

(1949) 11 PAT CK 0017

In the Patna High Court

Case No : Criminal Revision No. 1416 of 1949

Sudia Bhuskaulia and Another

APPELLANT

Vs

The King

RESPONDENT

Date of Decision : 24-11-1949

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 235
Penal Code, 1860 (IPC) — Section 323, 326

Citation : AIR 1950 Patna 210

Hon'ble Judges : Agarwala, C.J

Bench : Single Bench

Advocate : Gopal Prsaad, K.D. De and S. Akbar Imam, for the Appellant;
Raghunath, for the Respondent

Final Decision : Allowed

Judgement

Agarwala, C.J.—The petitioner Ghutar has been convicted u/s 326, Penal Code and his son, the petitioner Sudia, under Sections 323 and 379. The convictions are assailed on the ground of misjoinder of charges. The facts are that the complainant Yaidyanath Jha saw Sudia and his brother Karia cutting the gram crop in his field. On Vaidyanath protesting Karia ran away in one direction and Sudia in another direction. Vaidyanath followed Sudia and caught him and then took him towards the village. When they reached the house of Sudia the latter's father and brother emerged, the former armed with a garasa and the latter with a stick. They demanded that Yaidyanath release Sudia. On his refusal Ghutar assaulted him with a garasa and Karia with a stick, with the result that he fell. Thereupon he was still further assaulted by Karia and Sudia. Later, he was removed to hospital and a first information was laid. It is quite obvious that the offence of theft was quite separate from the offences under Sections 323 and 326 and should not have been tried together. The convictions and sentences must, therefore, be set aside. The petitioners must now be retried separately, that is to say, Sudia must be tried on the charge u/s 379 by himself and must be retried separately on the charge of assault with his father Ghutar, Sudia u/s 323

and Ghutar u/s 326.