
(2002) 06 PAT CK 0020

In the Patna High Court

Case No : Criminal Appeal No. 272 of 1991

Akalu Yadav and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 28-06-2002

Acts Referred:

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

Citation : (2002) 3 BLJR 2020

Hon'ble Judges : B.N.P. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.N.P. Singh, J.—On being tried by 6th Additional Sessions Judge, Arrah in Session Trial No. 370 of 1986, while appellant Bachan Yadav suffered conviction u/s 324 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for a term of three years, appellants Akalu Yadav and Sheonath Yadav suffered conviction u/s 323 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for a term of one year each.

2. The factual matrix. It is alleged that on 20th April, 1985 at about 5.20 a.m., the appellants came to the door of Sheo Kumar Yadav (P.M. 2) holding lethal weapons and also wooden substance with them when Bachan Yadav dealt a fasuli blow on his head. It is alleged that simultaneously Akalu Yadav and Lalan Yadav too dealt blows with bhaloon his skull. The allegation attributed to Sheonath Yadav was that after Sheo Kumar Yadav dropped to the ground on receipt of injury dealt by Akalu Yadav and Bachan Yadav, he dealt blows with wooden substance on back. It was alleged that only after the villagers assembled, the victim could be saved. The genesis of incident assigned by the prosecution was that Ram Tapasaya Yadav, son of appellant Sheonath Yadav had plucked mango, which was being guarded by Bali Yadav, father of Sheo Kumar Yadav, and after Ram Tapasaya Yadav was taken to task, the incident followed. After the prosecution was launched on behest of Sheo Kumar Yadav, the investigation

commenced, in course of which the Police Officer recorded statement of witnesses, visited place of occurrence, secured injury report from the doctor and on conclusion of investigation laid charge-sheet before the Court. In the eventual trial that commenced, the State examined altogether six witnesses and those examined by the State include the injured, his family members, doctor, who examined the injured and also the police officer.

3. The defence of the appellants before the trial Court and also this Court had been denial of entire allegations and they ascribed their false implication due to some sort of dispute pending between the parties. The explicit defence of the appellants was that since the appellants had kept garbage before the house of Sheo Kumar Yadav for which protest was made by them and hence their false implication.

4. The contention raised at bar on behalf of the appellants to assail the finding recorded by the trial Court was that while some witnesses were stating before the trial Court about wounds oozing blood, such narrations made by other witnesses, run counter. Yet it is urged that notwithstanding explicit finding of the doctor that none of the injuries noticed on the person of Sheo Kumar Yadav was either penetrating or incised, the Court below on erroneous consideration of evidence, rushed to wrong conclusion and recorded finding, holding Bachan Yadav guilty u/s 324 of the Indian Penal Code runs counter to weight of evidences. Other contention raised on behalf of the appellants was that witnesses examined by the, State were interested and partisan entirely to the exclusion of the independent witnesses, and the last argument was that appellant No. 2 was 82 years old, while appellant No, 3 was about 60 years old, and as the appellants have suffered ordeal of protracted prosecution for about 17 years, in case the finding of guilt of the trial Court is endorsed by this Court, these mitigating circumstances deserve consideration in awarding sentence to them.

5. Now coming to the evidence that has been adduced on behalf of the State I find Sheo Kumar Yadav P.W. 2 reiterating his earlier version which he rendered before the police about Bachan Yadav dealing blows with his fasuli on his head followed by assault by Akalu Yadav alias Lallan and Sheonath Yadav as Shidhnath Yadav. The accusation attributed to Akalu was that he dealt blows with bhala on his head and when he dropped on the ground successive assaults were made by Akalu and Sheonath, with wooden substance on his back. Similar narration was made by Shashi Bhushan Yadav about appellants dealing blow on Sheo Kumar Yadav with the weapons which they held with them. Admittedly, Bali Yadav P.W. 3 who happened to father of the informant was not an ocular witness. However, he would state before the Court that he was guarding the mango orchard from which the mangoes were plucked by son of Sheonath Yadav. He, however, stated to have learnt about the incident. The other witness was Ekram Singh P.W. 4 who states that Rarti Bali Yadav was guarding the mango orchard which he had taken from Gani Mian. Asrar Ahmad, P.W. 6, Sub-Inspector of Police, who happens to be the Investigating Officer stated to have recorded fardbeyan of Sheo Kumar

Yadav pursuant to which investigation followed. He stated to have noticed no marks of violence on the place of occurrence. Dr. Shashi Bhushan Singh P.W. 5 who examined the injured stated to have noticed lacerated wound on the middle of skull, another lacerated wound on, the: right side of skull and one bruise on the right side of chest. All the three injuries-estimation of the doctor were caused by hard and blunt substance. The doctor would further state that injury No. 3 which was bruise in nature was caused lathi injury No. 2 was caused by blunt portion of bhala and in injury No. 1 was caused by fasuli edge of which blunt. This is all the evidence that has been adduced on behalf of the State.

6. The defence too examined three witnesses D.W. 2 was formal, who brought Ext. B on record which was certified copy of the First Information Report drawn up at the instance of Seonath Yadav against Bali Yadav and others. The defence also examined Dr. D.N. Akela who stated to have examined Sidnath Yadav and noticed lacerated wounds and swelling on his person-and while other injury was simple in nature, two injuries were considered to be grievous The doctor would stale to have examined Bachan Yadav also, on whose person he noticed lacerated wounds and swapping and both the injuries were simple in nature caused by hard and blunt substance. Dr. Shashi Bhushan Singh D.W, 3 brought on the record Ext. C, an X-ray plate. The Court below on due consideration of the evidence of Dr. Shashi Bhushan Singh D.W. 3 had rightly excluded it from consideration as the doctor had not recorded any finding for which he came to depose in Court. Among witnesses examined by the State, Sheo Kumar Yadav P.W. 2 was the injured and also the maker of the fardbeyan and while P.W. 1 happens to be his son, P.W. 3 was father. Both P.W. 1 and P.W. 2 have stated on material particulars of the case making attribution to the appellants for dealing blows on the injured with their weapons which merits consideration. Though appellant No. 2 was attributed to have assaulted Sheo Kumar Yadav with Fasuli, P.W. 1 stated that the said Fasuli had no edge. As for appellant No. 1 though he was attributed to have assaulted Sheo Kumar Yadav with bhala, P.W. 2 states that Sheo Kumar was assaulted with wooden portion of bhala for which there was positive finding recorded by the doctor. Now certain facts reserve consideration. Notwithstanding there being explicit finding of the doctor that all the injuries were caused by hard and blunt substance and blunt portion of fasuli which was in consonance with ocular evidence, the trial Court recorded finding of guilt u/s 324 of the Indian Penal Code against Bachan Yadav which being not sustainable, is set aside and his is convicted u/s 323 of the Indian Penal Code. The genesis of incident which preceded cannot be lost sight of, as the incident took place on a petty matter about plucking of mangoes from a tree. The prosecution was launched against the appellants in the year 1965 and since then about two decades is going to elapse. Appellant Bachan Yadav was 70 years old while Sheonath Yadav was 50 years old when their statements were recorded by the Court below and by now while Bachan Yadav must be 82 years old, Sheonath Yadav, it is expected must be about 60 years old. The appellants have suffered ordeal of protracted prosecution for about 17 years.

7. Regard being had to attending circumstances of the case while endorsing the finding recorded by Court below finding Akalu Yadav and Sheonath Yadav guilty u/s 323 of the Indian Penal Code and convicting appellant Bachan Yadav u/s 323 of the Indian Penal Code, I feel expedient for the ends of justice that instead of sentencing them to any punishment, they be directed to be released on their entering into a bond to the satisfaction of the Court below with a direction to receive sentence when called upon during a period of one year, and in the meantime to keep peace and be of good behaviour and with this modification, the appeal fails and is dismissed.