
(1999) 09 PAT CK 0139

In the Patna High Court

Case No : Criminal Appeal No. 224 of 1989

Abhai Mahton and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 14-09-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 324

Citation : (2000) 1 BLJR 228

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.N. Sahay, J.—There are four appellants, who have been convicted u/s 323, I.P.C. and sentenced to imprisonment for one year. Appellant No. 1 Abhai Mahto was also charged u/s 307, I.P.C. and 324, I.P.C. has been acquitted.

2. The case of the prosecution is that Ramraj Mahton (P.W. 6) gave his statement to Shri R.P. Singh, Officer-in-charge on Nawadah police station on 9-10-1984 at 9.45 p.m. in the night at Sadar Hospital, Arrah indicating therein that on 9-10-1984 at about 6 p.m., he along with his cousin Makshudan Mahto was irrigating his field. It was further alleged that boring of Sudama Mahto was adjacent to his boring and the channel of water of both the boring is common. It has further been alleged that informant (P.W. 6), on the relevant date was using the same Channel for irrigation the land and it was then all on a sudden Sudama Mahto, Bikram Mahton, Lakhi Chand Mahton, Abhai Mahto, Acchi Choudhary and Bhanu Mahto all came variously armed with lathi, bhala, Garasa and Gun, and asked the informant not to irrigate his field on which the informant told them that since he has started irrigating his field and, therefore, they can irrigate their field after some time, on which altercation took place. Sheo Bachan Mahton, the father of the informant on hearing the altercation between the informant and the accused-persons, came along with his brother. It is further alleged that accused Lakhi Chand Mahto exhorted other accused-persons to assault, whereupon Abhai

Mahton gave a Garasa blow on the head of the informant's father. Thereafter, Bikram Mahton, Acchi Choudhary, Sudama Mahton and Lakhi Chand Mahton assaulted the informant, his brother Bahadur Mahton and his uncle with lathi. Subsequently, thereupon Bhanu Mahto fired two shots from his gun inflicting gun shot injury on the thigh of the informant's father. The informant, in the meantime, tried to flee away but he fell down near the Rehat and in the meantime the accused-persons also fled away. The injured persons thereafter shifted to hospital for treatment and it is further alleged that one Deo Lal Choudhary and Ramdeo Mahton along with some other villagers have witnessed the occurrence.

3. The charge-sheet was submitted only against appellants Abhai Mahto, Sudama Mahton and Acchi Choudhary. Bikram Mahto was added as an accused during the trial. .

4. Learned Counsel for the appellants submitted that the trial Court having disbelieved the substantial part of the prosecution evidence acquitted the appellant: No. 1 under Sections 307 and 324, I.P.C.. According to the learned Counsel, it was not justified in convicting all the appellants u/s 323, I.P.C..

5. I have gone through the records of the case and came to the conclusion that the conviction of the appellants u/s 323, I.P.C. fully justified. However, on the question so sentence I think that sentence should be reduced to the period already undergone by them. The appellants have remained in custody for about one month. Sentence of one year imposed by the trial Court is reduced to the period already undergone by them.

6. The appeal is dismissed with above modification in sentence.