

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.9 of 2002

1. Mahendra Ram, son of Fagu Ram
2. Ram Balak Ram, son of Mahendra Rai, both residents of village Kinaroo,
P.S. Maniyari, District Muzaffarpur

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Avinash Kumar Singh, Advocate (amicus curiae)

For the Respondent/s : Mr. S.A. Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 26-10-2018

The appellants have preferred this appeal against the judgment and order dated 18.10.2001 passed by Sri S.N. Sahai, the then Presiding Officer, Additional Court No.1, Muzaffarpur in Sessions Trial No. 56/308 of 1987/2001 by which he has convicted appellant No.1 under Section 324 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for two years under Section 324 IPC and appellant No.2 has been convicted under Section 323 IPC and released him on probation of good conduct for one year and to maintain peace on execution of bond of Rs.2000/-.

2. Since nobody appears to argue this appeal on behalf of the appellants on repeated calls, Mr. Avinash Kumar Singh, Advocate has been appointed as amicus curiae to assist this Court.

3. Prosecution case as per fardbeyan of Bind Raj Prasad Singh (PW 5) which has been recorded on 19.3.1986 at 7.30 P.M., in short, is that he was an employee in the Katchahari of Ramesh Prasad Singh and looked after his affairs and on 19.3.1986 at about 4 P.M. he saw the wife of appellant Mahendra Ram and his daughter and appellant Ram Balak Ram uprooting



gram crop from the field. He went to the field and scolded them and took away the gram crop. Further prosecution case is that thereafter appellant Mahendra Ram, his son appellant Ram Balak Ram, daughter and wife came in the Katchchari, armed with Bhala in the hand of appellant Mahendra Ram and appellant Ram Balak Ram was armed with lathi in the hand and appellant Mahendra Ram gave Bhala blow on his head and appellant Ram Balak Ram assaulted him by lathi on his shoulder and thigh. Further case is that the occurrence was witnessed by Sheolal Ram, Ram Chandra Ram, Ram Nandan Jha, Rajendra Jha and Ram Locha Jha and with the help of people he was taken to Maniyari Hospital where as there was no Doctor he was taken to Dr. Arun Babu in his clinic where he was treated.

4. On the basis of the aforesaid fardbeyan, Maniyari P.S. Case No. 12 of 1986 was registered under Section 307 and other sections of the IPC. After investigation charge sheet has been submitted under Section 307 and other sections of the IPC, cognizance was taken and as offence under Section 307 IPC is triable by a court of session the case has been committed to the court of sessions and ultimately the case traveled to the file of Sri S.N. Sahai, the then Presiding Officer, Additional Court No.1, Muzaffarpur for trial and disposal.

5. To substantiate its case the prosecution has examined altogether nine witnesses, they are PW 1 Sheolal Rai, who claims to be an eye-witness to the occurrence, PW 2 Ram Chandra Rai, who claims to be an eye-witness to the occurrence, PW 3 Rajendra Jha, who claims to be an eye-witnesses to the occurrence, PW 4 Ram Nandan Jha, who claims to be an eye-witness to the occurrence, PW 5 Bind Raj Prasad Singh, who is informant and injured in this case, PW 6 Ram Lalit Jha, tendered for cross examination, PW 7 Chandra



Shekhar Prasad, formal witness who proved Ext.2, PW 8 Dr. Arun Kumar, who has examined the informant and gave injury report (Ext.3) and PW 9 Chandeshwar Mahto, I.O., who has proved the fardbeyan (Ext.4).

6. Apart from the aforesaid ocular evidence the following documents have been brought on record as documentary evidence on behalf of the prosecution, they are Ext.1- signature of Bind Raj Prasad Singh, the informant on fardbeyan, Ext.2- protest petition, Ext.3- injury report, Ext.4- fardbeyan, Ext.5- endorsement on fardbeyan, Ext.6- FIR, and Exts. 7-7/1- seizure list.

7. No ocular or documentary evidence has been adduced on behalf of defence and their defence as per the cross examination and from the statement under Section 313 Cr.P.C. is of false implication due to enmity.

8. Learned trial court on conclusion of trial has not found the appellants guilty under Section 307 IPC. , however convicted the appellant No.1 under Section 324 IPC and appellant No.2 under Section 323 IPC and sentenced them as stated above.

9. Being aggrieved by the aforesaid judgment and order the present appeal has been preferred by the appellants.

10. PW 5 is the informant in this case and he has stated in his evidence in chief that on 19.3.1986 at about 4 P.M. he saw Shabitri Devi, accused Ram Balak Ram and the wife of accused Mahendra Ram uprooting gram crop and he snatched the uprooted gram crop from them and they went away and after some time, appellant Mahendra Ram, armed with Bhala, appellant Ram Balak Ram, armed with Lathi and the wife and daughter of Mahendra Ram reached at the Katchhari and called names. Thereafter appellant Mahendra Ram gave Bhala blow on his head and Ram Balak Ram



gave lathi blows on him from behind, he fell down and became senseless and he came to Maniyari in the clinic of Dr. Arun Babu where police officer came and recorded his statement on which he signed. He has been cross examined on the point that Sachida Babu is Patidar of Ramesh Babu, who is his employer, and there is title suit between them but he showed his ignorance. He has also denied that Mahendra Ram has lodged any criminal case against Sheo Balak and also stated even in his cross examination that from Bhala he received injuries in his scalp and thereafter assaulted by lathi on right scapular region and thereafter assaulted on thigh also. In spite of his cross examination there is nothing in his cross examination about his evidence of manner of assault or the place of occurrence or genesis of occurrence. Dr. Arun Kumar (PW 8) has been examined, who has examined PW 5, the informant and injured, and he has found the following injuries on the person of informant :

(1) Punctured wound 1' x 3/4" with a clean edge touching the bone of the forehead,

(2) Inflammatory swelling in 2" x 1/2" on both right and left shoulder joints,

(3) Inflammatory swelling in 3" x 3/4" on both right and left thighs,

(4) Inflammatory swelling 3/4" x 1/2" on the face below the both eyes.

All the injuries were found to be simple in nature, caused by hard and blunt substance, except injury No.1 which was grievous and caused by sharp cutting pointed weapon.



11. Aforesaid evidence of PW 5 was further corroborated from the evidence of PW 1, whose evidence also disclosed that appellant Ram Balak Ram came along with the wife of Mahendra Ram, Shabitri Devi and appellant Mahendra Rai assaulted by Bhala and appellant Ram Balak Ram assaulted by lathi, due to which informant fell down and he was taken to private Doctor. He has also been cross examined showing enmity between him and Mahendra Ram, though he has denied. His evidence also disclosed that in the boundary of place of occurrence, Kachchari is there and even in his cross examination he withstood the statement so far manner of assault is concerned.

12. PW 2 has supported the evidence of PW 5 so far manner of assault is concerned. He has been cross examined. Similarly Pws. 3 and 4 have also supported the manner of occurrence. PW 6 has been tendered for cross examination. I.O. (PW 9) has been examined in this case and his evidence also disclosed that in the boundary of place of occurrence kiachchari is there and as per evidence of PW 5 the occurrence took place near kachchari.

13. Contention of learned amicus curiae is that evidence of PW 5 itself shows that he is employee of Ramesh Singh and there is enmity between Ramesh Singh and Sachida Singh and a title suit is going on and appellant No.1 has testified in favour of Sachida Singh and as such he has been made accused in this case and the Doctor, who has treated the informant, has also a private Doctor and there is nothing available on record to show as to why he was not treated at Primary Health Centre. Further submission is that though PWs. 1 and 2 claimed to be eye-witnesses and stated about the manner of assault and I.O. in his evidence in paragraphs 6 and 7 has stated that PW 1, Sheolal Ram has not stated that Ram Balak Ram assaulted by lathi and PW



2, Ram Chandra Ram has not stated that Mahendra Ram assaulted by Bhala but he has stated that he has repeated the statement Ram Nandan and as such Pws 1 and 2 are not the eye-witnesses to the occurrence and PW 2 is a witness in a proceeding under Section 107 Cr.P.C. against Mahendra Ram and as such he is also inimical or interested and their evidence requires to be scrutinized with care and caution and their evidence clearly show that they are either interested or related witnesses. In view of aforesaid contentions learned amicus curiae has submitted that the impugned judgment and order suffer from inconsistencies and irregularities and cannot sustain in the eye of law.

14. Learned counsel for the State supporting the impugned judgment of guilt has submitted that there is clear evidence in support of the prosecution case regarding place of occurrence and manner of assault and as such the same is just and proper and does not require any interference by this Court.

15. In the background of rival submission on perusal of the evidence it appears that evidence of PW 5, informant and injured, about manner of assault has found corroboration from the evidence of Doctor (PW 8) and further even corroboration from evidence of PW 4 also which has been supported by evidence of PWs 1 to 3. So far contradiction from earlier statement before the police, that does not appear to go into root of the case also and Doctor (PW 8) has also found injuries as per description given by PW 5. No doubt, Doctor has found injury No.1 as grievous in nature but no X-ray report is available on record and injury also shows touching bone and there is no finding of fracture of bone and as such it appears that learned trial court has not convicted the appellants under Section 307 IPC. However, on discussions made above, I find that there is no infirmity in the conviction of



appellant No.1 under Section 324 IPC and appellant No.2 under Section 323 IPC.

16. So far question of sentence is concerned, submission of learned counsel for the appellants is that appellant No.1 was sentenced to R.I. for two years under Section 324 IPC, whereas appellant No.2 was given the benefit of Probation of Offenders Act and released on execution of bond by him and the period has already expired. However, learned trial court has not assigned any reason as to why the benefit of Section 360 Cr.P.C. or Section 3/4 of Probation of Offenders Act has not been given to appellant No.1 though the occurrence is of 1986 and conviction was held on 2001 and statement of appellant under Section 313 Cr.P.C. shows that appellant No.1 was 50 years at the time of recording his statement in the year 1991 and as such he must be at the age of 60 years at the time of passing of judgment and there is nothing on record to show that there was any previous conviction and as such appellant No.1 was also entitled to the benefit of Section 360 Cr.P.C. However, learned trial court has not given any reason for not extending the same benefit to appellant No.1 which is mandatory under Section 361 Cr.P.C. and as such miscarriage of justice has been done. Hence sentence of appellant No.1 is modified and he may be released on execution of bond as at present he may be aged more than 75 years of age.

17. I find from perusal of the judgment that no reason has been assigned for not extending the benefit of Section 360 Cr.P.C. to appellant No.1 though occurrence is of the year 1986 and the impugned judgment shows that appellant No.1 was aged 50 years at the time of recording his statement, i.e. 31.10.1991 and he must be aged about 60 years at the time of judgment but he has not been given the benefit of Section 360 Cr.P.C. stating



that he was at matured age. However, considering the facts and circumstances that appellant No.1 is suffering from mental agony and rigor of agony of trial for 31 long years, as such, in stead of confirming the order of sentence and sending him to serve the sentence, to my opinion, ends of justice will be served if he is released on probation of good conduct for a period of six months on execution of bond of Rs.5000/- for maintaining peace. So far appellant No.2 is concerned, it appears that he has already executed bond and period of bond has already expired.

18. In view of the discussions made above, the conviction of appellants 1 and 2 under Section 324 and 323 IPC is affirmed. As the appellant No.2 has already executed bond, as such, no order can be passed in his concern. However, in stead of confirming the sentence of R.I. for two years against appellant No.1 he is directed to be released on execution of bond of Rs.5000/- for a period of six months for maintaining peace and of good behaviour.

19. With the aforesaid modification in sentence of appellant No.1, this appeal is dismissed.

(Vinod Kumar Sinha, J)

spal/-

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