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Court : Patna

Decided On : Apr-29-2014

Judge : Dharnidhar Jha

Appeal No. : Criminal Appeal (SJ) Nos. 90 & 92 of 2002

Appellant : Sanjay Kumar Sinha @ Babloo and Another

Respondent : State of Bihar

Judgement :

1. No one appears on repeated calls and in spite of sending words and the peon for informing the counsel whose names appear in the list, no one turned up. I have heard Sri Sujit Kumar Singh, learned Additional Public Prosecutor and have perused the record myself for delivering the judgment.

2. The two appellants were put on trial by being charged with committing offences under Sections 307 and 450 IPC and by judgment of conviction and order of sentence both dated 18.0.2.2002 they were held guilty of committing offences under Sections 307 and 448 IPC and each of them was directed to suffer rigorous imprisonment for three years as also to pay a fine of Rs.1,000/- each under Section 307 IPC and in case of making default in paying the fine, was directed further to undergo rigorous imprisonment for six months each. Each of the two appellants was also directed to suffer rigorous imprisonment for six months on account of being convicted under Section 448 IPC.

3. The two appellants have preferred two appeals separately to challenge the judgment of conviction and order of sentence passed against them.

4. P.W.7 Bhuneshwar Rai was working as Accounts Clerk in the Building Division, Vaishali at Hajipur on 19.05.1988. He filed a written report (Ext-1) stating that while he was working in his office, the two appellants came to him and asked him to produce the two files in respect of M/S Trishul Construction and contractor Ratan Kumar. The informant stated that the two files were lying with the Estimates Officer of the department upon which he was asked by the appellants to bring those files from there. The informant refused by pointing out that it was none of his business, upon which the two appellants started abusing and also started assaulting him with fists and slaps. The two appellants caught the neck of the informant and put him down on the ground and kicked him around, as a result of which, he lost his consciousness. The employees of the office came and revived his consciousness. It was stated by the informant that on account of pressing of his neck and assault given to him, there was some injury on his throat and his hearing had also been impeared. It was lastly stated by P.W.7 that while he was leaving the office the two appellants gave threats to him.

On the basis of the written report of P.W.7, FIR of the case was drawn up and the investigation was taken up which ultimately resulted into submission of the charge-sheet under Sections 307 and 448 IPC.

5. The defence of the appellants was of false implication on account of the informant having demanded some money from one Upendra Singh who was the brother of appellant Binod Singh which was refused being paid by the said Upendra Singh.

6. During course of the trial, a total number of ten prosecution witnesses had been examined, out of whom P.W.2 Ram Dharan Singh, P.W.3 Ram Jee Singh, P.W.4 Lal Bahadur Sah, P.W.5 Ishwar Chandra Singh, P.W.6 Birendra Mishra, P.W.8 Rama Nand Jha and P.W.9 Rabindra Kishore Singh were declared hostile on account of having not supported the prosecution story narrated by P.W.7 Bhuneshwar Rai , the informant. The case was supported by P.W.1 (Ranbir Singh), one of the employees of the Building Division, Hajipur in its entirety.

P.W.10 Dr. Ram Govind Prasad had examined the informant on 21.05.1988 and had issued the injury certificate (Ext-2).

7. As I have already noted, no one appeared on behalf of the two appellants to make submissions on the merits of the appeal and I have heard Sri Sujit Kumar Singh, the learned Additional Public Prosecutor on the merits of the appeal.

8. P.W.7 Bhuneshwar Rai, the informant of the case has supported the allegations in its entirety and what I find after considering his evidence in cross-examination is that he appears sticking to his case and no fact which could be detrimental to the merit of the evidence appears brought on record. In fact the consistency of his evidence was such that not even a single attention of the witness was drawn to any fact so as to indicating that he had improved upon his story. The learned trial Judge had found him a trustworthy witness whose evidence had inspired his confidence and I not find any reason after considering the evidence of P.W.7 Bhuneshwar Rai to take a view different from the learned trial Judge. As regards the merit of the evidence of P.W.1 Ranbir Singh he has also supported the case of P.W.7, the informant, by stating that the two appellants had come into the office of the Building Construction Division and had entered into the section of the Accountant and had created a pandonium and had also assaulted the Accountant, i.e., P.W.7 and during that course, the appellant Sanjay Kumar Sinha @ Babloo had pressed his throat while the two had also assaulted him. P.W.10 (Dr. Ram Govind Prasad) had found the following injuries on the person of P.W.7, the informant after examining him on 21.05.1988:-

(i) Tenderness with swelling 1? in diameter on the left side of temple.

(ii) Liniar scratch with scab and swelling 3? in length on the right side of neck of P.W.7.

P.W.10 stated that P.W.7 was complaining of loss of hearing in his left ear, but on mere statement of P.W.10, the Court may not take a view that indeed there was any loss of hearing caused to P.W.7. No further opinion was given that indeed P.W.10 had found P.W.7 suffering from hearing impairment on account of any particular assault. Likewise, the complaint of pain by P.W.7 which had been

recorded by P.W.10 could not be classified as injury. Thus, the injuries which were found by P.W.10 were simple tenderness with swelling and linean scratch with tenderness, which were caused by hard and blunt substance. In addition to the above what this Court also finds is that the opinion of the doctor had not given the categorical opinion that there was any injury found on the person of P.W.7 which could have been dangerous to his life. In that view of the matter, the Court has serious reservation about the finding of the learned trial Judge as regards the acts constituting an offence under Section 307 IPC.

9. Likewise, the learned trial Judge had convicted the appellants under Section 448 IPC which provision punishes an offence of house trespass. House trespass has been defined by Section 442 IPC as per which whoever commits criminal tress pass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit œhouse-trespass?. The term œcriminal tress-pass? has been defined by Section 441 IPC As per the definition whoever enters into or upon the property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property;

or having lawfully entered into or upon such property, unlawfully remains there with interest thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, commits criminal tress-pass.

10. What appears from the consideration of the above definition, inter-alia, is that the property has. Firstly, to be in possession of another person which means that the property must have the nature of being a private property belonging to a particular person or at least being in possession of a particular person. As appears from the facts of the present case, the place of occurrence was the office of the Building Division (Vaishali at Hajipur) and it was an establishment run under a particular Government Department. The nature of the premises was definitely of a public place and it was never private or in other words, the premises or the property was not in a position of any particular individual. At least, the property was never in possession of P.W.7 Bhuneshwar Rai. As such, the learned trial

Judge appears faltering on the point of law in holding that an offence under Section 448 IPC was committed by the appellants. In fact, the appellants do not appear committing any offence either of criminal tress pass or of house tress-pass and, as such, their mere entry into the office of the Building Division could not be said to be falling within the category of any sort of tress-pass. In view of the above legal position, the conviction of the appellants for an offence under Section 448 IPC appears completely outside the purview of law and accordingly, the appellants have to be acquitted of the offence under section 448 IPC and they are, accordingly, acquitted.

11. As regards their conviction under Section 307 IPC, I have already noted that the medical evidence was as plain and simple as not to pointing out that the injuries could have been dangerous to the life of P.W.7. There were simple injuries on neck and on the temple of the informant. There was no internal damage. The evidence of P.W.7 that his hearing was impaired, is also not supported by any medical data and opinion as P.W.10 was merely recording the statement of P.W.7 that he was complaining of pain and was also complaining of his hearing being impaired, which complain of P.W.7 was neither proved nor the same was tested on any medical scales for rendering a definite opinion. In fact, P.W.10 had not even recorded his opinion that indeed P.W.7 was hard of hearing of either of his ears. In that view of the matter, it was plainly clear that an offence under Section 307 IPC was not constituted on the facts of this case.

12. In view of the evidence and above discussion thereof the conviction of the appellants under section 307 IPC appears illegal and unfounded.

13. However, the facts had clearly established that the two appellants entered inside the Chamber of the informant (P.W.7) and asked him to produce two relevant records with which they had no concern and on the refusal of P.W.7, it resulted into opening assault by the two appellants very much inside the office premises on P.W.7 and an offence under Section 323 IPC, as such, definitely appears made out by the act committed by the two appellants.

14. No one had appeared on behalf of the appellants. I have heard Sri Sujit Kumar Singh, the learned Additional Public Prosecutor on the quantum of sentence. The

facts are very serious, may be the offence is simple and punishable only in the maximum to the extent of one year imprisonment. The behaviour of the two appellants was unruly. They did not have any business at all to enter into the premises of such a public place as was the office of the Building Division, Vaishali at Hajipur. They did not also have any right to ask P.W.7 to produce the two records as they were never concerned with the records as appears from the facts of the case and the evidence adduced by the prosecution. The informant was perfectly justified in negating almost the command of the two appellants to him to produce the records and their dis-respect of law and modicum as regards the behavior could be fathomed from the fact that as soon as there was denial by P.W.7 to get the records for them from the Estimates Officers, the two appellants abused him and also assaulted him. Considering these serious circumstances attending on the commission of the offence, each of the two appellants are directed to suffer rigorous imprisonment for a period of nine months and also to pay a fine of Rs.1,000/- under section 323 I.P.C. which fine amount was imposed as a sentence to each of them by the learned trial Judge. In case, they had defaulted in making the payment of fine they shall have to undergo further period of rigorous imprisonment for one month.

15. With the above modification in the finding of guilty and order of sentence, the appeal being devoid of merit, is dismissed.

16. The appellants are on bail. Their bail bonds are cancelled. Let the learned trial Court, i.e., Fast Track Court No.I, Vaishali at Hajipur in connection with Sessions Trial No.218 of 1989/133 of 2001 or any other court which is successor to that Court be directed to take steps for ensuring the arrest of the appellants so as to be remanded into custody for serving out the sentence passed by this Court upon each of them.

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