

(1996) 04 PAT CK 0045
In the Patna High Court
Case No : Criminal Appeal No. 187 of 1989 (R)

Mulidhar Sharma @ Murlidhar Sharma and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 30-04-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360
Penal Code, 1860 (IPC) — Section 148, 149, 307, 323, 324

Citation : (1996) 2 BLJR 1602

Hon'ble Judges : Loknath Prasad, J

Bench : Single Bench

Judgement

Loknath Prasad, J.—This appeal is directed against the order of conviction dated 24th May, 1989 recorded by Sri J. Tigga, 7th Addl. Session Judge, Palamau at Daltonganj in Sessions Trial No. 377/83 through which all these six appellants were sentenced to undergo rigorous imprisonment for seven years under Sections 387/149 of the Indian Penal Code.

2. The fact, in short, giving rise to this appeal is that the informant, Janardan Sharma lodged an FIR on 20.8.82 claiming that on that day at about 8 a.m. in the morning, he along with his brothers, namely, Madhusudan Sharma and Bakhori Sharma had gone to attend the call of nature and also had taken their cattle for graezing. In the meantime, they heard alarm from the side of his house and when the informant reached near his house, then he found these accused persons, named in the FIR, armed with lathi, bhala and garassa and asking them to vacate a room and then the accused Shayama Sharma, Sachidanand Sharma, Kamta Sharma, and Murlidhar Sharma assaulted the informant by lathi and garassa and when Madhusudan Sharma intervened, he too was assaulted by Kamta Sharma, Murlidhar Sharma, Charitar Sharma, Manak Sharma and Ram Janam Sharma with lathi, bhala and garassa. It is alleged that accused Shayama Sharma also gave lathi below on the head of Bakhori Sharma, the brother of the informant, as a result of which the informant, and his two brothers were seriously injured and became unconscious and when they regained their

consciousness, they saw their belongings were thrown out of the room. The informant and his injured brothers were removed to Daltanganj Sadar hospital and in the hospital on 20.8.82, the fardbayan of the informant was recorded by A.S.I attached to Daltonganj P.S. and the Parchayan was forwarded to Bishrampur P.S. where the P.O. lins and on that basis a case under Sections 148, 447, 307, 324 and 323 IPC was institute.

3. In the course, the case was committed to the court of sessions and in the trial court accused persons claimed themselves innocent and denied to have taken part in the occurrence. It is their defence that actually the informant and his men on the date of occurrence at about 8.30 a.m. or so come to the house of the accused persons and began to quarrel regarding some ancestral land and in that process they assaulted Shyam Sharma, one of the accused and his father Ram Charitar Sharma who subsequently died during the pendency of the trial and for that a case use also instituted and this false case was instituted as a counter blast to the criminal case instituted on behalf of the accused person.

4. The trial court believed ,the prosecution story and found the appellants guilty convicted and sentenced them in the manner indicated above.

5. Having aggrieved by the order of conviction, this appeal has been preferred on various grounds.

6. To prove the case on behalf of the prosecution, as many as sight witnesses were examined, out of them, P.W. 1 Raj Kumar Sharma and P.W. 5 Vijoy Sharma are tendered witnesses, whereas P.W. 6 Bateshwar Prasad and P.W. 8 Arun Kumar Tiwary are formal witnesses as they proved some documents and, in factum, prosecution examined P.W. 2 Bakhori Sharma, P.W. 3 Madhusudan Sharma and P.W. 4 Janardan Sharma who is the informant and also P.W. 7 Dr. P.L. Pandey.

7. P.W. 4 being the informant in this case is an important witness and according to this witnesses on the date of occurrence, he had gone to case himself and when he heard alarm from the side of his house, than he came and found the appellants near his house and they were asking for vacating a room and claiming that room to be their ancestral property and at that time the accused persons were armed with lathi, bhala, and garasa. It is also his evidence that when the informant protested that he is not in a position to vacate the room, then he was assaulted by accused Shyam Sharma, Sachidanand, Kamta, Murlidhar Sharma by bhala, garasa and lathi and when his brother Madhusudan intervened, he was also assaulted by Murlidhar, Kamata, Ramcharitar, Nanak and Ram Janam Sharma and similarly his another brother Bakhori was also assaulted by lathi and so all the three brothers were seriously injured and then they were taken to Daltonganj hospital where they were examined by the doctor and in that very hospital his statement was recorded by a" police officer of Daltonganj, i.e. Ext. 1/1. Ext. 1/1, the fardbayan of the informant which was recorded on the same day of occurrence at Daltonganj hospital which indicate that the informant was in

injured condition and practically there is no delay in lodging of the FIR and Ext. 1/1. also corroborates the statement of the informant which he had given in the court.

8. Similarly other two witnesses i.e. P.W. 2 Bakhori Sharma and P.W. 3 Madhusudan Sharma also supported the informant on the point of assault by the accused persons by garasa, bhala and lathi, No doubt these witnesses are own brother of the informant and interested witnesses, but they are injured witnesses. In that circumstance, it can be said that they were definitely present at the time of occurrence and competent witnesses on the point of occurrence and as such their evidence also inspires confidence. No doubt, the learned lawyer for the appellants submitted that only the interested witnesses, that is, the informant and his two brothers were examined on the point of occurrence and admittedly the independent witnesses i.e P.W. 1 Raj Kumar Sharma and P.W. 5 Bijoy Sharma were tendered and but there independent witnesses could not be examined by the prosecution and as such adverse inference is to be drawn as against the prosecution case. If the witnesses were produced before the court and tendered by the prosecution, then in that contingency it cannot be said that the witnesses were withheld and it is for the defence to cross-examine them and in such circumstances, it cannot be said that the witnesses were withheld. Moreover, it is not the duty of the prosecution to examine such and every witness of the occurrence.

9. Furthermore, the evidence of the informant and two other injured witnesses also finds corroboration from the evidence of P.W. 7 Dr. P.L. Pandey who examined these three injured on 20.9.82 at about 4.10 p.m. or so and the doctor founds as many as eight injuries on the body of the informant Janardan Sharma and some of the injuries were caused by sharp-cutting weapon and some by hard and blunt substance. Similarly, the doctor also found as many as injuries on the body of another injured Madhusudan Sharma and some of the injuries were caused by sharp-cutting weapon and some by hard and blunt substances and further the doctor also found incised wound on Bakhori and according to the doctor, these injuries were caused in the morning of 20.8.82, i.e. 24 hours of the examination of the injured. In this case, the prosecution has failed to examine the I.O. but on this score learned Counsel for the appellant has not been able to establish that due to non-examination of the I.O. any prejudice was caused to the defence. Moreover, admittedly at the P.O. no incriminating article was found and further from the cross-examination of the witnesses, it also appears that no serious contradictions were taken and as such non-examination of the I.O. had not caused any prejudice to the defence.

10. It was also contended on behalf of the appellant that actually the prosecution side of this case are aggressor and they came to the house of the accused Shayama Sharma armed and they assaulted Shayam and his father with dangerous weapons and for that reason a counter case being ST 408/83 was instituted and the injuries on the body of the father of the accused Shayama were

very dangerous and as such on this score alone the appellants are entitled for acquittal. In this connection it can be said that no doubt a counter case has been instituted, but surprisingly on behalf of the defence, the injury report were not brought on the record and even the doctors who examined injured were not examined. So practically there is nothing on the record to show that in the counter cast, accused Shayama and his father were seriously injured at the hands of the prosecution side of this case. Moreover the counter case also ended in acquittal.

11. So from the evidence on the record, this fact is full well proved that all the accused persons formed an unlawful assembly in the early hours of 20.8.82 and had gone to the house of the informant duly armed with lathi, ghala and garasa and their common object was to cause hurt to the informant and his family members and in pursuance of that the accused persons also assaulted the informant and his two brothers.

12. No doubt the prosecution has been able to prove that the accused persons in furtherance of their common object assaulted the informant and his two brothers, but the learned Counsel for the appellants submitted that under no stretch of imagination, a case u/s 307 of the IPC is made out and at best a case u/s 323 and that of 324 IPC is made out as against the appellants. In support of this contention is it was submitted that the injuries found on the body of the informant and that of his two brothers were not dangerous and all the injuries caused by lathi or sharp-cutting weapon were found to be simple. Moreover, the accused persons had no intention to commit murder of the informant and his two brothers because there was no intervening circumstances which prevented the accused persons from commission of murder of the informant and his two brothers. On scrutiny of the evidence on the record also and that of the evidence of the doctors, it can be said that the injuries found on the body of the informant and his two brother were all simple in nature and, thus, the injuries in any view of the matter were not dangerous and further the accused persons had no intention to commit their murder and only act was to some force to take possession of the room.

13. In that view of the matter, the conviction of these appellants u/s 307/149 IPC is unwarranted and unjustified and accordingly hold all the appellants guilty under Sections 323/324 IPC read with Sections 149 I.P.C. Regarding sentence, it was contended that all the appellants are not criminal rather they are all agnates of the informant and this occurrence took place all of a sudden regarding possession of a room which the appellants claim to be their ancestral. Further more, it was also contended that a counter case has also been instituted bearing, No./408/83 on behalf of the accused persons as against the informant and his family members in which the prosecution side of this case were acquitted and as such the substantive sentence appears to be excessive. From the record it is clear that all the appellants were not criminal; rather it is there first reported offence and the parties are agnates and living side by side and this occurrence

took place all of a sudden and further the occurrence took place regarding possession of a room which the appellants claim to be their ancestral house.

14. Considering all these facts, a substantive sentence is not necessary. Accordingly the substantive sentence as awarded by the tried court is hereby set aside and though the appellants are found guilty u/s 324 and 323 IPC read with Section 149 IPC, they are to be released on furnishing a bond of Rs. 2000/- each with one sureties of the like amount with a dear cut undertaking to maintain peace and good behaviour for a period of one year failing which they will be called upto receive the sentences u/s 360 of the Code of Criminal Procedure. It is further observed that so far as the appellant Shayama Sharma is concerned he is in Govt. service being a teacher and this occurrence of assault which took place all in a sudden regarding dispute of some lands between agnates so it will not be case of moral turpitude and as such after execution of bond as ordered above it will not be considered by the authorities concerned a stigma for taking any departmental action so far as this occurrence is concerned. Accordingly, this appeal is allowed in part with modification in sentence as indicated above.