
(2006) 05 PAT CK 0065

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 118 of 1992

Shekh Darud, Shekh Dowa and Shekh Jahangir

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360
Penal Code, 1860 (IPC) — Section 147, 148, 307, 323, 324

Citation : (2006) 05 PAT CK 0065

Hon'ble Judges : Chandra Mohan Prasad, J

Bench : Single Bench

Advocate : Bashistha Narayn Mishra, Sachida Nand Rai, for the Appellant; Satya Narain Pd. , Assistant Public Prosecutor, for the Respondent

Judgement

Chandra Mohan Prasad, J.—This appeal is directed against the judgment dated 11.6.1992 of the 3rd Additional Sessions Judge, West Champaran (Bettiah) whereby each of the three appellants has been convicted under Sections 307 and 148 of the Indian Penal Code and respectively sentenced to undergo R.I. for five years and three years. Each of the three appellants has also been sentenced u/s 307 of the Indian Penal Code of monetary fine of Rs. 3000/-and in default of payment of fine to undergo R.I. for six months.

2. It may be mentioned here that originally there were five accused persons including Shekh Alamgir and Shekh Bhikhari in the case and they were also tried and convicted under Sections 147 and 323 of the Indian Penal Code and were sentenced to execute bonds for two years u/s 360 Cr.P.C. for maintaining peace and being of good behaviour during the period. These two accused namely Shekh Alamgir and Shekh Bhikhari did not file any appeal against the conviction and sentence passed as against them.

3. The prosecution commenced with the fardbeyan (Ext.2) wherein Informant Shekh Mazid (P.W.8) alleged that the appellants and accused Shekh Alamgir and Shekh Bhikhari being variously armed with farsa, bhala and lathi came over the

land at his Darwaja and forcibly started fixing their Nad and Khuta there. When the informant and his two brothers Shekh Sani (P.W.5) and Shekh Ghani (P.W.7) protested to it the accused persons surrounded them and Shekh Darud (appellant) assaulted Shekh Gani (P.W.7) with farsa and Alamgir and Bhikhari assaulted him (P.W.7) with lathi. It was further alleged that Shekh Dowa (appellant) assaulted Shekh Sani (P.W.5) with bhala Shekh Jahangir assaulted with Farsa and Shekh Alamgir and Shekh Bhikhari assaulted him (P.W.5) with lathi with intention to kill. The P.W.6, P.W.4, P.W.3 and P.W.1 were cited as witnesses to the occurrence.

4. On the basis of the fardbeyan the first information report (Ext.2) was lodged at Bettiah Sadar P.S. and on completion of investigation charge sheet was submitted and the accused were committed to the court of sessions and they were accordingly tried and were convicted and sentenced as above.

5. As many as ten witnesses were examined by the prosecution. P.W.8 Shekh Mazid is the informant himself. P.W.5 Shekh Sani and P.W.7 Shekh Gani are the Injured persons. P.W.1 Shekh Mantaza, P.W.2 Shekh Jalil, P.W.4 Shekh Jainuddin and P.W.6 Shekh Mustafa are the witnesses to the occurrence. P.W.9 Kamendra Kumar is the I.O. of this case. P.W.10 is Dr. Rameshwar Pd. who had examined the injured P.Ws. 5 and 7.

6. The doctor P.W.10 has deposed that on 2.10.1987 at 7.30 P.M. he had examined Shekh Gani (P.W.7) and found the following injuries:

(i) Sharp cutting injury 2" ? 1/2" ? muscle deep left perital region of head.

(ii) Swelling 2" ? 2" on back of the chest.

(iii) Swelling 2" ? 2" on left leg.

All the injuries were simple in nature and injury No. 1 was caused by sharp cutting instrument and it was dangerous for life due to loss of the blood, Injury Nos. (ii) and (iii) were caused by hard and blunt substance.

7. The doctor has further deposed that he had examined Shekh Sani (P.W.5) and found the following injuries on him.

(i) Swelling 2" ? 2" dorsum to the left hand fracture in lower end of 2nd metacarpal bone.

(ii) Lacerated injury 1/2" ? 1/2" muscle deep frontal region of head.

(iii) Sharp cutting injury 2" ? 1/2" muscle deep frontal region of head. Injury No. 1 was grievous in nature and caused by hard and blunt substance. Injury No. 2 was simple in nature and caused by hard blunt substance. Injury No. (iii) was simple in nature and caused by sharp cutting weapons. There was loss of blood. Injury reports were respectively proved which is Ext.6 and 6/1.

8. P.W.9 (I.O.) deposed that he had recorded the fardbeyan (Ext.2) on the statement of the informant. He deposed that he had prepared the injury report

(Ext. 4 and 4/1) of the injured Shekh Sani and Shekh Gani and had sent them to the doctor for examination of their injury. He further deposed that he had inspected the P.O. land which is situated in front of the house of the informant. He has further deposed that adjacent to that land towards west at a distance of 3 yards he found newly fixed Nad and Khuta.

9. The informant (P.W.8) deposed that when he and his brothers Shekh Gani and Shekh Sani protested to the fixing of khuta and Nad at his Darwaja Shekh Darud assaulted with farsa on the head of Shekh Gani and that Shekh Alamgir and Shekh Bhikhari assaulted Shekh Gani with lathi. He further deposed that Shekh Dowa assaulted Shekh Sani with bhala hitting on the left hand of Shekh Sani and that Jahangir assaulted Shekh Sani with farsa on his forehead. He also deposed that Shekh Alamgir and Bhikhari had assaulted Shekh Sani with lathi. The informant states about the assault of Shekh Gani and Shekh Sani but he does not say in his evidence that the assault was caused with intention or under attempt to kill.

10 The injured Shekh Sani (P.W.5) deposed on similar lines that Jahangir assaulted him with farsa, Shekh Darud Assaulted with bhala and Shekh Bhikhari and Alamgir Assaulted him with lathi. He further deposed that Shekh Darud had assaulted Shekh Gani (P.W.7) with farsa on head and Bhikhari and Alamgir had assaulted him with lathi. He further deposed that he and accused persons belong to the same Khandan. The another injured witness Shekh Gam (P.W.7) deposed similarly that Shekh Darud had assaulted him with farsa on his head and Bhikhari and Jahagir had assaulted him with lathi. He further deposed that Shekh Dowa had assaulted Shekh Sani with bhala on his hand and that Shekh Bhikhari and Alamgir had assaulted him (Shekh Sani) with lathi. He also deposed that Shekh Jahagir had assaulted Shekh Sani with farsa on his head.

11. P.W.1, P.W.2, P.W.4, and P.W.5 who were the witnesses have deposed on similar lines that Shekh Darud had assaulted Shekh Gani on head with farsa and Shekh Alamgir and Shekh Bhikhari had assaulted him (Gani) with lathi. They have also deposed that Shekh Jahagir had assaulted Shekh Sani with farsa on head and that Shekh Dowa had assaulted him (Sani) with bhala and Shekh Bhikhari and Alamgir had assaulted him (Shekh Sani) with lathi.

12. During hearing the learned Counsel for the appellant pointed out that in the first information report the informant states that the assault had been caused with intention to kill but in the evidence neither the informant nor the injured or any other witnesses have deposed that the assaults were given with intention or under any attempt to kill. It was further submitted that the injured Shekh Sani and Shekh Gani are said to have been assaulted with farsa causing injury on their head but the injuries have been found to be simple in nature. It was also argued that in the evidence of the prosecution witnesses there is nothing to show that there was any repetition of blow at the hands of the appellants Shekh Darud and Dowa who are said to have caused farsa injury on the head of P.W.5 and P.W.7. Thus under these circumstances I do not find it a case of assault with

intention or under attempt to commit murder. So far the assault and injury caused at the hands of the appellant Shekh Darud and Shekh Jahagir are concerned, I find it a case u/s 324 of the Indian Penal Code. Therefore, these two appellants can be convicted u/s 324 of the Indian Penal Code.

13. In such view of the matters the conviction of these two appellants u/s 307 of the Indian Penal Code is reduced to conviction u/s 324 of the Indian Penal Code and so far the question of sentence is concerned, in the facts and circumstances of the case, I feel that sentence of one year of R.I. will meet the ends of justice. Hence the two appellants namely Shekh Darud and Jahagir are sentenced u/s 324 of the Indian Penal Code to under-go R.I. for a period of one year. Prosecution has also been able to prove that these two appellants were members of the unlawful assembly and in prosecution of the common object they it caused the assault and injury, therefore, their conviction u/s 148 of the Indian Penal Code is upheld. But, so far the sentence u/s 148 Indian Penal Code is concerned, I feel that sentence of six months of R.I. will meet the ends of justice. Hence the sentence is reduced to the sentence of six months R.I. u/s 148 of, the Indian Penal Code.

14. So far the appellant Shekh Dowa is concerned, I find that it is the categorical case of the prosecution that this appellant had assaulted Shekh Sani with bhala causing injury on his hand. The prosecution witness including the injured have also stated like this. The further case of the prosecution was that Shekh Bhikhari and Almgir had also assaulted Shekh Sani with lathi. Bhala is a sharp pointed weapon which causes punctured injury. On considering the medical evidence with regard to the injury on the injured Shekh Sani I find that, only swelling and lacerated injury on the left hand of the injured (Shekh Sani) caused by hard and blunt substance was found. Any kind of sharp cut and punctured injury was not found on the hand of this witness. Therefore, in these circumstances the prosecution story that appellant Shekh Dowa had assaulted and caused injury to Shekh Sani with Bhala on his hand is falsified. Therefore, I further find that the charge u/s 307 of the Indian Penal Code as against appellant Shekh Dowa is not proved beyond doubt. Hence the appellant Shekha Dowa is entitled to be acquitted of this charge. In such view of the matters appellant Shekh Dowa is acquitted of the charge u/s 307 of the Indian Penal Code. Further due to acquittal of this appellant (Shekh Dowa) u/s 307 of the Indian Penal Code I find that the prosecution story of this appellant participating in the unlawful assembly also becomes doubtful and, therefore, this appellant is entitled to benefit of doubt, and thus giving him benefit of doubt this appellant is acquitted of the charge u/s 148 of the Indian Penal Code. Thus the appellant Shekh Dowa is acquitted of both the charges under Sections 307 and 148 of the Indian Penal Code.

15. In the result the conviction and sentence with regard to the appellant Shekh Dowa as passed by the learned 3rd Additional Sessions Judge is hereby set aside and the appeal in so far as it relates to the appellant Shekh Dowa is hereby

allowed. He is discharged from the liabilities of his bail bond.

15. So far the appellants Shekh Darud and Shekh Jahagir are concerned, their appeal is partly allowed with modification in conviction and sentence as indicated above.