

(2024) 04 PAT CK 0082

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 84 Of 2007

Naresh Sharma

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 24-04-2024

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 325, 504

Citation : (2024) 04 PAT CK 0082

Hon'ble Judges : Sunil Kumar Panwar, J

Bench : Single Bench

Advocate : Vipul Sinha, M. Dayal

Final Decision : Dismissed

Judgement

1. Heard Mr. Vipul Sinha, learned Amicus Curiae on behalf of the appellants and Mr. Mukeshwar Dayal, learned APP appearing for the State.

2. This appeal has been preferred by the appellants being aggrieved and dissatisfied with the judgment of conviction, dated 20th of December, 2006 order of sentence, dated 21st of December, 2006 passed by the learned Additional District and Sessions Judge, F.T.C. III, Khagaria in Sessions Trial No. 234/2003, arising out of Gogari (Maheshkhut) P.S. Case No. 210 of 2002, whereby and where-under appellants are convicted under Section 325/34 of Indian Penal Code and Section 504/34 of the Indian Penal Code and awarded sentence to undergo rigorous imprisonment of 3 years each and fine of Rs. 1,000/- each for the offence punishable u/s 325/34 of the Indian Penal Code and rigorous imprisonment of three months each for the offence u/s 504/34 of the Indian Penal Code.

3. The Prosecution case is based on the Fardbyan of informant, F.I.R. is that informant Kailash Sharma stated there on 3.11.2002 at about 8:30 A.M., he parked his Rickshaw on his own land and in the meantime, the appellants, armed with lathi came there and started abusing the informant. When the informant

forbade them from abusing, they assaulted the informant with lathi with intention to kill. Rambalak Sharma assaulted the informant with lathi due to which he sustained head injury and fell on ground. Naresh Sharma also assaulted him on his left hand due to which his hand got fractured. When the informant raised noise, his son Hareram Sharma came there for his rescue, he was also assaulted by the appellants. Some villagers came there and save the informant and his son.

4. On the basis of fardbyan formal F.I.R. was drawn up and Gogari (Maheshkhut) P.S. case No. 210/02 was registered against all the accused persons u/s 307, 325/34, 504/34 of Indian Penal Code.

5. After completion of investigation, charge-sheet was submitted against the appellants the case was committed to the Court of Sessions for trial and disposal.

6. Defense of accused was total denial of the charges and false implication with concocted allegations due to previous enmity between the parties.

7. The point of consideration in this appeal is whether the prosecution is able to prove the charges levelled against the appellants/ accused persons beyond reasonable doubt or not.

8. During trial altogether 6 witnesses were adduced on behalf of the prosecution.

9. P.W. 1 Hareram Sharma, P.W. 3 Kala Devi (informant's wife), are interested witnesses.

10. P.W. 2 Ranvir Yadav did not support the prosecution version and he has been declared hostile. P.W. 4 is informant himself. He has deposed that appellants have assaulted him by means of Lathi due to which he sustained head injuries and also injury on his left hand.

11. P.W. 5. Dr. Bijendra Kumar Vidyarthi who has examine the injury of informant and his son.

12. P.W. 6 Sudhir Kumar Singh is a formal witness who have proved the F.I.R, Fardbayan and case diary.

13. The defence has also examined two witnesses namely Kailu Sharma (D.W. 1) and Rakesh Kumar (D.W. 2) who have deposed that there is previous enmity between the parties.

14. On behalf of the appellants it is submitted by learned Amicus Curiae that that the trial Court passed the judgment of conviction and order of sentence which are bad in law and facts. There is major contradiction in the evidence of the prosecution witnesses which create doubt on the genuineness of the case. The appellants are not concerned for the injuries sustained by P.W. 1 and P.W. 4. Hence, the appeal is fit to be allowed and impugned order is fit to be set aside.

15. In contra, learned A.P.P. appearing on behalf of the State submitted that the impugned judgment of conviction and order of sentence is based on cogent and

consistent evidence. The impugned judgment is sustainable and there is no need for interference by way of this appeal.

16. I have gone through the entire prosecution oral and documentary evidence available on record and also considered the rival submissions made on behalf of the Amicus Curiae as well as learned A.P.P. appearing for the State. I have also peruse the impugned judgment. In this case, the accused persons abused the informant and on denial they assaulted the informant and his son, due to which the injured (informant (P.W. 4, namely, Kailash Sharma and his son (P.W. 1, namely, Hareram Sharma)) sustained injuries. Doctor also corroborated the prosecution case and proved the injury report. He has found grievous injury assaulted by means of Lathis. Informant sustained injuries on his head and on other parts of the body. He has also sustained fracture injury and informant's son also sustained injury. Learned trial Court has not convicted the accused/appellants under Section 307 and convicted under Sections 325/34, 504/34 of the Indian Penal code. The impugned judgment of conviction is based on consistent and cogent evidence by way of oral evidence adduced by the prosecution and medical report which proved by the Doctor as PW 5. Except minor contradictions nothing major surfaced to disbelieve the prosecution case. The defense tried to subject the prosecution witnesses by way of lengthy cross-examination but not succeed. I find no reason to interfere in the impugned judgment of conviction. Learned trial Court after considering the available evidence on record, the judgment of conviction has been passed.

17. As far as concerned order of sentence which awarded to the appellants/accused persons is required for modification. Hence, this Court is of this view that end of justice is sufficiently made if sentence imposed upon the appellants is modified and reduced to the period which the appellants have already gone into the custody because the appellants/accused persons are facing the ordeal of trial since the initiation of this case till now. This Cr. Appeal has been filed in the year 2007. From perusal of the record, it is apparent that the accused/appellants remained in judicial custody. The sentence imposed upon the appellants is therefore modified and reduced to the extent of the period already undergone by them in judicial custody.

18. With this modification in the order of sentence, this appeal is hereby dismissed.

19. Mr. Vipul Sinha, learned Amicus Curiae was appointed to represent the appellants/accused. I put on record the words of appreciation for able assistance rendered by him in arriving this Court at the proper conclusion in deciding the instant appeal. The Patna High Court Legal Services Committee is hereby directed to pay a sum of Rs. 6,000/- (rupees six thousand only) to Mr. Vipul Sinha, towards his professional fee.