

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.575 of 2002

Against the judgment of conviction dated 10.09.2002 passed in Sessions Trial No.1157 of 1994 by 6th Addl. Sessions Judge, Chapra.

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1. Raghunath Rai son of Deo Lal Rai
 2. Bishwanath Rai son of Deo Lal Rai
 3. Deonath Rai son of Deo Lal Rai
 4. Bindeshwar Rai son of Bishwanath Rai
 5. Devendra Rai son of Raghunath Rai

All resident of village-Bajahia, Police Station-Dariapur, District-Saran.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathy, Amicus Curiae

For the Respondent/s : Mr. Sujit Kumar Singh, A.P.P.

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 11-11-2017

Appellants herein have been convicted to undergo two years rigorous imprisonment for offences under Section 324 read with Section 149 of the Indian Penal Code and to pay a fine of Rs.500/- each, in default three months rigorous imprisonment, for offence under Section 323 of the Indian Penal Code.

It is the case of the prosecution that on 21.09.1992 at about 8 A.M., the accused Raghunath Rai was ploughing the field of the informant, P.W.5 Mangal Singh. The informant and his younger brother's wife Chinta Devi, P.W.3, intervened. Thereafter, the accused Raghunath Rai is said to have abused the complainant and thereafter the remaining accused persons Bishwanath Rai, Deonath Rai, Chhathu Rai, Bindeshwar Rai and Devendra Rai came to the



spot armed with weapons, they started assaulting the informant, P.W.5 Mangal Singh. When the informant started running away, Chhathu Rai fired a shot which caused injury on the right leg of the informant. Thereafter, it is said that Deonath Rai went to the Darwaja of the informant and set fire on his Khop where hay and grains were lying.

The prosecution was launched and the prosecution examined the following witnesses, P.W.1 Kameshwar Singh, P.W.2 Shailendra Singh, P.W.3 Chinta Devi, P.W.4 Sujanti Devi, P.W.5 Mangal Singh and P.W.6 Dr. Vijay Shankar Das.

P.W.1 Kameshwar Singh claims to be the uncle of the informant and supports the case of the prosecution. However, he alleges that Chhathu Rai fired a gun shot which hit the informant, P.W.5 Mangal Singh. Similar is the statement of the other witnesses. The story of the prosecution, as is revealed from recording of the statement of the eye witnesses, goes to show that omnibus general allegations are made against all the accused persons except Chhathu Rai, who is said to have fired on Mangal Singh, P.W.5, which hit him on his leg. No other persons is said to have injured in the incident in question.

P.W.6 Dr. Vijay Shankar Das, who has examined Mangal Singh, injured witness, and he only finds one injury on the right



leg upper portion which, according to him, is caused by a fire arm. Apart from solitary injury, neither Mangal Singh nor any other person has been injured in the incident in question.

The learned Court has found that no offence under Section 307 of the Indian Penal Code is made out, acquitted all the appellants of the same and convicted the appellants only for offences under Sections 324 and 323 of the Indian Penal Code. Even though the appellants were in one place and treating them to have caused unlawful assembly, all the appellants have been convicted, whereas solitary injury caused to Mangal Singh, the informant, P.W.5, has been caused by Chhathu Rai. Records indicate that Chhathu Rai was absconding and he was not tried and he is not the appellant before us and no order convicting him has been passed. That being so, all the appellants present before this Court are only alleged with omnibus allegations for being present on the spot as members of the unlawful assembly. There is no specific allegation attributed to them and the only injury sustained by the informant Mangal Rai, P.W.5 is apparently caused by Chhathu Rai who is not before this Court.

Taking note of all the circumstances and the fact that incident took place more than 25 years before on 21.09.1992, this Court deems it appropriate to hold that the appellants are not guilty of the



offences under Section 324 or 323 of the Indian Penal Code and therefore, their conviction for the aforesaid offences is not sustainable.

The appeal is allowed setting aside the conviction. All the appellants are acquitted of the charges levelled against them, their bail bonds be discharged and they be set free.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
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