
(2002) 07 PAT CK 0124
In the Patna High Court
Case No : Criminal Appeal No. 273 of 1991

Rampati Chaurasia and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 05-07-2002

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 323, 324, 452

Citation : (2002) 3 BLJR 1937

Hon'ble Judges : B.N. P. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.N. P. Singh, J.—While all the appellants suffered conviction u/s 452 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for a term of four years, Ram Brat Prasad Chourasia suffered conviction also u/s 323 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for a term, of three months. Suresh Chourasia, Lakhan Mahto, Ram Pati Chourasia, Awadhesh Chourasia, Hari Chourasia, Schua Chourasia, Naresh Chourasia and Ram Prit Chourasia suffered conviction also u/s 324 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for three years each, Suresh Chourasia suffered conviction also u/s 27 of the Arms Act but for that, no sentence was shown to have been assigned in the judgment. All the sentences were, however, directed to run concurrently.

2. The factual matrix. In the night of 17th April, 1978, it is alleged that while Ram Jatan Chourasia, P.W. 5, was gossipings with his family members and also relations who had visited his house that night, about some land dispute which was pending with Lakhan Mahto, the appellants came variously armed and after breaking door planks got their access in the inner apartment of the house and assaulted house inmates including Vijay Chourasia, son-in-law of the informant and also Swarath Chourasia who had come to his house that night. The Police

Officer on receipt of information about some incident happening in the village, rushed there and recorded statement of Ram Swarath Prasad Chourasia (P.W. 6), pursuant to which investigation commenced and during investigation the police recorded statement of witnesses, visited place of occurrence, sent the injured to the doctor for clinically examination, secured injury reports and on conclusion of investigation, laid charge-sheet before the Court, In the eventual trial that commenced, the State examined altogether nine witnesses including the doctor who examined the injured, the Police Officer who carried out investigation of the incident the injured and also those who claimed to be present at the relevant time of the incident in the house.

3. The defence of the appellants before the Court below and also this Court had been denial of entire allegations and they ascribed false implication due to persisting land dispute with regard to six decimals of land, between the parties. Explicit defence of appellants was that it would appear from the objective finding of the Investigating Officer that the Police had rushed to the house of Ram Jatan Chourasia on receipt of information, where miscreants had assembled in his house with an object to commit some cognizable offence, and on these premises it is urged that it was the member of prosecution party who were aggressor. However, trial Court on consideration of the evidences placed on the record while negating plea of innocence of the appellants, recorded verdict of guilt finding them guilty and sentenced them in the manner stated above.

4. Threefold contentions were raised at bar on behalf of the appellants ostensibly to assail the finding recorded by the Court below and it is sought to be urged that it would appear from the evidence of the Investigating Officer that the Police had rushed to the place of occurrence on receipt of information about assemblance of the miscreants in the house of Ram Jatan Chourasia for commission of some cognizable offence and it is only in the process of resistance that the members of the prosecution party suffered injuries on their persons. The factum of their being no marks of violence at the place of occurrence or there being no evidence of breaking door planks, was also taken to be a ground to suspect the bona fide of the assertion made by the prosecution. The incoherent statement made by even injured, was also taken to be a ground to suspect their credibility. The other contentions raised at bar on behalf of the appellants was that even though there was no explicit evidence about Lakhan Mahto, Ram Pati Chourasia, Awadhesh Chourasia, Schida Chourasia and Ram Prit Chourasia to be assailants, they were made to suffer conviction u/s 324 of the Indian Penal Code. As for their conviction u/s 452 of the Indian Penal Code, it is urged that its addition was ornamental, only to attract the mischief of grave offence, and the last argument canvassed at bar on behalf of the appellants was that since the prosecution was launched against the appellants in the year 1978 and more than two decades have elapsed and appellants have suffered ordeal of protracted prosecution for about 24 years, the ends of justice would be met if the appellants instead of sentencing them to substantive imprisonment are sentenced to pay fine.

5. Though large number of persons have been arrayed as accused, on meticulous appreciation of evidences of the witnesses, I have noticed that against Awadhesh Prasad Chourasia, there was only one identification, and similar was the case with Hari Chourasia against whom there was identification of only two witnesses, though a number of witnesses were examined at trial, some of whom also claimed to be injured. We have the evidence of P.Ws. 2, 3, 4 and 6 who can be treated to be ocular witnesses to the incident, leaving evidences of P.Ws. 1 and 5 who did not claim to have witnessed assault on other persons. Some of the witnesses have been making omnibus accusation against the assailants about they assaulting the family members and the strangers who had come that night. There has been evidence of P.W. 2 suggesting Ram Pati Chourasia to be the assailant of Vijay Chourasia and Daimanti Devi. Against Ram Pati Chourasia, there has been evidence of P.W. 3 suggesting him to be the assailant of Swarath Chourasia and Daimanti Devi, the evidence of P.W. 6 suggesting him to be his assailant. Against Hari Prasad Chourasia and Ram Barat Chourasia, there has been evidence of P.W. 6 only suggesting them to be his assailants. The conclusion that would follow from appreciation of these evidences is that while against Ram Pati Chourasia, there has been evidence of six witnesses who claimed to be ocular, suggesting him to be the assailant of others, there has been evidence of only one witness suggesting Hari Prasad Chourasia and Ram Barat Chourasia to be the assailant of Ram Swarath Chourasia. Though against appellant Hari Chourasia, there has been solitary evidence, the doctor who clinically examined Ram Swarath Chourasia noticed corresponding injury on his person of which Hari Chourasia was suggested to be the author. Similar was the case with Ram Barat Prasad Chourasia also in whose case though there was solitary testimony of P.W. 6, the doctor who clinically examined him, noticed corresponding injury on his person of which Ram Barat Prasad Chourasia was suggested to be the author.

6. Though Suresh Chourasia held pistol in his hand, there is no evidence for use of any of the house inmates. Even the witnesses admitted in candid terms about land dispute with regard to six decimals of land pending between Ram Jatan Chourasia and Lakhan Mahto. My attention has been drawn by earned Counsel for the appellants towards the age of some of the appellants, and it is urged that some of them must be more that 60 years or 70 years by this time, the prosecution was launched against the appellants in the year 1978 and admittedly more than two decades have elapsed. This fact cannot be lost sight of that none of the injured sustained any grievous injury on their persons, as has been found by the doctor. The appellants suffered ordeal of protracted prosecution for 24 years and in that view of the matter, as it is brought to my notice that the appellants have remained in custody for some period it is directed that all the appellants, except Ram Pati Chourasia be released on probation of their good conduct on their entering into a bond with sureties, as directed by the Court below with a direction to appear and receive sentence when called upon during a period of one year, and in the meantime to keep the peace and be of good

behaviour. So far the case of Ram Pati Chourasia is concerned, he is sentenced to the period already undergone by him and in addition, he is sentenced to pay a fine of Rs. 1,000 (one thousand), in default of which he would suffer rigorous imprisonment for a term of six months. The fine must be deposited with the Court below within a period of two months from the date of receipt/production of a copy of this order. However, half of the fine shall be payable to the information Ram Jatan Chourasia whose family suffered injury on their persons, and in case he is not alive, to his successor, and with these modification, the appeal is dismissed.