

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.287 of 2003

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

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1. Ramakant Prasad, son of Bachcha Prasad
2. Sanjay Prasad, son of Bachcha Prasad, both residents of village Khajuri Tiwari Tola, P.S. Kuchaikote, District Gopalganj
3. Surendra Prasad, son of Brijraj Prasad, resident of village Kharatia, P.S. Mirganj, District Gopalganj
4. Bachcha Prasad, son of Late Ganesh Prasad, resident of village Khajuri, Tiwari Tola, P.S. Kuchaikote, District Gopalganj

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Neeraj Kumar with Mr. Raghav Prasad,
Advocates

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
Date: 26-02-2018

Appellant No.1, Ramakant Prasad, stands convicted for the offence under Sections 324 and 148 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year in both counts and other appellants, namely, Sanjay Prasad, Surendra Prasad and Bachcha Prasad, have been convicted under Sections 323 and 147 IPC and sentenced to undergo rigorous imprisonment for six months in both counts vide judgment and order dated 7.5.2003 and 13.5.2003 respectively passed by Sri Chiranji Singh, the then Presiding Officer, F.T.C. No.1, Gopalganj in Sessions Trial No. 447/93/328/2001.

2. Prosecution case as per fardbeyan recorded by A.S.I. of



Kuchaikote P.S., in short, is that while informant Ramnagina Prasad (P.W.5) taking his Nasta at his house in village Tiwari Tola Khujuri on 31.3.1992 at about 7 A.M. accused Bachcha Prasad, Ramakant Prasad, Bharat Prasad, Sanjay Prasad, Ramsawari Devi and Surendra Prasad came there having armed with Lathi, Bhala and Dabiya in their hands and at that time daughter of informant Bindu Devi was present there for providing Nasta to the informant. Accused Bachcha Prasad exhorted the other accused persons to kill the informant and his daughter Bindu Devi and on such instigation accused Sanjay Prasad and Surendra Prasad assaulted the informant by lathi on his left leg and accused Ramakant Prasad aimed Dabiya at the informant to commit his murder but his daughter Bindu Devi intervened in order to save her father and, as such, Dabiya blow was given on the head of Bindu Devi causing injury on her head and bleeding started. Accused Bharat Prasad gave bhala blow on the right hand of the informant and another blow on his right leg causing injuries to his person and other accused persons assaulted the informant and his daughter with lathi causing injuries on their persons. Motive behind the occurrence is said to be land dispute between the parties from before.

3. On the basis of aforesaid fardbeyan Kuchaikote P.S. Case No. 50 of 1992 was registered and police after investigation submitted charge sheet against all the accused persons except accused Bharat



Prasad, who was absconding and investigation was kept pending against him and on cognizance the case has been committed to the court of sessions, which ultimately traveled to the file of Sri Chiranjii Singh, the then Presiding Officer, F.T.C. No.1, Gopalganj for trial and disposal.

4. During trial charges were framed against all the appellants and one Ramsawari Devi under Section 449 IPC, including under Sections 307 IPC against accused Ramakant Prasad, under Sections 307/149 IPC against accused Bharat Prasad, Bachcha Prasad, Sanjay Prasad, Surendra Prasad, under Sections 148 and 324 against Ramakant Prasad and Bharat Prasad and also charges were framed under Sections 147, 323 and 325/34 IPC against accused Bachcha Prasad, Sanjay Prasad, Surendra Prasad and Ramswari Devi.

5. In support of the case prosecution has examined altogether 8 witnesses, they are P.W.1 Mahesh Prasad, who claims to be an eye-witness to the occurrence and also accused in counter case, P.W.2 Baijnath Prasad, who claims to be an eye-witness to the occurrence and also accused in counter case, P.W.3 Rangi Prasad, who claims to be an eye-witness to the occurrence and also accused in counter case, P.W.4 Bindu Devi, who is daughter of informant and injured, P.W.5 Ramnagina Prasad, who is informant and injured in this case, P.W.6 Dr.Vishwanath Agrawal, who has examined the injured persons,



P.W.7 Bikrama Singh, who is a formal witness and has proved formal F.I.R. and P.W.8 is Nagnarain Singh, who is Investigating Officer in this case.

6. On behalf of defence one witness has been examined as D.W.1 Yogendra Singh, who is a formal witness and has proved the fardbeyan of counter case being Kuchaikote P.S.Case No. 49 of 1992 as Ext.A and F.I.R of that case as Ext.B, including other documents being certified copy of plaint of Title Suit No. 33 of 1990 as Ext. C, certified copy of judgment passed in Trial No. 13/99 as Ext.D, certified copy of judgment passed in Sessions Trial No. 126 of 1973/90 of 1977 as Ext.D/1 and Ext.E is certified copy of order passed by District Judge, Gopalganj in Civil Revision No.90 of 2000 in order to show the previous enmity between the parties. On perusal of the said documents it appears that there was land dispute between the parties and a title suit was going on between the parties from before and further appears that a counter case has also been filed with respect to the same occurrence by appellant No.1 Ramakant Prasad.

7. Learned trial court on conclusion of trial has convicted the appellants under Sections 148, 324, 147 and 323 IPC and sentenced them as stated above.

8. Learned counsel for the appellants has submitted that learned trial court has failed to consider that there is case and counter



case between the parties on the day of occurrence and I.O. has failed to establish the place of occurrence in this case. It is also submitted that evidence does not show the actual aggressor of the occurrence and further it appears that there was land dispute between the parties from before and there is case and counter case with respect to the same occurrence on the same day but learned trial without considering this aspect of the matter has convicted the appellants which is not sustainable in the eye of law as there was no unlawful assembly at that time and at best it is a case of free fight between the parties in which it cannot be said with certainty as to who was the aggressor.

9. On the other hand, learned counsel for the State has submitted that there is no infirmity in the impugned judgment and it is quite just and proper which does not require any interference by this Court as there is consistent evidence about assault by the appellants to the informant and his daughter and the same has been corroborated by the evidence of Doctor also.

10. On consideration of rival submissions and on perusal of the record it appears that informant (P.W.5) has supported the occurrence and has stated that appellant No.1 Ramakant Prasad has assaulted by Dabiya and appellants Nos. 2 and 3, namely, Sanjay Prasad and Surendra Prasad, have assaulted by lathi and his evidence has been corroborated by evidence of P.W.4 also and he is one of the



injured and their evidence has been found corroboration by the evidence of Doctor, who has found sharp cutting injury on the person of P.W.4 Bindu Devi and also other injuries on the person of informant (P.W.5). However, submission of learned counsel for the appellants in the background of the case is that there is no allegation of assault against appellant No.4 Bachcha Prasad and the said Bachcha Prasad has lodged a title suit against the informant being Title Suit No. 33 of 1990 with respect to land dispute between the parties from before and in such a case he has falsely been implicated in this case and he was not even present at the place of occurrence.

11. On a consideration of the entire evidence on record it appears that there is no allegation of assault against appellant No.4 Bachcha Prasad, who is said to have exhorted the other appellants, whereas the said Bachcha Prasad has instituted Title Suit No. 33 of 1990 against the informant and others, who were defendants in the said suit and the suit was decided in favour of Bachcha Prasad and further with respect to land dispute other cases are going on and in such a situation false implication of appellant Bachcha Prasad cannot be ruled out and, as such, he is entitled to the benefit of doubt in the given facts and circumstances and the conviction of the appellant Bachcha Prasad does not appear to be sustainable in the eye of law. So far other appellants are concerned, it further appears from the



record that there was marpit between the parties and both sides have received injuries and the motive behind the occurrence is land dispute and in such a situation the conviction of the appellants under Sections 147 and 148 IPC does not appear to be sustainable in the eye of law. Learned trial court has not considered this aspect of the matter and there was marpit between the parties and as such it cannot be said that they formed an unlawful assembly, rather it is a case of free fight between the parties, in which it cannot be said as to who was aggressor.

12. In view of discussions made above, the conviction of appellant Ramakant Prasad under Section 324 IPC and conviction of appellants Sanjay Prasad and Surendra Prasad under Section 323 IPC is upheld. So far conviction of appellants Sanjay Persad and Surendra Prasad under Sections 147 and Ramakant Prasad under Section 148 is concerned, their conviction under Sections 147 and 148 IPC is set aside. Similarly, conviction and sentence of appellant Bachcha Prasad under Sections 323 and 147 IPC is set aside.

13. On the point of sentence learned counsel for the appellants has submitted that appellant Ramakant Prasad has already remained in custody for about one month during pendency of trial and the case is of the year 1992, as such, 25 years long period have passed and no purpose will be served in sending him again in custody. It has



also been argued that considering the fact that occurrence is 25 years old, and sentence of imprisonment of appellants Sanjay Prasad and Surendra Prasad be also converted to a reasonable fine. I find force in the submission of learned counsel for the appellants.

14. Considering the facts and circumstances, the sentence of appellant Ramakant Prasad is reduced to the period already undergone by him in the custody and so far sentence in respect of appellants Sanjay Prasad and Surendra Prasad is concerned, their sentence of six months R.I. is modified to a fine of Rs.5000/- each, which shall be payable to both the injured and in default of payment of fine they shall have to suffer further three months simple imprisonment.

15. With the aforesaid modification in the judgment of conviction and order of sentence, this appeal is disposed of.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.2.2018
Transmission Date	28.2.2018

