
(2006) 12 PAT CK 0001

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 178 of 1992

Indrasan Raut @ Indrasan Yadav and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 05-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357
Penal Code, 1860 (IPC) — Section 147, 304, 323, 324, 325

Citation : (2007) 2 PLJR 626

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

Bench : Single Bench

Advocate : Purusottam Kr. Singh, for the Appellant; Dilip Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

I.P. Singh, J.—Appellant no. 1 Indrasan Raut and appellant no. 2 Singhasan Raut have been convicted u/s 325/ 34 of the Indian Penal Code and were sentenced to undergo R.I. for five years. Appellant no. 2 Singhasan Raut was further convicted u/s 379 of the Indian Penal Code and was sentenced to undergo R.I. for one year. However, both the sentences were ordered to run concurrently. Both the appellants Indrasan Raut and Singhasan Raut have been directed to pay fine of Rs. 5000/- (five thousand) each to the next of the kin of deceased Keshwar Raut u/s 357 of the Code of Criminal Procedure and in default to undergo a further period of R.I. for six months. The appellant no. 3 Dhanai Raut and appellant no. 4 Laxman Raut have been convicted u/s 323 of the Indian Penal Code and were sentenced to undergo R.I. for six months. However, the sentences were ordered to run concurrently.

2. The prosecution case disclosed from the fardbeyan of the informant is that on 25.4.80 at about 7 A.M. he along with Bhuneshwar Hazra, Chhotak Raut, Keshwar Raut (deceased) were going towards village Jamunia for purchasing an ox for Bhuneshwar Hazra. It has been alleged that when they reached near the

mango tree situated near a Kachcha bridge in village Badauli, accused Singhasan Raut, Indrasan Raut, Laxaman Raut and Dhanai Raut surrounded them under the mango tree near the aforesaid bridge and asked as to where they were proceeding. The informant further replied that they were going to purchase an ox upon which all the accused persons started assaulting the informant and others. Accused Singhasan Raut is alleged to have taken out Rs. 2,000/- from the pocket of Chhotak Raut which was resisted and when the informant and others demanded the money back, it is alleged that the accused Singhasan Raut and Indrasan Raut assaulted the deceased Keshwar Raut with lathi on his head and shoulder who being injured fell down. Chhotak Raut was assaulted by Laxaman and Dhanai with lathi on his head and shoulder and he also fell down. It has been stated that when the informant protested the assault, he was also assaulted by accused Indrasan and Singhasan on his head and the arm by lathi. It has also been stated that when some persons came the accused persons after taking money fled away. Thereafter a tyre cart belonging to one Jaikaran Yadav was brought from village Badauli by the informant and by that cart the informant and other injured persons were brought to Gaunaha Hospital where they were treated. The fardbeyan of the informant was recorded in Gaunaha State Dispensary on 25.4.80 at about 11.40 hours and on that basis Gaunaha P.S. No. 3 of 25.4.80 under Sections 147, 323, 324 and 349 of the Indian Penal Code was instituted. Subsequently, Keshwar Raut (the deceased) died in M.J.K. Hospital, Bettiah on 27.4.80 and as such Section 304 of the I.P.C. was added which appears from Ext. 9 and a requisition was sent by the I.O. to that effect. The Police started investigation and after completion of the investigation charge sheet was submitted, and accordingly, cognizance was taken and case was committed to the Court of Session for trial.

3. The appellants pleaded not guilty and have stated that they have been falsely implicated in this case due to enmity.

4. The prosecution in support of its case examined altogether 11 witnesses.

5. P.W. 1 Dhruva Raut is not eyewitness of the occurrence. P.W. 2 is Gorakh Yadav, he has been tendered. P.W. 3 is Kanchan Manjhi, he has also been tendered. P.W. 4 is Nathuni Raut. He is not eye-witness of the occurrence. P.W. 5 is Nepal Raut, injured and the informant. P.W. 6 is Bhuneshwar Hazra, injured eyewitness of the occurrence. P.W. 7 Chhotak Raut is injured witness. P.W. 8 is Dr. B.K. Sinha who had examined P.W. 5 Nepal Raut, the informant. P.W. 9 is Dr. R.B. Chaudhary who held post mortem examination on dead body of Keshwar Raut. P.W. 10 Ram Kumar Singh, the I.O. of this case and P.W. 11 Hridayanath Tiwari is a formal witness. He has proved protest petition Ext. 2.

6. P.W. 5 the informant has stated that he along with Chhotak Raut. Bhuneshwar Raut and Keshwar Raut were going to purchase an ox for Bhuneshwar Hazra. When they reached at Kachcha bridge in village Badauli at 7 A.M. in the morning they saw four appellants, namely, Singhasan Raut, Indrasan Raut, Laxaman Raut and Dhanai Raut. Appellants enquired from them that as to where they were

going. On this they replied that they were going to purchase an ox. All of a sudden, they started assaulting Chhotak Raut with lathi after surrounding him. The appellant Singhasan Raut took away Rs. 2,000/- from the pocket of Chhotak and after assault Chhotak fell down. Keshwar was also assaulted with lathi by Indrasan and Singhasan on his head and shoulder due to which he became unconscious. The informant stated that he too was assaulted with lathi by Indrasan and Singhasan on his arm and head. According to him, all the witnesses had seen the occurrence. Thereafter Chhotak and Keshwar were admitted to Gaunaha Hospital where his statement was recorded on which he put his signature. He has stated that condition of Keshwar and Chhotak were serious and they were referred to M.J.K. Hospital, Bettiah where Keshwar Raut died. After post mortem his dead body was cremated. He identified all the appellants in the Court. In his cross-examination he has stated everything and he stood the test of cross-examination. P.W. 7 the other material witness is Chhotak Raut, he has supported the case of prosecution and also the manner of assault. He has also stated about the theft of Rs. 2,000/- from his pocket.

7. P.W. 6 Bhuneshwar Raut for whom ox was to be purchased was accompanying the deceased and the informant has also supported the version of informant and story of assault and also theft of money from the pocket of Chhotak.

8. P.W.1 Dhruva Raut and P.W. 4 Nathuni Raut have also supported the case of prosecution and have stated that they saw all the appellants fleeing away. They also found Keshwar Raut unconscious. They saw injury on head and also injury on his shoulder. They also saw injury on the persons of Nepal Raut, the informant and Chhotak Raut.

9. P.W. 7 Chhotak Raut is another injured witness. He was carrying Rs. 2,000/- while accompanying P.Ws. 5 and 6 and the deceased, Keshwar Raut.

10. P.W.10 is the I.O. He has stated that he inspected the place of occurrence and has given the vivid description of the same. He has stated that he received a copy of statement of Nepal Raut (Exts. 5 and 5/1) and also a copy of inquest report Ext. 8 and post mortem report (Ext. 4) of Keshwar Raut from Bettiah Hospital. Later on, he filed an application for adding 304 of the Indian Penal Code in the case as Keshwar Raut died. In his cross-examination he has stated that Nathuni Raut has given his statement about the occurrence. According to him, in his cross-examination he got statement of 4 C.Ws., namely, Bhannu Mahto, Nathuni Sah, Paras Mukhia and Jagdish Mahto.

11. According to him, C.W. 4 Jagdish Mahto stated that on hulla he went to house of Singhasan where he saw Nepal Raut and Chhotak Raut. He also saw Keshwar Raut. He saw Bhuneshwar Raut, Nepal Raut and Chhotak Raut in injured condition. According to him, there was quarrel between the parties where members of both parties were injured.

12. C.W. 1 Bhannu Mahto has also stated before him that Nepal Raut, Chhotak Raut and Keshwar Raut were on the door of Singhasan Raut. He further stated

that on the date of occurrence they came to the house of Singhasan Raut for assaulting him and there was quarrel between them and injured persons received injury. On that point he has stated that other two C.Ws. Nathuni Sah and Paras Mukhia have supported about the quarrel.

13. C.Ws. 2 and 3 were also examined and they have given another version of the story. They have negated the story of prosecution and have stated that on that date of occurrence the injured had come to assault Singhasan in his village where there was a quarrel in which the injured Keshwar and Chhotak got injury. They have also specifically stated that at the Darwaja of Singhasan no money was taken from the pocket of Chhotak, as alleged.

14. Learned counsel for the appellants has submitted that the prosecution has miserably failed to establish the place of occurrence. It has further been submitted that the motive alleged for the said crime has not been proved and especially against the appellants by the prosecution. The Court below has not assigned cogent reason for disbelieving the evidence of at the four C.Ws. examined on behalf of the defence. It has also been submitted that the allegation against the appellants Singhasan and Indrasan is that both the appellants have assaulted the deceased. But, from the evidence of Doctors, P.Ws. 8 and 9, they found only one injury on the person of the deceased. As such, it is not clear that who caused injury on the deceased Keshwar.

15. The submission of learned counsel that the Court has not assigned any reason for disbelieving the evidence of C.Ws. examined at request of defence but from the judgment, it appears that the Court below has dealt about the deposition evidence of C.Ws. and disbelieved their version on two counts. Firstly, place of occurrence near the bridge was established by eye-witness and as well as P.W. 10 the I.O. who has stated that occurrence took place Kachchi Sadak which goes to Jamunia through Badauli. Secondly, that no suggestion was put forth by the defence at the time of their cross-examination about the free-fighting as alleged by C.Ws at the darbaza of Singhasan.

16. The submission of learned counsel that the motive has not been proved, it is true that no motive has been attributed but if there is evidence from witnesses about the assault, the motive may not be known to them and is not important and shall not fatally affect the case. As regard, the discrepancy between the oral evidence and medical finding that there is only one injury on the person of the deceased but as per assault evidence of P.W. 5 informant that Keshwar was assaulted both by Singhasan and Indrasan on his head and shoulder, this point has also been considered by the Court below and due to this discrepancy only Singhasan and Indrasan were convicted u/s 325 IPC instead of u/s 304 IPC. From the aforesaid discussion, it appears that the prosecution has been able to prove its case, and Court below rightly came to the conclusion and convicted the appellants for the offence punishable under Sections 325, 379 and also u/s 323 of the Indian Penal Code. I do not find any reason to interfere with the order and judgment under challenge. Accordingly, the conviction and sentence passed by

the Court below is hereby upheld and this appeal is dismissed.