
(1918) 02 PAT CK 0023
In the Patna High Court

Mousi Lal and Another and Lal Bahadur Singh
Vs

APPELLANT

Emperor

RESPONDENT

Date of Decision : 05-02-1918

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 353

Citation : AIR 1918 Patna 252 : 48 Ind. Cas. 340

Hon'ble Judges : Roe, J;Jwala Prasad, J

Bench : Division Bench

Judgement

1. The accused in Criminal Revision No, 483, Lal Bahadur, has been convicted of an escape from " lawful custody and sentenced to six months rigorous imprisonment. The lawful custody is alleged to have been effected by one Mathura Lal, constable, on a warrant which, it is admitted, was not signed by the Magistrate issuing it and made over to the Thana Officer on an order purporting to be made by the District Superintendent of Police, but not signed by anybody. It was admitted for the purpose of the argument in the Courts below that this warrant is defective. We need not go into this question. It is alleged, however, that the warrant itself was sufficient authority for the arrest, inasmuch as by it the constable had reason to believe that the person to be arrested had committed a cognizable offence. Had the constable said so himself, we might, conceivably have accepted this view, but nowhere in his evidence does he suggest that he had reason for such belief. He purports to have acted under cover of the warrant, and we must take the case as stated by the complainant in it. Lal Bahadur must be acquitted and discharged from his bail if he is not required for any other offence.

2. In Criminal Revision No. 464, the same remarks apply. It is clear on the evidence that the three men convicted of effecting the accused's rescue caused unnecessary hurt to the constable. One of the injuries inflicted was a blow over the eye with "Dhanta". We are not able to hold that -this assault was justified even if the arrest of Mathura Lal was technically wrong. It was Basdeo Singh who

is responsible for the principal injury, Mauji Lal was responsible really for the whole occurrence by giving the orders to beat the constable in order to rescue the accused.

3. The three accused were sentenced to nine months" rigorous imprisonment each, u/s 353, In the exercise of our powers in revision we alter these convictions to convictions u/s 323 and direct that Basdeo Singh be sentenced to six months" rigorous imprisonment, Mauji Lal to three months" rigorous imprisonment, and Kari Singh to three months" rigorous imprisonment. We see no reason to continue the bonds into which the accused have been directed to enter for the keeping of the peace. Clearly this was an offence committed on a sudden impulse. Lal Bahadur has now been convicted on the principal charge. There is no cause for anticipating a further breach of the peace by the accused.