
(1997) 11 PAT CK 0046
In the Patna High Court
Case No : Criminal Appeal No. 43 of 1993 (R)

Hakim Roy and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 18-11-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 307, 323, 324, 325

Citation : (1998) 1 BLJR 496

Hon'ble Judges : Loknath Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Loknath Prasad, J.—This appeal is directed against the judgment dated 15th February, 1993 passed by 4th Additional Sessions Judge, Giridih, in Sessions Trial No. 279 of 1988 thereby and thereunder the appellant Hakim Roy, was found guilty u/s 324 of the Indian Penal Code; Kedar Ray and Bhikhi Ray were also found guilty u/s 323, IPC and they were sentenced to under go rigorous imprisonment for one year; whereas the appellant Mathura Ray was found guilty u/s 325, IPC and sentenced to undergo rigorous imprisonment for two years and he was also found guilty u/s 323, IPC and was sentenced to undergo rigorous imprisonment for a year; whereas Arjun Roy was found guilty under Sections 326, 324, 148, IPC and he was sentenced to undergo rigorous imprisonment for three years and one year respectively.

2. The prosecution case, in short, is that on 12.12.87 Tunkeshwar Rai, the brother of the informant had gone to brick kiln situate near his house, then these petitioners and others came armed with Lath, Bhala and Rod and asked him as to why he is working in the kiln. Then they began to assault Tunkeshwar Rai and when Baikunth Rai and nephew Lekhraj Rai intervened, they were also assaulted. So this case was instituted u/s 307 326, 324 and other allied Sections of the IPC. The appellants claimed themselves innocent and their only defence is that they are agnates of the informant and due to previous enmity, they had been falsely

implicated.

3. When this appeal was taken up for hearing, the learned lawyer for the appellant frankly conceded that he is simply pressing this appeal on the quantum of sentence and not on merit. It was contended that all the appellants and the informant are agnates and close relation and this is their first reported offence, that too, for the land dispute. In that view of the matter, substantive sentence appears to be excessive and unwarranted.

4. Admittedly the parties are related to each other and this occurrence of assault took place all a sudden that too in connection with a land dispute. The appellant Hakim, Kadar and Bhikhi were simply found guilty under Sections 324, 323 IPC; whereas Mathura was also found guilty u/s 325 IPC. In that view of the matter, substantive sentence as awarded by the trial Court as against these petitioners appears to be excessive and unwarranted and so it is set aside and these appellants are hereby directed to execute bonds of Rs. 2000/- (two thousand) each with two sureties of the like amount each in the trial court itself with an undertaking to maintain peace and good behaviour for period of one year, failing which they will be called upon to receive sentence awarded by the trial court. The bond must be executed within three months from today in the trial court itself.

5. So far the appellant, Arjun Ray is concerned, the allegation against him is that he was holding tangi and caused grievous hurt to Tunkeshwar Rai and Shambhu. In that view of the matter, he is not entitled to any benefit u/s 360, IPC and though this appellant is found guilty under Sections 326 and 324 of IPC, his sentence of three years u/s 326 IPC is hereby modified and reduced to that of two years and that u/s 324 IPC is reduced to six months" R.I., and both the sentenced will run concurrently. In the circumstances this appeal is dismissed with modification in sentence in the manner indicated above, and bail bond of Arjun Ray is hereby cancelled and he is directed to surrender before the Court below for undergoing remaining part of the sentence.