

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.321 of 2006

1. Md. Umar, son of Late Md. Rabban
 2. Md. Abdul Tahir, son of Late Md. Rabban
 3. Md. Samsul Jaque @ Md. Samsul, son of Late Md. Yaqub
 4. Md. Habib @ Md. Halim, son of Md. Yaqub
 5. Md. Subhan, son of Md. Samsul Haque
 6. Abdul Raja, son of Samsul Haque
 7. Md. Sakeel, son of Md. Halim
- All are residents of village- Kasba, P.S. Balia, Distt.- Begusarai.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vipul Sinha (<i>Amicus Curiae</i>)
For the Respondent/s	:	Ms. Anita Kumari Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 23-02-2024

Heard Mr. Vipul Sinha, learned *Amicus Curiae*

on behalf of the appellants and Ms. Anita Kumari Singh,

learned APP appearing for the State.

2. This present appeal has been preferred

against the judgment of conviction dated 23.03.2006 and

order of sentence dated 25.03.2006, passed by learned

Additional Sessions Judge, F.T.C.-IV, Begusarai in

Sessions Trial No. 161/90, arising out of Ballia P.S. Case

No. 73 of 1989, whereby and where-under though the

appellants were found guilty of the offences punishable



under Sections 325/149 of the Indian Penal code, but they had been released under Section 4 of the Probation of Offenders Act, keeping in view the old age of the appellants, the background in which the case was registered and the nature of offence and on their furnishing bond of Rs. 2000/- with two sureties each of the like amount separately with their undertaking that they shall maintain peace and good behavior for two years.

3. The Prosecution case is based on the *Fardbyan* of Md. Kamaluddin (Exhibit 4), stating therein that on 3.6.1989 at about 10:15 A.M. while he was getting the construction of boundary wall with the help of laborers, all the accused persons, variously armed with pistol, *lathi* and bricks, forming an unlawful assembly came there. Accused Md. Rabban ordered his companion to assault the informant. Thereupon, all the accused person started assaulting the informant by means of *lathi* and bricks. Md. Rabban is alleged to have thrown chili powder in the eye of the informant. Upon assault, the informant sustained injury on his head and face which caused



bleeding from his head and mouth. One teeth of the informant was also broken in the assault. On hearing alarm, of the informant, his brother-in-law(Sala) Md. Shaukat (PW 2) and Md. Zafar (PW 1) rushed there to save the informant but they were also assaulted by the accused persons by means of *lathi* and bricks. When Md. Daud (PW 5) came there to save his father Md. Kamaluddin, it is further alleged that accused Md. Umar tried to drag him by wrapping a rope around his neck. Other accused persons also assaulted Md. Daud by means of *lathi* and bricks. It is also alleged that accused Md. Umar and Md. Shakeel fired, aiming pistol at Md. Daud, to which he narrowly escaped.

4. On the basis of fardbyan formal F.I.R. (Exhibit 6) was drawn up and Balia P.S. case No. 73/89 was registered against all the accused persons.

5. After completion of investigation, charge-sheet was submitted against them and accordingly, cognizance was taken. Therefore, the case was committed to the Court of Session for trial and disposal.



6. The charges were framed against all the accused persons under Sections 307/149 and 337 of the Indian Penal Code and further under Section 27 of the Arms Act against the accused Md. Umar and Md. Shakeel and further under Section 325 of Indian Penal Code against Md. Umar. They pleaded not guilty and claimed to be tried.

7. Notably, accused Md. Rabban has died. So, the proceeding against him was dropped by the learned Trial Court.

8. Defense of accused was total denial of the prosecution case. Further defense of the appellants is that the informant Md. Kamalludin and the witnesses of this case had assaulted to accused Md. Rabban, his wife Bibi Alima Khatoon and his son Abdul Bassar on the same day at about 8:30 AM. On the information of Bibi Alima Khatoon, a case has also been registered against the informant of this case, Md. Kamalludin and 8 others. In this they were convicted by the Trial Court.

9. Altogether 13 PWs have been examined,



namely, PW-1. Md. Zafar, PW-2. Md. Shaukat, PW-3. Bino Yadav, PW-4. Md. Kamaluddin, PW-5. Md. Daud, PW-6. Dr. Anuplal Choudhary, PW-7. Dr. Bhartendu, PW-8. Gopal Sharma (I.O), PW-9. Md. Makbool Ahamad, PW-10. Abu Bakar Hussain, PW-11 Jagdish Choudhari, PW-12 Bhola Prasad and PW-13 Md. Manzoor and the documentary evidence also adduced on behalf of the prosecution.

10. On behalf of the defence, one DW, namely, Ram Babu was examined and some documentary evidence have been adduced.

11. In the instant appeal, the point of consideration is whether the prosecution has been able to prove the charges as levelled against the accused persons/ appellants beyond reasonable doubt or not.

12. PW 7, Dr. Bhartendu, who examined the injured persons and proved the injury report (which are exhibited as Ext. 3, Ext. 3/1, Ext. 3/1, Ext. 3/3 and Ext 3/4.) P.W. 8, Gopal Sharma was Investigating Officer, who investigated this case as well as investigation of counter



case ie. G.R. Case Number 1130 of 1989. (certified copy of deposition of this witness is marked as Ext. B).

13. On behalf of the appellant it is submitted by learned *Amicus Curiae* that the judgment and order of conviction and sentence are bad in law as well as the facts, the Court below did not appreciate that the claim of the appellants of rights, title and possession of the land was based on sale deed of the year 1961 whereas the claim of prosecution party was based on sale deed of the year 1978 in respect of the same land, obviously, later than that of the appellants. Learned trial court has failed to appreciated the evidence adduced by the prosecution which did not prove the guilt of the appellants beyond reasonable doubt Hence, the instant appeal filed by the appellants is liable to be allowed.

14. In contra, learned APP submitted that the impugned judgment of conviction and release to the appellants after giving the benefit under Section 4 of Probation of Offenders Act to the appellants is fit and proper. There is no need for interference and the same



based on consistent and cogent evidence.

15. I have gone through the oral and documentary evidence, adduced on behalf of the prosecution as well as defense. The trial court in its impugned judgment has rightly upheld that the prosecution witnesses had deposed that all the accused surrounded Md. Kamaluddin (PW-4) at about 10:15 AM and accused Md. Rabban threw chili powder in the eye of Md. Kamaluddin. Thereafter, Md. Halim, Subhan and Rabban assaulted him by means of *lathi* and bricks. They have further stated that accused Md. Umar wrapped a rope around the neck of Md. Daud and pulled him from back. The doctor has opined that the injury No. 5 of Md. Daud is grievous and injury No. 1 of Md. Shaukat was also grievous, caused by hard & blunt substance. The reason assigned for showing the injuries grievous on the basis of X-ray reports and the same have been proved by Dr. Anup Lal Choudhary (PW-6). It is apparent from the evidence of prosecution witnesses that there is no repetition of blow. There is no material on record to shows that the accused



persons had any intention to kill Md. Kamalludin and others. As such they could not be held guilty for the charges u/s 307 and 149 of the Indian Penal Code. Charges u/s 337 of the IPC and u/s 27 of Arms Act against accused Md. Umar and Md. Shakir have not been proved by the prosecution.

16. After scrutinizing entire evidence available on record and from perusal of the impugned judgment of conviction, there is no need of interference in the said judgment. The impugned judgment has been delivered on the basis of cogent and consistent evidence and the trial court has rightly upheld all the appellants u/s 325/149 of the IPC. The Trial Court has released all the appellants after giving them the benefit of section 4 of the Probation of Offenders Act, for keeping peace and good behavior for 2 (two) years.

17. The ordeal of trial faced by the appellants since very beginning till now, more than 17 years. I find no reason to disbelieve the judgment of conviction passed by the trial court.



18. Accordingly, the instant appeal filed by the appellants is devoid of merit and hereby dismissed.

19. Mr. Vipul Sinha, learned *Amicus Curiae* was appointed to represent the appellants/accused. I put on record the words of appreciation for able assistance rendered by him in arriving this Court at the proper conclusion in deciding the instant appeal. The Patna High Court Legal Services Committee is hereby directed to pay a sum of Rs. 6,000/- (rupees six thousand only) to Mr. Vipul Sinha, towards his professional fee.

(Sunil Kumar Panwar, J)

Nirajkrs/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	26.02.2024
Transmission Date	26.02.2024

