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**(2019) 06 JH CK 0020**  
**In the Jharkhand High Court**  
**Case No : Acquittal Appeal No. 16 Of 2015**

Shashi Kant Singh @ Sashi Kant Singh APPELLANT  
Vs  
State Of Jharkhand And Ors RESPONDENT

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**Date of Decision :** 17-06-2019

**Acts Referred:**

Indian Penal Code, 1860 — Section 34, 302, 307, 323, 325, 328, 341, 506  
Code Of Criminal Procedure, 1973 — Section 164

**Citation :** (2019) 06 JH CK 0020

**Hon'ble Judges :** Aparesh Kumar Singh, J; Kailash Prasad Deo, J

**Bench :** Division Bench

**Advocate :** Manoj Kumar, Shresth Gautam, Deepankar Roy, Shiv Kumar Sharma

**Final Decision :** Dismissed

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## Judgement

1. Heard learned counsel for the appellant Mr. Manoj Kumar assisted by learned counsel Mr. Deepankar Roy and learned counsel for the State Mr.

Shiv Kumar Sharma, Additional Public Prosecutor.

2. Appellant being the informant of the case has preferred this acquittal appeal against the judgment of acquittal dated 25.06.2015 passed in Sessions

Trial No. 103 of 2010 whereby learned Trial Court has acquitted the respondent no.2 Devendra Pratap Singh and respondent no.3 Krishna Prasad @

Krishna Bihari Singh from the charge framed against them under Section 341/34,325/34,328/34,302/34 and 506/34 of the I.P.C and also acquitted

respondent no.4 Ramendra Singh @ Ramendra Pratap Singh from the above charge, though he has been convicted under Section 323 of the I.P.C.

3. Learned counsel for the appellant has submitted that the learned Trial Court has not scrutinized the evidence brought on record as it has not taken

notice with regard to the injury sustained by the deceased Manoj Singh and

wrongly acquitted the accused persons from the charge under Section 302/34 of the I.P.C as also wrongly convicted respondent no. 4 Ramendra Singh @ Ramendra Pratap Singh under Section 323 I.P.C, though he has hit on the head of the Informant. Learned counsel for the appellant has thus submitted that the impugned judgment of acquittal of Respondent no.2 to 4 under Section 302/34 is bad in law and as such this Court may grant leave to appeal preferred through I.A. No. 7952 of 2016 against the impugned judgment against these respondents and may interfere in the impugned judgment.

4. Learned counsel for the State has opposed the same and has submitted that while passing the impugned judgment of acquittal against these respondents, the learned Trial Court has discussed the material brought on record and has considered the judgment rendered by the Apex Court in the case of Masalti Vrs. State of U.P. reported in AIR 1965 SC 202 and also in the case of Virsa Singh Vrs. State of Punjab reported in AIR 1958 SC 465 and has rightly acquitted Respondent no.2 to 4 from the charge under Section 302/34 of the I.P.C. Learned State Counsel has further submitted that the learned Trial Court has given reason for convicting the respondent no.4 Ramendra Singh @ Ramendra Pratap Singh for the charge under Section 323 of the I.P.C as because in the absence of any injury report on record and also in the absence of any evidence of the doctor on record with regard to the nature of injury on the person of informant Shashi Kant Singh. Learned Trial Court has rightly considered the ocular witnesses as informant Shashi Kant Singh has received only one injury. As such learned Trial Court has rightly convicted the respondent no.4 Ramendra Singh @ Ramendra Pratap Singh for the charge under Section 323 I.P.C which is already subjudice before this Court in Criminal Appeal (S.J.) No. 498 of 2015. Learned State Counsel has thus submitted that considering the materials brought on record and the discussion made by the learned Trial Court, there is no reason to interfere with the impugned judgment of acquittal against the respondents under Section 302/34 of the I.P.C and the learned Trial Court has rightly convicted the accused Gourav Singh under Section 302 of the I.P.C who has preferred Criminal Appeal (DB) No. 517 of 2015.

5. Heard learned counsel for the parties and from perusal of the materials brought on record it appears that on the basis of fardbeyan of Shashikant

Singh recorded on 04.09.2009 at about 00:20 Hrs (night) on bed no. 05, Male Surgical Ward, Tata Motors Hospital, Kharangajhar, Jamshedpur (vide

Exhibit 9) it has been stated that the informant along with Manoj Kumar Singh were going towards the house situated at Telco to bring CD on

03.09.2009 at about 9.30 P.M. In the way, as soon as they reached near Chandni Chouk when Gaurav, son of Ramendra Singh cut across his

motorcycle obliquely, dashing against the motorcycle of the informant and fled away, abusing that while returning to their residence when they again

reached near the house of Ramendra Singh, they saw Ramendra Singh standing near his house. They stopped and charged with earlier incident to him,

whereupon Ramendra Singh started abusing them and when objected to, he started shouting and quarrelling. Thereafter Devendra Singh (brother of

Ramendra Singh), Gaurav Singh (son of Ramendra Singh) and Krishna Kumar Singh (father of Ramendra Singh), all armed with lathi, danda and

sharp weapon rushed out from their house and attacked the informant and his companion, Manoj Kumar Singh. Ramendra Singh brought his hockey

stick from house, shouting to kill the informant and his companion, assaulting the informant and Manoj Kumar Singh causing head injury and other

injuries to the informant and causing serious bleeding injuries right side head of Manoj Kumar Singh. Subsequently he fell down and became

unconscious. Informant fled away and informed to the family members at the house of Manoj Kumar Singh and thereafter informant and Manoj

Kumar Singh were brought to Tata Motors Hospital and while the informant was being treated upon there, Manoj Kumar Singh was referred to Tata

Memorial Hospital (TMH) for proper treatment.

6. On the basis of the fardbeyan of the informant, Police has registered Telco (Govindpur) P.S. Case No. 278 of 2009 corresponding to G.R. Case

No. 2248 of 2009 under Section 341,323,324,307,506,325/34 of the I.P.C and after death of Manoj Kumar Singh at TMH on 11.09.2009 Section 302 of

the I.P.C was added. On conclusion of the investigation, Police submitted charge-sheet against all the named accused persons under 341, 323, 324,

325, 307, 302 and 506/34 of the I.P.C. Learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions on

26.02.2007.

7. All the 4 accused persons were charge under Section

341/34,325/34,323/34,307/34 and 506/34 I.P.C to which they pleaded their innocence and put

under trial.

8. In order to prove its case, prosecution has altogether examined 10 witnesses which are as under:

1. Informant Shashi Kant Singh has been examined as P.W.1

2. Dr.Bibhakar Kumar has been examined as P.W.2.

3. Chandra Bhushn Singh has been examined as P.W.3

4. Rajan Kumar Singh @ Ranjan has been examined as P.W.4

5. Subhash Rai has been examined as P.W.5

6. Surya Bhushan Ojha, learned Judicial Magistrate has been examined as P.W.6

7. Dr. Fateh Bahadur Singh has been examined as P.W.7

8. Uttam Rai has been examined as P.W.8

9. Parmeshwar Rai has been examined as P.W.9

10. Deo Paswan, Investigating Officer of the case has been examined as P.W.10.

9. Prosecution has also examined number of exhibits as under: 1. Fardbeyan of the informant recorded by S.I.J.P.Singh on 04.09.2009 has been

proved and marked as Ext. 1; Signature of Rajan Kumar Singh @ Ranjan (P.W.4) on the fardbeyan proved by him as been marked as Ext.1/1.

2. Signature of the informant in his statement recorded under Section 164 Cr.P.C has been proved and marked as Ext. 2,2/1 and 2/2. Statement of the

informant recorded under Section 164 Cr.P.C by the then Judicial Magistrate, Jamshedpur Surya Bhushan Ojha (P.W.6) has been marked and proved

as Ext. 2/3

3. Post Mortem report of the deceased Manoj Kumar Singh has been proved by Dr. Bibhakar Kumar (P.W.2), which has been marked as Ext. 3.

4. Seizure list of bat prepared by Investigating Officer Deo Paswan in his handwriting bearing his signature also has been proved and marked as Ext.4

5. The case sheet of deceased Manoj Kumar Singh prepared by Dr. Fateh Bahadur Singh (P.W.7), which has been proved and marked as Ext.5

6. The seized bat has been proved and marked as material Ext.I

10. Injury report of the informant has not been brought on record. Only the post mortem report of the deceased Manoj Kumar Singh has been brought

on record and proved as Ext.3. From perusal of the post mortem report it appears that the victim had sustained the following injuries:

External Injuries:

- (i) Abrasion: 1 cm x 1cm left ear lobule middle part on lateral border
- (ii) Stitched wound-6 cm in length with 5stitch on rt. Side of fronto parietal area of scalp.
- (iii) Internal Injuries- on dissection of scalp there was diffused contusion of whole scalp and temporal muscle of both sides with mosaic fracture of parieto occipital temporal bone of both side underneath.

There was presence of extradural blood and blood clot over parieto temporo occipital area of brain and subdural blood and blood clots over both sides of brain. Brain tissues were congested. Internal organs congested and stomach contained yellowish fluid about 250 cc.

In his opinion (i) above noted injuries were ante-mortem in nature caused by hard and blunt object, such as, hockey stick or baseball bat.(ii) He stated

that opinion regarding stitched wound and tracheostomy would could be had from the surgeon concerned (iii) time elapsed since death, approximately

12 to 24 hours from the time of P/M examination He proved the P/M report (Exhibit 3), which was prepared by him under his signature.

11. From perusal of the evidence on record and the discussion made in the impugned judgment, it appears that the learned Trial Court upon discussion

of the materials brought on record has rightly considered that discrepancies in the number injury; opinion of the doctor and the ocular witnesses which

shows that the doctor has found one ante-mortem external injury which was on the head of the deceased Manoj Kumar Singh and there was no

second ante- mortem injury on his person. It further appears that prosecution has not brought on record the injury report of the informant. Learned

Trial Court while relying upon the judgment passed in the case of Virsa Singh (supra) held the accused Gaurav Singh responsible for the charge under

Section 302 of the I.P.C and convicted him of the said charge. The said accused Gaurav Singh has already preferred appeal against the said judgment

of conviction and the matter is subjudice before this Court. So far as Respondent no.4, Ramendra Singh @ Ramendra Pratap Singh is concerned,

there is ocular evidence on record with regard to the assault made on the head of the informant Shashi Kant Singh by respondent no4, though his

injury report has not been brought on record to suggest the nature of injury, as such the learned Trial Court has convicted him for the offence

punishable under Section 323 I.P.C. So far as the evidences against Devendra Pratap Singh and Krishna Prasad @ Krishna Bihari Singh are

concerned, though it has been alleged by the prosecution that they were armed with weapon but no injury found on the person of the victim Manoj

Kumar Singh. However as per the opinion of the Doctor, no injury has been found on the person of the victim or informant which can be attributed to

these two accused. Considering the evidences in totality and considering the medical evidence, learned Trial Court after due consideration and

discussion did not find any material against Devendra Pratap Singh and Krishna Prasad @ Krishna Bihari Singh for recording their conviction.

Accordingly, they have not been convicted rather acquitted from the charge. So far as respondent no.4. Ramendra Singh @ Ramendra Pratap Singh

is concerned, he has been convicted under Section 323 I.P.C by the learned Trial Court, whose appeal is also subjudice before this Court.

12. Accordingly, we are of the opinion that the impugned judgment dated 25.06.2015 assailed before us does not suffer from any illegality so as to

invite our attention for interfering with the same. Accordingly the same is not interfered with and the prayer for grant of leave to appeal made through

I.A. No. 7952 of 2016 is hereby denied. I.A. also stands rejected.

13. Consequently, the acquittal appeal is dismissed.