

(1996) 04 PAT CK 0023

In the Patna High Court

Case No : Government Appeal No. 1 of 1990 (R)

State of Bihar

APPELLANT

Vs

Hirdayanand Sharma and Others

RESPONDENT

Date of Decision : 30-04-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 307

Citation : (1996) 2 BLJR 1360

Hon'ble Judges : Loknath Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Loknath Prasad, J.—This Government appeal has been preferred against the judgment of acquittal recorded in Sessions Trial No. 408/83 by Sri J. Tigga, 7th Addl. Sessions Judge, Palamau through which all the respondents who were figuring as accused in the Sessions Trial were acquitted.

2. The prosecution Case, in short, is that the informant has alleged that there was dispute in respect of some Lands of village Lumba within Bishrampur P.S. between the informant and his against and so on 19.8.82 Anchal Amit of the Government came for measurement to which his co-sharer pretested. Again on 20.8.82, at about 8.30 a.m. in the morning, his agnates Hridayanand Sharma and others began to quarrel regarding the measurement of the lands by Amin and immediately after that Hridayanand Sharma brought a garassa from his house; whereas Raj Kumar Sharma and Radhe Shyam Sharma Janardart Sharma brought lathi and Hridayanand Sharma gave a garassa blow on the head of the father of the informant due to which he fell on the ground and when the informant Shayama Sharma intervened, then he was also assaulted by lathi by Raj Kumar and Radheyshyam. It has also been alleged that immediately after that Mahendra Sharma, Nagendra Sharma and some others as named in the FIR came and they again instigated the aforesaid accused persons to assault but in the meantime some villagers came and then the accused persons left the place.

Immediately after the occurrence, the informant lodged information by giving a fardayan at Bishrampur P.S. on 20.8.82 at about 1 p.m. and on that basis this case was instituted. Then the injured, that is the informant and his father were taken to the hospital where they were treated by a doctor. The police after investigating the case submitted charge sheet as against the respondents here.

3. The Case was committed to the court of sessions and the trial Judge Sri Jiwan Tigga framed charges under Sections 307 and 148 IPC as against all the respondents and the accused claimed themselves innocent and denied to have taken part in the occurrence.

4. On the other hand, it is the defence of the accused persons in the court below that actually on the same date and time, the informant of this case and his men came to the house of the accused Radheyshyam, Janaradan and wanted to take forcible possession of a room and had assaulted Janardan and his brother. For that also a criminal case was instituted which has resulted in conviction of the informant and others of this case in S.Tr. 377/83 u/s 307 read with Section 149 IPC and only to make out a defence by way of counter blast, this false counter case has been instituted.

5. Being aggrieved by the orders of acquittal by the trial judge, the Government has preferred this appeal mainly on the ground that on similar evidence in the counter case, the conviction of the informant of this case and others were recorded by the same trial Judge and though was sufficient evidence including the testimony doctor, still the trial court erred in receding an order for acquittal.

6. Now the question for consideration is if at all the respondent of this case who had figured as an accused in the sessions case actually had taken part in this occurrence and caused justice to the informant and his father as alleged.

7. To prove the case in the trial court on behalf of the prosecution, only six witnesses were examined and out of them P.W. 1 Ramjanam Sharma and P.W. 4 Mithilesh Kumar Sharma are the tendered witnesses; whereas P.W. 2 Murlidhar Sharma, the brother of the informant and P.W. 3 is Shyama Sharma who is the informant in this case and P.W. 6 is the doctor who examined the injured. So on the record only there is evidence of P.W. 2 and 3 and that of the doctor to substantiate the allegation. P.W. 2 and have stated that on the date of occurrence, that is, 20.8.82 at about 8.30 or so. first of all Hridayanand Sharma, Raj Kumar and Janaradan came and there was altercation between them and the informant regarding the measurement of land by Ainin and after that Hridayanand Sharma came with a garassa and Raj Kumar and Radheyshyam Sharma and Janardan came with lathi and Hridayanand gave a garassa blow on the head of his father namely, Ram Charitar and Shyama P.W. 3 the informant, when intervened then he too was assaulted on the head by Raj Kumar and Radheshyam and Janardan by lathi. It is also the evidence of these witnesses that subsequently other accused persons came after the occurrence, but they had not assaulted any of the P.Ws. But simply instigated the accused persons to

assault them. But in the meantime, the villagers came and all the accused persons escaped away.

8. No-doubt from the evidence of the doctor who has figured as P.W. 6 it can be said that he examined the father of the informant, namely, Ram Charitar Sharma on 20.8.82 at 6.10 p.m. and found an incised wound on the head and also a fracture and according to the doctor, these injuries were caused by Varasa and grievance in nature. The doctor also found lacerated wound on the head of the informant which were simple in nature. So the doctor also found injuries on the head of the father of the informant and also on the informant as claimed by them.

9. But the evidence of P.Ws. 1 and 2 has rightly been rejected by the trial court for the reason that a counter case that is, S.T. No. 377/83 Was instituted in respect of the occurrence which took place on the same day near the house of the accused Janaradan in which Janardan, his brother Madhusudan and Dakhauri sustained injury and Janaradan, his brother sustained as many as injuries as evident from Ext. 8; whereas Madhusudan sustained as many as 8 injuries as evident from Ext. 8/1 and Ext. 8/2 is the injury report of Bakhuri. But inspite of all these, two P.Ws. are completely silent about the injuries of these accused persons and they had not explained as to how they sustained injuries. Moreover, the entire genesis of the trouble as claimed by the informant of this case in the FIR and in his evidence appears to be highly improbable because the prosecution has claimed that one day earlier Anchal Amin came for measurement but though there was some altercation, but it was duly pacified by co-villager Jamuna Sharma. Further the report of Anchal Amin dated 20.8.82 has been brought on record on behalf of the defence i.e. Ext. A. and from the report of the Amin it appears that some measurements were done on 19.8.82 in respect of lands of several persons and measurement was completed peacefully. But the said Anchal Amin, Kamta Sharma or co. villagers Jamuna Sharma who specified the matter on 19.8.82 were not examined to prove the genesis of the trouble, that is, the occurrence took place only for the reason that there was annoyance to the accused persons regarding measurement of the land" by the Amin on the previous day.

10. On the other hand from the FIR of the counter case instituted by Janaradan i.e. Ext. C, it can be said that the prosecution side of this case are the aggressor and they wanted to take forcible possession of a room belonging to accused Janaradan Sharma and assaulted Janaradan and his father.

11. So from the discussions made above, it can be said that the trial court rightly rejected the evidence of P.Ws. 2 and because they made out different story and also an improbable story so far as this occurrence is concerned. They have also not been able to explain the injuries which the three brothers sustained during the occurrence.

12. In that view of the matter, in my opinion, there is nothing on the record to set aside the judgment of the trial court through which the respondents were

acquitted of the charges. Accordingly, this appeal is dismissed.