

**Md. Halim and Others Vs. State of Bihar**

**Md. Halim and Others Vs. State of Bihar**

**SooperKanoon Citation :** [sooperkanoon.com/1151893](http://sooperkanoon.com/1151893)

**Court :** Patna

**Decided On :** Mar-06-2014

**Judge :** Dharnidhar Jha

**Appeal No. :** Criminal Appeal (SJ) No. 376 of 2000

**Appellant :** Md. Halim and Others

**Respondent :** State of Bihar

**Judgement :**

1. None appears today also on behalf of the appellants.
2. Sri Jitendra Kumar Roy-I, Advocate is present in Court. He has been requested by me to assist the Court as Amicus Curiae to which he has readily agreed.
3. The three appellants were charged with commission of offences under Sections 307 and 341 of the Indian Penal Code and were put on trial by the learned 3rd Additional Sessions Judge, Muzaffarpur in Sessions Trial No.266 of 1993. By judgment dated 21.09.2000, they were acquitted of the charges, they had been indicted of and in the alternative were held guilty under different Sections of the Penal Code. Appellant Md. Halim was convicted of an offence punishable under Section 324 of the IPC and was directed to suffer rigorous imprisonment for one year whereas the remaining two appellants, namely, Md. Nizam and Md. Islam were found guilty of committing the offence under Section 323 of the IPC. As appears from the impugned judgment, there was no period specified for Md.

Nizam who had to undergo imprisonment but the order of conviction passed by the learned Judge in the trial record indicates that each of the two was to suffer rigorous imprisonment for six months. The appellants have preferred the appeal to assail the judgment of conviction and the order of sentence passed against them.

4. Some of the facts which appear admitted from the record of the case is that the informant Md. Salim and appellant Md. Halim were full brothers being sons of Md. Abdul Bihari. They had some dispute in respect of a land measuring 16.25 dhurs and the informant had also filed a title suit and probably had claimed the recovery of possession as his evidence appears indicating that he sought a decree for demolition of the house of the accused persons which decree, as may appear from his evidence in para-2, had been stayed by this Court. Not only that, for the same disputed land there had earlier been same incidence between the parties and there were several criminal cases pending between them as appears from the same paragraph-2 of P.W.2.

5. In the above background, it was alleged that on 09.10.1991 the informant P.W.2 was standing on the road situate by the side of his house and was uttering that he was fed-up with the litigation and as such should sell his land and migrate to another place. The story further was that hearing these words being uttered by the informant, appellant Md. Halim armed with a talwar with other appellants armed with a Bana or lathi came to the place, that the road and Md. Halim stated that the informant be killed and dealt a blow with talwar on the informant P.W.2 on his head as also on the ankle as a result of which he became injured. The other accused persons also dealt blows by Bana and lathi.

6. The informant went to the police station in an injured condition and gave his statement which was reduced into writing and that is the FIR Ext-1 of the case.

7. The investigation started and the appellants were sent up for trial and that ended in the impugned judgment.

8. The defence of the appellants was that in fact there had been a free fight between the parties and the informant and his men had assaulted appellant Md. Halim so badly that he was admitted in the S.K.M.C.H, Muzaffarpur for treatment

of multiple injuries caused to him and in that respect appellant Md. Halim had also lodged a report (Ext-C) which had also ended in the submission of chargesheet against the informant and others.

9. During course of trial, ten witnesses were examined, out of whom, P.Ws.1 and 9 were formal in nature; P.W.1 having proved the writing and signature of the officer-in-charge of Mithanpura police station, while P.W.9 had identified the signature of the informant on the FIR. P.Ws.3 and 8 did not support the prosecution case and, rather stated that they did not see anything of it and as such they were declared hostile. P.W.4 was tendered for cross-examination. The support to the prosecution case came from P.W.2 Md. Salim, the informant, his wife P.W.5 Nagina Khatoon and one Ashok Razak(P.W.6), and Md. Taiyab(P.W.7). P.W.10 Shahzahan Khatoon was the daughter of the informant. She also came in support of the prosecution charges.

10. As regards the evidence of P.W.5 Nagina Khatoon and P.W.10 Shahzahan Khatoon, wife and daughter respectively and P.W.2 Md. Salim, it is true that they have supported the prosecution case that Md. Halim had dealt a talwar blow to the informant and had caused the injury to him, but during their cross-examination what appears stated by them makes them not a witness to the real part of the occurrence. P.W.5 Nagina Khatoon stated in her cross-examination in paragraph-5 that she was inside her house and came running to the scene of occurrence on hearing hulla and found Md. Salim(P.W.2) lying unconscious. Froath was coming out of his mouth and his sons and daughters P.W.5 and P.W.2 were there attending on him. Subsequently, he was put on a cot and was shifted to the hospital. Thus, the evidence which she had given in her examination-in-chief that she had seen the accused persons giving blows to her husband either with talwar or with any other weapon gets demolished by her evidence in paragraph-5 as per which she was never present at the time to see the blow being given to P.W.2 by the accused persons. Similarly, P.W.10 Shahzahan Khatoon was also stating that she saw her father being assaulted with talwar by appellant Md. Halim which hit him on his head and on his ankle joint while appellant Md. Nizam had given a blow with a Bana on his hand as a result of which his hand was fractured. Md. Islam had given a lathi blow to his father. In her cross-examination in paragraph-3 she

also appears sailing in the same boat with her mother. P.W.10 stated that when she arrived at the place of occurrence, she found her father and the accused persons in a scuffling together and further that the accused persons had mounted on the chest of her father and in that course rib bones of P.W.2 had been fractured, whereafter his father became unconscious and the accused persons escaped towards south. Thus, what appears from the evidence of P.W.10 is that the story narrated by her was altogether different from the evidence of her mother. Similar was the case with other witnesses, like, Ashok Razak(P.W.6) who was giving evidence in general terms that the accused persons assaulted Md. Salim with the weapons as stated earlier, but in his cross-examination in paragraph-2, he also appears having arrived at the scene of occurrence almost after the whole assault was over and he found that Md. Salim was lying unconscious and blood had fallen on the ground. Yet another witness P.W.7 Md. Taiyab appears also giving the same evidence as appears given by P.W.6 Ashok Razak. Thus, there was no support to the evidence of P.W.2 by any of the witnesses that he had been assaulted by Md. Halim by talwar or by Md. Nizam with a lathi.

11. Even assuming that he had been assaulted by the above named appellants with their respective weapons as assigned to them, one aspect of the case which appears also taken cognizance of by the learned Trial Judge was that the doctor had not been examined nor any injury report was produced to indicate that P.W.2 was bearing any injury which could be corresponding to his own evidence. The learned trial Judge was also noting that appellant Md. Halim was admitted in the S.K.M.C.H., Muzaffarpur and in support of that fact he had produced the bed head ticket Ext-A which indicated that appellant Md. Halim was admitted for the management of multiple injuries which were caused to him on account of being assaulted by some one. These facts are very much clear from the bed head ticket. P.W.10 Shahzahan Khatoon, the daughter of the informant herself stated that when she reached there, she found her father and the accused persons scuffling on the road. Thus, the fact that there was fight between the parties appears probalised from the very prosecution evidence. P.W.2, the informant has admitted in his evidence as appears from paragraph-2 of his evidence that appellant Md. Halim who was his full brother, had also lodged a case against him and that was also pending at the time of his deposition in a Magisterial Court.

What appears further from the evidence of the informant was that he had made out a case of his wife having interfered at the time P.W.2 was being assaulted by the accused and the lady was also assaulted by the appellants which is highlighted more by the facts P.W.2 stated in paragraph-9 of his evidence when he stated that the medical report of his wife regarding the injuries which were caused to her was available and the lady was also treated by the doctor. Not only that in the same paragraph P.W.2 had stated that his son had also been assaulted but he was not treated by any doctor. Wife of P.W.2, namely, Nagina Khatoon examined as P.W.5, did not support this fact that she had intervened and had received any injury or had even been assaulted by any of the accused persons.

12. There is no medical report as the doctor was not been examined. Blood had fallen at the place of occurrence, appears stated by P.W.5 Nagina Khatoon as also by P.W.6 Ashok Razak. As appears from the document Ext-A the bed head ticket in respect of treatment administered to Md. Halim, the accused persons were also assaulted and a case had also been filed by Md. Halim who had been brought to the hospital by the police officer for being admitted as appears from the bed head ticket. Thus, it appears admitted that accused persons were also assaulted in the same transaction. In spite of that there is no explanation as to how they happened to be injured.

13. The learned Trial Judge noticing the non-examination of the doctor and non-production of the medical report held the charge under Section 307 of the IPC not established and had convicted the appellant Md. Halim under Section 324 of the IPC. But, then there is absolute lack of evidence that any injury caused by an instrument which could be an instrument of shooting, cutting or stabbing was present on the person of P.W.2. Likewise, appellant Md. Nizam was alleged to have given Bana blow and Md. Islam was said to have given lathi blow to the informant but again in absence of the medical report it appears very unsafe to uphold the conviction of the appellants under the two counts as they were convicted individually. It appears that there was a free fight between the parties for any particular reason and while the prosecution had failed in proving the charges against the appellants. There was also a probability that the accused persons might have been assaulted by the informant and his men and might be that they

had acted in exercise of their right of private defence.

14. In the result, the appeal is allowed. The judgment of conviction and the order of sentence are hereby set aside. The three appellants are on bail. They shall stand discharged from the liabilities of their respective bail bonds.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**