

(2002) 04 PAT CK 0008

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 160 of 1991

Bikrama Singh, Bharat Singh and Dharendra Narain Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 05-04-2002

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 148, 149, 324, 325

Citation : (2002) 4 PLJR 767

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Advocate : Ashwani Kr. Sinha, for the Appellant; Rudradeo Kr. Sinha, for State, Mukteshwar Singh, Jai Prakash Singh, Parmanand Prasad and Arvind Kumar for Informant, for the Respondent

Final Decision : Dismissed

Judgement

I.P. Singh, J.—There are three Appellants in this case. Appellant No. 1, Bikrama Singh has been convicted u/s 324 of the Indian Penal Code (for short "the Code") and sentenced to undergo rigorous imprisonment for two years. He has been further convicted under Sections 148 and 149/324 of the Code and sentenced to undergo rigorous imprisonment for two years u/s 148 of the Code but no separate sentence has been u/s 149/324 of the Code. Appellant No. 2, Bharat Singh has been convicted u/s 148 of the Code and sentenced to undergo rigorous imprisonment for one year. He has been further convicted u/s 149/324 of the Code and sentenced to undergo rigorous imprisonment for two years. He has also been convicted u/s 27 of the Arms Act and sentenced to undergo rigorous imprisonment for two years. Appellant No. 3, Dharendra Narain Singh has been convicted u/s 147 of the Code and sentenced to undergo rigorous imprisonment for two years. He has been further convicted u/s 149/324 of the Code and sentenced to undergo rigorous imprisonment for two years. He has also been convicted u/s 325 of the Code and sentenced to undergo rigorous imprisonment for two years. However, the/sentences have been ordered to run

concurrently.

2. The prosecution case, in short, is that on 4.10.84 the informant Sudarshan Singh (PW. 6) along with his brother Sheoparshan Singh (PW. 3), Tejbali Singh, Satya Narain Singh (PW. 2) and Birendra Singh (PW. 1) was sitting on his Mori near the canal culvert situated at village Kharahari at about 5.30/6.00 P.M. Meanwhile accused Bikrama Singh armed with Bhala, Bharat Singh with country made gun, Dhirendra Narain Singh with Lathi along with other 8 to 10 unknown persons who were armed with Lathis came there and they started obstructing the flow of water through the Mori (Channel). It has been alleged that on protest of the informant they started abusing him and one of the unknown person ordered Maro. Thereupon accused Bikrama Singh gave Garasa blow on the head of the informant causing bleeding injury to him. He fell down. Accused Bikrama Singh again inflicted Garasa blow but the brother of informant Sheoparshan Singh pushed Bikrama Singh aside as a result of which he was saved. Accused Dhirendra Singh gave Lathi blows to the informant as well as his brother causing injury to the right hand finger of the informant and the right hand of Sheoparshan Singh respectively. On Hull people rushed there and saved the life of the informant. It has been alleged that the accused persons wanted to kill him. The informant was taken to Kudra by 8.00 PM. in the same night but no doctor could be found there, therefore, he came to Sasaram so that his condition might not deteriorated There he met the doctor in the morning of 5.10.1984 who admitted him in the hospital after examining him. His fardbeyan was recorded by Sasaram Police on 5.10.84 the Sadar Hospital, Sasaram on the basis of which first information report was registered. The police started investigation after completion of the same submitted charge sheet against the accused person Accordingly, cognizance was taken and the case was committed to the court of sessions. Ultimately the trial concluded with the result as indicated above. The Appellants pleaded not guilty,

3. The prosecution in support of its case examined 15 witnesses. P.W. 1 is Birendra Singh. He claims to be eye witness of the case. P.W. 2 is Satya Narayan Singly an eye witness. PW. 3 is Sheoparshan Singh, injured eye witness. PW. 4 is Bhola. Singh, formal witness. P.W. 5 is Bashishtha Singh, tendered witness. PW. 6 is Sudarshan Singh, injured-infor.m-ant. P.W. 7 is Dr. R.S. Tiwary, P.W. 8 is Dr. Sudhir Kr. Sinha. P.W. 9 is Bishwa Nath Singh, a tendered witness. P.W. 10 is Suraj Singh, a formal witness. He had proved X-ray report. P.W. 11 is Jawahar Singh, formal witness. P.W. 12 is Rana Ram Badan Singh, I.O. of this case, PW. 13 is Constable, Kushal Singh, a formal witness. P.W. 14 is Dr. Sudarshan Singh and P.W. 15 is Moti Singh, a formal witness.

4. P.W. 6, the informant has fully supported his Fardbeyan and has stated that while he was sitting near his Mori along with his brother P Ws. "1, 2 and 3, the Appellants along with 8 to 10 persons came there. According to him, Appellant Bikrama Singh was armed with Garasa, Bharath Singh was armed with gun and Dhirendra Narayan Singh and other co-accused were armed with Lathi. They

started closing the Nali (channel) leading to his village which was protested by him. In the meantime, one of the co-accused ordered to kill him. Thereupon Appellant Bikrama Singh assaulted him with Garasa on his head causing cut injury. This Appellant again wanted to assault him with Garasa but the same did not hit him as his brother pushed him aside. He has further stated that the Appellant Dharendra Nr. Singh assaulted him with Lathi causing fracture to his right index finger. Appellant Dharendra gave Lathi blow to his brother causing fracture of his right wrist. On Hulla villagers came and the Appellants fled away. He was taken to Kudra Bazar but since the doctor was not available he was taken to Sasaram Hospital where the injured were treated. The police came there and recorded his Fardbeyan. P.W. 3, Sheoparshan Singh has also fully supported the version of P.W. 6 and has stated that the Appellant Bikrama assaulted his brother Sudarshan with Farsa on his head and Appellant Dharendra gave Lathi blow causing fracture of his wrist as well as fracture of right hand finger of his brother Sudarshan Singh. P.Ws. 1 and 2 have also supported the version of the informant.

5. P.W. 7, Dr. R.S. Tiwary, Civil Assistant Surgeon, Sasaram had examined the injured informant Sudarshan Singh on 5.10.84 in Sasaram Sadar Hospital and found the following injuries on his person:

(I) Incised wound over scalp 4" x 3/4" x skin deep (ii) Deffused swelling over right index finger 2" x 1" with tenderness over the proximal phalanx of right index finger. X-ray showed fracture of proximal phalanx of right index finger. According to him, injury No. 1 was simple in nature caused by sharp cutting substance such as Farsa and injury No. (ii) was grievous in nature caused by hard and blunt substance with (sic-which ?) might be Lathi.

P.W. 7 has further said in his cross examination that he had also examined Bikrama Singh on 6.10.84 at 1.45 P.M. and found the following injuries on his person:

(i) Bruise over left infra scapular region 2" x 2", (ii) Bruise over back on right side 3" x 1/2" (iii) lacerated wound over front of right leg 2 1/2" x 1/2" x skin deep 3" below the right knee joint (iv) swelling over left parietal region of scalp 1 1/2" x 1 1/2". According to him, all the injuries were simple in nature caused by hard and blunt substance such as Lathi.

P.W. 14, Private Practitioner of Kudra has testified that he had examined Sheoparshan Singh (P.W. 3) on 4.10.1984 at 9.00 P.M. in his dispensary who had gone there with injury on his right forearm. There was suspicion of simple fracture and therefore he gave first aid and referred him to orthopeadician as he was child specialist. He has proved his injury report Ext. 5/ 2.. According to him, the injury might have been caused by blunt weapon such as Lathi.

P.W. 8, Dr. S.K. Sinha the then Civil Assistant Surgeon, Sadar Hospital, Sasaram examined Sheoparshan Singh (PW. 3) on 9.10.84 and found the following injuries on his person:

(i) pain and swelling 2" x 2" over right lower 1/4th of forearm and x-ray was advised, (ii) pain over back. The doctor had found fracture of right lower 1/4th of ulna by x-ray in injury No. (i) which was grievous in nature in his opinion. Injury No. (ii) was simple in nature. Both of the injuries were caused by hard and blunt substance such as Lathi. The doctor has also opined that injury No. (i) could be caused by fall on hard blunt substance.

P.W. 10, Suraj Singh, X-ray technician has stated that he had x-rayed the right index finger of the informant on 5.10.84. He has proved X-ray plate, Ext. 7. He had also x-rayed the injured Sheoparshan Singh on 9.10.84. P.W. 12, the I.O. has also supported the case of prosecution. According to him on 5.10.84 he received the Fardbeyan of informant from Sasaram Police and he could not visit the place of occurrence on that very day because it was dark night and he visited the place of occurrence on 6.10.84 at 10.00 A.M. He has given the full description of the place of occurrence. He found the injury on the person of Sheoparshan Singh (P.W. 3) and referred him to Sasaram Hospital after preparing injury slip Ext. 10. He also seized blood stained Ganji and towel. He has proved formal F.I.R., Ext. 11.

6. Learned Counsel for the Appellant submitted that no overt act was attributed to Appellant Bharat Singh. Only it has been alleged that he was a member of unlawful assembly. From the deposition of the witnesses it appears that all the Appellants forming an unlawful assembly came to the place of occurrence and assaulted the injured informant and other witnesses after altercation over flow of water through Mori (channel) but the Appellant Bharat Singh did not assault any of them. It has also been stated by P. Ws. 1, 2 and 3 that the Appellant Bharat did not assault any one. From the record it appears that though the P Ws. 1, 2 and 3 have stated that Appellant Bharat was having gun in his hand but the I.O. has specifically stated that P Ws. 1, 2 and 3 did not tell him that Appellant Bharat was having a gun in his hand at the place of occurrence. Even it has been mentioned in the F.I.R. that the Appellant Bharat was having gun in his hand at the place of occurrence but that part of story was not supported by the witnesses as stated by; the I.O. As such, whether Appellant Bharat Singh was armed with gun at the place of occurrence becomes doubtful and he deserves benefit of doubt. Accordingly, he is acquitted of the charge levelled against him. So far Appellants Bikrama Singh and Dharendra Narain Singh are concerned, the court below on appreciation of the evidence so adduced came to the conclusion that these Appellants forming an unlawful assembly came variously armed with Carasa and Lathi and assaulted the informant and his brother and the informant and P.W. 3 sustained injuries. As such, the court below has rightly convicted them for the offence punishable under the aforesaid sections of the Penal Code. I do not find any reason to interfere with the findings of the court below.

7. However, coming to the question of sentence learned Counsel for the appellants submitted that the occurrence took place about 18 years ago and there was case and counter case in which Appellant were also assaulted. It has been also

sub-mitted that the occurrence took place dose to irrigation of field between the Appellants and the informant and these Appellants have no criminal antecedent and previous conviction. Moreover they have remained in jail for some time. Therefore, it requires consideration on the point of sentence. Having regard to the submission raised on behalf of the Appellants and in the facts and circumstances of the case I am of the view that ends of justice will be met if the period of sentence of these Appellants is reduced to the period they have lready undergone in jail with a fine of Rs. 2,000/-each to be deposited by them within three months from the date of receipt/production of a copy of this order, in default, to undergo rigorous imprisonment for one year. It is made clear that the amount of fine, if and when realised from these Appellants, Rs. 2000/- will be paid to the informant Sudarshan Singh (PW. 6) and Rs. 2000/-shall be paid to the injured Sheoparshan Singh (PW. 3) by way of compensation. In the result, the appeal on behalf of Appellant Bharat Singh is allowed and the appeal on behalf of Appellant Bikrama Singh and Dhirendra Narain Singh is dismissed with the aforesaid modification in sentence.