

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.450 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

- =====
1. Bhuwar Yadav
 2. Judagi Yadav
 3. Gajadhar Yadav
 4. Chhotak Yadav

All sons of Late Bakhori Yadav. All residents of Village – Charma, Police Station – Masaurhi, District – Patna.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Gajanan Mishra, Adv.
Mr. Ravi Bharadwaj, Amicus Curiae
For the Respondent/s : Mr. Binod Bihari, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
Date: 09-08-2018

Appellant no. 1, stood convicted under Section 324 and 148 of the Indian Penal Code (hereinafter referred to as the “IPC”) and was sentenced to undergo rigorous imprisonment for two years under each sections and rest of the appellants were convicted under Section 323 and 147 of the IPC and were sentenced to undergo rigorous imprisonment of one year under each sections, by the judgment of conviction and order of sentence dated 21.08.2003 passed by Shri Chandra Shekhar Sharma, the then, Presiding Officer Additional Court No. 1, Patna. Adhoc Sessions Judge, Fast Track Court No. 1, Patna in Sessions Trial Case No. 1163 of 1996.



2. As nobody appeared on 08.08.2018 to argue the appeal, in spite of repeated calls, Mr. Ravi Bharadwaj has been appointed as *Amicus Curiae* to assist this Court.

3. Prosecution case as per written report of PW2 informant Parmeshwar Rai in short is that on 24.02.1996 in the evening at about 5 P.M., when the informant came back to his house, he saw appellant no. 1 Bhuwar Yadav was cutting Posta of the northern wall of his *dalan*, which was objected by the informant, on which, Bhuwar Yadav gave *farsa* blow on the head of the informant, as a result of which, he fell down on the ground and, thereafter, rest of the accused persons assaulted him by means of *lathi*. Informant raised alarm, on which, Gikal Rai, Sampati Devi and Kameshwar Rai came there running and they were also assaulted by the accused persons. The villagers assemble and saw the occurrence. Motive behind the occurrence is alleged to be the dispute between the parties with respect to the partition.

4. On the basis of the aforesaid written information, Masaurhi 30/96 was registered against the appellants. Police after investigation submitted charge-sheet. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately traveled to the file of by Shri Chandra Shekhar Sharma, the then, Presiding Officer Additional Court No. 1, Patna for trial and



disposal.

5. Charges were framed under Sections 307/34 as well as under Sections 147 and 148 of IPC and to prove the charge, prosecution has examined altogether seven witnesses. They are; P.W. 1 – Gigal Rai, (father of informant and injured), P.W. 2 – Parmeshwar Rai, the informant and injured, P.W. 3 – Kameshwar Rai (full brother of the informant and injured), P.W. 4 – Sampati Devi, (wife of the informant and injured), P.W. 5 – Sudama Singh, declared hostile, P.W. 6 – Dr. Satya Narayan Singh, who examined the injured persons, P.W. 7 – Ram Pravesh Pandit is a formal witness, who proved the formal F.I.R. In this case Investigating Officer has not been examined.

6. Apart from that following documents have been brought on record and marked as Ext. 1 – Signature of Ashok Kumar Sharma on fardbeyan, Ext. 2 – Original Baynama of Jang Bahadur Sharma banam Ashok Sharma, Ext. 3 to 3/2 – Injury reports, Ext. 4 – Endorsement on fardbeyan, Ext. 5 – F.I.R., Ext 6- Fardbeyan and Ext. 7 to 7/2 – Requisition of injuries.

7. On behalf of the defence also, some documents have been brought on record to show that a case has been lodged by Bhuwar Yadav with respect to committing theft inside his house against the informant and others.



8. Learned Trial Court on conclusion of trial though acquitted the appellants from the charge under Section 307/34 of the IPC, however, he convicted the appellant no. 1 under Section 324 and 148 of the IPC and other appellants under Section 323 and 147 of the IPC and sentenced them in the manner aforesaid.

9. Learned counsel for the appellants as well as learned *Amicus Curiae* have assailed the judgment of trial court and submitted that in this case there are several contradictions in the evidence of prosecution witnesses and there is also contradiction with respect to time of occurrence as it is alleged in the written report that the occurrence took place at about 5 P.M., however, during evidence in court, the prosecution witnesses has stated that the occurrence took place at about 3 P.M. and in the cross-examination also, witnesses denied that any occurrence took place at 5 P.M on 24.02.1996. Further submission of learned counsel for the appellants that in this case almost all the prosecution witnesses, who have supported the case of prosecution are the members of one family and they are interested witnesses. Further contention of learned counsel for the appellants is that there was dispute between the parties from before and appellant no. 1 has also lodged a case against the informant and others for commission of theft in his house. It has further been contended that though one of the injuries was found to be grievous in



nature but the Radiologist has not been examined in this case and in cross-examination, the doctor has not found the injuries grievous in nature. However, the trial court has failed to consider all these infirmities in the prosecution story and has convicted the appellant no. 1 under Section 324 and 148 of the IPC and other appellants under Sections 323 and 147 of the IPC, which is out and out perverse and not sustainable in the eye of law.

10. Learned counsel for the State on the other hand, has supported the finding of guilt recorded by learned Trial Court and has submitted that in this case there are as many as four persons sustained injuries that fully support the case of prosecution with regard to assault by the appellants. No doubt, there is some contradiction with regard to time of occurrence but so far genesis and manner of occurrence is concerned, the evidence of all the witnesses are consistent and the same has also been corroborated by the evidence of doctor, who has found the injuries on the persons of the injured and since the PW1 to PW4 himself are the injured in this case, veracity of evidence of these witnesses cannot be doubted and, therefore, the conviction of the appellants in this case is just and proper and the same does not require any interference.

11. Having heard both sides. From perusal of the evidence of witnesses, it appears that PW2 is the informant in this case and he



has supported the manner and genesis of occurrence and has stated that Bhuwar Yadav assaulted him by means of *farsa* and others assaulted him by means of *lathi* and the doctor PW6 has also found the following injuries:-

(i) sharp cutting wound on left side of head 1 ½” x ¼”x 1/6”.

(ii) lacerated wound on right leg 1” x ½” x ¼”.

(iii) swelling on left elbow 2” x 2”.

12. As such, evidence of doctor supports the ocular evidence of PW2 which is further corroborated by the written report. No doubt, in written report there is some contradiction with regard to time of occurrence, however, that is minor contradiction and does not go to the root of the case. PW1, PW3 and PW4 has also been assaulted by Bhuwar Yadav and other appellants by *farsa* and *lathi* and they have also sustained injuries and doctor has also found certain injuries on their persons and as such evidence of PW1, PW3 and PW4 are corroborated by the evidence of doctor. In this case, Investigating Officer has not been examined and there are contradiction in the evidence of PW1 and PW3 and submission of learned counsel for the appellants is that the contradiction is vital in nature as there is contradiction between the earlier statement recorded before the police and the evidence of witnesses in the court. It is also a fact that PW1 to PW4 are the injured witnesses and it is well settled that the evidence



of injured witness are always on higher pedestal and as such their evidence cannot be brushed aside only because of minor contradiction.

13. Considering the facts and circumstances as well as the evidence of witnesses, I do not find any infirmity in the conviction of the appellant no. 1 under Section 324 and 148 of the IPC and conviction of other appellants under Section 147 and 323 of the IPC and the same is hereby upheld. .

14. A submission has been advanced by learned counsel for the appellants that the case is of the year 1996 and now 22 years have passed and the injuries caused to all the injured were found to be simple in nature and admittedly there was dispute between the parties with respect to the partition and further, there is nothing on record to show that the appellants were convicted in any other case and have ever misused the privilege of bail and it also appears that appellant no. 1 has remained in judicial custody for one month during pendency of trial and so far other appellants are concerned, they have been convicted under Section 323/147 of the IPC and, therefore, a lenient view may be taken and the sentence of the appellants may be reduced to the period already undergone by them in judicial custody.

15. This court finds force in the submission of learned counsel for the appellant and considering the fact that the case is very old and all



the appellants must be now aged about 50 years and appellant no. 1 has also remained in judicial custody for one month during pendency of the trial and as such no fruitful purpose will be served to send him behind the bars to serve the remaining sentence. Accordingly, the period of sentence of appellant no. 1 is reduced to the period already undergone by him in judicial custody and so far other appellants are concerned, they are directed to be released on due admonition under Section 360 of Cr.P.C

16. With the above modification in sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

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