
(2009) 02 PAT CK 0024
In the Patna High Court

Gayanand Yadav and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 04-02-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323
Probation of Offenders Act, 1958 — Section 4

Citation : (2009) CriLJ 1816 : (2010) 2 Crimes 291 : (2009) 3 PLJR 364 :
(2010) 6 RCR(Criminal) 2730

Hon'ble Judges : Kishore Kumar Mandal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kishore Kumar Mandal, J.—The present appeal arises out of and is directed against the judgment and order dated 24th April, 1993, passed in Sessions Case No. 282 of 1990, whereby the appellants have been found guilty under Sections 324/149 and 148, IPC. They have been released u/s 4 of the Probation of Offender's Act on their entering into a bond of Rs. 1000/- with one local surety of the like amount for a period of one year.

2. To put the record right, it is recorded that during the pendency, of the present appeal, appellant No. 3 Ram Chandra Yadav, appellant No. 5 Bhaluk Yadav, appellant No. 10 Khedu Yadav and appellant No. 13 Satyanarayan Yadav were reported to be dead. Affidavits in this regard were filed on behalf of the appellants. This Court called for a report from the Superintendent of Police, Lakhisarai regarding the death of these four appellants. On submission of the report, this Court under order dated 3-7-2008 found that the present appeal against abovementioned four appellants stood abated as they have been reported dead. Necessary corrections in the memo of appeal have already been carried out by the office in terms of the order dated 3-7-2008.

3. Background facts giving rise to the present appeal, in a nutshell, are as follows:

An FIR (Ext. 2) seems to have been lodged by P.W. 4 Bisheshwar Yadav alleging therein that on 6-12-1987 at about 9.30 a.m. the informant (P.W. 4) was sitting at his Darwaza along with his nephew Sanjay Kumar Yadav (P.W. 3). All the accused persons named in the FIR variously armed with deadly weapons arrived at the said Darwaza of the informant, started abusing and threatening him. This was protested by the informant. The prosecution case further is that the accused persons surrounded the informant and his nephew and started assaulting them with their respective weapons. An alarm was raised by his nephew (P.W. 3), whereafter witnesses named in the FIR including P.W. 1 arrived at the scene of occurrence. On seeing the witnesses, the accused persons stopped assaulting them. The prosecution case further is that thereafter the accused Krishna Deo Yadav took out a match box from his pocket and put the Baithka of the informant on fire. It was a thatched roof and, therefore, caught fire and burnt into ashes. The prosecution case further is that the household articles, such as books, cloths etc. kept in the Baithka also burnt into ashes. According to the informant, the accused persons did not stop there. They entered into the "Aangan" of the brother of the informant and committed theft of different articles including golden Hansuli, golden chain and Rs. 1,600/- cash amount from the room of Negeshwar Yadav. On the basis of the Fardbeyan (Ext. 3), a formal FIR (Ext. 2) was drawn the Lakshsarai P.S. Case No, 367 dated 6-12-1987 was instituted under various sections of the Penal Code including Sections 147, 148, 149, 323, 324, 307, 448, 436 and 380, IPC. The motive assigned in the FIR is that both the parties were at loggerheads due to some land disputes going on between them from before. The land dispute is thus admitted in the FIR.

4. The Investigating Officer, who conducted the investigation, has not been examined in the present case. However, it appears that the investigation was carried out and a charge-sheet was laid whereafter cognizance was taken. Appellant No. 2 (Krishna Deo Yadav) stood charged under Sections 436 and 148, IPC. Appellant Nos. 9 and 11 stood charged under Sections 324/34 and 147 IPC. All the appellants thereafter charged under Sections 148 and 324/149, IPC.

5. The appellants abjured the guilt and thus claimed to be tried. Their defence appears to be false implication due to admitted land dispute between the parties. The defence examined witnesses in the shape of D.W. 1 Dr. Jawahar Mahton, D.W. 2 Dina Nath Singh, D.W. 3 Tribhuvan Prasad Singh and D.W. 4 Rajendra Sharma in order to prove and bring on record certain documents to show alibi of some of the appellants as also the sale deed(s) in relation to a piece of land adjoining to the house of the informant which appears to be the bone of contention between the parties. Those sale deeds are Exts. D and D/1.

6. The prosecution in order to prove the charges preferred to examine eight witnesses out of fifteen witnesses cited in the charge-sheet. P.W. 1 Chulhan Yadav is relative of the informant (P.W.4) P.W.2 and P.W.8 appear to be one and the same person named as Dinanath Sah. He is a formal witness. He has proved the contents of the formal FIR (Ext.2). He proved the Fardbeyan recorded by Shri

S.K. Dubey, the Officer-in-charge which has been marked as Ext.3. It appears that he was subsequently again re-summoned and has been examined separately as P.W.8. On this occasion, he has proved the contents of the case diary (Exts.5 and 6). P.W. 3 is Sanjay Yadav who claimed to be an eye-witness is the nephew of the informant. P.W.4 is the informant. P.W.5 is also an eye-witness to the occurrence. P.W.6 is Ajay Yadav who has proved his signature on the seizure list prepared in respect of ashes found at the place of occurrence (Ext. 1/1). P.W.7 is Dr. Laxmi Narayan Singh who has taken the dock to prove the injury report (Ext.4 series).

7. Learned Counsel for the appellants criticized the judgment on the following counts:

1. The prosecution spelt out several allegations constituting offences under Sections 436 and 380, IPC and the learned trial Court on appraisal of evidence has disbelieved their depositions so far as those allegations/statements are concerned. According to him, major part of their ocular evidence in this regard have been disbelieved by the learned trial Court and, as such, reliance placed on their evidence for convicting the appellants under Sections 323/149 and 148, IPC is not sustainable in law.

2. The Investigating Officer has not been examined in this case which has caused serious prejudice to the appellants.

3. There is evidence on record in the shape of deposition of P.Ws. 4 and 5 as also the documents brought on record by the defence in the shape of Ext.D and D/1 to show that there was enmity between the parties over a piece of land which punctuated Marpit between the parties. Enmity is admitted in the FIR The ocular evidence on record is/are, therefore, tainted and the trial Court committed serious error on placing reliance on their turncated evidence to record finding of guilt.

4. The prosecution has failed to explain the injuries sustained by appellant No. 11 Dayanand Yadav and appellant No. 10 Khedu Yadav (deceased). The injury reports respecting those appellants have been brought on record by the defence Exts. A and A/2.

5. The place of occurrence in the present case has not been established beyond reasonable doubts.

8. In order to substantiate the submissions, learned Counsel for the appellants draws attention of this Court to the judgment rendered by the trial Court to show that the Court below too has merely placed reliance on the evidence of P.Ws. 1, 3, 4 and 5 for recording conviction against the appellants under Sections 323/149 and 148, IPC. Referring to the evidence of PW1 (Chulhan Yadav), it has been submitted that although in his examination-in-chief he has stated that on the date and time of occurrence he heard the Hulla and rushed to the place of occurrence (Baithka) of the informant and thereafter witnessed the occurrence,

but from his deposition appearing at paragraph 15, it would appear that no such statement was made by him before the police. In this regard, learned Counsel draws attention of the Court to paragraph 12 of the case diary (Ext.5) where the I.O. has recorded that this witness (PW1) did not claim to be an eye-witness to the occurrence. According to the statement incorporated by the Investigating Officer at para 12, this witness claimed to have heard that there was "Marpit" between the parties. As regards PW3, Sanjay Yadav, learned Counsel for the appellants states that he is the own nephew of the informant. In his deposition at paragraph 8 he has categorically stated that the accused persons entered into the Angan and committed theft, but he could not see as how and in what manner they did commit the overt act inside the Angan. Referring to his deposition appearing at paragraph 16, it has been submitted that this witness appears to have not stated all these facts before the Investigating Officer. In paragraph 15 of his evidence, he has candidly accepted that both the parties were involved in criminal litigations from before, some of which are/were pending. It has further been pointed out that this witness in his depositions has very emphatically stated about the allegations constituting the offences punishable u/s 436, IPC. The said part of the evidence has already been disbelieved by the learned trial Court. As about PW4, the informant Bisheshwar Yadav is concerned, learned Counsel draws attention of the Court to paragraph 16 of his deposition where he appears to have admitted that the dispute between the parties, in fact, related to a piece of land measuring about 2 kathas which belonged to the informant. Referring to his statement incorporated in paragraph 22, it has been submitted that according to this witness the place of occurrence is not the "Darwaza" of this witness but a piece of land adjacent to the place of occurrence. In his deposition before the Court (para 20) this witness has specifically stated that "Marpit" had taken place outside the house on a piece of land which was close to the house of the informant. In paragraph 21 he has stated that although there was "Marpit" by using sharp cutting weapons, but the blood had not fallen on the ground. In paragraph 24 this witness appears to have further deposed that after the "Marpit" between the parties had taken place, the accused appellants involved themselves in putting the Baithka on fire and thereafter committed theft from inside the house. Counsel for the appellants highlighted that major part of his deposition has been disbelieved by the learned trial Court and the rest part of his deposition is/are so intermingled that they cannot be safely sifted out and relied upon. According to this witness, the place of occurrence is not the "Baithka" of the house but a piece of land outside the house. Referring to his deposition appearing at paragraphs 9 and 11, it has been submitted that this witness admitted that he was not examined by any Government doctor. In paragraph 11 of his deposition, he is emphatic in saying that he had shown the injury sustained by him to the Investigating Officer but referring to the case diary, it has been submitted that no such statement was incorporated therein that any such requisition was made by the Investigating Officer for medical examination of the injuries sustained by this PW.

9. P.W.5 Rajo Singh appears to be a hearsay witness. In paragraph 1 of his examination-in-chief, he has frankly admitted that on Hulla he went to the place of occurrence and saw that there was Marpit on the place of occurrence. In paragraph 2, he is emphatic in stating that both the parties were involved in "Marpit". In paragraph 7 he has stated that once the "Marpit" subsided, the accused (appellants) were brought to the hospital for treatment of the injuries sustained by them.

10. On the basis of the evidence so brought on record and highlighted by the counsel for the appellants, it has been submitted that the prosecution cannot be said to have proved the charges beyond all reasonable doubts, firstly, because the witnesses appear to have not stated many relevant facts before the Investigating Officer (not examined) and, as such, their deposition in Court cannot be blindly relied upon, and, secondly, the evidence adduced on behalf of the prosecution does indicate that on the alleged date and time of occurrence there was/were "Marpit" between the parties. The evidence of PW5 indicates that some of the accuseds had also received injuries as they proceeded to the hospital for treatment for their injuries. Their injury re-ports are on record as Exts.A and A/2. In the backdrop of these factual scenario emerging from records the non-explanation of the injuries sustained by the accused (appellants) assumes greater significance and casts serious doubt on the veracity of the prosecution case, Further, evidence of the informant (PW4) does indicate that, in fact, the occurrence in which injuries were caused to the parties had taken place not on the "Verandah" or close to the "Baithaka" but on different piece of land (Parti Zamin) which was adjacent to the house of the informant.

11. This Court in the light of the evidence on record and highlighted at the Bar gets an impression that the evidence of the informant is not compatible with the evidence of other witnesses so far as the place of occurrence is concerned. Learned trial Court itself disbelieved the evidence of PWs. 1, 3, 4 and 5 so far as their depositions relating to putting "Baithka" on fire and commission of theft by the appellants are concerned. These allegations have been consistently made by PWs. 3 and 4. This Court in the given facts situation is of the view that sifting of their evidence would not be legally justified. This view has been taken by the Court keeping in mind that admittedly they were on litigating terms and there is/are positive evidence on record that there was "Marpit" from both sides. The evidence on record is, therefore, discrepant so far as the manner of occurrence and the place of occurrence are concerned. The prosecution "appears to have not come up with true version of occurrence. A serious doubt has crept into the mind of this Court regarding the; veracity of the prosecution case as projected. at the trial. The submissions advanced on behalf of the appellants that in the particular fact situation non-examination of the Investigating Officer has caused prejudice to the defence carries weight. The testimonies of PWs. 3, 4 and 5 and the documents brought on record definitely indicate that the parties are/were on litigating from before in respect of a particular piece of land. This" Court further gathers from their evidence that, in fact, on that particular date both" sides

involved themselves in "Marpit" over possession of a piece of land which appears to be the bone of contention between them. This being the background, the non-explanation of the injuries sustained by some of the accuseds (appellants) including appellant No. 10 assumes greater significance. This Court would, therefore, be Justified in inferring therefrom that the prosecution has not projected the true picture of occurrence.

12. Taking all these factors into consideration, this Court is of the considered view that the prosecution has not been able to prove the charges beyond shadow of reasonable doubts and, therefore, the appellants are entitled to the benefit of doubts and, thus, an order of acquittal.

13. In the result, the appeal succeeds and the judgment and order of conviction dated 24th April, 1993, passed by the learned trial Court in Sessions Case No. 282 of 1990 is set aside and quashed.