

(2014) 02 PAT CK 0009

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 332 of 2002

Achal Srivastava, Amit Srivastava, Chanchal Srivastava and
Ajay Srivastava

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 307, 323, 324

Citation : (2014) 02 PAT CK 0009

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Advocate : V.R.P. Singh, Mr. Pradeep Narain Kumar, in CR. app SJ No. 332 of 2002 and Mr. Krishan Chandra in CR. app SJ No. 345 and 370 of 2002, for the Appellant; Sujit Kumar Singh, Assistant Public Prosecutor in CR. APP (SJ) No. 332 of 2002, Mr. Damodar Prasad Tiwary, Assistant Public Prosecutor in CR. APP (SJ) No. 345 of 2002 and Mr. Bipin Kumar, Assistant Public Prosecutor in CR. APP (SJ) No. 370 of 2002, for the Respondent

Judgement

Akhilesh Chandra, J.—Since all these appeals arise out of one case, they are being taken up together and are disposed of by this composite judgment. Heard learned counsels appearing on behalf of the parties.

2. All the appellants have preferred these appeals against the judgment of conviction and order of sentence respectively dated 20th June, 2002 and 26th June, 2002 passed by 11th Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 347 of 1993 arising out of Bhagwan Bazar P.S. Case No. 198 of 1990, through which, the four appellants, namely, Achal Srivastava, Amit Srivastava, Chanchal Srivastava and Ajay Srivastava (Cr. Appeal No. 332 of 2002), have been convicted for the offence under Sections 148 and 323 of the Indian Penal Code and sentence to undergo rigorous imprisonment for two years for the offence u/s 148 of the Indian Penal Code, no separate sentence was awarded to them for the offence u/s 323 of the Indian Penal Code. The solitary appellant, namely, Munna @ Munna Srivastava (Cr. Appeal No. 345 of 2002), has

been convicted for the offence under Sections 307/149 and 148 of the Indian Penal Code and sentence to undergo rigorous imprisonment for ten years and also to pay a fine of Rs. 2,000/-, payable to the informant and, in default, to undergo further simple imprisonment for one month, no separate sentence was awarded to him for the offence u/s 148 of the Indian Penal Code. The solitary appellant, namely, Deo Kumar Prasad @ Green (Cr. Appeal No. 370 of 2002), has been convicted for the offence u/s 307 of the Indian Penal Code and sentence to undergo rigorous imprisonment for ten years and also to pay a fine of Rs. 5,000/-, out of which, half of the amount is to be paid to the informant and, in default, to undergo further simple imprisonment for three months.

3. The prosecution case in short, as reveal from the Fardbeyan (Ext. 1/1) of P.W. 2, namely, Suresh Prasad, recorded on 01st October, 1990 by A.S.I., namely, R.D. Rai (not-examined), of Bhagwan Bazar police station at emergency ward of Sadar hospital, Chapra at 22.00 hours, is that roughly just an hour before the appellant, namely, Munna @ Munna Srivastava, came on a motorcycle and attempted to get it on newly constructed drain with assistance of appellant, namely, Deo Kumar Prasad @ Green, which was objected on the ground that drain has recently been constructed and it may be damaged and such damage may be avoided by taking the bike with the help of Patra (wooden piece). On such protest, appellant, namely, Munna @ Munna Srivastava, took out the pistol from the dickey of the bike and appellant, namely, Deo Kumar Prasad @ Green, took Farsa from his son, namely, Prabhakar (non-appellant), and with intention to kill aiming neck of the informant gave blow, anyhow, due to resistance by the informant, it could cause injury on the left hand near the elbow, wherein, the bleeding started and he felled down. Then the appellants, namely, Achal Srivastava, Amit Srivastava, Chanchal Srivastava and Ajay Srivastava, have started assaulting the informant by means of Lathi-Danda on his back, chest and legs etc. only because of some dispute. On alarm, other persons arrived and he (informant) was brought to hospital, where he was being treated and got his statement recorded.

4. During trial, the prosecution has examined altogether seven witnesses besides producing following documentary evidence:-

- (A) Ext. 1: Signature of Suresh Prasad on the Fardbeyan.
- (B) Ext. 2: Injury report.
- (C) Ext. 3: Sketch Map of the P.O. on page No. 5 of CD.
- (D) Ext. 4: Para No. 51 to 64 of C.D.
- (E) Ext. 5: Signature of Muniwar Pathak on F.I.R.
- (F) Ext. 6: Formal F.I.R.
- (G) Ext. 7 to 7/6: Prescriptions of doctor and pathological reports.
- (H) Ext. 1/1: Fardbeyan.

(I) Ext. 8: C.C. of order sheets dt. 14.5.90 in T.S. No. 187/88 by 1st Addl. Munsif, Chapra.

(J) Ext. 8/1: C.C. of order sheets dt. 14.9.2000 in T.S. No. 187/88 by 4th Munsif, Chapra.

(K) Ext. 9: C.C. of judgment in Misc. App. No. 103/2000 by 4th A.D.J., dt. 2.7.01.

(L) Ext. 10: C.C. of Informatory petition dt. 10.12.98 filed before S.D.O.

On the other hand, on behalf of the defence one single witness was produced besides producing following documentary evidence on behalf of appellant, namely, Deo Kumar Prasad @ Green (Cr. Appeal No. 370 of 2002):-

(A) Ext. A: Photocopy of report of medical board Dt. 22.11.90.

(B) Ext. B: C.C. of plaint in T.S. 169/94 of 1st Munsif.

(C) Ext. C: C.C. of injunction petition dt. 30.3.2000 in T.S. No. 169/94.

(D) Ext. D: C.C. of Commissioner report in Misc. Case No. 38/2000 in 4th Munsif, Chapra.

(E) Ext. D/1: C.C. of filed book.

(F) Ext. E: C.C. petition by plaintiff in Misc. Case No. 38/2000.

(G) Ext. F: C.C. of final report in Bhagwan Bazar P.S. Case No. 225/98.

And following documentary evidences are also produced on behalf of the appellants, namely, Achal Srivastava, Amit Srivastava, Chanchal Srivastava and Ajay Srivastava (Cr. Appeal No. 332 of 2002):-

(A) Ext. A-1: C.C. of the order-sheet passed in T.S. No. 187/88 on 21.3.96.

(B) Ext. B-1: C.C. of the order-sheet dt. 27.2.2001 passed in T.S. No. 187/88.

(C) Ext. C-1: C.C. of the order-sheet passed on 11.2.2001 in T.S. No. 187/88.

On consideration of the materials available on the record, the trial court has convicted and sentenced the appellants in the manner aforestated.

5. Out of total seven prosecution witnesses, P.W. 7, namely, Mritunjay Prasad, is formal one and he proved Ext. 1/1, the Fardbeyan. P.Ws. 5 & 6, namely, Surendra Tiwari and Budhan Rai, declared hostile since they said nothing about the occurrence.

6. P.W. 3, namely, Ramesh Chandra Jaiswal, is the doctor, who examined the informant (P.W. 2) and found following injuries on his person:-

One sharp cut wound on the middle of left fore-arm posterior aspect oblique in direction cutting muscles, nerves artery and tenders with profuse bleeding 5" x 3 1/2" x bone deep. Complain of pain in interior part of chest wall back. Complain of pain in back. Complain of pain in both legs. Nature of injury No. 1, grievous in

nature, caused by sharp cut weapon as Farsa, and rests other, simple in nature, caused hard blunt object. Duration of injury within two hours. The doctor, in cross-examination, has said that injury No. 1 was up to bone. On injury Nos. 2 to 4, no apparent injuries on body surface were found and he presumed" that injury Nos. 2 to 4 were caused from hard blunt substance.

And in cross-examination, this witness has accepted that injury No. 1 may be caused from the broken piece of bottle.

7. P.W. 4, namely, Ashok Kumar Mishra, is the initial Investigating Officer, who immediately on being authorized to investigate, inspected the place of occurrence in the following morning at about 9.15 A.M. and found the drain etc., prepared sketch map (Ext. 3) and recorded the statements of the witnesses and on 09.10.1990 received injury report of the injured and, subsequently, on 23.01.1991 handed over the charge to another and also proved Exts. 4 to 6. There is nothing in his cross-examination to notice and consider.

8. P.W. 1, namely, Shanti Devi, is the mother of the informant and an eye-witness, has stated the prosecution case and prolonged treatment of P.W. 2 even at Patna. She further admits some dispute with the family of four appellants, namely, Achal Srivastava, Amit Srivastava, Chanchal Srivastava and Ajay Srivastava (Cr. Appeal No. 332 of 2002), and civil suit is also going on and this is why they joined their hands with main culprits. Neither in examination-in-chief nor in cross-examination, this witness has said about any other role of the appellant, namely, Munna @ Munna Srivastava, who as stated was simply armed with a pistol, did nothing and it is also not evident from the statement of this witness that all the assailants arrived at the place at one time rather at very initial stage only appellant, namely, Munna @ Munna Srivastava and Deo Kumar Prasad @ Green, were present and, thereafter, others came into picture and prosecution is silent about the sequence.

9. P.W. 2, namely, Suresh Prasad, is the informant and he too almost stated the prosecution version and, likewise, his mother said nothing more about appellant, namely, Munna @ Munna Srivastava, or assemblage of the miscreants since very initiation of the occurrence, but in cross-examination he further adds that after sustaining Farsa injury by him, the appellant, namely, Deo Kumar Prasad @ Green, attempted second time but could not succeed due to intervention of family members of the informant. This witness also proves his signature, which is marked as Ext. 1 on Ext. 1/1 and also on seven series.

10. By producing D.W. 1, namely, Dr. Sanat Kumar Singh, and Ext. A, the report of medical board constituting to examine the informant on 22.11.1990, it is submitted on behalf of the appellants that to ascertain the nature of injuries, the report of Department of Orthopedic Surgery, PMCH, Patna, was required, but it is not produce by the prosecution, so, opinion of P.W. 3 that injury No. 1 sustained by the informant was grievous cannot be accepted, at least it becomes doubtful. Remaining documents produced on behalf of the defence are nothing more than

to show continuing land dispute.

11. This much is crystal clear about appellant, namely, Munna @ Munna Srivastava, that except his presence with a pistol, nothing has been said by the prosecution about his any more activity and for such keeping of arms he was not put on trial after framing specific charge under the Arms Act. Accordingly, on the facts and circumstances discussed above, his [Munna @ Munna Srivastava (Cr. Appeal No. 345 of 2002)] conviction, as recorded by the trial court, for the offence u/s 148 of the Indian Penal Code or 307 of the Indian Penal Code, is not at all sustainable. Accordingly, it is set-aside.

12. So far as, the appellant, namely, Deo Kumar Prasad @ Green, is concerned, he has used the deadly weapon Farsa and inflicted injury upon P.W. 2, the informant, in a very petty dispute and since nature of injury as opined by P.W. 3 becomes suspicious in absence of report of PMCH, his conviction for the offence u/s 307 of the Indian Penal Code is also not at all sustainable rather the act committed by him attracts the offence u/s 324 of the Indian Penal Code. Accordingly, his conviction is converted from Section 307 of the Indian Penal Code to Section 324 of the Indian Penal Code and he has suffered detention for more than three months at pre and post conviction stage, hence, subject to deposit of Rs. 5,000/-, payable to the informant, within two months, his [Deo Kumar Prasad @ Green (Cr. Appeal No. 370 of 2002)] sentence, as awarded by the trial court, is reduced as the period already undergone.

13. And so far as the appellants, namely, Achal Srivastava, Amit Srivastava, Chanchal Srivastava and Ajay Srivastava, are concerned, they have participated in simple assault of the informant but, as stated above, offence u/s 148 of the Indian Penal Code is not made out, accordingly, their conviction [Achal Srivastava, Amit Srivastava, Chanchal Srivastava and Ajay Srivastava (Cr. Appeal No. 332 of 2002)], for the offence u/s 148 of the Indian Penal Code is set-aside, but the offence u/s 323 of the Indian Penal Code is proved and needs no interference. They have suffered detention, of course, for a brief period for about a week during the period after conviction and awarding sentence, their sentence, as awarded by the trial court, for the offence u/s 323 of the Indian Penal Code, is reduced as undergone. With the above modification in the judgment of conviction and order of sentence, as recorded by the trial court, the two appeals, i.e., Cr. Appeal Nos. 332 of 2002 & 370 of 2002, are hereby dismissed and the appeal, i.e., Cr. Appeal No. 345 of 2002, is, hereby allowed and the appellant, namely, Munna @ Munna Srivastava (Cr. Appeal No. 345 of 2002), is set free from the liability of the bail-bond furnished on his behalf.