

ishar Hazra and ors. Vs. State of Bihar

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Court : Patna

Decided On : Apr-27-2007

Judge : Abhijit Singh, J.

Appellant : ishar Hazra and ors.

Respondent : State of Bihar

Prior history : Abhijit Singh, J. 1. The six appellants herein along with one Ramanand Hazra were put on Trial in Sessions Trial No. 37/40 of 1988/ 90 arising out of Ramgarhwa P.S. Case No. 173/87. Sri Jaleshwar Ram, the then Ist Additional Sessions Judge, East Champaran, Motihari, by his judgment dated 13-11-1992 convicted accused Ishar Hazra for commission of offence punishable under Sections 307 and 148 of the IPC, accused Bhuar Hazra and Ramanand Hazra under Sections 324 and 148 of IPC and the remaining f

Judgement :

Abhijit Singh, J.

1. The six appellants herein along with one Ramanand Hazra were put on Trial in Sessions Trial No. 37/40 of 1988/ 90 arising out of Ramgarhwa P.S. Case No. 173/87. Sri Jaleshwar Ram, the then Ist Additional Sessions Judge, East Champaran, Motihari, by his judgment dated 13-11-1992 convicted accused Ishar Hazra for commission of offence punishable under Sections 307 and 148 of the IPC, accused Bhuar Hazra and Ramanand Hazra under Sections 324 and 148 of

IPC and the remaining four accused under Section 147 of IPC and by order dated 16-11-1992 while releasing accused Ramanand Hazra under the provisions of Section 360(1), Cr. P.C. convicted accused Ishar Hazra, taking into account his advanced age, to simple imprisonment for three years for offence under Section 307 of IPC and simple imprisonment for one year under Section 148 of IPC; Bhuar Hazra was sentenced to undergo rigorous imprisonment for two years under Section 324 of IPC and one year under Section 148 of IPC and the remaining four accused were sentenced to undergo rigorous imprisonment for offence under Section 147 of IPC.

2. The prosecution story as unfolded in the fard beyan (Ext. 3) given by one Hargovind Hazra at 5 p.m. on 2-10-1987 at the Ramgarhwa Primary Health Centre, inter alia, is that earlier that day at around 12 noon all the accused persons were seen erecting a Jhopri over his land whereupon the informant, his sons Ramchandra Hazra and Ram Bilash Hazra and his wife, Ramrajo Devi, went over there and forbade the accused persons from constructing as the said lands had been purchased by the informant from one Budheshwar Ojha. An altercation developed in between the two parties and on the orders of Ishar Hazra to bring lathi, bhala, Garansa etc. and kill them Ishar Hazra, Ramanand Hazra, Bhuar Hazra, armed with farsa, and the remaining four accused armed with lathi forming an unlawful assembly came up to the informant and with the intention to kill Ishar Hazra dealt a blow on the head of Ramchandra Hazra as a result whereof he sustained bleeding injuries and when his wife rushed to the rescue of Ramchandra, Ishar Hazra dealt a farsa blow on her head causing bleeding injury and she dropped to the ground. Then accused Bhuar Hazra allegedly gave bhala blow upon the head of the informant causing injury and on his son Ram Bilash Hazra coming to save his father accused Ramanand Hazra gave farsa blow on his arm causing bleeding injury. This was followed by the remaining accused armed with lathi showering lathi blows upon the injured. Attracted by the cries of alarm several co-villagers including Ramchandra Raut, Wali Miyan, Ramjanam Raut and Suraj Mahto came and witnessed the occurrence. The injured are said to have been carried by the villagers to the hospital for treatment and here the fard beyan was recorded giving rise to Ramgarhwa P.S. Case No. 173/87 under Sections 147, 148, 307, 324, 323 and 326 of IPC.

3. The police after due investigation submitted a charge-sheet against all the accused for commission of offences under Sections 147, 148, 149, 324, 323 and 307 of IPC.

4. At the trial the prosecution in support of its case examined as many as nine witnesses including the informant (P.W. 7), his two sons (P.W. 3) and (P.W. 6), his wife (P.W. 5), the Doctor (P.W. 8) and the Investigating Officer (P.W. 9), Some documents were also adduced by the prosecution to bolster its case.

5. The defence plea was one of innocence and false implication. It would also appear from the examination of the accused under Section 313, Cr. P.C. and on perusal of the testimony of the sole defence witness that the accused had laid claim over the land as having been given by the Government by issuing a parcha.

6. The learned trial Court on appraisal of the materials on record and on Consideration of the submissions advanced by the learned Counsels for the parties recorded the verdict of guilt and imposed sentence therefor as mentioned hereinbefore.

7. In assailing the impugned judgment the learned Counsel for the appellants sought to submit that no offence under Section 307, IPC can be said to have been made out on the basis of materials available on record particularly the medical report and there was absence of motive. It was also sought to be submitted with reference to the testimonies of the witnesses that their statements are contradictory and discrepant and the Court below had erred in placing reliance on the same. Criticism was also made of some of the witnesses who had arrived on the scene of occurrence on being attracted by the cries of alarm not being examined. It was also sought to be submitted that the P.O. lands belong to the appellants by virtue of a parcha issued by the State Government.

8. To appreciate the contention of the learned Counsel for the appellants it would be appropriate to test the evidence of the witnesses examined. The informant, Hargovind Hazra, figuring as P.W. 7 narrated the prosecution story as recited in the fard beyan in toto except that he did not mention about the assault on his son, Ramchandra Hazra, by Ishar Hazra. He further submitted that the P.O. lands had

been purchased by him some years prior to the occurrence from one Muneshwar Hazra and ever since then he was coming in peaceful and continue possession over the same. It would appear from the impugned judgment that after his cross examination he was discharged and was again recalled at the instance of the prosecution and on such recall he stated that the land had been purchased from one Budheshwar Ojha and not Muneshwar Hazra by a Mahadanama dated 30-5-1987 and proved the same. In his cross-examination he stated that he was not in a position to read and write save only that he could give his signature. He also stated that he would not be able to give out the date or the contents of the Mahadanama and was also not in a position to say as to at whose instance the said Mahadanama had been written. P.W. 7 also stated that initially he had been a resident of village Bainkunthwa under Nautal P.S. and it was for the past 26 years that he had taken up residence at the present village, Chikni. P.W. 7 appears to have taken his good advantage of his recall and filled up what he had missed stating in course of his examination-in-chief on the initial occasion by stating that it was his son, Ramchandra Hazra, who had initially been assaulted and this was followed by the assault on his wife, himself and his son, Ram Bilash Hazra.

9. The defence appeared to be more interested in cross-examining this witness in respect of the alleged Mahadanama and little was asked on the point of the occurrence and the assault upon the informant and his family members.

10. Ramchandra Hazra (P.W. 4), Ram Bilash Hazra (P.W. 6), two sons of the informant, Samrajo Devi (P.W. 5), Ramjanam Raut (P.W. 1) and Md. Wali Miyan (P.W. 2) have fully supported the factum of the occurrence and nothing of any substantial importance has been extracted from any of these witnesses by the defence in course of their cross-examination.

11. Dr. Shambhu Prasad (P.W. 8) has examined the four injured persons. On the person of Samrajo Devi he found incised wound 2 1/2' x 1/3' x bone deep on the right parital region of the head. According to the Doctor the patient was in semi-conscious state and there was a big hematoma under the skull and the wound was bleeding profusely. In the opinion of the Doctor the injury was dangerous to life and caused by a sharp cutting weapon such as a farsa.

12. On the person of informant, Hargovind Hazra., the Doctor found one incised wound 2' x 1/3' x bone deep on the centre of his head and a lacerated wound 2' x 1/4' x 1/2' on the back of the right forearm in the middle. In the opinion of the Doctor both injuries were simple in nature and whereas injury No. 1 was caused by sharp cutting weapon such as a farsa, injury No. 2 was caused by hard blunt substance such as a lathi. On the person of Ram Bilash Hazra the Doctor found an incised wound 2 1/2' x 1/2' x 1' on the upper third of the outer surface of right arm. In his opinion the injury was simple in nature and caused by sharp cutting weapon such as a pharsa.

13. The Doctor found four wounds on the person of Ramchandra Hazra, namely, an incised wound 2 1/2' x 1/3' x bone deep on left side of head, an incised wound 3' x 1/4' x bone deep on the front of the left leg in the middle, (iii) An abrasion 2' x 1/2' x on the right big toe, (iv) An abrasion 1' x 1' on the front of the right knee joint. In the opinion of the Doctor all injuries were simple in nature and whereas injury Nos. 1 and 2 were caused by sharp cutting weapon such as a garansa. Injury Nos. 3 and 4 were caused by hard and blunt substance such as lathi.

14. It would, thus, appear from the evidence of the Doctor that the alleged assault on the four injured by means of pharsa remains corroborated. The fact that the doctor has mentioned that the injury on Ramchandra Hazra was caused by garansa does not vitiate the prosecution case as both pharsa and garansa are sharp cutting weapons.

15. It is apparent from the evidence of the witnesses that an assault by the accused persons was made on the informant, his two sons and his wife who at the relevant time were completely unarmed. In such a situation even if it is expected that the P.O. lands belonged to the accused persons there was no reason for any apprehension in any manner from the informant and his family members for the accused persons to have resorted to assault. In that view of the matter I do not find any reason to differ or interfere with the impugned judgment of the learned trial Judge and there is no impropriety or illegality in the verdict of guilt recorded by him.

16. So far as the question of non-exami-, nation of some of the villagers who arrived at the scene of the occurrence is concerned I am unable to accept the submissions of the learned Counsel for the appellants that the same was prejudicial to their case. It is not the nature and number of the witness examined which is relevant but the quality and reliability of the witness which is required to be taken into account. In the instant case P.Ws. 1 and 2 who had appeared at the scene of the occurrence on being attracted by the cries of alarm have deposed in support of the prosecution case and nothing of any particular significance has been attracted by the defence from them.

17. Having given my anxious thoughts to the materials on record and the submissions advanced by the learned Counsels for the parties I am of the opinion that there is no reason to interfere with the impugned judgment of conviction and the same is upheld.

18. However, considering the fact that the occurrence took place in 1987 and the judgment of the Sessions Trial is of the year, 1992 the appellants have had to suffer about 20 years of litigation and the sword of conviction has been dangling over their head for the past 15 years which must have had an adverse effect not only on their mental condition on also their physique and financial resources. In the aforesaid situation it would, in my opinion, not be proper to send them back to jail for serving out the remaining period of their sentence. I am of the view that it would be expedient in the interest of justice to modify the sentence to the period already undergone. All the six appellants are on bail. They are accordingly dishcarged from the liabilities of their respective bail bonds.

19. In the result, the appeal is dismissed with modification in the sentence.