

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.695 of 2010

1. Anil Kumar Pandey @ Anil Pandey, son of Late Rang Nath Pandey
2. Tarkeshwar Pandey, son of Late Rang Nath Pandey
3. Saroj Pandey, son of late Rang Nath Pandey
4. Kapildeo Upadhyay, son of Late Bishwanath Upadhyay
5. Deo Kumar Upadhyay, son of Raghubir Upadhyay
All resident of village Mani Chhapra, Police Station-Ekma, Distt. Saran at Chapra.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sachchidanand Choudhary, Adv.
For the Respondent/s : Mr. A.M.P. Mehta, APP.

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 28-02-2024

Heard Mr. Sachchidanand Choudhary, learned counsel appearing for the appellant as well as Mr. A.M.P. Mehta, learned Additional Public Prosecutor for the State.

2. This appeal has been preferred by the appellant against the judgment and order of conviction dated 14.05.2010 passed by Sri Akhilanand Dubey, Additional District and Sessions Judge-cum-F.T.C. No. 5, Chhapra in Sessions Trial No. 343 of 1996 arising out of Ekma Police Station Case No. 43 of 1995, G.R. No. 1524 of 1995 convicting the appellants for the offence punishable under Sections 147 and 323 of the Indian Penal Code and has



acquitted them under Sections 307/149 of the Indian Penal Code. Appellant no. 5, Deo Kumar Upadhyay has been acquitted also under Sections 148 and 324 of the Indian Penal Code. On the point of sentence, trial court instead of ordering them for imprisonment, giving them the benefit of Section 4 of Probation of Offenders Act, they have been released with a direction to execute Bonds of Rs. 2,000/- with two sureties for maintaining peace and tranquility for one year.

3. The prosecution case in brief is that, the informant, namely, Md. Yasin (P.W.-6) gave a written report before Ekma Police Station stating therein that on 15.5.1995 at about 4:30 p.m informant alongwith Samiullah Ansari (P.W.-1) were going towards his house and when they reached near the house of Ish Mohammad, then accused Late Rang Bahadur Pandey (since died) started to abuse the informant, to which he protested. Thereafter, Rang Bahadur Pandey pointedly pressed toe of the lathi in his chest. It is further alleged that after some time, all the FIR named eight accused persons including Rang Bahadur Pandey, Anaras Upadhyay and Shankar



Upadhyay (all three accused died during trial) came to the door of the informant, variously armed with lathi and farsa, and on order of accused Rang Bahadur Pandey (since died), Deo Kumar Upadhyay (appellant no. 5) inflicted farsa blow on informant's head. When his father, namely, Qayamat Hussain came to rescue his son, accused Rang Bahadur Pandey (since died) inflicted farsa blow on his head. Other accused persons are also said to have assaulted other family members of the informant, namely, Hakim Ansari, Dadan Ansari and Sadique Mian by means of lathi. On hearing noise, villagers, namely, Hajrati Mian, Sugh Narain Raut, Hirdyanand Raut and others (none examined) came there and pacified the matter. In the background of the alleged incident, there was old land dispute between the parties.

4. On the basis of written report given by P.W.-6, Ekma Police Station Case No. 43 of 1995 was registered against the eight accused persons. After completing the investigation, police submitted chargesheet against them. On the basis of evidence during investigation, cognizance was taken and the case was committed to the court of Session for trial and disposal.



4. It is pointed out that during trial out of the eight accused persons, three accused, namely, Rang Bahadur Pandey, Anaras Upadhyay and Shankar Upadhyay died and the trial abated against them.

5. In this appeal, point for consideration is whether the prosecution is able to prove the charges levelled against the appellants beyond the shadow of reasonable doubt or not.

6. To substantiate the charges leveled against the appellants, altogether nine witnesses were examined by the prosecution as P.W.-1 Salimullah Ansari, P.W.-2 Harun Ansari (brother of the informant), P.W.-3 Quyyamat Hussain (father of the informant), P.W.-4 Surendra Pandey, P.W.-5, Darudan Bibi (mother of the informant), P.W.-6 Md. Yasin (informant), P.W.-7 Dr. Dadhichi Prasad Singh (doctor), P.W.-8 Satyanarayan Rai and P.W.-9 Radha Raman Singh. From defense side, one witness, namely, Shivji Singh was examined as D.W.-1.

7. Learned counsel appearing on behalf of the appellants has submitted that evidence of witnesses suffered from serious infirmities and contradictions,



which makes their case highly doubtful, totally unreasonable and untrustworthy. P.W.-7 Dr. Dadhichi Prasad Singh had examined six injured persons and disclosed that all injured persons have received simple injury and no any person has received injury on vital part. He submitted that injured Yasin and Qyamat Hussain are said to have assaulted by means of farsa, whereas doctor opined lacerated and swelling with pain injury to them, caused by hard and blunt object. They have not received any sharp cutting injury. He further submitted that injured Sadique Miyan had received fracture in his right forearm, but his evidence was not recorded before the trial court. On the point of place of occurrence, there are contradictions in the evidence of the prosecution witnesses. P.W. 2 (brother of the informant), P.W.-3 (father of the informant) and P.W.-5 (mother of the informant) are interested witnesses and their evidence are not trustworthy. In this case, Investigation Officer of the case was not examined and due to his non-examination, the prejudice was caused to the defense as the contradictions in respect of place of occurrence could



not be verified properly. Prosecution should have examined the Investigation Officer.

8. It is further submitted by learned counsel for the petitioner that a counter blast case i.e. Ekma P.S. Case No. 44 of 1995 was also instituted by accused no. 2, namely, Tarkeshwar Pandey against the informant and his father in respect of the same incident and in this case informant and other accused faced trial and the same was concluded and they were convicted u/s 323 IPC and the accused persons were released under the Probation of Offenders Act. In the said case, it had been proved, that actually the prosecution party had assaulted the appellants.

11. Learned APP appearing for the state has argued that the impugned judgment in question is based on cogent and consistent evidence, which is adduced by the prosecution witnesses. Doctor proved the injury reports of injured persons which is exhibited as ext.-2 series. Learned trial court has rightly convicted the appellants u/s 147 and 323 of the IPC by relying upon the evidence brought on record by the prosecution during trial. Therefore, the judgment and order



assailed in this appeal requires no interference and appeal is liable to be dismissed.

12. I have gone through the entire prosecution evidence, documents, exhibits, defense evidence, medical reports in respect of injured persons, which are proved by P.W.-7 (doctor). Evidence of all the witnesses including the evidence of P.W.-6 (informant) proved the prosecution case in respect of manner of occurrence, place of occurrence and time of occurrence. In this case, it is apparent that I.O., who had conducted the investigation, was not examined but all the witnesses examined in the case, have proved the prosecution case. And as such, non-examination of I.O. does not prejudice the defense. The doctor proved the medical reports of all the injured persons, which are exhibited as Ext.-2 series.

13. After scrutinizing all the evidences, which are available on record and the impugned judgment of conviction, there is no need of interference in the said judgment. The impugned judgment is delivered on the basis of cogent and consistent evidence and the trial court had rightly convicted all the appellants under Sections 147 and



323 of the Indian Penal Code. This Court does not find any infirmity in the order impugned. Being the first offence committed by the appellants, trial court released all the appellants after giving them the benefit of Section 4 of Probation of Offenders Act. I find no reason to disbelieve the judgment of conviction passed by the trial court.

14. Accordingly, the instant appeal is hereby dismissed.

(Sunil Kumar Panwar, J)

sushma/-

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