

(1999) 08 PAT CK 0007

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 186 of 1989

Ajay Thakur and Bijay Thakur

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 31-08-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 320

Citation : (2000) 1 PLJR 382

Hon'ble Judges : M.L. Visa, J

Bench : Single Bench

Advocate : Shrinandan Pd. Singh and Prabhat Kumar Singh No. 1, for the Appellant; Lala Kailash Behari Pd. for the State, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Visa, J.—This appeal is directed against the judgment and order dated 3rd May, 1989 passed in Sessions Trial No. 86/88 by the Sessions Judge, Saharsa, convicting and sentencing both the appellants to undergo R.I. for 5 years each u/s 452 IPC and R.I. for 5 years each u/s 326 IPC. Both the sentences have been ordered to run concurrently. The appellants have further been convicted u/s 324 IPC but no separate sentence has been passed under this head. The prosecution case, in short, is that on 30.8.87 at 1 A.M. the Fardbeyan (Ext.2) of informant Urmila Devi (PW 2) was recorded by ASI B.N. Gupta (PW 8) in the Emergency Ward of Sadar Hospital, Saharsa where she stated that she was running a hotel named "Chulhai Hotel" since 50-60 years in a house situated by the side of a road passing between Mahavir Chauk and Chandani Chauk at Saharsa and she along with her family was residing in a portion of that house. On 29.8.87 at about 11 PM both the appellants alongwith Bedanand Ram, Bam Bahadur Yadav, "Bahnoi" of appellant Bijay Thakur and 2-3 others came there with bottle and torch and the appellants started abusing the informant and asked her to vacate the house otherwise she would be killed. When the informant protested the appellants caught hold of her hairs and started dragging her outside the house.

On the order of appellant Ajay Thakur his other companions started assaulting the family members of the informant with fists and slaps and when the appellants and their companions did not succeed in ousting the informant and her family members from the house, both the appellants poured acid on the informant, Kailash Kumar (PW 7) and Suren Bishwas (PW 3), both grandsons of informant, Bhola Devi (PW 5) and Tikka Devi (PW 1) both daughters of informant causing injuries on their eyes, faces and other parts of the bodies and assaulted them with bottle. The vision of informant and her grandsons was impaired by injuries caused by pouring acid on them by the appellants. The house in which informant was running hotel belonged to one Janardan Bhimseria who had executed an agreement to sell the house in favour of her husband for a sum of Rs. 28,000/- in the year 1984 but subsequently in the year 1987 he sold the house to appellants for a sum of Rs. 75,000/-. According to informant the occurrence took place at the instance of Janardan Bhimseria. On the basis of Fardbeyan of informant a formal FIR under sections 147, 148, 149, 452, 326, 324 and 307 IPC was drawn up and after investigation chargesheet under sections 452, 323, 341, 324, 326 and 307 IPC was submitted against both the appellants. Accused Bedanand Ram, Bam Bahadur Yadav and Bahnoee of Vijay Thakur were not sent up for trial. After commitment of the case to the court of Sessions charges under sections 452 and 307 were framed against both the appellants who after trial were found guilty under sections 452, 326 and 324 IPC and were accordingly convicted and sentenced as indicated above.

2. The defence of the appellants before the court below was that on the date and time of occurrence they were assaulted by the prosecution party and in order to cover up that action they have been falsely implicated in this case.

3. In order to prove its case the prosecution has examined 10 witnesses. Suren Bishwas (PW 3) has been tendered. Urmila Dei, (PW 2) is the informant. Tika Devi (PW 1), Phul Devi (PW 4), Bhola Devi (PW 5) and Kailash Kumar (PW 7) are the witnesses to the occurrence and are injured persons. Udai Chandra Mishra (PW 6) is the doctor who had examined the informant and other injured persons. Dr. Chandra Mohan Choudhary (PW 9) had submitted a report (Ext. 6) at the request of I.O. about the injured persons. Dr. R.P. Yadav (PW 10) is the doctor posted at Sadar Hospital, Saharsa at the relevant time under whose treatment the injured persons remained till their discharge from the hospital. Bishwanath Gupta (PW 8) is the I.O.

4. The informant (PW 2) in her evidence has stated that on the day of occurrence she was in her hotel along with her family members and the house in which her hotel is situated belonged to one Janardan Bhimseria under whom she was a tenant and 4 years ago a talk for purchase of the house from Janardan Bhimseria was held in which it was decided that the house would be sold to her husband for a sum of Rs. 28,000/-. But thereafter Janardan Bhimseria sold the house to appellants and since then appellants were pressing her for vacating the house and they were giving her threatening. Her husband filed a title suit against the

appellants in the court of Subordinate Judge, Saharsa in which an order of injunction was passed restraining the appellants from evicting her from the house. According to her, on the date of occurrence when she and her family members after winding up the day's business of the hotel were going to sleep, both the appellants along with Kapildeo Thakur, Bedanand Ram and Bam Bahadur Yadav came there carrying bottle and torch and started abusing her and told her to vacate the house and gave her threatening and when she protested both the appellants caught hold of her hair and tried her to oust from the house and poured acid on the eyes, faces and other portions of the bodies of her grandsons namely, Kailash and Soren. Thereafter when her daughters Bhola and Tika came to rescue her, the appellants poured acid on their eyes, faces and bodies also and they then poured acid on her face and eyes and when her daughter-in-law Phul Devi came there the appellants poured acid on her face and other portions of the body. She has further stated that all the injured started staggering and her eye sight was impaired. About her grandson Suren and daughter Bhola she stated that they were still having injuries on their eyes and their eye sight was also impaired. Tika Devi (PW 1), Phul Devi (PW 4), Bhola Devi (PW 5) and Kailash Kumar (PW 7) supporting the evidence of the informant have stated that at the time of occurrence the appellants poured acid on them as well as on informant.

5. Dr. Udai Chandra Mishra (PW 6) in his evidence has stated that on 29.8.87 when he was posted as Civil Assistant Surgeon at Saharsa Hospital he was on emergency duty in the night and on that day he had examined Suresh (PW 3), Tika Devi (PW 1), Kailash Kumar (PW 7), Phul Devi (PW 4) and Urmila Devi (PW 2) and found acid burn injuries involving right eye and outer part of both arms of Suresh Kamat (PW 3), acid burn injuries involving left eye and part of face and acid burn injury on the right forearm of Bhola Devi (PW 5), acid burn injury involving part of the face and forehead of Tika Devi (PW 1), acid burn injuries involving right side of the face, outer part of the right arm, right side of the anterior part of neck, right side of the chest wall anterior part on Kailash Prasad (PW 7) and acid burn injuries on both eyes and right side of face & both hands of Urmila Devi (PW 2). According to him, all the injuries found were caused by corrosive substance which may be acid. Opinion about the nature of acid injury involving right eye of Soren Bishwas (PW 3), acid injury involving right eye and part of face of Bhola Devi, acid injury involving eye and face, acid injury involving right side of face of Kailash Prasad and injury involving both eyes and right side of face of informant was kept reserved whereas other injuries found on the aforesaid persons were simple in nature. About the age of injuries he has stated that all the injuries were within 12 hours from the time of examination. The evidence of informant and other injured witnesses coupled with the evidence of Dr. Udai Chandra Mishra (PW 6) who had examined the injured persons immediately after the occurrence supports the case of the prosecution that on the date and time of occurrence both the appellants poured acid on informant and her family members causing injuries on different parts of their bodies.

6. Learned counsel appearing on behalf of the appellants has argued that there is no medical evidence on record to show that any of the injuries found on any of the injured persons including the informant was grievous in nature and the court below has wrongly held the appellants guilty u/s 326 IPC. The prosecution has examined Dr. R.P. Yadav (PW 10) who at the relevant time was posted at Sadar Hospital, Saharsa and has proved bed head ticket (Ext. 7/1) of Kailash Kumar (PW 7) and has stated that Kailash Kumar was admitted in the hospital on 29.8.87 and was discharged on 18.9.87. He has also proved bed head ticket (Ext. 7/2) in respect of Suresh (PW 3). He has stated that he was admitted on 29.8.87 and was discharged on 7.9.87. About the informant (PW 2) the bed head ticket proved by this witness is Ext. 7/3 and he has stated that she was admitted in hospital on 29.8.87 and was discharged on 21.9.87. Similarly about Bhola Devi (PW 5) the bed head ticket proved by him is Ext. 7/4 and about her he has stated that she was admitted on 29.8.87 and was discharged on 21.9.87. About Tika Devi (PW 1) he has stated that she was admitted on 29.8.87 and was discharged on 21.9.87. Her bed head ticket is Ext. 7/5. Besides this, Dr. Chandra Mohan Chaudhary (PW 9) in his evidence has said that Bhola Devi (PW 5) and Urmila Devi (PW 2) were admitted in the hospital and they were under his treatment and he after examining the injuries has found that there was disfigurement of their faces which, according to him, was grievous in nature and there was diminution of the vision due to corneal scar in the eye of Urmila Devi, the informant. So from the evidence of this witness as well as the evidence of PW 10 who has stated about the period for which injured persons remained in hospital it is clear that PW 1, PW 2 and PW 5 were remained admitted in hospital from 29.8.87 to 21.9.87, a period exceeding twenty days. Kailash Kumar (PW 7) remained admitted in hospital from 28.8.87 to 18.9.87 i.e. for twenty days and PW 9 found disfigurement of faces of PW 1 and PW 5 which in his opinion was on account of grievous injuries. When the evidence of PW 2 was recorded the court below observed that there were marks on the face and the colour of the skin of the face was changed and different compared to colour of other parts of the body. The court below has rightly held that when the injured with injuries on their persons including their eyes caused by acid were admitted in hospital they would not have been able to follow ordinary pursuits of their life. As some of the injured persons remained in hospital for more than twenty days the nature of their injuries will be grievous under the provisions of section 320 IPC.

7. The next point urged on behalf of the appellants is that there are contradictions in the statements and evidence of witnesses. According to him, PW 4 had earlier stated that first of all appellants poured acid on her but in her evidence she has stated that first of all acid was poured on Kailash. PW 5 had earlier stated that on receipt of information that some dispute had taken place she came from Shardangar to hotel of her mother and on way she had seen her mother near the shop of appellants where some altercation took place on between them and informant and thereafter she came running to hotel with her mother but in her evidence she has stated that she was in the hotel at the time

of occurrence. It is true that these contradictions are there in the evidence of aforesaid witnesses but then these are not contradictions of such nature that they hit the case of the prosecution on the point of pouring acid by appellants or on the point of presence of these witnesses at the place of occurrence.

8. On behalf of defence four witnesses have been examined. Ratan Kumar Thakur (DW 1) has produced photostat copies of two injury reports (marked Y and Y/1 for identification) and Ratan Kumar Gupta (DW 2) has stated that he had prepared the aforesaid photo-stat copies from the originals (Exts. B and B/1). Dr. N.C. Jha (DW 4) has said that on 29.8.87 at 10.15 P.M. he examined appellant Ajay Thakur and found injuries on his person 1 1/2" x 1" scalded area on the front and upper portion of chest, 2" x 1" scalded area on the right fore-arm and 1 1/2" x 1" scalded area on middle portion of left arm and on the same day he also examined appellant Vijay Thakur and found injuries such as one red swelling on the upper portion and laterally of the right arm 2" x 1/4", one red line on the middle with abrasion on the back of the chest 3" x 1/4" and one red line with defused swelling with redness over the right scapular region 2" x 1/4". According to him, injuries found on both the appellants were simple in nature caused by hard blunt substance like fists and slaps and lathi. Bam Sankar Mishra (DW 3) has proved written statement (Ext. C) filed by Janardan Bhimseria in T.S. No. 45 of 1987. The prosecution has admitted that a title suit has been filed by the husband of informant in respect of house in which hotel of informant is situate. So the evidence of DW 3 is of no help. The evidence of DW 1, 2 and 4 is in respect of some injuries found on appellants. The appellants except giving a suggestion to PW 2 that she and others after going to the shop of appellants had assaulted them, have not brought on record any evidence to show that the injuries which are said to have been found by DW 4 on 29.8.87 in the night were caused by informant or any of her relations. The consistent evidence of informant and other injured persons supported by the medical evidence, the evidence of DW 4 that he found some injuries on the persons of the appellants which in his opinion were superficial can not be a ground for disbelieving the case of the prosecution.

9. Considering the entire evidence on record I find that the prosecution has been able to prove the charges against the appellants under sections 452, 326 and 324 IPC.

10. Both the appellants have been sentenced to undergo R.I. for a period of 5 years each u/s 326 IPC and they have been further sentenced to undergo the sentence of same period u/s 452 IPC, and both the sentences have been ordered to run concurrently. It is a case in which acid has been poured by the appellants on as many as six persons. Considering the nature of offence I do not find the sentence against the appellants is excessive. In the result, this appeal is dismissed. The judgment and order of the court below convicting and sentencing the appellants is hereby confirmed. The appellants, who are on bail, are directed to surrender before the court below to serve out the remainder of sentence.