

Mansoor Alam and Others Vs. the State of Bihar

Mansoor Alam and Others Vs. the State of Bihar

SooperKanoon Citation : sooperkanoon.com/1151813

Court : Patna

Decided On : Mar-27-2014

Judge : Aditya Kumar Trivedi

Appeal No. : Criminal Appeal (SJ) No. 1234 of 2011

Appellant : Mansoor Alam and Others

Respondent : The State of Bihar

Judgement :

1. All the three appellants namely Mansoor Alam, Riyasat Mian, Rameshwar Prasad have been convicted vide judgment dated 22.10.2011 for an offence punishable under Section 307/34 of the I.P.C. as well as Section 341 of the I.P.C. and each of them has been sentenced vide order dated 24.10.2011 to undergo rigorous imprisonment for five years under Section 307/34 of the I.P.C. as well as simple imprisonment for one month under Section 341 of the I.P.C. with further direction to run the sentences concurrently by the 4th Additional Sessions Judge, Gopalganj in Sessions Trial No.79/1996/216/2011.

2. PW-4 Kalamuddin, an injured, had given his fard-bayan at Baikunthpur State Dispensary on 28.07.1994 at about 11.00p.m., alleging inter alia that on the same day at about 8.00p.m. while he was taking meal at his Darwaja, Mansoor Alam, Riyasat Mian, Rameshwar Prasad came, began to abuse and having protest at their end, Riyasat Mian and Rameshwar Prasad caught hold while Mansoor Alam

pave two Chhura blow over his back and one Chhura blow over his neck. After having escape of all these accused, villagers lifted him to hospital where he was undergoing treatment.

3. Having registration of Baikunthpur P. S. Case no.56 of 1994 followed with investigation. Ultimately filing of charge sheet attracting trial of appellants who vide judgment impugned being convicted and sentenced, the subject matter of instant appeal.

4. The defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is of complete denial as well as false implication in the background of land dispute. It has also been submitted that on the alleged date and time of occurrence the prosecution party had assaulted and for that wife of Riyasat Mian namely Chania Begam had filed Complaint Case no.849 of 1994 just to retaliate the allegation so levelled against them, instant case has been filed. In support of their plea apart from examination of DW, the documents have also been exhibited on behalf of defence.

5. From the record, it is evident that nine witnesses have been examined on behalf of prosecution, out of whom, save and except, PW-4, the informant and PW-5 Saliman, mother, none of the material witnesses have supported the case of prosecution. It is also evident that PW-7 Dr. Ram Karn, who had examined the injured, PW-4, had supported the injury as well as exhibited the injury report. However, there happens to be non-examination of I.O. and the paraphernalia was exercised by a formal witness Brij Kishore Singh (PW-9). Documentary evidence have also been exhibited on behalf of prosecution as Exhibit-1 injury report, Exhibit-2 formal F.I.R., Exhibit-3 fard-bayan, Exhibit-4 case diary, Exhibit-5 C.C. of Judgment of complaint case no.849 of 1994. Side by side defence had also examined DW-1 Suresh Manjhi formal witness as well as had also exhibited as Exhibit-A C.C. of complaint case no.849 of 1994, Exhibit-B, C.C. of injury report, Exhibit-C compromise petition, Exhibit-D order sheet of Title Suit No.107 of 1999, Exhibit-E C.C. of plaint of T.S. 107/99, Exhibit-F, C. C. of commissioners report, Exhibit-G and G/1 C.C. of two sale deeds dated 25.05.1972 and 15.04.1994 respectively.

6. While assailing the judgment of conviction and sentence, it has been submitted on behalf of appellants that the learned lower Court failed to appreciate the admitted case of the prosecution divulging the fact that one of the appellants Riyasat Mian happens to be a defence personnel and while he was in service, he gave his saving to father of informant his full brother, who purchased the land in name of wife of informant over which both the parties were in occupation having their residential house. However, the informant, after developing dishonest intention wants to kick out and for this case has been filed. It has further been submitted that all the independent witnesses did not support the case of the prosecution. It has also been submitted that presence of PW-4, the informant and PW-5, his mother fell under category of interested and partisan witness. Moreover, their evidences are sufficient to be discarded in the background of evidence of PW-7, the doctor, who found the injuries over the person of PW-4 caused by two different weapon, which is not the case of the prosecution nor the prosecution had suggested to PW-7 that all the three injuries having over person of PW-4 was an outcome of Chhura. It has also been submitted that for want of examination of Investigating Officer, the right of the accused is found prejudiced, because of the fact that there happens to be inconsistency amongst the evidence of the witnesses relating to the place of occurrence as well as in the background of presence of Complaint Case no.849 of 1994 filed on behalf of Chania Begam with regard to her assault by the prosecution party.

7. In an alternative, it has also been submitted that from the evidence of PW-4, PW-5, it is evident that both the parties are close agnate. It is also evident that joint property was purchased in name of wife of informant and only with regard thereto the dispute happens to be. It has also been submitted that in the aforesaid background, the circumstance probablises the prosecution to be the aggressor instead of accused even accepting the prosecution case. It has further been submitted that there happens to be no specific allegation against Riyasat Mian and Rameshwar Prasad. Furthermore, Mansoor Alam, apart from remaining under custody at an initial stage is under custody since 22.10.2011, the date of judgment and on account thereof, taking into account the inter se relationship as well as the nature of dispute having amongst the parties coupled with the fact regarding absence of criminal antecedents, appellants need modification in sentences even

maintaining the conviction.

8. The learned Additional Public prosecution while counter meeting with the submission raised on behalf of appellants submitted that the defence could not be able to demolish the evidence of informant PW-4 as well as eye witness PW-5. It has further been submitted that any sort of discrepancy found in the injury report as well as evidence of PW-7 is not going to affect upon the prospect of judgment, because of the fact that Section 307 of the I.P.C. did not require the nature of injury for its application. However, fairly concedes so far inter se relationship is concerned as well as the nature of evidence on that very score so coming out from the mouth of PW-4 and PW-5.

9. PW-5 in para-3 had stated that her husband along with Riyasat Mian (accused) happens to be full brother. The dispute relates with land so purchased from Bhagwan Giri. This land was jointly purchased. No other kind of dispute is amongst them.

10. PW-4 in para-5 had stated that Riyasat Mian happens to be his own uncle. Homestead land which stood in name of his wife was purchased during life time of his father. At that very time, Riyasat Mian was living in jointness. Riyasat was employed in Army. Riyasat is living over the aforesaid land. He is not aware that his father dishonestly purchased the land in name of his wife although it happens to be a joint property and for that the dispute is going on. He had further said that accused persons had grabbed six dhoores of land belonging to him. From Exhibit-E plaint of Title Suit no.107 of 1999, filed on behalf of wife of informant clearly shows intention of the parties and in the aforesaid background I do feel that the prayer made on behalf of the appellants with regard to modification in sentences appears to be genuine one.

11. In the aforesaid background, maintaining the conviction so held by the learned trial Court observing each of the appellants guilty for an offence punishable under Section 307/34 of the I.P.C. as well as Section 341 of the I.P.C., the sentence is modified in a way, already undergone. With the aforesaid modification in sentences instant appeal is dismissed. Appellant, Riyasat Mian and Rameshwar Prasad are on bail, hence are discharged from it liability while Mansoor Alam

happens to be under custody, hence is directed to be released forthwith if not wanted in any another case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com