
(1999) 07 PAT CK 0026

In the Patna High Court

Case No : Criminal Revision No. 107 of 1994

Babulal Sahni and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 22-07-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324, 34, 436, 448

Citation : (1999) 3 PLJR 193

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : D.K. Tandon, for the Appellant; U.K. Choudhary and Damodar Prasad Tiwary, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—This revision application is directed against the judgment dated 2.12.93, passed by Shri Sheo Shankar Prasad, 3rd Additional Sessions Judge, Motihari, in Cr. Appeal No. 24/14 of 1989/91, whereby he has dismissed the appeal of the present four Petitioners and confirmed the judgment dated 18.2.89, passed by Shri H.N. Gupta, Judicial Magistrate 1st Class, Motihari, in GR Case No. 2381/85/Trial No. 123/88 Petitioner No. 1 has been convicted u/s 324 and 448, IPC, and sentenced to undergo simple imprisonment for one year and four months, with respect to the said sections respectively. Petitioner Nos. 2, 3 and 4 have been convicted under Sections 323 and 448, IPC and have been sentenced to undergo imprisonment for six months, and four months, with respect to the said sections respectively. Both the sentences with respect to the four Petitioners shall run concurrently.

2. The prosecution case, in short, is that on 26.11.85, at about 5 P.M. the first informant, Lal Babu Sahni, while he was in his field, had rushed to his house on hearing the cries of his wife, and saw that the accused-Petitioners were assaulting his wife, Lal Muni Devi. Petitioner No. 1 (Babu Lal Sahni) was armed with pharsa, and others were armed with lathi. When the informant pretested,

Petitioner No. 1 gave pharsa blow on the head of the informant and other accused persons assaulted him with lathis. Petitioner No. 1 gave pharsa blow on the left leg of the wife of the informant, and other accused persons assaulted her with lathis. When Ramanand Choudhary came to their rescue, the accused persons also assaulted him. Petitioner No. 4 (Ramnath Sahni) set his hut on fire. The informant, his wife and his brother came to Harsidhi hospital for their treatment.

3. On the basis of the statement of the informant, a case was registered with Harsidhi P.S. under Sections 323, 324, 448 and 436/34 IPC against the accused persons on 27.11.85. After completing investigation, charge sheet was submitted under Sections 323, 324, 448 IPC against the accused persons. On receipt of the charge-sheet, cognizance was taken and the case was transferred to the Magistrate for disposal. The defence version was complete denial of the allegations, and they have been falsely implicated due to land dispute. After completing the trial, the learned Magistrate by his judgment dated 18.2.89, convicted the Petitioners herein and sentenced them in the aforesaid manner.

4. Aggrieved by the judgment of the trial court, the Petitioners herein preferred Cr. Appeal No. 24/14 of 1989-91, which was dismissed by the judgment dated 2 12.93, passed by the 3rd Additional Sessions Judge, Motihari. The appellate court has by the impugned judgment affirmed the findings recorded by the trial court in entirety, and has upheld the conviction under Sections 323, 324 and 448, IPC, and has also affirmed the sentences inflicted on the Petitioners. Hence the present revision application.

5. By the order dated 1.3.94 this Court had admitted this revision application and granted a limited rule to the Petitioners confined to the question of sentence. Learned Counsel for the Petitioners has submitted that they have no criminal antecedents and this is their first offence. According to the findings recorded by the court below, it was really a marpit between known persons with no wider implications. He further submits that the Petitioners have already been in custody for one month and three days. In such circumstances, in his submission, the sentence awarded by the court of appeal below should be reduced to the period already undergone.

6. Learned Counsel for the informant submits that the Petitioners in an orgy of violence had stormed into the house of the informant in the absence of the head of the family and injured three persons. The intention was to kill them, but they escaped death only on account of fortuitous circumstances. He further submits that the Petitioners do not deserve the least of sympathy, inter alia, for the reason that they had stormed into the room of the wife of the informant when the latter was not at home, and had assaulted her on her leg with pharsa and lathis, apart from assaulting others. He further submits that in view of the concurrent findings recorded by the courts below, the sentence awarded to the Petitioners is inadequate.

7. Mr. Oamodar Prasad Tiwary, learned Counsel for the State supports the judgment and submits that there is no mitigating circumstances in favour of the Petitioners.

8. Having considered the rival submissions, I am of the view that this revision application has to be dismissed. Both the courts below have concurrently found that the Petitioners have committed grave and absolutely, unexcusable acts of storming into the room of the informant's wife in his absence and delivering pharsa blow on her leg, and also lathi blows on her. This is really a barbaric act and deprives the Petitioners of all sympathy and compassion. This revision application is really concluded. by findings of fact. The sentences awarded to the Petitioners are really on the lighter side in view of the findings recorded by the courts below. In such circumstances, this criminal revision application fails.

9. In the result, this revision application is dismissed and the impugned judgment dated 2.12.93, passed by the learned 3rd Addl. Sessions Judge Motihari, in Cr. Appeal No. 24/14 of 1989/91, is hereby upheld. The bail bonds of the Petitioners are hereby cancelled, who are directed to surrender before the trial court forthwith to serve out the remaining/period of sentence.