
(1998) 05 PAT CK 0017
In the Patna High Court
Case No : Criminal Revision No. 48 of 1997

Nasirhuddin Ahmad and Others	Vs	APPELLANT
The State of Bihar		RESPONDENT

Date of Decision : 15-05-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324

Citation : (1998) 3 PLJR 93

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Y.V. Giri and S.K. Giri, for the Appellant; Amarendra Prasad, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—This criminal revision is directed against the judgment and order dated 13.1.1997 passed by 2nd Addl. Sessions Judge, Gopalganj in S.T. No. 119/1989. By the impugned judgment, the trial court, though acquitting the Petitioners of the relatively more serious, charge of the attempted murder, convicted Petitioner No. 1 u/s 324 of the Penal Code and sentenced him to undergo rigorous imprisonment for three months; Petitioners 2 to 6 were convicted u/s 323 of the Penal Code and were sentenced to undergo rigorous imprisonment for one month.

2. The Petitioners and the informant are adjacent neighbors and there is admittedly a long standing and bitter dispute between the two parties concerning a piece of Chair Mazrua land lying in front of their houses. It is also admitted that several litigations concerning the land was pending between them from before. The informant, however, claimed that the land was settled in his favour by the erstwhile Hathwa Raj and after the vesting of the Zamindari, his right over the disputed land was recognized by the State of Bihar and his name was accordingly entered in Register II. The Petitioners refuted his claim of settlement of the disputed land and maintained that that piece of land was used by them for

ingress into and egress from their house. They claimed the right of easement over the disputed land. On 10.2.1988, the date of occurrence the informant was digging a Nala over the land and according to him the Petitioners went there armed with Pharsa, Lathi and gun and tried to stop him from digging the Nala. The informant asserted his right over the land whereupon the Petitioners assaulted him with their respective weapons, as a result of which he sustained injuries.

3. The prosecution in support of its case examined nine witnesses and also brought on record some documents including the injury report of the informant.

4. According to the defence it was the informant who was the aggressor. The further case of the defence was that in the same occurrence some of the Petitioners had sustained injuries for which another case was instituted at their instance. The defence also examined some witnesses and produced the injury reports of some of the Petitioners before the trial court.

5. On an appraisal of the evidences, the trial court found and held that there was truth in the prosecution case that the informant was assaulted by the Petitioners. However, having regard to the nature of the injuries suffered by him the trial court convicted Petitioner No. 1 u/s 324 and the rest of the Petitioners u/s 323 of the Penal Code.

6. Mr. Y.V. Giri, learned Counsel for the Petitioners submitted that the learned trial court had erred in brushing aside the injuries sustained by some of the Petitioners as of no consequence. According to Mr. Giri, the prosecution's failure to explain the injuries sustained by some of the Petitioners made its case liable to be rejected.

7. From a perusal of the judgment coming under revision, it appears that the fact that some of the Petitioners had received some injuries was not in dispute. In fact, the trial court noticed the injuries sustained by the Petitioners in para 17 of the judgment. However, relying upon a decision of the Supreme Court in Lakshmi Singh and Others Vs. State of Bihar, , the trial court observed that the Supreme Court had laid down the principle that fouler the crime higher would be the degree of proof. Proceeding from this axiom the trial court went on to observe that since this case involved relatively minor offences under Sections 324 and 323 etc., the degree of proof required should not be so high and it was, therefore, not incumbent upon the prosecution to explain all the injuries sustained by the Petitioners.

8. In my view, the trial court appears to have misdirected itself. The axiom referred to by the learned trial court does not seem to have any application in the facts of this case. What, however, cannot be lost from sight is the fact that in the same occurrence a number of Petitioners had sustained injuries which were more or less of the same nature as the injuries suffered by the informant himself. In case, therefore, the injuries sustained by the Petitioners were not explained by the informant and if he tried to make it appear before the court that

the assault was wholly one sided, it is evident that the true facts were not being presented before the court. This would make the entire prosecution liable to be viewed with suspicion. In such a situation the Petitioners would be entitled to the benefit of a reasonable doubt. I accordingly extend that benefit to the Petitioners and hold them entitled to acquittal.

9. The judgment and order coming under revision is set aside. In the result, this application is allowed and the Petitioners are discharged from the liabilities of their bail bonds.