

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.335 of 2003

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

- =====
1. Binod Prasad @ Vinod Prasad, sonof Sri Ram Chandra Prasad
 2. Manoj Pasad @ Munna Prasad, son fo Sri Ram Chandra Prasad
- Both the resident of village- Bal Bangara Tola, Ramchandrapur, P.S. Daraundha, District siwan.

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Rabindra Nath Dubey, Adv.
Mr. Sanjay Kumar Singh, Adv.

For the Respondent/s : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
Date: 26-03-2018

Appellant Binod Prasad @ Vinod Prasad stands convicted under Section 326 of the IPC and sentenced to undergo R.I. for three years with fine of Rs.2,000/- with default clause and appellant Manoj Prasad @ Munna Prasad has been convicted under Section 324 of the IPC and sentenced to undergo R.I. for two years.

2. The prosecution case as per fardbeyan of Sheoji Prasad (P.W.6) who also claims to be injured in short is that on 14.07.1998 at 9.45 A.M. his *pattidar* Ram Chandra Prasad armed with Lathi, Vinod Prasad armed with licencee gun, Vijai @ Bachha Prasad armed with country-made Pistol, Ajai Prasad with Bricks, Manoj Prasad @ Munna Prasad armed with country-made Pistol and Sanjai Prasad



armed with Farsa made unlawsul assembly and came to the *darwaza* of the informant and started abusing the informant and also started pelting brickbats. Further case of the informant is that his family members came out of their house and on the order of accused Ram Chandra Prasad to kill the informant, appellant Binod Prasad fired from his licencee gun, which hit buttocks of the nephew of the informant, Babloo Prasad, and he fell down after receiving gun short injury, in the meantime, Munna Prasad fired from the country-made Pistol which hit left elbow of the *Bhaujai* of the informant. It is further stated that Bachha Prasad fired from the country-made Pistol which passed touching left hand of the informant and it is also alleged that the other accused persons were pelting stones. Hearing sound of firing, villagers came there and thereafter the accused persons fled away.

3. On the basis of aforesaid fardbeyan, Duraundha P.S.Case no.92 of 1998 was registered and the police after investigation submitted charge-sheet, cognizance of the case has been taken and case has been committed to the court of Sessions which ultimately came to the file of Sri Anant Prasad Srivastava, Presiding Officer, Ist Additional Fast Track Court, Siwan for trial and disposal.

4. During the trial charges were framed against the accused persons under various Sections.



5. On behalf of the appellants altogether 12 witnesses have been examined and they are : - P.W.1 Urmila Devi (who claims to be eye witness and the injured), P.W.2 Narayan Mahto (who claims to be eye witness), P.W.3 Thakurji Prasad (who claims to be eye witness), P.W.4 Babloo Prasad (who claims to be eye witness and injured) , P.W.5 Dharm Nath Rai (who claims to be eye witness) P.W.6 Sheoji Prasad (informant and injured witness), P.W.7 Hakik Mian (who claims to be eye witness) P.W.8 Dr. S.K. Aman (who has examined P.W.1 and 4 at Sadar Hospital, Siwan), P.W.9 Ram Sagar Mishra I.O. of the case, P.W.10 Dr. Mahavir Rawat (who has examined P.W.6 informant and Urmila Devi), P.W.11 Dr. Shyam Sundar Kumar (who has examined Babloo Prasad) and P.W.12 Santosh Kumar Yadav (Technician of Clinic of Doctor Lakhan Prasad).

6. It further appears that a large number of documents have been brought on record on behalf of the prosecution and they are :- Ext. 1 Fardbeyan, Ext.2& 2/a injury report, Ext. & 3/a Advice slip for X-ray of Urmila Devi and Babloo Prasad, Ext.4 Formal FIR, Ext.5, 5/a & 5/b requisitions prepared by I.O. for Sheojee Prasad, Babloo Prasad and Urmila Devi, Ext.2/b injury report with regard to Sheojee Prasad, Ext.2/c injury report with regard to Urmila Devi along with X-ray report with X-ray plate, Ext.2/d injury report of injured Babloo Prasad, Ext. 2/e report of Dr. Laxmi Pd., on x-ray plate of Smt.



Urmila Devi, Ext.6 certified copy of judgment passed by Sri R.P.Singh, J.M. in G.R.2243 of 1990, Ext.7 & 7/1 Deed & Ext.8 photocopy of Elector Roll list.

7. On behalf of the defence also one witness has been examined and he is D.W.1 Dharamnath Tiwari, who is said to be Pujari of the temple and a large number of documents have been bought on record on behalf of the defence and they are :- Ext A F.I.R. of Duraunda P.S.Case no.57 of 1998, Ext.A/1 FIR of Duraundha P.S.Case no.51 of 1986, Ext.B Power of Attorney, Ext.C & C/1 Rent Receipt No.876049, Ext.D A.I. Case No.240 of 1956-57, Ext.D/1 Order sheet dated 8.5.57, Ext.D/2 Case No.222 of 1978-79, Ext.D/3 order dated 22.8.1998, Ext. E & Ext.E/1 Inquiry report with regard to Misc. Case No.30 of 1957-58, Ext.F Judgment of G.R.Case No.2481 of 1989/T.R.74 of 2000, Ext.F/1 Judgment dated 13.12.1958 in G.R.Case No.1351 of 1957/Tr.54/58, Ext.F/2 judgment dated 21.1.58 in G.R.Case No.462 of 1957, Ext.F/3 Report of ASI of Duraunda P.S., Ext.F/4 Judgment dated 27.9.1996 in G.R.Case No.2057 of 1986/TR 116 of 1996, Ext.I Deposition of Narsingh Narain, Ext.I/1 copy of deposition of Narain alias Narain Prasad, Ext.I/2 copy of deposition of Md. Hakik in T.S.No.45 of 1978, Ext.J to J/4 Series entry passes, Ext.K Prescription of Dr.Alam, Ext.L to L/1 Affidavit, Ext.M Informatory petition, Ext.N Informatory petition, Ext.O Certificate of



sale, Ext.P Plaint of t.S.No.152 of 1995 and Ext.Q Khatian slip.

8. The learned trial court on conclusion of the trial has convicted the appellant Binod Prasad @ Vinod Prasad under Section 326 of the IPC and Manoj Prasad @ Munna Prasad under Section 324 of the IPC.

9. Contention of the learned counsel for the appellants is that the learned trial court has himself not found manner of occurrence as alleged by the prosecution true in this case but in spite of that he has convicted the appellants in this case. Further submission of the learned counsel for the appellants is that the materials available on the record clearly show that there was dispute between the parties from before with respect to management of the temple and the evidence of Urmila Devi (P.W.1) and on evidence of P.W.6 discloses that it was under the management of the defence party and the learned trial court has also found the prosecution party as aggressor and it has also been found that they had come over the temple and in retaliation the accused persons have assaulted them. It is further submitted that the learned trial court has also failed to consider that there is discrepancies and inconsistencies in the evidence of Urmila Devi but in spite of that the learned trial court has convicted the appellants under Section 326 and 324 of the IPC, which does not appear to be sustainable in the eye of law rather the learned trial court ought to



have given benefit of doubt to these appellants as has been given to the other accused persons in this case.

10. On the other hand the learned counsel for the State has defended the judgment and stated that both P.W.1 and P.W.4 have received fire arm injuries and the Doctor has found the fire arm injuries true and grievous in nature and the prosecution has supported the prosecution case of assault by the appellants on P.W.1 and P.W.4, as such the learned trial court has rightly convicted the appellants under Sections 326 and 324 of the IPC respectively and there is no infirmities in the in the impugned order.

11. Considering the rival submission and on perusal of the record, it appears that P.W.6 (informant) has supported the prosecution case, as stated in his earlier statement, however, his evidence in cross examination shows that he has admitted that the accused persons were looking after the affairs of the temple. Other witnesses had also supported the prosecution case. However, it appears that the learned trial court has found that the evidence shows that accused persons were managing the affairs of the temple and D.W.1 was Pujari of the temple and finding of the learned trial court is as follows- *“....However, in para 109 of the deposition, P.W.6 Sheoji (informant) has admitted that the accused persons have been looking after the affairs of the temple. This way the prosecution*



side must have been aggrieved. I am of the view that some altercation must have taken place on the date of occurrence and the root cause appears to be affairs of the temple. Possibility of prosecution side having gone to the temple and the retaliation by the accused side with the help of the villagers as told by the Pujari (D.W.1) may not be overruled and this being the position some persons must have been injured.

12. The learned trial court further found that Urmila Devi must have sustained injury at the hands of Manoj Prasad alias Munna Prasad as such he has held Muna Prasad guilty under Section 324 of the IPC and come to a further finding that there was wound of entry and that of exit in the case of Babloo Prasad, Mischief of Section 326 of the IPC was attracted against the appellant Binod Prasad. The learned trial court has himself disbelieved the prosecution case so far manner of occurrence is concerned and further held that the accused persons along with the villagers attacked the prosecution side in retaliation. However, the learned trial court is coming with third story, which is not admissible in the eye of law. It further appears that the learned trial court has found the injury on Babloo Prasad (P.W.4) grievous only because there was wound of entrance and one wound on the person of Babloo and he was hospitalized, however, the learned trial court has failed to consider that there is no opinion of the Doctor.



It further appears that the learned trial court has disbelieved the prosecution story and he has given benefit of doubt to the other accused persons but convicted the appellants because they caused injury to P.Ws. 1 & 4. However, learned trial court failed to consider that he has to believe either prosecution story or the story propounded by defence and he can not come with a third story. Further learned trial court has disbelieved the prosecution story as far manner of occurrence is concerned, he ought to have given benefit of doubt to the appellants also.

13. Accordingly, this appeal is allowed and the impugned judgment and order are set aside. As the appellants are on bail, they are discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	30.03.2018
Transmission Date	30.03.2018

