

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.251 of 2003

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1. Ram Prasad Sah Son of Late Nand Lal Sah
2. Krishnandan Sah son of Sathu Sah
3. Sitaram Sah son of Jay Narayan Sah
4. Kedar Sah Son of late Asharfi Sah
5. Gujur Sah Son of Late Nand Lal Sah
6. Mohan Sah Son of Shankar Sah
7. Rameshwar Sah Son of Indra Lal Sah
8. Hardeo Sah Son of Late Nand Lal Sah

All are resident of Village – Ram Diha, P.S. – Chakia,
District – East Champaran,

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar No. -III, Adv.

For the Respondent/s : Mr. Abhya Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date: 09-02-2018

Challenge in this appeal is of judgment of conviction and order of sentence dated 11.03.2003, passed by Shri Bimal Kumar, the then Presiding Officer, Fast Track Court No. -3, Additional District & Sessions Judge, East Champaran, Motihari, in Sessions Trial No. 203/358 of 1992/02, by which the appellant – Hardeo Sah stood convicted under Sections 148 and 324 of the Indian Penal Code (hereinafter referred to as the “IPC”) and was sentenced to undergo imprisonment for 03 years under Section 324 of the IPC and imprisonment for 01 year under



Section 148 of the IPC and rest accused persons were convicted under Section 147 of the IPC, however, they were given the benefit of Probation of Offender Act, and were released on probation bond of Rs. 2,000/- each, for a period of one year

2. It appears from the record the bond has already been executed by the appellant nos. 1 to 7 and period of probation has also been completed.

3. Prosecution case as per the fardbeyan of Bharat Pandit (P.W. 7) in short is that a dispute was going on with respect to a certain piece of land, where he was growing paddy crops and on the alleged date of occurrence, all the accused persons armed with various weapons came on the land and started cutting the paddy crops and when the informant along with Sathu Pandit, Mahadeo Pandit and Tama Pandit went to stop them, appellant – Hardeo Sah assaulted informant on his chest by means of *bhala*.

4. On the basis of above fardbeyan of the informant, Chakia P.S. Case No. 106/96 was registered against the accused persons.

5. Post investigation, charge sheet was submitted. Cognizance of the offence was taken and the case was



committed to the court of sessions, which ultimately came to the file of Bimal Kumar, the then Presiding Officer, Fast Track Court No. -3, Additional District & Sessions Judge, East Champaran, Motihari for trial and disposal. During trial charge has been framed under Section 307, 379, 447 and 149 of the IPC.

6. In order to prove its case, prosecution has examined altogether 09 witnesses. They are: P.W. 1- Jaimangal Pandit, P.W. 2 – Rama Pandit, P.W. 3 – Awadhesh Singh, P.W. 4 - Sathu Pandit (injured), P.W. 5 –Guru Sharan Singh, P.W. 6 – Sushil Kumar Singh, I.O. of this case, P.W. 7 – Bharat Pandit (informant), P.W. 8 – Mahadeo Pandit (injured) and P.W. 9 – Arvind Kumar Sinha, Doctor, who treated and examined the injured.

7. Apart from that following documents have been brought on record and marked as; Ext. 1 – Fardbeyan of Bharat Pandit, recorded by A.S.I. Sushil Kumar Singh, Ext. 2 – Signature of Officer –in – Charge, Chakia P.S. on the formal F.I.R of Chakia P.S. Case No. 106/96, Ext. 3 to 3/3 – Injury reports of Sathu Pandit, Rama Pandit, Mahadeo Pandit and Bharat Pandit.

8. On behalf of the defence also, one witness was



examined as D.W. 1- Chandrika Choudhary, who proved Ext. A – Certified copy of decree passed by Munsif in T.S. No. 190/89, Ext. B - Certified copy of order passed in T.S. No. 190/89, Ext. C – Certified copy of order of Executive Magistrate in Cr. Revision No. 189/92, Ext. D – Deed of agreement and Ext. E – Certified copy of register.

9. From the examination under Section 313 Cr.P.C. and from trend of cross-examination, it appears that the defence of the appellant is of complete denial of occurrence.

10. Learned Trial Court after considering the evidence available on record, though not found the case true under Section 307 and other Sections of the IPC, however, he convicted the appellant – Hardeo Sah, under Section 148 and 324 of the IPC and sentenced him in the manner as stated above and further convicted other appellants under Section 147 of the IPC and they were released on furnishing probation bond.

11. Contention of learned counsel for the appellant is that admittedly, there was land dispute between the parties and the said land also belonged to the appellants' side, which will appear from Ext. A to C, and in fact informant and others were aggressor in the occurrence. It has also been



argued that there are contradictions in between the evidence of prosecution witnesses. Further the trial court has given the benefit of Section 360 Cr.P.C. to other appellants, however, he failed to appreciate the fact that case of appellant – Hardeo Sah also stood on similar footing and, therefore, the judgment of trial court is perverse and not sustainable in the eye of law.

12. On the other hand, learned counsel for the respondent - State supported the finding of guilt recorded by learned Trial Court and submitted that there are consistent evidence of prosecution witnesses with regard to manner of assault by appellant – Hardeo Sah not only to informant – Bharat Pandit but to other persons also and the doctor has also found injuries over the person of injured and, therefore, there is no infirmity in the impugned judgment of trial court and conviction of appellant Hardeo Sah under Section 148 and 324 of the IPC is just and proper.

13. Heard the rival contentions of the parties.

14. On evaluation of evidence of witnesses, it appears that informant – Bharat Pandit (P.W. 7) has stated in his evidence that when he prevented the accused persons from harvesting the paddy, appellant – Hardeo Sah assaulted



P.W. 7 by means of *bhala*. The aforesaid evidence of this witness has also been supported by other witnesses and it appears that other witnesses, namely, Sathu Pandit, Mahadeo Pandit were also assaulted by the other appellants and, therefore, their presence at the place of occurrence cannot be doubted. Their evidence is further corroborated by evidence of P.W. 9 (Doctor), who has found the injuries on the person of injured and proved Ext. 3 to 3/3 and what transpire from the impugned judgment is that injury caused to the informant was found to be grievous in nature, however, his evidence shows that X-ray plate has not been brought on record and the trial court has also considered this aspect and did not convict the appellant – Hardeo Sah under Section 307 of the IPC.

15. Considering the entire discussions made above, I find no infirmity in the judgment of Trial Court and conviction of appellant – Hardeo Sah under Section 324 and 148 of the IPC and conviction of other appellants under Section 147 of the IPC is just and proper. However, it appears that the occurrence is of the year 1991 and 26 long years have elapsed since then and appellant has also suffered the rigors of trial and appeal for many years and it also appears



that he has already remained in custody for one and half month and there is nothing available on record to show that he was previously convicted in connection with any other case or has ever misused the privilege of bail and no purpose will be served to send him behind the bars to serve remaining sentence. Accordingly, though while upholding the conviction of appellant – Hardeo Sah under Section 148 and 324 of the IPC, his sentence is reduced to the period already undergone by him in judicial custody.

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

(Vinod Kumar Sinha, J)

sunil/-

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