

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.100 of 2003

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

- =====
1. Bhoj Yadav, son of Rajpati Yadav
 2. Umesh Yadav, son of Ram Ashray Yadav
 3. Bulaki Yadav, son of Haruna Yadav (since died)
 4. Gopi Chand Yadav, son of Ram Nath Yadav (since died), all residents of village Gopalpur, P.S. Jamo, District Siwan

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Dilip Kumar Singh, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 22-02-2018

This appeal has been originally preferred by appellants Bhoj Yadav, Umesh Yadav, Bulaki Yadav and Gopi Chand Yadav, who have been convicted under Sections 323 and 447 and sentenced to undergo rigorous imprisonment for one year under Section 323 IPC and no separate sentence has been passed under Section 447 IPC by the judgment and order dated 31.1.2003 passed by Sri Anant Prasad Shrivastava, the then Ad hoc District and Sessions Judge, Presiding Officer, 1st Additional Fast Track Court at Siwan in Sessions Trial No. 139/92/93/2001.

2. It was informed by learned counsel for the appellants that during pendency of this appeal appellants Nos. 3 and 4, namely, Bulaki Yadav and Gopi Chand Yadav have died on which a report



was called for from the Superintendent of Police, Siwan and the report has been received which is at Flag 'Y' from which it appears that appellant No.3 Bulaki Yadav has died on 11.12.2014 and appellant No.4 Gopi Chand Yadav has died on 28.1.2016. Hence, this appeal stands abated against appellants Nos. 3 and 4.

3. The prosecution case, which has been initiated on the basis of fardbeyan of informant Baijnath Yadav (P.W.6) recorded by the police, in short, is that the accused appellants came at his darwaja at 8.30 P.M. in the night on 20.9.1991 armed with lathi and on instigation of appellant Bhoj Yadav all the appellants started assaulting him and his family members. Further prosecution case is that appellants Bhoj Yadav and Umesh Yadav assaulted his wife by lathi, causing miscarriage of her eight months pregnancy.

4. On the basis of aforesaid fardbeyan, which was recorded on 21.5.1991 at 6.30 P.M., Jamo P.S.Case No. 28 of 1991 was registered and police after investigation submitted charge sheet, thereafter cognizance has been taken and after commitment of the case, the case traveled to the file of Sri Anant Prasad Shrivastava, the then Ad hoc District and Sessions Judge, Presiding Officer F.T.C.-I, Siwan for trial and disposal.

5. It appears that during trial all the appellants stand charged under Sections 447/34, 323/34, 307/34 IPC and apart from that



appellants Bhoj Yadav and Umesh Yadav were charged under Section 315/34 IPC also.

6. The prosecution in support of its case has examined altogether nine witnesses, they are P.W.1 Ali Ahmad Khan, who is a formal witness and has proved FIR as Ext.1, P.W.2 Madhuri Devi, who is daughter of informant and injured, P.W.3 Birendra Manjhi, who is injured and claims to be eye-witness to the occurrence, P.W.4 Vikrama Manjhi, who is injured and claims to be eye-witness to the occurrence and has been declared hostile, P.W.5 Champa Devi, who is wife of informant and injured, P.W.6 Baijnath Yadav, who is informant and injured, P.W.7 Ram Autar Manjhi, who claims to be eye-witness to the occurrence and injured and has been declared hostile, P.W.8 Gopal Prasad, who is a formal witness and has proved the injury reports as Exts. 3 to 3/6 and P.W.9 Harelal Prasad is a formal witness who has proved pages 1 to 43 of the case diary as Ext.4.

7. Apart from the oral evidence the following Exhibits have been admitted into evidence as Ext.1, formal FIR, Ext.2 signature of informant on fardbeyan, Exts.3 to 3/6 injury reports and Ext.4 is original case diary.

8. Before proceeding further it is relevant to mention here that neither the Doctor nor the I.O. has been examined in this case.



9. On behalf of defence no ocular or documentary evidence has been adduced and defence as per trend of cross examination and statement under Section 313 Cr.P.C. is of false implication due to land dispute.

10. Learned trial court after considering the entire materials available on record and also considering the fact that Doctor has not been examined in this case and relying on several decisions of this Court has acquitted the appellants from the charges under Sections 307/34 and 315/34 IPC. However, appellants have been convicted under Sections 323 and 447 IPC.

11. Being aggrieved by the impugned judgment and order, the present appeal has been preferred and contention of learned counsel for the appellants is that the learned trial court has failed to consider that there is land dispute between the parties from before and defence side also has received injuries and further there are several contradictions in the evidence of witnesses. Further learned trial court has failed to consider that there is no independent witness to the occurrence and all the witnesses are related to each other and in spite of that the conviction of appellants does not appear to be just and proper and is not sustainable in the eye of law.

12. On the other hand, learned counsel for the State has defended the judgment on the ground that for conviction under



Section 323 IPC the evidence of Doctor is not essential and further though witnesses are related to the informant but there is nothing in their cross examination to doubt the veracity and credibility of their evidence and there is no reason to disbelieve the prosecution case and, as such, there is no infirmity in the impugned judgment and order which are quite sustainable in the eye of law.

13. On a consideration of the rival contentions and from perusal of the materials available on record, it appears that P.W.6 is the informant in this case and he has supported the occurrence in his evidence in chief before the court and narrated the occurrence that appellant Bhoj Yadav instigated for inflicting injuries and appellants Bhoj Yadav and Umesh Yadav assaulted the wife of informant, causing miscarriage of her eight months pregnancy and there is nothing in his cross examination to doubt its credibility, rather in his cross examination he has given the details about injuries received by prosecution side. His cross examination shows that defence side also received injuries but injury report has not been brought on record by the defence and in spite of cross examination the evidence of P.W.6 (informant) remains undiluted so far point of assault is concerned and the same has been found corroboration from the evidence of P.W.5, who is wife of informant and has received injury causing miscarriage of her pregnancy and the evidence of P.Ws. 2 and 3 is that they have



also received injuries and the evidence of P.W.6 has also been corroborated by the earliest version of this witness which has been recorded by police in fardbeyan.

14. No doubt, in this case Doctor has not been examined and on consideration of several judgments learned trial court has not found the appellants guilty under Sections 307/34 and 315/34 IPC on the ground of non-examination of Doctor. However, learned trial court has convicted the appellants under Sections 323 and 447 IPC and sentenced them, as stated above. There is undiluted evidence available on record to show that appellants Bhoj Yadav and Umesh Yadav have assaulted the wife of informant and there is also sufficient evidence available on record against the appellants that they came at the darwaja of informant and assaulted the informant and his family members and, as such, there is sufficient and cogent materials available on record in support of prosecution case so far assault and criminal trespass are concerned and conviction of appellants under Sections 323 and 447 IPC appears to be just and proper and appellants have been sentenced to undergo R.I. for one year for offence under Section 323 IPC but no separate sentence has been passed for the offence under Section 447 IPC.

15. It has been informed by learned counsel for the appellants that appellants Nos. 1 and 2 have remained in custody for



two months during trial and moreover the case is of 1991 and appellants have faced mental agony of trial and appeal for the last 26 long years, as such, their sentence may be reduced to the period already undergone by them.

16. I find sufficient force in the submission of learned counsel for the appellants in the given facts and circumstances and, as such, the period of sentence is reduced to the period already undergone by them.

17. With the aforesaid modification in the order of sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

spa/-

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