

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.995 of 2016

Arising Out of PS. Case No.-66 Year-2002 Thana- BIHIYA District- Bhojpur

-
1. Ram Jee Dhanuk @ Ramjee Mahto Son of Late Ram Dayal Mahto.
 2. Mahendra Mahto @ Mahendra Dhanuk Son of Ram Das Mahto, Both are resident of Village- Chakarhi, P.S.- Bihiya, District- Bhojpur (Arrah).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellants	: Mr. Ram Bilash Mahto Mr. Chandan Kumar Verma Mr. Manish Kumar.
For the Respondent	: Mr. Binod Bihari Singh

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 22-06-2018

Heard learned counsel for the appellants and for the State.

2. The appellant no. 1/Ram Jee Dhanuk @ Ram Jee Mahto has been convicted under Sections 307, 323 read with 34 of the I.P.C. and Section 27 of the Arms Act and appellant no. 2/Mahendra Mahto @ Mahendra Dhanuk has been convicted under Section 307 read with 34 of the I.P.C. and Section 323 of the I.P.C. by judgment dated 22.10.2016 passed by the learned 4th Additional District and Sessions Judge, Bhojpur at Ara in Sessions Trial No. 264 of 2004. By order dated 25.10.2016, appellant no. 1 has been sentenced to undergo R.I. for five years, to pay a fine of Rs. 5000/- for the offence under Section 307 of the



I.P.C.; R.I. for six months for the offence under Section 323/34 of the I.P.C. and R.I. for two years for the offence under Section 27 of the Arms Act and appellant no. 2 has been sentenced for four years and a fine of Rs. 5000/- for the offences under Section 307/34 of the I.P.C. and R.I. for six months for the offence under Section 323 of the I.P.C. The sentences have been directed to run concurrently.

3. The appellants and two others are said to have assaulted the informant/Keshav Mahto (P.W. 6) and his son Radha Kishun Mahto/(P.W. 5) leading to simple injuries on their persons.

4. The prosecution case is based on the *fardbayan* of Keshav Mahto (P.W. 6) who has alleged that on 13.09.2002, at about 6 O'clock in the morning, while he was feeding his cattle, the appellants and others came and started demolishing the wall belonging to P.W. 6. When it was protested against, accused persons indulged in assault. When the son of the informant viz. Radha Kishun Mahto came for his rescue, he was fired upon which led to injuries on his person. The injured persons were treated in Sadar Hospital where the *fardbayan* was recorded.

5. On the basis of the aforesaid *fardbayan* statement of P.W. 6, Bihiya Town P.S. Case No. 66 of



2002 was instituted for investigation against the appellants and others for the offences under Sections 448, 341, 323, 324, 307/34 of the I.P.C. and Section 27 of the Arms Act.

6. The police, after investigation, submitted charge-sheet whereupon cognizance was taken and the case was committed to the court of Sessions for trial.

7. The learned trial court, after examining eight witnesses on behalf of the prosecution convicted and sentenced the appellants as aforesaid.

8. From the deposition of the witnesses offered on behalf of the prosecution, two things come to the fore. There happened to be a dispute between P.W. 6 and appellant no. 2 with respect to a plot of land over which a house had to be constructed. The other aspect which gets reflected from the deposition of the witnesses is that the parties are related to each other and the appellants are the nephews of the informant (P.W. 6).

9. The informant (P.W. 6) has deposed during the trial that appellant Ram Jee Mahto and Chulhi were armed with gun. When P.W. 6 stopped the accused persons from uprooting the wall, he was assaulted. When Radha Kishun (P.W. 5) came to his rescue, he was fired at by the appellant no. 1. Both P.W. 6 and 5 were treated in the hospital. The wall, but, could not be demolished. P.W. 6 has admitted that the accused persons stand in special



relation to him. The aforesaid witness along with his son had gone to Bihiya hospital, but since there was no doctor available there, he came to Ara at about 8 O'clock in the morning where he was treated. He has categorically stated that there is no enmity with the accused persons and the fight was because of sudden bit of anger.

10. Similar statement has been made by the son of the informant who has been examined as P.W. 6. He has supported the prosecution version in as much as he has stated that his father was assaulted by hard and blunt substance. He had fallen down on the ground. When he went to lend support to his father, he was fired at, leading to injuries on his person.

11. Saryug Mahto, Khichari Mahto, Birendra Mahto and Satyandra Kumar are the co-villagers who have been examined as P.Ws. 1, 2, 3 and 4. They have supported the prosecution version of assault by the appellants and others on P.Ws. 5 and 6. However, in the same breath, the aforesaid witnesses have also spoken about the appellants being related to the informant and his son.

12. From the analysis of their deposition, it further stands established, that there was some dispute with respect to possession of a piece of land; but the



dispute was not of such a nature that the appellants could be said to have intended to kill either P.W. 5 and 6.

13. Mr. R.B. Mahto, the learned advocate has submitted that the conviction of the appellants under Section 307 of the I.P.C. even with the aid of Section 34 of the I.P.C. is highly unjustified. The nature of injuries suffered by P.W. 5 and 6 are stated to be simple in nature and the circumstances in which the injuries were inflicted, does not reveal any intent to kill. It can safely be stated that Section 307 could not have been made out as against the appellants. The doctor (P.W. 7) has found injuries on the person of P.W. 5 and 6, but those injuries are opined to be simple in nature.

14. Regard being had to the nature and manner of assault perpetrated by the appellants and the relationship of the parties, this Court is of the view that no offence can at all be said to be made out against the appellants under Section 307 of the I.P.C.

15. For the offence of assaulting the informant and his son (P.Ws. 5 and 6 respectively) by the appellant no. 1 by means of a firearm, his conviction is converted into one under Section 324 with the aid of Section 34 of the I.P.C. and Section 27 of the Arms Act. The conviction of the appellant no. 2 is converted into one under Section 323 of the I.P.C.



16. In the opinion of this Court, interest of justice would be sufficiently met, if the appellants are sentenced for the aforesaid offences for the period of custody which they have already undergone under both the counts viz. Section 324/323 of the I.P.C. and Section 27 of the Arms Act.

17. Appellant no. 2 is on bail, he is discharged of his liabilities of his bonds.

18. Appellant no. 1 is in jail, he is directed to released forthwith, if not wanted in any other case.

19. A copy of the judgment be communicated to the Superintendent of Police of the concerned jail for information, record and compliance.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.06.2018
Transmission Date	28.06.2018

