
(2002) 02 PAT CK 0050

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 27 of 1991

Jagdeo Mahto and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 27-02-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 323, 324, 325

Citation : (2002) 2 BLJR 1388 : (2002) 2 PLJR 368

Hon'ble Judges : Indu Prabha Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Indu Prabha Singh, J.—Appellant No. 1 Jagdeo Mahto has been released on Probation of Offenders Act and has been directed to execute a bond of Rs. 2000/- to keep peace and tranquility for one year. Appellant No. 2, Banarsi Mahto and Appellant No. 3, Ram Sabuj Mahto have been convicted under Sections 325, 323 and 147 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year u/s 325 and six months u/s 323 and u/s 147 respectively. Appellant No. 4, Rabindra Mahto and Appellant No. 6, Daso Mahto have been convicted under Sections 324 and 148 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year u/s 324 and also u/s 148 of the Indian Penal Code. Appellant No. 5 Ramdeo Mahto has been convicted u/s 148 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year.

2. The prosecution case briefly stated is that on 11.8.1988 at about 7 A.M. while the informant Saudagar Pasi was uprooting paddy seedling in his field the accused persons variously armed came there and threatened him to be killed for not withdrawing the case in spite of their repeated requests. It has been alleged that appellant Jagdeo Mahto and appellant Ram Sabuj Mahto assaulted the informant on his right hand, right thigh and right leg by means of Lathi. One Kameshwar Pasi raised alarm on which son of the informant Babu Lal Pasi came

to save the informant but the appellant Rabindra Mahto gave a Garasa blow on the head of Babu Lal with an intention to kill him. Having sustained injury of Garasa he fell down. Thereafter appellant Daso Mahto and Ramdeo Mahto assaulted him by means of Bhala and Saif respectively. It has been alleged that the appellant Banarsi Mahto and appellants Jagdeo Mahto and Ram Sabuj Mahto assaulted Babu Lal by means of Lathi also. Babu Lal had kept Rs. 1100/- in his pocket for purchasing fertilizer. That money was also taken out from his pocket by appellant Rabindra Mahto. On alarm villagers came there and saw the occurrence. The informant and his son Babu Lal, both injured, were brought to Sadar Hospital, Nawadah for medical treatment where the Fardbeyan of the informant was recorded by A.S.I. in the Sadar Hospital, Nawadah, on the basis of which formal F.I.R. was drawn up and the case was instituted against the accused persons. After completion of investigation charge sheet was submitted, cognizance was taken and the case was committed to the Court of Sessions for trial and the trial concluded with the result as indicated above. The appellants pleaded not guilty.

3. The prosecution in support of its case examined altogether nine witnesses. P.W. 1 is Dhaneshwar Manjhi, P.W. 2 is Sodhan Manjhi P.W. 3 is Babu Lal Chaudhary, injured, P.W. 4 is Chano Devi alias Chanak Devi, she is the wife of the informant and hearsay witness. P.W. 5 is Saudagar Pasi injured-informant, P.W. 6 is Dr. Bhuneshwar Prasad. He had examined the injured Babu Lal (P.W. 3). P.W. 7 is Dr. Anil Kumar. He had examined P.W. 5 injured-informant. P.W. 8 is A.S.I., who had recorded the Fardbeyan of the informant and P.W. 9 is the I.O. of this case.

4. P.W. 5 the informant has supported his Fardbeyan and has stated that on the date of occurrence at 7 a.m. while he was uprooting the paddy seedlings in his field, all the accused persons asked him to withdraw the previous case. On his refusal they assaulted him. According to him appellants Jagdeo Mahto, Banarsi and Ram Sabuj assaulted him with Lathi on his right hand and right leg. His son Babu Lal came for his rescue who was also assaulted by appellants Rabindra and Daso Mahto by means of Garasa, Saif and Bhala respectively. P.W. 3 has also supported the case of the prosecution as stated by the informant. P.W. 1 Dhaneshwar Manjhi claimed to be eye-witness of the occurrence of assault on the informant and on his son Babu Lal. According to him he was uprooting paddy seedling in another field at the time of occurrence. At that time the appellants came and assaulted the informant and his son Babulal. P.W. 2 is also claimed to be an eye-witness of the occurrence. He was also working in another field at the time of occurrence and he saw the appellants were armed with Bhala, Garasa, Saif and Lathi and they assaulted P.W. 5, Saudagar and his son Babulal. He has not specifically stated that who assaulted Saudagar and who assaulted Babu Lal and on which part of the body. P.W. 6, Dr. Bhuneshwar Prasad examined Babulal Pasi on 11.8.1988 and found the following injuries on his person:

(i) Incised wound 4" x 1" x 1" over parital occipital region of head left side. (ii)

Fracture of radius and ulna of left forearm. (iii) Fracture of radius right forearm. (iv) Incised wound 2" x 1" x 1" over left ankle.

In the opinion of the doctor Injury Nos. 1 and 4 were simple in nature caused by sharp cutting weapon and Injury Nos. 2 and 3 were grievous in nature caused by hard blunt substance.

P.W. 7, Dr. Anil Kumar examined the informant Saudagar on 11.8.1988 and found the following injuries on his person:

(i) Redish bruise with swelling and tenderness 4" x 3" over right arm. (ii) Redish bruise with swelling and tenderness 3" x 2" over right forearm and upper third. (iii) Redish bruise with tenderness 4" x 2" over right thigh middle third, (iv) Redish bruise 2" x 1" on right ankle lateral side (v) Redish bruise with tenderness 2" x 1" over chest right side.

In the opinion of the doctor Injury Nos. 3 and 4 were simple in nature and Injury Nos. 2 and 5 were grievous in nature caused by hard blunt substance.

P.W. 8 has stated that on the date of occurrence he was posted at Nawadah P.S. He recorded the fardbeyan of the informant. He also saw the informant in injured condition. He also saw the injured Babulal in an injured condition and found the injuries on different part of the body of the injured. According to him, on receipt of O.D. slip he went to the hospital and recovered the blood stained clothes. P.W. 9 has stated on 11.8.1988 he visited the place of occurrence and also went to Nawadah Sadar Hospital and again recorded the Fardbeyan of the injured informant and also he recorded the statement of injured Babulal. He found both of them in injured condition. He did not see blood stains at the place of occurrence as the field was full of water.

5. Earned Counsel for the appellant submitted that there are contradictions in the deposition of the witnesses and the witnesses examined on behalf of the prosecution are interested witnesses. So far the interested witnesses are concerned, there is no hard and fast rule that the case of the prosecution can be out rightly discarded rather in such cases their evidence should be scrutinized with more care and caution. So far the contradictions in the deposition of the witnesses are concerned, they are not vital and major and they are bound to happen after such a long time. From the deposition of the witnesses it is apparent that the appellants farming unlawful assembly came to the place of occurrence and assaulted P.Ws. 5 and 3 voluntarily causing grievous hurt on the person of the injured. The testimony of the P.Ws. 5 and 3 informant and his son is reliable and trustworthy which has been supported and corroborated by other witnesses including the doctors who examined the injured on the same day soon after the occurrence. As such the Court below has rightly came to the conclusion and acquitted the appellants for the offence punishable under Sections 325, 324, 147 and 148 of the Indian Penal Code.

6. However, coming to the question of sentence earned Counsel appearing on

behalf of the appellants submitted that the occurrence took place in 1988 and since then the appellants have been amply punished. It has been also submitted that there is no criminal antecedent and previous conviction against these appellants. They had no intention to kill the informant and his son. There was enmity between the appellant and the informant with regard to the land dispute. Moreover the appellants have remained in jail for some time. Therefore, it requires consideration on the point of sentence. Having regard to the submissions raised above. I am of the view that it will be expedient in the interest of justice if the sentence of these appellants are reduced to the period they have already undergone in jail with a fine of Rs. 1000/- to be deposited by Appellant No. 2, Banarsi Mahto and appellant No. 3, Ram Sabuj Mahto each, Rs. 500/- to be deposited by Appellant No. 4, Rabindra Mahto, Appellant No. 6 Daso Mahto and Appellant No. 5, Ramdeo Mahto each within three months from the date of receipt/production of a copy of this order. The amount of fine if and when realised from these appellants Rs. 2000/- will be given to the informant, Saudagar Pasi (P.W. 5) and Rs. 2000/- to the injured Babulal Chaudhary (P.W. 3), in default, Appellant Nos. 2, 3, 4 and six shall undergo rigorous imprisonment for six months, Appellant No. 5 shall undergo rigorous imprisonment for one month. With the aforesaid modification in sentence this appeal is dismissed.