

(2011) 08 PAT CK 0164

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 159 of 1998

Maujilal Mehta, Anant Kumar Mehta @ Anant Mehta, Khusilal Mehta and Amod Mehta

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 307, 323, 325

Citation : (2011) 08 PAT CK 0164

Hon'ble Judges : Gopal Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Prasad, J.—Heard the counsel for the Appellants and the State.

2. The Appellant No. 3, Khusilal Mehta, has been convicted u/s 147 of the Penal Code and sentenced to undergo rigorous imprisonment for six months and Ors. convicted u/s 325 of the Penal Code and sentenced to undergo rigorous imprisonment for three years and rest of the Appellants are convicted under Sections 147 and 323 and sentenced to undergo rigorous imprisonment for six months and, further sentenced under Sections 325/149 of the Penal Code and sentenced to undergo rigorous imprisonment for three years. However, it has been ordered that all the sentences shall run concurrently.

3. The prosecution case, as alleged in the fardbeyan that at 08.30 a.m. on 03.11.1988, the informant asked his cousin brother, Khusilal Mehta to show deed regarding partition by the Panchayati of the ancestral land otherwise he will break the ridge and will consolidate the land on which there was verbal altercation and then Khusilal Mehta came armed with lathi and then the informant started fleeing away and when he reached at the darwaza then he indiscriminately assaulted and when his wife and daughter protested then Maujilal Mehta, Jamuna Mehta, Anant Kumar Mehta and Amod Mehta came and assaulted the wife and daughter causing fracture of clerical bone.

4. On the fardbeyan, the first information report lodged, after investigation charge sheet submitted, cognizance taken and the case was committed to the Court of sessions where charge was framed under Sections 147, 149 and 307/149 of the Penal Code and during the trial nine witnesses examined by the prosecution case and three witnesses examined by the defence and the trial Court taking into consideration the evidence of the witnesses as well as the injury report on the informant and his wife and daughter and found the injuries simple except one on the person of Sheela Devi, the wife of the informant, a simple fracture of medial 1/3rd of left clerical bone alleged to be inflicted by Khusilal Mehta, convicted him for offence u/s 325 of the Penal Code and other Appellants u/s 325/149 of the Penal Code and sentenced as stated above and acquitted the Appellants for charged u/s 307 of the Penal Code.

5. The learned Counsel for the Appellants, however, contends that Khusilal Mehta is a person who is seventy years old at the time of judgment in the year 1998 and both the Appellants and the accused persons are descendant to common ancestors living in the same house and the occurrence is of two family feud and the weapon used is lathi and though the conviction has been maintained u/s 325 of the Penal Code holding it a grievous offence, but, the x-ray report has not been proved and, further, as per the nature of the allegation, itself, the offence u/s 149 of the Penal Code is not made out and there is No. common intention and the accused persons come one after other and only four persons are facing trial though the charge sheet has been submitted against five persons.

6. However, I perused the record though the witnesses supported the prosecution case and though there is allegation of assault and the injury report has been proved, however, the injuries have been shown to be simple, except two injuries on the persons of the informant and other on the person of the informant's wife shown to be grievous on the basis of the x-ray report, however, the x-ray report has not been proved and, hence, the conviction u/s 325 of the Penal Code is not maintainable and, hence, the conviction u/s 325 of the Penal Code is converted to Section 323 of the Penal Code and, further, taking into consideration that the occurrence took place for showing the papers with threat to removing the brick and there was verbal altercation between Khusilal Mehta and the informant with regard to the partition of the land and after assault when wife and daughter of the informant came they were assaulted by other inmates and, hence, the occurrence took place on the spur of moment and there is No. common object.

7. Having regard to the facts and circumstances, since, the x-ray report has not been proved the order of conviction u/s 325 of the Penal Code is not maintainable and is substituted by Section 323 of the Penal Code, however, taking into consideration the fact that the occurrence is of the year 1988 and both the parties are descendant of common ancestors living in the same house, hence, the benefit of Section 360 of the Probation of Offenders Act required to be given and, hence, the benefit of Section 360 of the Probation of Offenders Act is

given to the Appellants and they are ordered to be released with due admonition.

8. The appeal is allowed in part.