

(2002) 02 PAT CK 0138

In the Patna High Court

Case No : Criminal Appeal No. 7 of 1991 (S.J.)

Nawal Kishore Pandey and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 15-02-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 324

Citation : (2002) 4 PLJR 801

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Advocate : Soni Shrivastava, Amicus Curiae, for the Appellant; Ashwini Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

I.P. Singh, J.—Appellants, Nawal Kishore Pandey, Nand Kishore Pandey and Braj Kishore Pandey have been convicted under Section 324 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for three years each. Appellants, namely, Shyam Kishore Pandey, Raj Kishore Pandey and Sunil Kumar have been convicted u/s 324/149 of the Indian Penal Code have been sentenced to undergo rigorous imprisonment for three years.

2. The prosecution case, in brief, is that on 18.12.1985 at about 9 A.M. the informant Nawal Kishore Sharma (P.W. 6) along with Sanjay Kumar (P.W. 4) and Ram Sewak Singh (P.W.3) was demolishing the old boundary wall belonging to Ram Sewak Singh. In the meantime all the Appellants armed with deadly weapons like Tangi, Khanti etc. came there. It has been further alleged that on the order of Raj Kishore Sharma, Appellant! Nand Kishore Pandey gave a Tangi blow on the head of Sanjay Kumar on which he fell down. Thereupon, Appellant Nand Kishore Pandey gave several blow from back of the Tangi on his chest and other parts of his body. It has been further alleged that the Appellant, Nawal Kishore Pandey assaulted Ram Sewak Singh with Khanti on his head on which he also fell down. The informant tried to save him upon which Appellant Braj Kishore

Pandey assaulted him with Khanti on his head. He also fell down. Thereafter all the Appellants, assaulted him on his hand, back etc with bricks and back portion of Khanti. It has been further alleged that Mukti Prasad Singh (P.W. 2), Ram Chandra Singh (P.W. 5) and others were present at the time of the occurrence and when they attempted to save them, Appellant Sunil Kumar threatened them with pistol. It has been further alleged that thereafter the villagers brought all the injured to Mokameh Hospital for treatment. Thereafter the informant gave a written report before the police. On the basis of the written report a formal F.I.R. was drawn up. After completion of investigations the police submitted charge sheet. Thereafter the cognizance was taken and finally the trial concluded with the result as indicated above. Hence this appeal.

3. The Appellants pleaded not guilty and have stated that they have been falsely implicated in this case.

4. The prosecution in order to prove its case has examined altogether eight witnesses. P.W. 1 is Rajendra Singh. P.W. 2 is Mukti Prasad Singh. P.W. 3 is Ram Sewak Singh. P.W. 4 is Sanjay Kumar. P.W. 5 is Ram Chandra Prasad Singh. P.W. 6 is Nawal Kishore Sharma. P.W. 7 is M. Khan and P.W. 8 is Sheo Chandra Prasad Singh. P.Ws. 4, 5 and 6 are injured. P.W. 6 is informant. P.W. 8 is a formal witness.

5. P.W. 6, the informant, has fully supported the case of the prosecution as narrated in his fardbeyan. According to him on the alleged date and time of the occurrence, he was digging foundation alongwith two other injured, namely, Ram Sewak Singh and Sanjay Singh. These Appellants armed with Tangi, Khanti and country made pistol came at the spot. He has further, stated that on the order of Raj Kishore Sharma, Appellant and Kishore Pandey, assaulted Sanjay Singh with Tangi on his head. Appellant Nawal Kishore Pandey assaulted Ram Sewak Singh on his head with Khanti and Appellant Braj Kishore Pandey assaulted him on his head with Khanti. He has further stated that all the three injured fell down after receiving the injuries and thereafter all the Appellant also assaulted them with bricks etc. According to him when witnesses tried to save them Appellant Sunil Singh threatened them with pistol. He has further stated that the land over which the occurrence took place was in share of Ram Sewak Singh by virtue of partition but the Appellants who were Phuphera brothers, were laying false claim over the same.

6. P.Ws. 3 and 4 both the injured have also fully supported the version of the informant. According to them they alongwith P.W. 6 Nawal Kishore Sharma were digging foundation of their old house for giving new boundary wall. According to them the land was in their share. They have further stated that Appellant Nand Kishore Pandey assaulted Sanjay Singh with Tangi on his head. Appellant Nawal Kishore Pandey assaulted Ram Sewak Singh with Khanti on his head and Appellant Braj Kishore Pandey assaulted the informant with Khanti on his head.

7. P.Ws. 1, 2 and 5 are eye witnesses of the occurrence. They all have stated

that while injured persons were digging foundation of their land, the Appellants came and assaulted them in a manner alleged in the Fardbeyan. According to them on the order of Raj Kishore Pandey, Appellant Nand Kishore Pandey assaulted Ram Sewak Singh and Appellant Braj Kishore Pandey assaulted the informant with Khanti. They have also stated that when they tried to save them, the Appellant Sunil Kumar threatened them with pistol.

8. P.W. 7 is the I.O. of this case. He has stated that he visited the place of occurrence and prepared the memo of injuries and sent the injured to the Hospital. He visited the place of occurrence and has given the vivid description of the place of occurrence.

9. The defence has also examined four witnesses to prove the alibi. D.W. 1 is Basleshwar Ram. D.W. 2 is Dip Narain Bhagat. D.W. 3 is Ram Das Prasad and D.W. 4 is Sudhir Kumar Chaudhary.

10. The Court below has discussed the plea of alibi. The plea of alibi, however, was not disclosed either before the Investigating Officer or at the time of bail, as such the court below has not accepted the plea of alibi.

11. The witnesses are consistent and, corroborative that the Appellants have assaulted the injured witnesses causing injuries on their persons.

12. On the appreciation of the evidence of the witnesses the court below has rightly convicted the Appellants for the offence punishable under Sections 324 and 324/148 of the Indian Penal Code. I do not find any reason to interfere with the conviction of the Appellants.

13. Coming to the question of sentence the learned Counsel appearing on behalf of the Appellants that the occurrence took place in the year 1985 and since then the Appellants have been amply harassed and punished during the prolonged litigation. He has further submitted that there is no criminal antecedent and previous conviction against the Appellants, therefore, it requires consideration on the point of sentence.

14. Having regard to the submissions raised on behalf of the learned Counsel for the Appellants that the occurrence took place more than 15 years ago and the Appellants had gone through mental strain and financial crisis during the prolonged litigation now it will not be proper to send the Appellants in jail to serve out the sentence awarded by the court below. In my view, it would be expedient in the interest of justice if the Appellants are sentenced to pay a fine of Rs. 1,000/- each to be deposited within three months from the date of receipt/production of a copy of this order. It is made clear that the amount of fine, if and when realised from the Appellants, the same shall be equally distributed between Sanjay Kumar (P.W. 4), Ram Chandra Prasad Singh (P.W. 5) and Nawal Kishore Sharma (P.W. 6) by way of compensation.

15. With the aforesaid modification in the sentence this appeal is dismissed.