
(1985) 04 PAT CK 0043
In the Patna High Court

Abdul Qadir and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 12-04-1985

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 302, 304, 323, 34

Citation : (1985) CriLJ 1735

Hon'ble Judges : Phani Bhushan Prasad, J;Anand Prasad Sinha, J

Bench : Division Bench

Judgement

Anand Prasad Sinha, J.—Appellant Abdul Quadir has been found guilty for the offence punishable u/s 302 of the Penal Code and appellants Ataullah and Md. Mazlum have been found guilty for the offence punishable u/s 302 read with Section 34 of the Penal Code and each has been sentenced to undergo imprisonment for life. All the appellants have been found guilty for the offence punishable under Sections 147 and 379 of the Penal Code and each has been sentenced to undergo rigorous imprisonment for one year under each count. Appellants Lal Mohammed, Neyamat Main, Makul and Ali Hassan have further been found guilty for the offence punishable u/s 323 of the Penal Code and each has been sentenced to undergo rigorous imprisonment for one year. However, the sentences have been ordered to run concurrently.

2. The prosecution case, briefly stated, is that at about 9 A.M. on 24-7-1972 Md. Usman (P. W. 8), who is also the informant of this case and who happened to be the son of deceased Chuman Mian resident of village Chakla Nirmali, P. S. Supaul, was ploughing his field which was situated towards south of the village. Chuman was, at that time, standing on a ridge. Suleman (P. W. 7) was at his house. At that time, the appellants armed with lathis and sickles came to the informants' field and started cutting Bhadai paddy. In the meantime, Suleman (P. W. 7) also arrived at the place of occurrence. Usman (informant), his father Chuman and his brother Suleman protested. On this protest, appellant Quadir Mian gave a lathi blow on the right Kanpatti of Chuman Mian, who fell down and,

thereafter, appellants Mazlum and Ataullah assaulted him with lathis. Suleman wanted to save his father, whereupon he was also assaulted by appellant Lal Mohammad, Neamat Mian, Maqbool Mian and AH Hassan Mian. Hulla was raised and many persons came and witnessed the occurrence. On hulla, the accused persons fled away after taking the harvested Bhadai crops. Chuman and Suleman were taken to the hospital, but Chuman died on the way. The Sub-Inspector of Police of Supaul police station recorded the Fardbeyan of Md. Usman in the Supaul Hospital.

3. Learned Counsel appearing on behalf of the appellants has mainly confined his argument on the appreciation of evidence and specially it has been put forward that, as a matter of fact, the disputed land belonged to the appellants and that being so, if at all any assault had been committed, that has been done in exercise of the right of private defence of the property.

4. In order to appreciate as to whether any right of private defence existed or not, it may be stated that the dispute related to plot No. 10/2 consisting of about 3 3/4 Bighas. Appellant Quadir Mian claimed that he had acquired 11 kathas 4 dhurs out of the total area towards west of that plot. Bhadai paddy was grown by him. On the date of occurrence in between 9 and 10 a.m. Bibi Sharifan wife of appellant Quadir Mian, who has examined herself as D. W. 2 and Bibi Jamiran sister of appellant Quadir Mian were cutting grass in the land of Plot No. 10/2. In the meantime, Chuman Mian and his two sons, namely, Suleman and Md. Usman came there armed with sickles and lathis and started cutting Bhadai paddy in the land of appellant Quadir Mian. Both the aforesaid ladies protested upon which they were assaulted with lathis, fists and slaps. Hulla was raised. Lallu Mian, who happened to be the servant of Quadir Mian and who was working in the nearby field, protested against the assault over the ladies whereupon the assault took place in which Lallu Mian was assaulted. Further the claim is that the appellants were not present at the time of occurrence.

5. On close scrutiny of the evidence, it appears that, as a matter of fact, the appellants' possession over the disputed plot of land is not supported by cogent and reliable evidence or documents. Also there is complete lack of evidence that the appellants had grown paddy. This fact could not be made available even by the force of the cross examination of the witnesses. On the contrary it appears that the informant's father Chuman Mian had taken settlement of entire plot No. 10/2 measuring 2 bighas 13 kathas & 18 1/2 dhurs of land from Raj Darbhanga and he was in cultivating possession. He paid rent and he had receipts with him. Ext. 10 is the settlement paper indicating settlement of the aforesaid land at the annual rental of Rs. 10/9/6 in 1349 Fasli. Chuman Mian had sold 1 bigha 7 Kathas of land out of the aforesaid lands to one Babu Thakur Prasad. The concerned registered sale deed dt. 6-3-1942 is Ext. 8. Babu Thakur Prasad had sold that land to Nathuni Mian and that is supported by a registered sale deed dt. 10-3-1958 (Ext. 8/1). Moreover, Ext. 7 series are the rent receipts granted by the State of Bihar in the name of Chuman Mian and also in the name of the

vendee. Further from the rent receipts Ext. 7 & 7/1 it appears that one bigha 6 kathas 18 1/2 dhurs of land were retained by Chuman Mian out of the total area of Plot No. 10/2 after sale to Babu Thakur Prasad.

6. In face of this, the claim of the defence that appellant Quadir Mian had purchased 11 kathas 4 dhurs of land out of plot No. 10/2 by virtue of registered sale deed dt. 25-4-1953 from Durga Nand Jha. Manager, Raj Darbhanga cannot be said to be such document which had, in fact, conveyed the land in question in a legal manner and also Quadir's possession could not be said to be completely established. The concerned sale deed Ext. A can be said to be a document executed by such a person who had not, in fact, conveyed the legal right and title. Further it appears from the records of Mutation Case No. 5 of 1977-78 (Ext. 11) that the claim of Mutation filed by appellant Quadir Mian had been rejected. This order of the Anchat Adhikari is dt. 8-11-1977.

7. Therefore, from the facts and evidence on record, it would appear that the appellants were labouring under a wrong concept that, as a matter of fact, they were in possession and owner of the disputed plot of land although excepting some confusion having been created by Ext. A, as a matter of fact, no legal right had been conveyed to appellant Quadir. How far this will have an impact upon the offence having been committed by the appellants will be dealt later.

8. Although there is an assertion that a theft had been committed but it would appear that no such reliable and cogent evidence is available in support of this charge. The prosecution case indicates that the moment the appellants arrived, there was a protest and Marpit took place. Under the circumstances, absolutely there was no time lag in support of the fact that the crops would have been harvested and those would have been carried by the appellants. Moreover, the allegation of theft has been attributed to all the appellants lacking details and when the appellants, according to the prosecution case, were engaged in assault leading to a Hulla raised by the prosecution party and arrival of the witnesses soon thereafter compelling the miscreants to run away, in that background, it cannot be said with certainty that, as a matter of fact, the appellants had committed theft. It is a different matter that the appellants might have damaged or cut the standing crops, but in that circumstance, the question of theft did not arise and utmost it can be said to be a case of mischief but in view of the fact that details have not been stated that who had, in fact, indulged in cutting of the crops, the general type of allegations cannot be said to be acceptable for establishing the charge of theft. Under the circumstances, the appellants are acquitted of the charge u/s 379 of the Penal Code.

9. It appears from the prosecution case that the act of assault is only attributed to appellants Ataullah, Md. Mazlum and Quadir Mian over the deceased. However, appellants Lal Mohammad Neyamat Mian, Maqbul and Ali Hassan are stated to be the assailants of the informant's brother Suleman. On deep consideration of evidence it appears that appellants Lal Mohammad, Neyamat Mian. Maqbul and Ali Hassan have been named mechanically in order to make them accused in the

case. No details have been mentioned that out of these four appellants, who had assaulted in what manner. Of course 14 injuries have been found by Dr. B. N. L. Das (P. W. 10), who had examined Suleman. They are lacerated wounds, swelling and acchymosis in the different parts of the body. Under the circumstances, when the lathi injuries were inflicted in the different parts of the body and in continuation of the occurrence that earlier Chuman had been assaulted and when the occurrence had taken place in a field abruptly and suddenly, it was very difficult to say that who were the persons who had assaulted. It is a different matter that the assailants of Chuman who had inflicted lathi injuries could have been distinguished and named specifically as assailants, but on the basis of the facts and circumstances of the case, other persons appear to have been named mechanically. Moreover, from the prosecution case it will appear that while Chuman was being assaulted by appellant Quadir Mian and other two persons, Suleman had gone to save him and then he was assaulted and under this circumstance it would appear that there was no occasion for any others to assault Suleman as absolutely there is no allegation that excepting the three, others had also assaulted Chuman. Therefore, the four appellants, namely, Lal Mohammad, Neyamat Mian, Maqbool and Ali Hassan are not found guilty for the offence u/s 323 of the Penal Code and they are acquitted of that charge also.

10. The allegation of assault by appellants Ataullah and Mazloom is surrounded by suspicion. Dr. G. R. Mehta(P. W. 9) had found the following injuries on the person of deceased Chuman Mian:

- I. Swelling 3" x 2 1/2" with scratch 1" x 2" on the scalp and upper portion of neck behind right ear.
- II. One lacerated wound 2" x 1/2 x skin on the back of right shoulder.
- III. Scratch 1 1/2" x 1/2" on the upper portion of right shoulder;
- IV. Scratch 1" x 1/2 on the front of left leg.
- V. Scratch 1" x 1/2" on the front part of right leg.

On further dissection, blood clots were found present in the subcutaneous and muscular layer at the sight of injury No. 1 with fracture of the underlying occipital and temporal bone and laceration of dura matter and brain tissues with blood clots at the sight of fracture.

Therefore, injury Nos. I & II are the only two injuries which are indicative of the fact that they have been caused by use of lathi. According to the prosecution allegation, appellant Quadir Mian was the first man to give lathi blow on the head and, therefore, the assault by appellant Quadir Mian can be said to be well supported both by medical evidence and by the informant who had occasion to see the first assault as he was at the place of occurrence. It may be stated here that there always is a distinction between the first assault and any assault thereafter because the first assault may be clearly visible and unmistakably stated; whereas the allegation of assault having been inflicted thereafter may not

be accurate but stated mechanically to suit the convenience of the prosecution. It is because, after the first assault, the atmosphere becomes soaked with fear, nervousness and diversion of mind and that being so, unless the subsequent assault stated specifically with details supporting the fact that, as a matter of fact, that had been witnessed without any confusion and with all clarity, that has always to be decided and scrutinised minutely on the principle of proof of evidence. In the instant case, from the medical evidence it appears that two lathi injuries have been found. Under the circumstances, it cannot be said with certainty that appellants Ataullah and Mazloom had assaulted. Under the circumstances, appellants Ataullah and Mazloom are also entitled for benefit of doubt and acquittal for the charge u/s 302 read with Section 34 of the Penal Code and accordingly, they are acquitted of that charge.

11. However, the allegations are fully supported against appellant Quadir Mian, who was alleged to have assaulted by lathi on the head of the deceased when the deceased fell down. Under the circumstances, appellant Quadir Mian cannot escape the offence that he had assaulted by lathi on the head causing death of Chuman Mian. However, in the facts and circumstances of the case, he cannot be said to be guilty for the offence u/s 302 of the Penal Code. It is because, there is some trace of notion and feeling that appellant Quadir Mian had right over the disputed plot of land. After all he was armed with a sale deed. Moreover, it would appear that the primary object was to cut down the Bhadaï paddy. It is because excepting lathi and sickles, there is no allegation that they carried any arm like Bhala, Garansa and the like. This will reflect an established fact that appellant Quadir had no intention to take life. That is further supported from the fact that according to the allegations he had given only one lathi blow on the head. There is no allegation of repetition of that lathi blow. The action for inflicting lathi blow can be said to be sudden. Absolutely, there is no allegation that the appellant Quadir and his associates had any object or intention to kill the deceased. That being so, the appellant Quadir Mian is found guilty for the offence punishable u/s 304 Part II of the Penal Code.

12. With regard to the sentence, there appears to be certain facts worth consideration. The occurrence took place in the middle of the year 1972. The session trial came to an end at the end of the year 1978. Under the circumstances, appellant Quadir Mian had to undergo rigors of criminal prosecution for complete six years which, in my opinion is too long a period for a person to be kept in suspense and under the tension of a serious criminal charge. In addition, he had to face this state of mind for about 13 years as the appeal is being disposed of in the year 1985. He has remained in jail for about 13 years. Under the circumstances, in my opinion, the ends of justice will be sufficiently met if the appellant Quadir Mian is sentenced to the period of imprisonment already undergone by him for the offence u/s 304 Part II of the Penal Code.

13. Naturally, in view of the discussions made above, there is no application of Section 147 of the Penal Code and thus the appellants are acquitted of that

charge also.

14. Under the circumstances, the appeal of all other appellants, except appellant No. 1 Abdul" Quadir, is allowed. The order of conviction and sentence passed against them by the trial Court is hereby set aside and they are acquitted of their respective charges. However, the appeal of appellant Abdul Quadir is hereby dismissed with modification in the order of conviction and sentence to the extent that he is convicted u/s 304 Part II of the Penal Code and sentenced to the period of imprisonment already undergone by him. However, he is acquitted of other charges levelled against him under Sections 147 and 379 of the Penal Code. The appellants shall be discharged from the liability of bail bond forthwith.

Phani Bhushan Prasad, J.

15. I agree.