
(2002) 02 PAT CK 0027

In the Patna High Court

Case No : Criminal Appeal No. 74 of 1991 (S.J.)

Anirudha Mandal and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 28-02-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 452

Citation : (2003) 1 PLJR 75

Hon'ble Judges : Indu Prabha Singh, J

Bench : Single Bench

Advocate : Krishna Mohan, for the Appellant; Ashwani Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Indu Prabha Singh, J.—All the Appellants have been convicted u/s 452 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for two years each with fine of Rs. 1,000/-each in default of payment of fine to undergo rigorous imprisonment for three months each. They have been further convicted u/s 323 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for one year each. Both the sentences were ordered to run concurrently.

2. The prosecution case, in brief, is that on 9.9.1985 at about 10 P.M. the informant was sitting at his Darwaja on a cot. About 10-15 persons came there all on a sudden from the northern side. They were variously armed with gun, rod, hammer, farsa, Garasa and Lathi. They came there and surrounded the informant. It has been further alleged that they started assaulting the informant with lathi and with the butt of a gun. The informant raised an alarm when the inmates of his house came out. It has been further alleged that Appellant Surendra Mandal assaulted Dilip Kumar Thakur with a Danda Sanichar Mandal brought out a dagger and aimed at the head of the aunt of the informant, namely, Sangita Devi. Sangita Devi was injured and she fell down on the ground.

Appellant, Anirudha Mandal assaulted the sister of the informant, while Appellant, Fatuli Mandal assaulted the brother of the informant, namely, Bipin Kumar Thakur. Both of them sustained injuries and fell down. The informant escaped in order to save his life. It has been further alleged that the accused persons entered into the house of the informant and his cousin brother and took out with them gold Asarfi 1 tola, clothes utensils and Rs. 250/- in cash. In the meantime armed forces reached there and the accused persons fled away towards north. It has been further alleged that the informant had enmity in connection with the ancestral land with the accused persons for which the accused persons had committed the offence. On the aforesaid statement a formal F.I.R. was drawn up. After completion of investigations the police submitted charge sheet. Accordingly the cognizance was taken and the trial concluded with the result as indicated above. Hence this appeal.

3. The Appellants pleaded not guilty and have stated that they have been falsely implicated in this case.

4. The prosecution to prove its case has examined altogether 6 witnesses. P.W. 1, Bipin Kumar Thakur, is injured P.W. 2, Dilip Kumar Thakur is also an injured. P.W. 3 is Jagtarni Devi alias Sangeeta Devi. P.W. 4 is Dr. Ranjjet Kumar. P.W. 5, Indra Deo Thakur is the informant of this case. P.W. 6, Jitendra Kumar Sharma is the I.O. of this case.

5. P.W. 5, the informant has fully supported the case of the prosecution as stated in his Fardbeyan. According to him in the night of the occurrence he was sitting at his Darbaja of his house when the accused persons came there. He raised alarm and accused persons surrounded him and assaulted him. On his alarm his brother Bipin Kumar Thakur and his cousin brother Dilip Kumar Thakur came there. They were also assaulted by the Appellants. He has further stated that the Appellants also assaulted his aunt, Sangita Devi and his cousin sister Mala Devi. They also took away some ornaments, clothes, utensils and Rs. 250/- in cash.

6. P.Ws. 1, 2 and 3 have also supported the assault inflicted to them by the Appellants.

7. P.W. 4 is the Doctor who has examined the injured Sangita Devi and found the following injuries on her person:

(i) Lacerated wound 1 1/2" x 1/2"x1/4" on right side of head.

(ii) Abrasion 1"x1/4" on left palm.

(iii) Abrasion 1 1/2"x1/6" on right arm

(iv) Swelling 1 1/2"x1" on left palm.

(v) Bruise 2" x1/2" on left thigh.

The Doctor (P.W. 4) has also examined Bipin Kumar Thakur on the same day and has found the following injuries:

(i) Lacerated wound 1/2"x1/4"x1/4" on left forehead.

(ii) Abrasion 1"x1/6" on left elbow.

The Doctor (P.W. 4) has also examined Dilip Kumar Thakur injured on the same day and found the following injuries:

(i) Bruise 1"x1/2" on right forearm.

(ii) Bruise 1 1/2" x 1" on left wrist.

The Doctor (P.W. 4) has also examined Indradeo Thakur injured and found the following injuries:

(i) Abrasion 1" x 1/4" on left elbow.

(ii) Laceration 1/2"x1/4"x1/4" on lower part of left arm.

(iii) Laceration 1/2"x 1/4"x 1/4" on left palm middle part.

(iv) Bruise 1"x1/2" on left leg.

All the injuries were caused by hard and blunt substance and were simple in nature. The injury reports have been marked from Exts. 1 to 1/4.

8. P.W. 6 is the I.O. of this case. He has stated that he had not found any broken box, door etc. or anything worth seizure on the place of occurrence. He has given the full description of the place of occurrence.

9. Learned Counsel appearing on behalf of the Appellants has submitted that all the witnesses are interested and related to each other and as such they are not reliable and trustworthy.

10. The submission of the learned Counsel that all the witnesses are related but there is no hard and fast rule that the case of the prosecution will be discarded on this ground only rather in such cases their evidence have to be scrutinised very carefully and cautiously. As the witnesses have seen the occurrence and they were assaulted by the Appellants as such they are competent and natural witness and their testimony are reliable and trust inspiring.

11. On the appreciation of the evidence of the witnesses so adduced the Court below came to the conclusion that all the Appellants came and assaulted the inmates of the house and as such the Court below has rightly convicted the Appellants for the offence punishable under Sections 452 and 323 of the Indian Penal Code. I do not find any reason to interfere with the conviction of these Appellants.

12. Coming to the question of sentence the learned Counsel appearing on behalf of the Appellants has submitted that the occurrence took place 20 years ago and the Appellants have been amply punished and harassed during this prolonged litigation. He has further submitted that there is enmity between the Appellants and the informant for Khatiyani land. Moreover, there; is no criminal antecedent

and previous conviction against the Appellant, therefore, it requires consideration on the point of sentence.

13. Having regard to the submissions raised on behalf of the learned Counsel for the Appellants and in the facts and circumstances of the case, I am of the view that it will be expedient in the interest of justice if all the Appellants are sentenced to pay a fine of Rs. 1000/- each to be deposited within a period of three months from the date of receipt/production of a copy of this order. In default, they shall have to undergo rigorous imprisonment for six months. It is made clear that the amount of fine, if and when realised by these Appellants the same shall be equally distributed to injured Bipin Kumar. Thakur (P.W. 1), Dilip Kumar Thakur (P.W. 2), Sangita Devi (P.W. 3) and Indradeo Thakur (P.W. 5) by way of compensation.

14. With the aforesaid modification in the sentence this appeal is dismissed.