

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.445 of 2003**

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1. Jugal Kishor Sharma, Son of Ram Lakhan Sharma  
2. Deep Narayan Sharma, Son of Ram Lakhan Sharma  
3. Kabutari Devi, Wife of Ram Lakhan Sharma  
4. Renu Devi, Wife of Jugal Kishor Sharma  
All are residents of Village – Siswan, P.S. – Marhourah, District – Saran.  
.... .... Appellant/s

Versus

State of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mrs. Rina Sinha, *Amicus Curiae*

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

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**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**

**ORAL JUDGMENT**

**Date: 03-08-2018**

In spite of repeated calls, none has appeared on behalf of the appellants and it appears that the case is of the year 2003, I deem it appropriate to appoint Mrs. Rina Sinha, who is present in the court, as *Amicus Curiae* to assist the court.

2. Appellant no. 1, stood convicted under Section 324 Indian Penal Code (hereinafter referred to as the “IPC”) and was sentenced to undergo rigorous imprisonment for two years and appellant no. 2 to 4 were convicted under Section 323 of the IPC and were sentenced to undergo rigorous imprisonment of one year, by the judgment of conviction and order of sentence dated 26.08.2003 passed by Shri Prabhat Kumar Jha, the then, Additional District & Sessions Judge – VI, Chapra in Sessions Trial No. 139/1988.



3. Prosecution case as per the fardbeyan of informant Ashok Kumar Sharma (PW7) in brief is that on the day of occurrence, while he was fixing the pole in his land for erecting a *palani*, on which, appellant Yugal Kishor Sharma, Deep Narayan Sharma along with wife and mother of Yugal Kishore Sharma and asked the informant to stop the work of erecting the *palani*, on which, the informant resisted as it was his land. Accused persons started pulling out the said pole and also started abusing the informant and when the informant protested appellant Yugal Kishor Sharma gave *farsa* blow on the head of the informant and appellant Deep Narayan Sharma started assaulting the father of informant, whereas, appellant nos. 3 and 4, namely, Kabutari Devi and Renu Devi assaulted the mother of the informant, thereafter, the villagers assembled and the appellants fled away.

4. On the basis of the aforesaid fardbeyan, Marhaura P.S. Case No. 85/1995 was registered agasint the appellants. Police after investigation submitted charge-sheet. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately traveled to the file of Shri Prabhat Kumar Jha, the then, Additional District & Sessions Judge – VI, Chapra for trail and disposal.

5. Charges were framed under Sections 307/34 of IPC and



to prove the charge, prosecution has examined altogether nine witnesses. They are; P.W. 1 – Motilal Sharma, P.W. 2 – Kamaldeo Sharma, P.W. 3 – Harendra Sharma, P.W. 4 – Narayanji Sharma, P.W. 5 – Darshan Sharma, father of informant and injured, P.W. 6 – Dhurbpatiya Devi, mother of the informant and injured, P.W. 7 – Ashok Kumar Sharma, informant and injured, P.W. 8 – Dr. Rana Chandra Ketu Singh, the doctor, who treated the injured persons and P.W. 9 – Krishna Murari Rai, the Investigating Officer.

6. Apart from that following documents have been brought on record and marked as Ext. 1 – Signature of Ashok Kumar Sharma on fardbeya, Ext. 2 – Original Baynama of Jang Bahadur Sharma banam Ashok Sharma, Ext. 3 to 3/2 – Injury reports, Ext. 4 – Endorsement on fardbeyan, Ext. 5 – F.I.R., Ext 6- Fardbeyan and Ext. 7 to 7/2 – Requisition of injuries.

7. P.W. 7 is the informant in this case and he has supported the case of prosecution as stated in the F.I.R. and also stated about the assault by the Yugal Kishor Sharma by *farsa* on his head and appellant Deep Narayan Sharma assaulted the father of informant and ladies members assaulted the mother of informant causing injuries to them. He has been cross-examined at length but there is nothing in his cross examination to doubt his testimony except the defence by cross-examination, this witness has tried to show that the land belonged to



the appellants and appellant Kabutri got the land in Bakshish from Jang Bahadur Singh.

8. PW5 and PW6 are father and mother of the informant and they have also supported the case of prosecution so far the genesis of occurrence and manner of occurrence is concerned.

PW1 to PW4 are other witnesses and they have also supported the case of prosecution.

9. PW8 is the doctor, who examined and treated the injured persons and found following injuries on their persons:-

Injury found on the person of informant Ashok Kumar Sharma:

- (i) One cut wound 2"x1/4"xbone deep on parietal region.
- (ii) Complain of back pain.
- (iii) Complain of pain on the waist
- (iv) Complain of pain on the abdomen wall.

Injuries found on the person of Darshan Sharma ( PW5):

- (i) Lacerated wound 1 1/2"x1/4" on right and middle finger.
- (ii) Complain of pain on all over the body.

10. Further the doctor has also found one swelling injury on the wrist and swelling and bruise on the right shoulder. In the opinion of doctor all the injuries caused to the informant and his father and mother were simple in nature and it appears that the medical evidence corroborates the evidence of PW5, PW6 and PW7.



11. Defence of the accused persons is that the land in question belonged to them and appellant Kabutri Devi has got the said land in Bakshishnama and informant was trying to grab the said piece of land, which was protested by them due to which, the informant came with this false case.

12. Learned Trial Court on conclusion of trial, though not found a case under Section 307/34 of the IPC, however, he convicted the appellant no. 1 under Section 324 of the IPC and appellant nos. 2 to 4 under Section 323 of the IPC and sentenced them in the manner aforesaid.

13. Learned Amicus Curiae assailed the impugned judgment and submitted that there was land dispute between the parties and admittedly the land in dispute belonged to the appellant Kabutri Devi, which has been received by her in *Bakshishnama*, which the informant was trying to grab and even if the prosecution case is believed to be true, whatever appellants did they did in their right to protect the property. However, the trial court has not considered the same and convicted the appellants in this case, which is out and out perverse and not sustainable in the eye of law.

14. On the other hand, learned counsel appearing on behalf of the respondent – State has supported the finding of guilt recorded by the Trial Court and submitted that the evidence of witnesses are



consistent and PW5 to PW7 themselves being the injured in this case, veracity of evidence of these witnesses cannot be doubted and their evidence further found corroboration from the medical evidence and evidence of Investigating Officer also shows that he submitted charge-sheet against the appellants and other witnesses have also supported the prosecution case and, therefore, there is no infirmity in the judgment of trial court and conviction of the appellants is just and proper.

15. Heard rival contentions of the parties, in the background of submission of the parties, on perusal of the evidence of witnesses as discussed above, it appears that evidence so far the assault by the appellants is concerned, the same is consistent and PW5 and PW7 were the injured in this case and their evidence is consistent on the point of assault and further their evidence also found corroboration from the evidence of doctor and in spite of cross-examination, there is nothing to cast doubt on the veracity of their evidence except the fact that there was land dispute between the parties as both the parties claiming on the land on the basis of Baynama and Bakshishnama from one Jang Bahadur Sharma but the prosecution story consistently shows that the land, which has been taken by the appellant Kabutri Devi is the different land, which has been taken by the informant through Baynama. Even if the land dispute between the parties is



believed to be true, the defence side has exceeded in their right to private defence and assaulted the informant and his father and mother and the evidence of doctor shows that they sustained injuries on their person and, therefore, so far conviction of the appellant no. 1 under Section 324 of the IPC and conviction of appellant nos. 2 to 4 are concerned, the same appears to be just and proper.

16. However, a submission has been made by learned *Amicus Curiae* that there was land dispute between the parties and the occurrence took place on the spur of moment and there is nothing available on record to show that the appellants were previously convicted in connection with any other case or have ever misused the privilege of bail and, as such, they are at least entitled for benefit of Section 360 of Cr.P.C., however, the trial court while passing the order of sentence has not considered this aspect and even has not assigned any reason for not giving the benefit of Section 360 of Cr.P.C. or under Section 4 of Probation of Offenders Act, to the appellants.

17. I find force in submission of learned *Amicus Curiae*, however, it appears that the Trial Court has not given the benefit of Probation of Offenders Act to the appellants as one of the lady members was assaulted in this case but at the same time, the trial court has failed to consider that there was no previous conviction of



the appellants in connection with any other case and appellant nos. 3 and 4 are ladies and there was land dispute between the parties and further the occurrence is of the year 1995 and much water has flowed between the parties since then and as such, in stead of convicting the sentencing the appellants, the trial court ought to have considered for granting the appellants benefit of Probation of Offenders Act or under Section 360 of Cr.P.C. It also appears that the appellants have suffered the rigors and ignominy of trial for 23 long years and there is no previous conviction of the appellants in connection with any other case and no purpose will be served to send them in custody to serve the sentence.

18. Accordingly, In view of the above mentioned facts and circumstances and considering the scope of Section 4 of the Act, this appeal is, accordingly, dismissed by upholding the conviction of the appellants. However, they are granted the benefit of Section 4 of the Probation of Offenders Act and instead of confirming the sentence of the appellant no. 1 for two years rigorous imprisonment under section 324 IPC and appellant nos. 2 to 4 for one year rigorous imprisonment under Section 323 IPC., the appellants are exonerated on probation on filing personal bond to the tune of Rs.5,000/-each for keeping peace in the society and shall not commit any such offence in future for a period of six months. In case of breach of any such condition, they



will subject themselves to undergo the sentences before the Trial Court as per law. The appellants shall file the bond within a period of one month from today.

(Vinod Kumar Sinha, J)

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