

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.69 of 2006

1. Harkhen Singh, Son Of Ram Bahadur Singh
2. Tirloki Singh, Son Of Late Ram Jeevan Singh
3. Binay Kumar Singh @ Binay Singh, Son Of Krishndeo Singh
4. Jawahar Singh, Son Of Kamta Singh
5. Jai Kishor Singh, Son Of Late Ram Dutt Singh

All are residents of village Nawada Ben, P.S. Udwant Nagar, Distt.- Bhojpur.

... .. Appellant/S

Versus

State Of Bihar

... .. Respondent/S

Appearance :

For the Appellant/s : Mr. Vipul Sinha (*Amicus Curiae*)
For the Respondent/s : Mr. Mukeshwar Dayal, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 18-03-2024

Heard Mr. Vipul Sinha, learned *Amicus Curiae*
on behalf of the appellants and Mr. Mukeshwar Dayal,
learned APP appearing for the State.

2. This appeal has been preferred by the appellants being aggrieved and dissatisfied with the judgment of conviction and order of sentence, dated 29th of December, 2005 passed by the learned Additional Sessions Judge, F.T.C. IV, Bhojpur, Ara in Sessions Trial No. 313/1991, arising out of Udwant Nagar P.S. Case



No. 34 of 1988, whereby and where-under appellants are convicted under Section 324 of Indian Penal Code and awarded sentence to undergo rigorous imprisonment of 3 years each.

3. The Prosecution case is based on the *Fardbyan* of informant, Radha Krishna Singh, stating therein that in the night of 3rd-4th of March, 1988, while he, his brother and his father was sleeping at the door of his house on Chowki, at about 2-3 AM, appellants along with other accused persons, armed with lathi, bhala and gun, came there and started assaulting the informant and his family members indiscriminately. On raising alarm by the informant, neighbors woke and then accused persons fled away. The motive of occurrence is said to have been old litigation over an adjacent plot of land.

4. On the basis of fardbyan formal F.I.R. was drawn up and Udwant Nagar P.S. case No. 34/88 was registered against all the accused persons u/s 147, 148,



149, 307, 323, 324, 325 of Indian Penal Code and Section 27 of Arms Act.

5. After completion of investigation, charge-sheet was submitted against the appellants and three other persons, namely, Sudershan Singh, Hare Ram Singh and Jai Ram Singh who were acquitted by learned trial court and accordingly, cognizance was taken. Therefore, the case was committed to the Court of Sessions for trial and disposal.

6. Defense of accused was total denial of the charges and false implication with concocted allegations due to land dispute between the parties.

7. The point of consideration in this appeal is whether the prosecution is able to prove the charges levelled against the appellants/ accused persons beyond reasonable doubt or not. It would not be out of place to mention here that before trial Court eight accused persons were facing trial and out of them accused Jai Ram Singh, Hare Ram Singh and Sudarshan Singh were



acquitted after giving the benefit of doubt and the present appellant were convicted and hereby sentenced.

8. It would also notably that all accused persons stand charged u/s 307/149 of Indian Penal Code, accused Jawahar Singh & Vinay Singh stand charged u/s 147, accused Harkhen Singh, Sudershan Singh, Hare Ram Singh, Sri Ram Singh, Triloki Singh, Jai Kishore Singh, Jai Ram Singh also stand charged u/s 148 of Indian Penal Code and accused Jai Kishore Singh stands charged u/s 27 of Arms Act.

9. During trial altogether 10 witnesses were adduced on behalf of the prosecution and some set of documents were also exhibited.

10. P.W. 1 Rajendra Prasad Yadav did not support the prosecution version and he has been declared hostile.

11. P.W. 2 Nandji Singh Yadav and P.W. 3 Sri Krishna Singh Yadav are informant's brother.

12. P.W. 4 Suresh Yadav, P.W. 5 Ram



Singhashan Singh Yadav, P.W. 6 Radha Krishna Singh Yadav (informant), P.W. 7 Md. Suleman (treating doctor), P.W. 8 Tarkeshwar Prasad, P.W. 9 Gorakh Singh, P.W. 10. Jaganlal Rai.

13. I have gone through the entire case records, oral and documentary evidence adduced on behalf of the prosecution during trial and scrutinize the judgment passed by the trial court. Trial court rightly observed and mentioned vide para 13 of the judgment that this case appears to be one u/s 324 Indian Penal Code instead of a case u/s 307 Indian Penal Code. Injuries of alleged injured persons are of simple in nature. Injury sustained by P.W. 5 (Ram Singhashan Singh Yadav) is in shape of curve as a farsa is a curved weapon but there is no mention of farsa in the F.I.R. According to F.I.R., there was only one assault by lathi on all the three injured but injury of Ram Singhashan Singh Yadav has been found to be by sharp weapon. Allegedly, 9 accused persons have assaulted to Jainath



Singh but as per the injury report, he sustained only three injuries, which contradicts with the prosecution version. None of the witnesses alleged that any of the accused has repeated the blow. There is no circumstance to prevent the accused persons in executing attempted murder as it has come that one of the accused was armed with fire arms and if there had been intention to commit murder, fire arm could be fired from the weapons or it might have been repeated by the accused persons.

14. The judgment of conviction is passed on consistent and cogent evidence. Except minor contradiction nothing major surfaced to disbelieve the prosecution case. The defense tried to subject the prosecution witnesses but not succeed.

15. On behalf of the appellants it is submitted by learned *Amicus Curiae* that as far as sentence awarded by the trial court is not proper and according to law because the appellants/convicts are said to be the first



offenders. According to provision of Sections 360 and 361 of Cr.P.C., the appellants are entitled for getting the benefit of probation of first offender Act. The appellants have been facing the ordeal of trial and appeal since 1988 (more than 35 years). The appellants are entitled to get some relief in respect of sentence awarded by the trial Court since the appellants remained in custody during trial of this case.

16. Learned trial Court rightly convicted the appellants under Section 324 of Indian Penal Code. Learned trial Court elaborately discussed the entire prosecution evidence. I find no reason to disbelieve the observation passed by the trial court in respect of conviction of the appellants. Learned trial Court discussed and explained the prosecution evidence. I am of this belief that learned trial Court has not committed any wrong to convict the appellants under Section 324 of Indian Penal Code.

17. However, conviction under Section 324 of



Indian Penal Code is hereby confirmed and such appellants are sentenced to undergo rigorous imprisonment for period during which, they remained in jail as under trial prisoners in connection with this case.

18. With this modification in the order of sentence, this appeal is 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	NA
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