

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.167 of 2013

Arising Out of PS. Case No.-78 Year-2005 Thana- GOGRI District- Khagaria

1. Santosh Mandal and Ors. S/O Late Bhupi Mandal Resident Of Jamalpur Kurmi Tola, P.S. Gogri, District Khagaria.
2. Balmiki Mandal S/O Jyoti Mandal @ Yogendra Mandal Resident Of Jamalpur Kurmi Tola, P.S. Gogri, District Khagaria.
3. Manoj Mandal S/O Kedar Mandal Resident Of Jamalpur Kurmi Tola, P.S. Gogri, District Khagaria.
4. Mithilesh Mandal S/O Paras Mandal Resident Of Jamalpur Kurmi Tola, P.S. Gogri, District Khagaria.
5. Sikandar Mandal S/O Late Jagat Mandal Resident Of Jamalpur Kurmi Tola, P.S. Gogri, District Khagaria.
6. Guthan Mandal S/O Rajendra Mandal Resident Of Jamalpur Kurmi Tola, P.S. Gogri, District Khagaria.
7. Dipak Mandal S/O Late Bhupi Mandal Resident Of Jamalpur Kurmi Tola, P.S. Gogri, District Khagaria.
8. Bhikhari Thakur S/O Kailash Thakur Resident Of Jamalpur Kurmi Tola, P.S. Gogri, District Khagaria.
9. Kailsh Thakur S/O Late Sahdeo Thakur Resident Of Jamalpur Kurmi Tola, P.S. Gogri, District Khagaria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Kumar Choudhary, Advocate
For the Respondent/s : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

Date : 14-11-2024

The present appeal have been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Cr.P.C.’) challenging the Judgment of conviction and order of sentence dated 18.02.2013, to undergo simple imprisonment of two years and fine of Rs. 500/- under Section



147 of I.P.C, in default of fine simple imprisonment of one month, simple imprisonment of one year and fine of Rs. 1,000/- under Section 323 of I.P.C, in default of fine simple imprisonment of one month and simple imprisonment of one month under Section 341 of I.P.C by the learned Gajendra Prasad Ad-hoc Additional District and Sessions Judge I, Khagaria (hereinafter referred to as the learned 'trial Court') in Sessions case No. 361 of 2005 arising out of Gogri P.S. Case No. 78 of 2005, GR No. 373/05 and all the sentences have to run concurrently.

2. Heard Anil Kumar Choudhary learned counsel for the appellant and , learned APP for the State.

3. The brief fact leading to the filing of the present appeal, as per *fardbeyan* of the informant Banbari Lal (PW-6) that at approximately 8:15 AM on the 30.03.2005, he had gone to raise the outer wall of a private Shiv temple. While some bricks had been laid, a group of individuals, namely Balmiki Mandal, Mithilesh Mandal, Paras Mandal, Santosh Mandal, Bhupi Mandal, Deepak Mandal, Manoj Mandal, Sikandar Mandal, Kailash Thakur, and Bhikhari Thakur, all residents of Kurmi Tola, arrived at the location armed with sticks, spears, and country-made pistols.



3. The aforementioned individuals allegedly began abusing him and obstructing the construction work. The informant asserted that the land and the temple belonged to him and that he would repair the boundary wall. Subsequently, Balmiki Mandal, armed with a stick, provoked other accused persons to assault the informant. Balmiki Mandal struck the informant with a stick on the informant's head causing severe injury. Santosh Mandal allegedly struck him on the hand with a stick, resulting in the fracture of his right-hand finger. When the informant's brother, Rajkumar Khetan, intervened to rescue him, he was also assaulted with sticks, causing injuries. Thereafter, Guthan Mandal S/O Rajendra Mandal arrived at the scene, armed with a pistol, and threatened them, stating that he would kill them if they did not leave and fired a shot in furtherance of threat.

4. On the basis of the *Fardbeyan* of the informant recorded by the police on 30.03.2005, at 9:45 AM, while undergoing treatment at the Referral Hospital, Gogri. Based on this, P.S. Case No. 78 of 2005, GR No. 373/05 dated 30.03.2005 was registered in Gogri police station under Sections 147, 148, 149, 323, 341, 307 of Indian Penal Code and 27 of Arms Act.

5. The learned counsel for the appellant has



confined his arguments to challenging the sentence imposed by the trial court in its judgment of conviction and order of sentence dated 18.02.2013. The counsel stated that the incident, arose out of a pre-existing land dispute where the prosecution party acted as aggressors and obstructed ongoing boundary wall construction. He further stated that the trial court allegedly failed to provide a summary of the evidence, thereby omitting the rationale for the conviction and disregarding the written arguments and defence submissions made on behalf of the appellants. He further stated that the court overlooked material contradictions in the testimonies of prosecution witnesses and neglected to consider the applicability of the Probation of Offenders Act for the appellants, who were first-time offenders.

6. During the course of the trial, the prosecution examined altogether 8 (Eight) witnesses, namely, PW-1 Raj Kumar Khetan, PW-2 Narayan Khaitan, PW-3 Nitish Kumar Khetan, PW-4 Palji Yadav, PW-5 Hari Kishore Khaitan, PW-6 Banbari Lal (informant), PW-7 Dr. Janardhan Prasad Yadav, and PW-8 Abhay Pratap Yadav (I.O.) have been examined.

7. PW-1 Raj Kumar Khetan in his examination-in-chief has stated that On March 30, 2005, Banbari Lal, along with his brother Banbari Lal (informant) and son (PW-3 Nitish



Kumar Khetan), was engaged in reconstructing the walls of the Shiv Temple when the accused persons namely Balmiki Mandal, Mithilesh Mandal, Bhupi Mandal, Santosh Mandal, Deepak Mandal, Sikander Mandal, Bhikari Thakur, Kailash Thakur, and Manoj Mandal arrived and objected to the work. Upon the informant's (PW-6 Banbari Lal) refusal to stop, Balmiki Mandal verbally abused him and incited others to attack him.

8. Subsequently, the accused persons collectively assaulted the informant (PW-6) with 'lathis' (sticks). Balmiki Mandal struck the informant on the head with the intent to kill, resulting in a severe head injury. He further attacked the informant's right hand, causing a fracture to one of his fingers. When the son (PW-3 Nitish Kumar Khetan) of PW- 1 (Raj Kumar Khetan) attempted to intervene, Balmiki Mandal struck him on the temple and hand, and Santosh Mandal pushed him aside. Additionally, Santosh Mandal assaulted PW-1 with a stick. During the attack, Guthan Mandal brandished a firearm, fired into the air, and ordered them to flee.

9. Following the incident, the injured individuals sought medical treatment at the Referral Hospital, Gogri, where the informant's (PW-6 Banbari Lal) *fardbeyan* was recorded by the police.



10. PW-1 in his cross-examination has stated that adjacent to the temple premises is a Dharamshala, with some land lying to its north, which is south of the main road. PW-1 further stated that both the temple and the Dharamshala have existed since 1942 and are situated on two plots of land, although he could not confirm if the land bore Jamabandi No. 397. He further stated that the area became valuable after the formation of the Gogri Subdivision in 1992, leading to an increase in land prices.

11. PW-1 further stated that on the day of the occurrence i.e., 30.03.2005, he, along with his brother (the informant) and other workers, was reconstructing the temple wall. Around 8:30 to 9:00 AM., individuals from Kurmi Tola approached and claimed the land belonged to them, not the temple, demanding the work to stop. Despite their objections, the work continued near the roadside north of the Shivalaya.

12. PW-1 further stated that During the altercation, he got injured by a side blow, but he saw who attacked him. The incident caused a commotion, with around 50-100 people running in different directions. PW-1 stated that his brother's wife and other family members were also injured during the chaos. He further stated that after the incident, they returned



home and then went to the hospital for treatment.

13. PW- 2, Narayan Khetan, stated in his examination-in-chief that the incident occurred on 30.03.2005, around 9:00 AM, near a temple approximately 150 yards away from his home. Upon reaching the spot, he observed Balmiki Mandal, Mithilesh Mandal, Bhupi Mandal, Santosh Mandal, Deepak Mandal, Manoj Mandal, Sikandar Mandal, Kailash Thakur, Bhikhari Thakur, and Budhhan Mandal were present in the temple premises armed with sticks, bricks, and pistols.

14. He further stated that he saw Banwari Lal (Informant) and Rajkumar Khetan bleeding, and they informed him that the accused had assaulted them. He also noticed injuries on his nephew Nishant Kumar and his wife, reportedly caused by brick-throwing. He further stated that, according to them, Balmiki Mandal struck with a stick while other threatened and abused them, including firing pistols. The injured individuals were taken to the hospital for treatment, and PW-2 statement was later recorded by the police.

15. PW-2 in his cross-examination stated that he was at home at the time of the incident and arrived afterward, where he saw the injured. He stated that his wife, who had gone to the temple to pray, told him about the brick-pelting incident.



He further stated that there was opposition to constructing a brick boundary wall for the Dharamshala and that stone-pelting had occurred the same day. he further stated that when he reached the temple premises, he saw about 10-15 accused persons inside and accompanied Banwari Lal.

16. PW-3, Nitish Kumar Khaitan, in his examination-in-chief stated that the incident occurred on 30.03.2005, at approximately 9:30 a.m. He was heading toward the temple when Balmiki Mandal, Mithilesh Mandal, Bhupi Mandal, Deepak Mandal, Santosh Mandal, Manoj Mandal, and Sikandar Mandal arrived and interrupted the work being carried out by his father (PW-1). When the accused claimed ownership of the temple, an argument ensued. Balmiki Mandal struck his uncle Banwari lal (informant) on the head with a stick, while the others threw bricks, injuring his father (PW-1). His sister-in-law was also hit by a brick on her leg as she was leaving the premises of the temple. Santosh Mandal pushed his sister-in-law, causing her to fall and sustain a finger injury. The injured were taken to the Referral Hospital in Gogri for treatment.

16.1. PW-3 in his cross-examination stated that the dispute arose over fencing land surrounding the temple, which the accused claimed as their own. The temple had existed



since before his birth, with no prior disputes over its premises. He further stated that the conflict was not about the temple itself but the surrounding land.

16.2 PW-3 further stated that he saw his father being beaten near the temple, and later accompanied him to the hospital. Along the way, his father named the accused responsible for the assault.

17. PW-4. Palji Yadav in his examination-in-chief that he work as a mason. The incident took place on 30. 3. 2005 at 8-9 AM. He came from Jamalpur to work to lay bricks in the temple. Banwari, Khetan etc. had called him for the work. His brother Rishidev Yadav mason and other labourers were also with me. 200-400 bricks had already been laid. On day of the occurrence more than ten people came but he did not recognize them. He did not even know their names. They asked to stop the work and one person hit Banwari Lal (informant) on the head with a stick, then PW-4 ran away along with his companions.

17.1 PW-4 in his cross-examination stated when the work started, there was a little opposition, but it increased on the second day. There was no fight on the first day. He did not recognize the accused.

18. PW-5, Hari Kishore Khetan in his



examination-in-chief stated that the incident occurred on 30.03.2005, at around 9:30 AM. He was performing pooja at his house, when he went to the temple and saw a crowd gathered. His brother, Banwari Lal (informant), was overseeing construction work on the temple wall when several individuals, including Balmiki Mandal, Mithilesh Mandal, Bhupi Mandal, Guthan Mandal, Kailash Thakur, Bhikhari Thakur, Manoj Mandal, and others he could not recall, stopped the work. Balmiki Mandal struck Banwari Lal (informant) on the head with a stick, injuring him. Raj Kumar Khetan (PW-1) sustained injuries to his hand and temple from a stick, and his wife was struck on the leg by a brick. All injured individuals received treatment at the hospital. He further stated that the temple and its land are his personal property and that he possesses the relevant documents, which he is willing to submit.

18.1 PW-5 in his cross-examination stated that he was not injured in the incident. He stated that he was praying at home when the altercation began. He further stated the temple and dharamshala land measure approximately 3 bighas and 16 kathas, inherited from his ancestors over 100 years ago. He further stated that he accompanied Banwari Lal (informant) to the hospital, where they stayed for about half an hour before



returning home.

19. PW-6, Banbari Lal (informant) in his examination-in-chief stated that the incident occurred on 30.03.2005, at approximately 8:15 AM. He stated that he was supervising construction work in the temple courtyard when ten individuals entered the premises, including Balmiki Mandal, Guthan, Manoj Mandal, Mithilesh Mandal, Deepak Mandal, Santosh Mandal, Kailash Thakur, and Bhikhari Thakur. They demanded that the work be stopped. PW-1 refused, asserting it was a personal matter. At this, Balmiki Mandal threatened him and struck him on the head with a stick, causing bleeding. When PW-1 reiterated his refusal to stop the work, Balmiki struck him again, injuring his hand as he attempted to block the blow. The family members gathered, and the accused fled. The informant was taken to the hospital by his family, where his statement was recorded by the police. He further stated that his younger brother Raj kumar, nephew, and son were assaulted during the incident, while his wife was injured by a brick.

19.1 PW-6 in his cross-examination stated that he refutes the accused's claim that the land belonged to a public temple, asserting that the Shiv temple of Lord Trilokinath had been under his family's care for generations. He further stated



that the dharamshala predates the temple and that his elder brother is more familiar with the land's records. He further stated to produce documents proving his ownership. While he acknowledged the land is valuable and located in the heart of Jamalpur market, he stated that no one had protested or claimed personal ownership of the land before this incident. He further stated that the accused protested for the first time on the day of the incident. He further stated that he felt unconscious after being struck and he went to the hospital directly after the incident.

20. PW-7 Dr. Janardan Prasad Yadav in his examination-in-chief stated that on 30.03.2005 while he was posted at referral Hospital Gogari. He examined Nitish Khetan s/o Raj Kumar Khetan R/o Vill- Jamalpur Gogari P.S.- Gogari, Dist-Khagaria the same day 9:50 PM, and found following injuries.

1. Abrasion 2"X1" on left side of elbow Joint caused by hard and blunt substance simple in nature. Patient was admitted, X-Ray show N.A.D and patient did not submit X-Ray. Age of injuries within 12 hours, color – Red, M.I. -Mole on left side.



20.1 He further stated that on same day at 9:45 PM, he examined Smt. Shanti Devi wife of Narayan Kumar Khetan of village Jamlapur Gogari P.S. Gogari, District - Khagaria same Abrasion and found following injuries.

1. Abrasion 2"XI" on left ankle Joint caused by hard blunt substance.

21. PW-8, Abhay Pratap Yadav in his examination-in-chief stated that on 30.03.2005, he was posted as Sub Inspector in Gogari Police Station. The SHO was Sub Inspector Virendra Kumar Singh. On 30.03.2005 at 9:45 AM, the statement of the injured Banwari Lal was taken on the basis of the OD slip of the doctor in the referral hospital Gogari. The statement is in handwriting and signature of PW-8.

21.1 He further stated that on the basis of the statement, Gogari police station case number 78/05 dated 30.03.2005 has been registered. He further stated that fear taking charge of the investigation, he first went to the place of occurrence. The place of occurrence is the premises of Shri Trilokinath Harishankar temple situated in Jamalpur market. He further stated the location and mapping of the temple. He further stated that he recorded the statements of the injured person and his brother, Rajkumar Khetan. Subsequently, the statement of



Banwari Lal Khaitan was also recorded, followed by the statements of witnesses Narayan Khetan and Harikishore Khetan. The statements of witnesses Nitish Khaitan and Shanti Devi were recorded, and their injury reports were issued. Injury reports for Banwari Lal Khaitan, Rajkumar Khetan, Nitish Khetan, and Shanti Devi were also provided. He further stated that on 30.03.2005, statements from masons Palji Yadav and Rishidev Yadav were taken, both of them corroborated the case. He further stated that a raid was conducted, resulting in the arrest of the named accused, whose statements were recorded before being sent to judicial custody on 31.03.2005. He further stated that the referral hospital's report was received on 23.03.2005. The investigation of the site was conducted, and based on the evidence gathered, a charge sheet was filed against the named accused.

21.2 PW-8 in his cross-examination stated that he had not examined any documents related to the land of the Triloki Nath Harishankar temple during the investigation, nor were any such papers presented by the informant. He further stated that no statements were recorded from any independent witnesses concerning the land of the temple or Dharamshala. He further stated that he refuses that the dispute arose from a



sudden quarrel to stop the construction of the boundary wall. He further stated that PW-3 Nitish Khetan stated during his deposition that someone packed the bricks, while the mason mentioned there was no sound of gunfire. He further stated that the investigation and witness statements revealed that the accused were attempting to prevent the wall from being built, and brick-laying was observed at the site during the inspection as part of the wall construction. He further stated that he could not confirm whether the Shiv temple was over a thousand years old. Although locals claimed the land was public. He further stated that while the statement of Rishidev Yadav was recorded as an independent witness, he also did not report any gunfire or its sound.

22. The learned counsel for the appellant argued that the trial court has failed to consider the facts that the occurrence taken place in the background of land dispute between the parties in which prosecution party were aggressor. It has been contended that on this basis the case has not been established beyond a reasonable doubt. He further argued that the trial court failed to summarize the evidence and provide a clear rationale for the conviction, disregarded the appellants' written arguments and defence submissions, overlooked



contradictions in prosecution witnesses' testimonies, and did not consider the applicability of the Probation of Offenders Act for the first-time offenders.

23. The learned Additional Public Prosecutor argued that there were no previous enmity between the parties related to the land. Thus, the case is sufficiently proven against the accused. It has been observed that the appellants have been convicted for maximum period of two years and no previous conviction is proved against him.

24. On perusal of all evidences, it is evident to note that the appellants has been rightly convicted in the Judgment of conviction dated 18.02.2013 under Sections 147, 323 and 341 of I.P.C and after perusal of the trial Court record, I find that this is the first offence of the appellants and further appellants have not been convicted earlier in any other matter. There is no adverse report against them about their conduct and character otherwise the same would have been brought to our notice by learned counsel for the State. In my opinion having regard to the circumstance of the case including the nature of the offence, and the character of the offenders, it is expedient so to do instead of sentencing him to any punishment or releasing him on probation of good conduct, release him after due admonition under



Section 3 of the Probation of Offenders Act, 1958. In such condition there is no need to interfere in the judgment of conviction dated 11.07.2013. So, this court does not find any infirmity to disbelieve the judgment of conviction passed by the trial Court.

25. The appeal stands partly-allowed.

(Ramesh Chand Malviya, J)

S.Katyayan/-

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