendra Mahton, she seen her husband fell on the ground. He further stated that the informant has not come on the P.S. and he has not told that incident happened at 6.00 P.M. on 02.09.2011 at the home of Surendra Mahton when he went there to claim Rs. 10,000/- as tractor fare, then Surendra Mahton got angry and asked the other accused persons to bring Danda and Farsa upon this Bishundeo brought Farsa and Danda and gave Farsa to Surendra Mahton has given to Farsa blow on un-resulting the head of the informant. Injured from both sides, Bishundeo Mahton has given stick blow causing hand of the informant broken and when the wife and son of the informant came to rescue the accused persons also thrashed them.

16. P.W.10 Shashikant Sinha I.O. of this case on 05.11.2010 he assumed charge of this case and after perusing the case record on 27.11.2010 he submitted C.S. u/s 341,323,324,325 and 307 IPC. In his cross examination P.W.10 has stated that after perusing the case diary he did not find that the previous I.O. has not taken statement of the accused persons. He has further stated that



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there are 12 cases registered against the informant Krishanandan Mahton and his son Pradeep Mahton.

17. D.W.1 Bhushan Mahton, D.W.2 Ram Sewak Paswan, D.W.3 Arvind Mahton have stated that on the date of occurrence at about 6.00 A.M. the informant was going on motorcycle and met with an accident with dog and the head and hand of the informant has got injured.

In his cross-examination D.W.1 has stated that he was collecting Chanda since 5.00 A.M., at the place of accident there were many women but he cannot tell any one of her.

In his cross examination D.W.2 has stated that he reached at the place of accident after 15 minutes but he does not remember the name of the person who supported the informant, he used to go to brick cline at 8.00 A.M. and returned at 6.00 P.M. D.W.3 has stated in his cross examination that he went to doctor in 15 minutes.

18. D.W.5 is Dr. Lalit Kumar he has stated that on 02.09.2009 at about 6.15 A.M. Krishanandan Mahton reached their clinic for treatment his left side of temporal region was light bleeding and finger of right hand got light screech and on being inquired Krishanandan said that to save the dog , he fell from the motorcycle . He further stated that he treated Krishanandan , then Krishanandan went from there.

In his cross-examination D.W.5 has stated that he is Ayurved graduate , there is no definite time upon his clinic , on that day he treated 10-11 patients.

19. The Ld. Counsel for the defence has argued that there are vital contradictions in the evidence of the prosecution. The informant himself and his son both are notorious criminals. There are no independent witnesses in this case but all the contesting witnesses are the informant himself and his wife and daughter. The informant has got injury in the motorcycle accident. Therefore, the prosecution has failed to prove the guilt of the accused persons, hence, they deserve acquittal.

20. On the other hand, the Ld. APP has argued that the informant himself is a injured witness and his presence at the scene of occurrence cannot be doubted. If single witness is reliable than conviction can very well be based upon it. The oral witnesses are supported by the injury report. Therefore, the prosecution has proved the guilt of the accused persons beyond the shadow of reasonable doubt, hence, the accused persons are liable to be punished.

21. Heard the arguments of both the parties, perused the case record and evidences produced by both the parties.

22. The private witnesses produced by the prosecution have turned hostile except the informant (P.W.5) his wife (P.W.7) and his daughter (P.W.8) and rest are official witnesses. P.W.5 has clearly stated that he was struck with Farsa on his head got injured from two sides. But from the perusal of the evidence of P.W.6 and Ext.2 it is clear that he has got lacerated wound 3” x ½” on left temporal reason of scalp and this is the only head injury of the informant by hard blunt



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substance . P.W.5 has stated that when his son Pradeep and wife Gayatri Devi came to rescue the accused persons also thrashed them but Pradeep was not examined and from the perusal of statement of P.W.6 as well as Ext.2/1. No injury was found on the body of Gayatri Devi. Therefore, the name of Gayatri Devi seems to be given for creating the evidence against the accused persons by the informant .Thus the statement of P.w.7 Gayatri Devi cannot be relied upon. As far as the evidence of P.W.8 is concerned the informant has given detailed version of the alleged occurrence is written report but he did not mentioned the name of his daughter Punam Bharti was present at the place of occurrence . Thus her presence at the place of occurrence seems to be after thought and for this reason the evidence of P.W.8 is also not reliable.

23. The prosecution has relied on the following judgment – **2005 Cri.LJ 2018-evidence of injured witness is of high standard and conviction can be found on this ground alone.**

2007(4) PLJR-730- Sustaining conviction only on the testimony of the informant possible.

2008 (i) PCCR- page -212, The evidence of injured witness lends more credence.

1986 SCC (Criminal) page 369, the evidence of injured witness is of more credence because his presence at the seen of occurrence cannot be doubted.

24. **2006(i) PLJR 345- In this case the informant and witness told that the injury was caused by the sharp weapon but medical report it was caused by HBS that's why conviction was held wrong.** In the present case the informant has claimed that he was hit by Farsa but in medical report, the injury report found to be caused by HBS, therefore, conviction cannot be based on this point. In **2004(3) East Cri. C page 231(Pat.)**, it was held that “–when it is not mentioned that which portion of weapon was used then conviction cannot be based u/s 307 IPC.”

In **PLJR 2005 (I) Patna 442**, it was held that “–the nature of the injury as graved is different in legal and medical terms, therefore, fractured in finger does not come within the ambit of grievous injury.”

But from the perusal of sec. 319 of the I.P.C., which says :- *“The following kinds of hurt only are designated as “grievous”:— First.—Emasculation. Secondly.—Permanent privation of the sight of either eye. Thirdly.—Permanent privation of the hearing of either ear. Fourthly.—Privation of any member or joint. Fifthly.—Destruction or permanent impairing of the powers of any member or joint. Sixthly.—Permanent disfiguration of the head or face. Seventhly.—Fracture or dislocation of a bone or tooth. Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”* Thus, it is clear that fracture is covered in the ambit of grievous hurt.

2012 (IV) Cr.R.243 Pat. It was held that on material contradiction the whole evidence come unworthy. But from the perusal of **2007(4) PLJR-730 and 2005 Cri.LJ 2018** the



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evidence of injured testimony is regarded at high standard, but, since, the informant is himself involved in many criminal cases and he deposed wrongly sometimes, careful scrutiny of his testimony is needed.

25. In this case the private witnesses are from the family of the informant i.e. informant himself (P.W.5) his wife Gayatri Devi (P.W.7) and his daughter Punam Bharti (P.W.8). On the date of occurrence i.e., 02.09.2009 P.W. 5 has lodged an FIR (Ext.1) at about 9.00 A.M. against the accused persons for the lodged prosecution story of assault on him. P.W.5 has stated that his wife came to rescue then the accused Rajesh Mahton has thrashed her with fists and blows and torn her Sari Blouse and Petticoat but from the perusal of the Ext.2/1 as well as the statement of P.W.6 no external injuries were found on the body of Gayatri Devi (P.W.7). Therefore, it appears that the name of Gayatri Devi (P.W.7) was inducted in this case as a witness falsely because it is almost impossible that when a lady was thrashed with fist blow and thrown on the ground she would not have any injury or even any screech mark. Hence, this court found the evidence of P.W.7 is not reliable.

The FIR was lodged on the basis of the written report of informant himself and he has not mentioned that his daughter Punam Bharti (PW8) was present at the scene of occurrence but PW8 has stated that the entire incident happened before herself. If she would have present at the place of occurrence certainly she would have tried to save her father but in this case it is not so, therefore, the evidence of PW8 is also seems to be not reliable and her name was also inducted in this case by the informant to make his case more strong, therefore, the evidence of PW8 cannot be relied on. In this case of **Vijay Shinde Vrs. State of Maharashtra 2008(I) PCCR-211**, it was held by the Hon'ble court that the evidence of injured witness is of more credence. But in his statement P.W.5 has wrongly stated that no criminal case is pending or filed against him. He again stated that he does not know that his son Dilip Mahton is an accused in murder case, the defence has produced certain document Ext.A. Ext.Q and Ext.R, from the perusal of which, it is quite clear that the P.W.5 and his son Pradeep Mahton is accused in many criminal cases, thus, PW5 has stated wrongly before the court. The principle of “**falsus in uno, falsus omnibus**” is not applicable in Indian Law, moreover, the Hon'ble Court in case of **Vijay Kumar Sinde Vrs. State of Maharashtra (Supra)**, has held that the injured witness is of more credence, therefore, after careful scrutiny of the statement of P.W.5 that part of the statement of P.W.5 can be made admissible which relate to the incident in which he has got the injuries. The case of **Md. Abdul Kalam Vs. State of Bihar, 2012 (4) Cr.R. 243 Pat.(supra)**, was relied by the defence that if material contradictions arose then whole of the evidence become untrustworthy, but in the present case P.W.5 is injured witness and the incident cannot be ruled out because certain injuries were found on the body of the informant. The defence witnesses D.W.6, D.W.7, D.W.8 and D.W.11 have also supported the view of the prosecution that on the date of occurrence, scuffle arose at the home of accused Surendra Mahton but on the point of reason behind this scuffle the court does not believe the statement of these witnesses of discussions made above. This court is relied on the judgment of **Parmanand Singh Vrs. State**



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of Bihar, 2004(3) East Cr.C.-231 Pat., in which it was held that ‘if weapon used in the assault is not fatal then conviction u/s 307 IPC is wrong.’ Here, from the perusal of Ext.2 as well as statement of P.w.6 both the injuries of the informant was caused by HBS and the injuries found on the head was found as simple injury found on the wrist joint of the informant was grievous because fractured was caused on the wrist joint. Section 320 of the IPC says that fracture in any bone or teeth is grievous injury. Sec. 325 IPC says “whoever, except in the case provided for by Sec. 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”. The court also relied on the judgment in case of **Kanchan Vs. State of Bihar 2006(I) PLJR page-345 (Supra)** which was relied on by the defence that “if there is contradictions in the version of FIR and medical report than conviction is wrong” but in the present case the accused specifically stated that he was assaulted with Farsa and lathi. In a fight which ensued in early wee morning when someone was assaulted with lathi and the accused persons also have a Farsa, then such mistake as to the weapon used is possible. Therefore, this court found that the injury on the body of informant was caused by lathi (Ext.2).

When someone is being assaulted then he is also wrongfully restrained because without wrongfully restraining any person it is impossible to cause multiple injuries over him. Section 339 of the IPC says that, “Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.” Therefore, by thrashing the informant with intention to teach him a lesson and not allow him to go unhurt amounts to wrongful restriction.

The ingredients of the Sec. 341 IPC is also fulfilled against the accused persons as he restrained the informant and made assault on him.

26. From the perusal of statements of DW1, DW2, DW3 and DW5 it is quite improbable that of village Ayurveda doctor used to open his clinic at this early time. DW1 stated that he was collecting Chanda (donations) from 5.00 A.M. and it is also impossible in the villager that any person gives Chanda at this early time, therefore, their presence at the scene of occurrence is questionable.

27. D.W.4 Prem Kumar have given are totally version and stated that the informant has taken loan from PNB but he could not repay the loan that why he got noticed from PNB employee and on 22.08.2009 he has seen scuffle between Krishanandan Mahton and Surendra Mahton. In his cross-examination D.W.4 has stated nothing important. From the perusal of the statement of D.W.4 it is quite clear that his statement irrelevant to this case as he knows nothing about the day of occurrence but statement it related to earlier date.

28. D.W.6 Ashok Mahton has also given unique and entirely different statement that the informant has pronounced the wife of Surendra Mahton as Dayan and in this dispute the



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informant himself has given a Khanti blow on the head of Surendra Mahton causing his head injured, Pradeep also given Khanti blow to left waist on the Surendra Mahton causing the finger of Surendra Mahton broken, Surendra Mahton was taken to Begusarai hospital. In his cross-examination D.W.6 has stated that at the time of occurrence Surendra Mahton was brushing his teeth but ordinarily he does not brush that time but in order to corroborate this theory, defence has not produced any medical document.

29. D.W.7 Anandi Paswan has given similar statement of D.W.6 and he further stated that at that time he was measuring land for making home of Permeshwar Mahton. In his cross-examination he has stated that he is Rajmistri and he used to go to work at 7.00 A.M. in the morning. He has further stated that the informant pronounced the wife of Surendra as Dayan and due to this, dispute arose. The statement of DW7 also cannot be relied because he said that he used to go to his work at 07.00 am but in which circumstance he was forced to go in early wee of time.

D.W.8 Pran Paswan has also given similar statement as D.W.6 and D.W.7. In his cross-examination he has stated that the incident happened for 3-4 minutes.

D.W.9 Vidya Nand Mahton has also given entire new version and statement that there was land dispute between the informant and Bishundeo Mahton. He has exhibited inquiry report of the S.I. and map. In his cross-examination D.W.9 has stated that he was asked by Anchaladhikari and ordinarily Bihari Sah has informed him. He has never seen the signature of S.I. before.

D.W.10 Kudush Miyan has stated that in a land measurement between Bishundeo and Krishanandan Mahton, he was preset on 10.07.2009. In his cross-examination he has said that on the map he put his signature.

Thus, D.W.9 and D.W.10 both are giving evidence on the point of land dispute but hear the question which is to be decided by the court is that the accused has committed the alleged offence or not and the evidences are admissible only on this point to prove the offence.

D.W.11 Brajesh Kumar has also given the same version as D.W.6, D.W.7, D.W.8, and also stated that at about 5.30 A.M. he went to Nageshwar Mahton for taking medicine for his child. In his cross-examination D.W.11 has stated that the fighting lasted for 2-3 minutes but those people were not ready to separate, the doctor, where he went to take medicine open his clinic at 5.30 A.M.

30. From the perusal of the deposition witnesses they are giving entirely different version- one part is saying that the informant was injured in an incident with dog and their received injuries. The 2nd part is saying that the informant himself was abusing the wife of the accused Surendra Mahton and the informant himself the brother of the informant has assaulted to the accused Surendra Mahton. The 3rd part is saying that there was land dispute between the informant and the accused persons.

31. On careful perusal it come to the conclusion that the defence witnesses seems to be not reliable as the occurrence happened at early morning at about 6.00 A.M. in the village and the



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defence witnesses are giving evidence that the informant was injured an accident and he himself was assailant in a fight with the accused persons. Therefore, the defence witnesses seems to be not reliable.

32. From perusal of the statement of P.w.5 it appears that the main allegations are on the accused Surendra Mahton and the informant implicated the other two accused persons falsely, as it is practice in Indian Village that if any dispute arose all the family members of enemy would have been implicated. Ext.2 shows that both the injuries of the informant was caused by the same weapon (HBS) and no injury on the family members of the informant, where proved. Therefore, this court finds that the accused Surendra Mahton has solely made assault on the informant with lathi and caused injury on his head and wrist.

33. On the basis of the above discussions this court finds that the accused person namely Surendra Mahton is liable to be held guilty for the offence u/s 325 and 341 IPC. And the accused persons namely Rajesh Mahton and Bishundeo Mahton are deserving acquittal for the offences charges u/s 341,323,324,325,307/34 of IPC.

ORDERED

Accordingly, the accused person namely Surendra Mahton is convicted for the offence u/s 341 and 325 IPC and acquitted u/s 323,324,307/34 IPC. Furthermore, the accused persons namely Rajesh Mahton and Bishundeo Mahton are acquitted from the charge u/s 341,323,324,325,307/34 IPC.

Put up on 27.03.2023 for hearing on the point of sentence.

Pronounced in open court.

(Dictated & corrected by me)

Sunil Kumar Verma
Addl. Distt. & Sessions Judge-II
Begusarai Dated 24.03.2023.

Sunil Kumar Verma
Addl. Distt. & Sessions Judge-II
Begusarai Dated 24.03.2023.



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ORDER OF POINT OF SENTENCE

27.03.2023: Heard both sides on the point of sentence.

Learned counsel appearing on behalf of the convicts has submitted that convict is first offender and so lenient view may be taken against him and also he is sole bread earner of his family and also a bank employee.

Contrary to this learned Addl.P.P. appearing on behalf of State has submitted that convict has brutally assaulted the injured. So no leniency may be shown against him and maximum punishment may be imposed upon him.

Keeping in view over all facts and circumstances of the case while deciding the punishment, it is required that court should strike a balance between the aggravating circumstances it appears that the informant and the accused are co-villagers, hence, there are possibility of good relation between both the parties. Moreover, the witnesses have admitted that there are no previous enmity between both the parties. Therefore, the following punishment would be sufficient for the offence committed by the convict Surendra Mahton:-

1. For Sec. 325 I.P.C. the convicted is sentenced with Two years simple imprisonment and also a fine of Rupees 5000/- each.
2. For Sec. 341 I.P.C. the convicted is sentenced with 15 days simple imprisonment.

All the sentences shall run concurrently. Any period of custody already undergone by the convicted person, shall be set-off against these sentences.

Pronounced in open court.

(Dictated & Corrected by me)

sd/-

sd/-

Sunil Kumar Verma

Addl. Distt. & Sessions Judge-II

Begusarai Dated 27.03.2023.

Sunil Kumar Verma

Addl. Distt. & Sessions Judge-II

Begusarai Dated 27.03.2023.