

(2007) 05 PAT CK 0128

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 47 of 1993

Sk. Safayat and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 24-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Penal Code, 1860 (IPC) — Section 323, 324

Citation : (2007) PLJR 517

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

Bench : Single Bench

**Advocate : Bashishtha Narayan Mishra and Brijkishore Mishra, for the Appellant;
Dilip Kumar Sinha, for the Respondent**

Final Decision : Dismissed

Judgement

I.P. Singh, J.—Appellant Shekh Gayasuddin has been convicted u/s 323 I.P.C. and was sentenced to pay a fine of Rs. 500/- in default R.I. for six months for causing hurt to Sk. Attiullah, Sk. Abdul Gaffar, Sk. Saheb Hussain and Noor Jahan Khatoon. Appellant Shekh Gaffar was also convicted u/s 323 I.P.C. and was sentenced to pay a fine of Rs. 500/- in default, R.I. for six months for causing hurt to Sk. Attiullah, Sk. Abdul Gaffar, Sk. Saheb Hussain and Noor Jahan Khatoon. Appellant Shekh Safayat was convicted u/s 324 I.P.C. and was sentenced to pay a fine of Rs. 1000/- in default R.I. for one year for causing injury to Sk. Attiullah and Sk. Saheb Hussain. The appellant Shekh Anwar was also convicted u/s 324 I.P.C. and was sentenced to pay a fine of Rs. 1000/- in default R.I. for one year for causing hurt to Sk. Attiullah, Sk. Gaffar and Saheb Hussain. The appellant Shekh Rawayat was convicted u/s 324 IPC and was sentenced to pay a fine of Rs. 1000/- in default R.I. for one year for causing hurt to Sk. Abdul Gaffar. The prosecution case, in short, is that on 15.8.1986 in the morning at 7 O'clock all the appellants armed with farsa, garasa, bhala and lathi came at the darwaja of Sk. Atiullah and thereafter Sk. Safayat ordered to kilt him. Thereupon the accused Sk. Saheb Hussain gave farsa blow on his head. Sk.

Gayasuddin, Sk. Anwar, Sk. Gaffar fractured the leg of Sk. Saheb Hussain. It has further been stated that Sk. Abdul Gaffar, Sk. Atiullah, Sk. Safayat, Sk. Gayasuddin, Sk. Anwar, Sk. Rawayat, Sk. Gaffar also assaulted with bhala, garasa, lathi on the head of informant Abdul Gaffar and P.W. 1 Atiullah and thereafter Sk. Safayat and Sk. Anwar came armed with Nalkatti gun and threatened if you will go to THANA then you will be shot dead. The villagers came and saved them. It has been stated that the occurrence took place at his darwaja and the appellants entered into their house and assaulted them. Further on the written report of the informant Sk. Abdul Gaffar First Information Report was lodged at 8.45 A.M. After completion of investigation charge-sheet was submitted against the accused persons. Accordingly, cognizance was taken and case was committed to the Court of Sessions.

2. The appellants pleaded not guilty and have stated that they have falsely been implicated in this case due to land dispute.

3. The prosecution, in support of its case, examined altogether 8 witnesses.

4. P.W. 1 is Shekh Atiullah, brother of the informant, injured. P.W. 2 is Sk. Saheb Hussain. P.W. 3 is Langat Sah. P.W. 4 is Sk. Qasem. P.W. 5 is Sk. Quamurn Nissa. P.W. 6 is Noor Jahan Khatton. P.W. 7 is Abdul Gaffar, the informant of this case and P.W. 8 is Narsingh Narayan Sharma, the Investigating Officer of this case. He is a formal witness and has proved F.I.R.

5. The defence has also examined one defence witness Braj Kishore Prasad.

6. P.W. 7 the informant Abdul Gaffar has fully supported the case of prosecution. He has stated that Shekh Atiullah was repairing radio at his darwaja at 7 O'clock in the morning. The appellants came at his darwaja and appellant Sk. Safayat was having farsa Sk. Anwar was armed with farsa, Sk. Rawayat was having garasa, Sk. Gayasuddin and Sk. Gaffar were having lathi in their hands. According to him Sk. Safayat assaulted Atiullah with farsa and he fell down. Thereafter Sk. Anwar also gave farsa blow which caused injury on his cheek. Sk. Gaffar and Gayasuddin also assaulted him with lathi. He has stated that he saw the occurrence and as soon as he came out from his house Sk. Anwar gave him farsa blow. He fled away towards his darwaja and there he fell down. Sk. Anwar again dragged him out and Sk. Rawayat gave garasa blow on his shoulder. He has further stated that in the meantime, his elder brother Shekh Saheb Hussain came there and Shekh Safayat gave a farsa blow on his head also. He fell down and Shekh Anwar broke his right leg with farsa. According to him Shekh Gayasuddin and Shekh Gaffar also assaulted him with lathi. He has further stated that when Noor Jahan daughter of Saheb Hussain came to rescue she was also assaulted by Gayasuddin and Anwar. In the meantime, the villagers came and they driven out the miscreants. According to him all the four injured were treated in the hospital. He has stated that he gave his written statement (Ext. 1) on which a formal F.I.R. was drawn up. However, in his cross-examination he has accepted that there was a counter case. According to him there was a dispute

over the piece of land for last 13 years and there were also cases with respect to that land.

7. P.W. 1 Shekh Atiullah the brother of the informant Abdul Gaffar has also stated that while he was repairing the radio all the appellants came and they were uttering that he would be killed since he had lodged a case u/s 145 Cr. P.C. against them. He has also stated that the accused Safayat gave a farsa blow on his head. He also gave a blow on his neck but it could only injured his cheek. According to him two accused persons, namely, Shekh Gayasuddin and Shekh Gaffar assaulted him with lathi. According to him his brother Abdul Gaffar was also assaulted by the accused persons. According to him Shekh Saheb Hussain and Noor Jahan were also assaulted by the accused persons.

8. P.Ws. 3, 4, 5 & 6 have also corroborated the version of P.Ws. 1 & 7.

9. P.W. 8 Narsingh Narayan Sharma is the Investigating Officer of this case. He has stated that on the day of occurrence the informant alongwith other injured came to Police Station and gave their written report on which a formal F.I.R. was lodged. He took up investigation and recorded the statement of the witnesses and also inspected the place of occurrence. He has given full description of the place of occurrence. According to him he did not find any specific sign of the occurrence but he found injuries on the person of the injured. Thereafter he submitted charge-sheet on 3.8.1986.

10. Learned counsel for the appellants has submitted that he will argue only on the question of sentence as the occurrence took place 21 years back and the appellants have been sufficiently harassed and punished during the prolong litigation. Moreover they have also remained in custody for sometime, as such some lenient view may be taken while awarding the sentence to the appellants.

11. Considering the submissions and in the facts and circumstances of the case, I am of the view that it will be expedient in the interest of justice if the sentences of the appellants are reduced to the period they have already undergone in jail. With the aforesaid modification in the sentence this appeal is dismissed.