

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.146 of 2003

1. Jageswar Chaudhary @ Maklu Chaudhary, son of Karu Choudhary
2. Shiv Balak Choudhary, son of Bhattu Choudhary (since died)
3. Sukhdeo Choudhary, son of Bhattu Chaudhary
4. Basudeo Choudhary, son of Karu Choudhary
5. Ganesh Choudhary, son of Maklu Choudhary
6. Budhan Choudhary, son of Maklu Choudhary
7. Naresh Chaudhary, son of Maklu Chaudhary, all residents of village
Malikpur, P.S. Wazirganj, District Gaya

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Ajay Kumar Sinha with
Mr. Ashok Kumar Sinha, Advocates
For the Respondent/s : Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 02-04-2018

Appellants Nos. 1 and 2 have been convicted under Sections 324 and 148 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years for the offence under Section 324 IPC and R.I. for one year for the offence under Section 148 IPC and further appellants Nos. 3 to 7 have been convicted under Sections 323 and 147 IPC and sentenced to undergo R.I. for one year under Section 323 IPC and one year R.I. for the offence under Section 147 IPC and sentences were directed to run concurrently vide judgment and order dated 14.2.2003 passed by Sri Shree Prakash Chandra Gupta, the then 7th



Additional Sessions Judge, Gaya in Sessions Trial No. 99 of 1999/261 of 1996.

2. As earlier nobody had appeared on behalf of the appellants notices were issued to the appellants and on notice learned counsel for the appellants has appeared but notice further shows that appellant No.2 Shiv Balak Chaudhary has died, as such, the appeal against appellant No.2 stands abated.

3. Prosecution case, in short, is that Ishwar Chaudhary (PW6) has lodged a written report stating, inter alia, therein that on 19.12.1991 at about 7 P.M. he along with his brother Mundrika Choudhary (PW 4) was sitting at his Khalihan and on hearing sound of hue and cry in the village they proceeded to that and when they reached near the house of Chandra Yadav, appellants Jageshwar Choudhary alias Maklu Choudhary, Naresh Chaudhary, Shiv Balak Chaudhary (since died), Ganesh Chaudhary, Basudeo Chaudhary and Sukhdeo Choudhary variously armed with lathi and Garasa came there and started assaulting the informant and his brother. Further prosecution case is that appellant Jageshwar Chaudhary alias Maklu Choudhary assaulted the informant by Garasa on the head of informant and appellant Sheo Balak Chaudhary (since died) assaulted the brother of informant by Garasa on head. It is also the prosecution case that on hearing



hulla the brother and father of informant, namely, Mahendra Chaudhary and Krishna Chaudhary also arrived at the scene of the occurrence and they were also assaulted by the accused persons by brickbats. It is also alleged that there was gambling going on in the village and for that there was quarrel and from before there was litigation between the parties.

4. On the basis of aforesaid written report FIR has been registered and post investigation charge sheet has been submitted, cognizance of the offence has been taken and after commitment the case ultimately traveled to the file of the learned Trial Judge and trial and disposal.

5. Appellants Nos. 3 to 7 have been charged under Sections 323 and 147 IPC appellants Nos. 1 and 2 have been charged under Section 324 of 148 IPC and all the appellants have been charged under Sections 307/149 IPC.

6. On behalf of prosecution altogether eight witnesses have been examined, they are PW1 Kameshwar Ravidas, who is rickshaw puller, PW2 Krishna Chaudhary, who is brother of informant, PW3 Jagdish Chaudhary, who is father of informant and injured, PW4 Mundrika Chaudhary, who is brother of informant, and injured, PW5 Mahendra Chaudhary, PW6 Ishwar Chaudhary, who is informant and injured, PW7 Mahendra Singh,



who is I.O. of the case and PW8 Dr. Brijnandan Sharma, who has examined the injured persons.

7. Apart from that, the prosecution has brought on record the following documents as exhibits, they are Ext.1- signature of informant Ishwar Choudhary on fardbeyan,, Exts. 2 to 2/3- requisition slips for medical report, Ext.3-3/III- Injury reports.

8. Contention of learned counsel for the appellants is that enmity is admitted between the parties and there are litigations going on between the parties, as such, learned trial court ought not to have convicted the appellants on the basis of such evidence. Further submission is that there was admitted land dispute between the parties from before and in such view of the matter learned trial court ought to have given the benefit under Section 360 Cr.P.C. and ought to have released them on executing bonds but the same has not been given to the appellants which has caused miscarriage of justice.

9. On the other hand, learned counsel for the State has supported the findings of learned trial court and submitted that there is no infirmity in the judgment which does not require any interference by this Court.

10. From evidence it appears that PW 6 is the informant in this case and he has supported the prosecution case in toto in his



evidence and further stated that he was assaulted by appellant Maklu Chaudhary alias Jageshwar Chaudhary by means of Garasa on his head and his brother Mundrika Chaudhary was assaulted by appellant Sheo Balak Chaudhary (since died) by means of Garasa on his head and others have also been assaulted. In his cross examination nothing has appeared to doubt his evidence in chief except that there was enmity between the parties from before and Pws 3 and 4 have also received injuries in the occurrence and, as such their presence cannot be doubted and they have also supported the prosecution case about injuries received by them and stated that appellants Jageshwar Chaudhary and Sheo Balak Chaudhary assaulted by Garasa and others have also assaulted to them.

11. PW8 is Doctor in this case and his evidence discloses that he examined all the three injured including the informant and found the following injuries on the person of informant **Ishwar Chaudhary** :

(I) Incised wound over scalp 3-1/4" x 1/4" x 1/4", caused by sharp cut instrument, (ii) Abrasion over eyes, caused by hard substance, (iii) Swelling over lateral side right upper arm, caused by hard substance. Injuries are simple in nature caused by hard and blunt substance, except injury no.(i) which is caused by incised weapon.

He has also examined **Jagdish Chaudhary** and found the following injuries :



(i) Swelling over lateral side of thigh, caused by hard substance, ((ii) swelling over left elbow, caused by hard blunt substance. Both the injuries are simple in nature.

He has also examined Mundrika Chaudhary and found the following injuries :

(i) Incised wound over scalp 2-1/2" x 1/4" x 1/4", caused by sharp cutting weapon (ii) swelling over left side of chest, caused by hard and blunt substance. Both the injuries are simple in nature.

His evidence further shows that he found incised injury on the person of Mundrika Choudhary but prosecution case is that he was assaulted by Shiv Balak Choudhary by Garasa and, as such, prosecution evidence found corroboration by the evidence of Doctor and that supports the manner of occurrence also.

12. PW 1 is rickshaw puller who had taken injured to the hospital and PW 2 is injured, who have supported the prosecution case so far manner of occurrence is concerned. PW 7 is ASI and there is nothing in his evidence to doubt the prosecution case so far place of occurrence is concerned.

13. Considering the entire evidence discussed above, it appears that evidence is consistent so far time, place and manner of occurrence are concerned and, as such, prosecution has established its case about assault to injured persons, i.e., Pws 2, 3, 4 and 6 by accused persons. Learned trial court has not found the accused appellants guilty for the offence under Sections 307/149



IPC. However, they have been convicted under Sections 324/148 and 323/147 IPC, which appears to be just and proper and does not require any interference. As such, there is no infirmity in the impugned judgment of conviction of the appellants.

14. So far sentence is concerned, submission of learned counsel for the appellants is that the occurrence is of the year 1991 and 26 years have passed and, as such, no useful purpose will be served by again sending them in custody and in the facts and circumstances, a lenient view may be taken and they may be released on executing bond, under Section 360 Cr.P.C.

15. I find force in the submission of learned counsel for the appellants and considering the fact that this is an old case and also considering the age of the appellants, instead of sending them again in custody they are directed to be released on executing bonds of Rs.5000/- each with one surety each for six months to maintain peace.

16. With the aforesaid modification in order of sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

spal/-

AFR/NAFR	
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