

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction and order of sentence dated 20.11.2002 passed by Shri Nirmalesh Chandra Lala, Ad-Hoc Sessions Judge, Additional Court No.2, Patna in Sessions Trial No. 420 of 1996 / 317 of 2001)

Criminal Appeal (SJ) No.665 of 2002

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1. Ram Prasad Rai, son of Sri Brahamdeo Rai
 2. Sheo Prasad Rai, son of Sri Brahamdeo Rai
 3. Shoti Lal Rai, son of Sri Bhagirath Rai
 4. Jai Nandan Rai, son of Sri Ram Prasad Rai
 5. Janak Rai, son of Sri Amrit Rai.
 6. Lakhan Rai, son of Muni Lal Rai
 7. Rameshwar Rai, son of Basant Rai
 8. Ram Swaroop Rai, son of Sri Laldhari Rai
 9. Ambika Rai, son of Sri Amrit Rai
 10. Guru Bachan Rai, son of Guru Bijan Rai
 11. Sidh Nath Rai, son of Sri Chanarik Rai
 12. Dayali Rai, son of Deepan Rai
 13. Bijay Rai, son of Sri Sheo Prasad Rai

All residents of Village- Girbari Tola, P.S.- Bikram, District- Patna.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Tej Narayan Singh, Advocate
Mr. Harsh Kumar Singh, Advocate
For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 13-01-2018

The present appeal has been filed against the judgment of conviction and order of sentence dated 20.11.2002 passed by Ad-hoc Sessions Judge, Additional Court No. 2, Patna in Sessions Trial No. 420 of 1996 / 317 of 2001, whereby the appellant no.1, Ram Prasad Rai, has been convicted under Section 324 of the Indian Penal



Code and sentenced to under go RI for two years. The appellant nos.2 to 13 have been convicted under Sections 324/149 of the Indian Penal Code and sentenced to undergo RI for two years. The appellants, namely, Sheo Prasad Rai, Ambika Rai, Dayali Rai, Janak Rai and Bijay Rai have been convicted under Sections 323 of the Indian Penal Code and sentenced to undergo R.I. for 6 (six) months. All the appellants have further been convicted under Sections 323/149 of the Indian Penal Code and sentenced to undergo RI for 6 (six) months. All the sentences have been directed to run concurrently. However, all the appellants have been acquitted for the offence under Sections 307 and 307/149 of the Indian Penal Code.

2. The prosecution case, as disclosed from the fradbeyan (Ext.2) of the informant Rameshwar Rai (P.W.6) that on 27.07.1995 there was altercation between him and accused Ram Prasad and his brother Sheo Prasad for passage, but nothing untoward happened at that time. On the next day i.e. 28.07.1995, at 7.00 A.M. when the informant was going to work in his field with spade, all of a sudden accused Ram Prasad Rai, Sheo Prasad Rai and Soti Lal Rai came armed with Farsa, Lathi come in front of a house in a field and stopped him. Accused Ram Prasad Rai had farsa in his hand and in order to kill him, he hurled a Farsa blow on him. He tried to ward off the blow and received injury by Farsa on his right hand and he fell



down and raised alarm, whereupon the other accused persons, namely, Jai Nandan Rai, Janki Rai, Lakhan Rai, Ambika Rai, Ram Ishwar Rai, Ram Swaroop Rai, Gurubachan Rai, Sidhnath Rai, Dayali Rai and Bijay Rai reached there armed with lathi, Garsad and Farsa. It is also said that Dilchand Rai, Rajnath Rai, Rabindra Rai and others also reached there to save the informant and they were also assaulted by the accused persons with lathi, Garasa and Farsa. It is further said that in the course of assault, accused Ram Prasad Rai also received lathi injuries and that the occurrence took place as the accused persons had blocked the road by placing a Nad on the road by uprooting it from other place.

3. On the basis of the fardbeyan of the informant Danapur P.S. case no. 199 of 1995 dated 28.07.1995 was registered for the offence under Sections 147, 148, 341, 323, 324 and 307 of the Indian Penal Code.

4. The police after investigation submitted chare-sheet. Thereafter the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions for trial. The trial court framed charge against appellants to which they pleaded not guilty and claimed to be tried. The appellants have also pleaded that no occurrence took place in the manner prosecution as alleged.

5. On behalf of the prosecution altogether 8 witnesses



were examined. P.W.1 is Rajnath Yadav, P.W.2 is Dilchand Rai, P.W.3 is Rabindra Prasad, P.W.4 is Premchand Yadav, P.W.5 is Rajdeo Rai, P.W.6 is Rameshwar Rai, P.W.7 is Parmanand Singh and P.W.8 is Dr. Dwojendra Kumar Jha, who had examined the injured persons.

6. The trial court on scrutiny of the evidence convicted and sentenced the appellants for the offence mentioned hereinabove. However, all the appellants have been acquitted for the offence under Sections 307 and 307/149 of the Indian Penal Code

7. Mr. Tej Narayan Singh, learned counsel appearing on behalf of the appellants submitted that there is case and counter case on account of land dispute between the informant and the appellants. Mr. Singh next submitted that from the injury report and the opinion of the doctor, it appears that the injuries are simple in nature and, as such, the conviction of the appellants, even if the prosecution case in its entirety is accepted is only under Section 323 of the Indian Penal Code and not under Section 324 of the Indian Penal Code. Referring to the injuries sustained by the appellants' side, Mr. Singh submitted that the prosecution has miserably failed to explain the injury sustained by the injured/appellants and, as such, the trial court was obliged to draw adverse inference on the injury sustained by the appellants' side. Mr. Singh referring to the age of the



appellants of this appeal submitted that most of the appellants were of advance age in between 50 to 80 years on the date of judgment of the trial court and, as such, the court should have adopted pragmatic approach in the present case. He submits that the appellants in the present case are of advance age, except appellant nos. 11 and 13. The appellant no.11 has now become 57 years old and appellant 13 has also now become 55 years of age.

8. Learned counsel appearing on behalf of the State submits that appellant nos. 11 and 13 were aged about 40 and 35 years at the time they were convicted by the trial court. However, he admits that the other appellants were more than 50 years of age, at the time they were convicted by the trial court.

9. In view of the above when the injury is simple and the appeal remain pending for 15 years and during the intervening period out of 13 appellants, 11 appellants have now become more than 65 years of age. The Court is of the considered view that no penological purpose would be served to send them to jail to serve the remaining sentence.

10. Accordingly, while upholding the judgment of conviction and order of sentence of appellant nos.1 to 10 and 12 is reduced to period already as undergone.

11. So far as the appellant nos. 11 and 13 are



concerned, the Court in the aforesaid facts and circumstances, where there is admitted land dispute, case and counter case between the Gotieas, it may deem fit and proper to reduce their sentence, as fine. Accordingly, the appellant nos. 11 and 13 may pay a fine of Rs. 2000/- each to the informant's side within a period of three months from today.

12. Since all the appellants are on bail, they are discharged from the liabilities of their bail bonds, except appellant nos. 11 and 13, as they are required to pay fine of Rs.2000/- each and only after payment of fine of Rs.2000/- the liabilities of their bails bonds stand discharged.

13. With the aforesaid modification in the judgment of conviction and order of sentence, the appeal stands disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
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