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Court : Patna

Decided On : Mar-05-2008

Judge : Shyam Kishore Sharma, J.

Appellant : Mohan Singh and ors.

Respondent : State of Bihar

Disposition : Appeal allowed

Prior history : Shyam Kishore Sharma, J. 1. The above five appellants, have filed this appeal against the judgment dated 16-8-1993 passed by 3rd Additional Sessions Judge, Vaishali at Hajipur in Sessions Trial No. 70 of 1987 by which they have been convicted under Sections 307/149, 323, 325 and 148 of the Indian Penal Code but appellant Nos. 1 and 2 (Mohan Singh and Ganesh Singh) have been sentenced to undergo rigorous imprisonment for six years and rest three appellant Nos. 3, 4 and 5 (Tek Narain Singh, Ram

Judgement :

Shyam Kishore Sharma, J.

1. The above five appellants, have filed this appeal against the judgment dated 16-8-1993 passed by 3rd Additional Sessions Judge, Vaishali at Hajipur in Sessions Trial No. 70 of 1987 by which they have been convicted under Sections 307/149, 323, 325 and 148 of the Indian Penal Code but appellant Nos. 1 and 2 (Mohan

Singh and Ganesh Singh) have been sentenced to undergo rigorous imprisonment for six years and rest three appellant Nos. 3, 4 and 5 (Tek Narain Singh, Ram Bilash Singh alias Ram Biraj Singh and Raj Narain Singh alias Chotak Singh) for four years each under Sections 307/149 and 325 of the Indian Penal Code and rigorous imprisonment for one year under Section 323 of the Indian Penal code. No separate sentence is awarded to appellant Nos. 1 and 2 under Section 148 of the Indian Penal Code. The sentences were ordered to run concurrently.

2. The prosecution case is based on the fardbeyan of Hari Nandan Singh wherein it is alleged that on 16-9-1984 at about 10.00 a.m. when he went to his village pond, he saw many co-villagers assembled there in connection with performance of shradh ceremony of mother of Bishwanath Singh. He learnt 4-5 days prior to the date of occurrence that accused Raj Narain Singh and Ganesh Singh had cut away his seesam tree worth Rs. 25/-. The informant's cousin brother Shiv Nandan Singh told accused Tekan Singh as to why theft of seesam tree was committed by his brother Ganesh Singh and Raj Narain Singh. The accused Tekan Singh became angery and threatened to dire consequences. At the behest of Lalit Singh, the accused persons assaulted the informant with palm sticks in presence of the witnesses named in the fardbeyan. Then the informant proceeded towards his house but in the way when he reached near the house of Aneshwar Singh, all the accused persons surrounded him and at the instigation of Lalit Singh, accused Ganesh Singh gave a bhala blow on his left chest and accused Mohan Singh hurled a farsa balow on his head. After sustaining injuries, the informant fell down and thereafter he was further assaulted by Ganesh Singh on his left arm by bhala and other accused persons with lathis. The informant's cousin brother Ramji Singh came to rescue the informant, he was also assaulted by accused Tekan Singh, Raj Narain Singh and Ram Biraj Singh by lathis. Both the injured cried for help. On hearing cry, the witnesses came there and saw the occurrence. Thereafter the accused persons escaped. Both the injured were brought to Jandaha Hospital for treatment where fardbeyan of the informant was recorded by S.I. Satyadeo Rai of Janmdaha Police station. On the basis of which Jandaha P.S. case No. 97 of 1984 was registered under Sections 147, 148, 324, 149, 307, 323, 341 and 379 of the Indian Penal Code. Thereafter, formal FIR was drawn. The matter was investigated into and after completion of investigation, charge-sheet was

submitted. Cognizance was taken and the case was committed to the Court of sessions. The trial proceeded. Charge under Section 148 of the Indian Penal Code was framed against accused Ganesh Singh and Mohan Singh. Further charge under Sections 307/149, 323 and 325 of the Indian Penal Code was framed against all the accused persons and the same were explained to the accused persons who pleaded innocence and preferred to face trial.

3. The defence of the accused persons was of false implication and also that no such occurrence as alleged has taken place. In fact the appellants were victim of assault by the prosecution as they received injuries at the alleged field from which seesam tree was cut away by the prosecution party. The defence has also examined one D.W. who is Shiv Nandan Singh.

4. In order to prove its case, the prosecution examined altogether 7 witnesses. They are : P.W. 1 Ramji Singh, P.W. 2 Harinandan Singh, the informant, P.W. 3 Ram Sarowar Singh, P.W. 4 Ram Naresh Singh, P.W. 5 Ram Ashray Singh, P.W. 6 Satyadeo Rai, Investigating Officer and P.W. 7 Dr. Ujjawal Kumar Banerjee.

5. P.W. 2 is the informant of this case. He in his evidence has stated that at about 8.00 a.m. about seven and half years ago he went to his orchard and found the seesam tree cut and he was informed about the same. Thereafter he went to the village pond where co-villagers had assembled there in connection with performance of sharadh ceremony. His cousin brother Shivanand Singh asked Tekan Singh why he had cut away the seesam tree. On hearing this, accused Tekan Singh abused Shivanand Singh and caught his neck. When this witness protested, at the behest of Lalit Singh, all the accused persons assaulted him by palm sticks. Thereafter, when this witness proceeded for his house and when reached near the house of Ashesar Singh, he was again attacked by accused persons. Accused Ganesh Singh gave a bhala blow on his left chest and accused Mohan Singh gave a farsa blow on his head. On receiving injury this witness fell down and thereafter, accused Ganesh Singh assaulted him with bhala on his left arm and other accused persons also assaulted him by lathis. The villagers Ram Asharay Singh and Ramakant Singh came on hulla for rescue. Ramji Singh also reached there and when he tried to rescue the informant, he was also assaulted

by accused Tekan Singh, Ram Biraj Singh and Raj Narain Singh by lathis. This witness further stated that he was brought to Jandaha Hospital where he was treated and there his fardbeyan was recorded by police. This witness has proved his signature on the fardbeyan as Ext. 1. This witness in cross-examination had admitted that the accused persons are his co-sharers and there is no partition of the property by metes and bound and they are cultivating the lands by family agreements. This witness denied that the accused persons were also assaulted and were treated in hospital but admitted that the accused persons had also lodged a case against him. From the evidence of this witness it appears that the lands were joint and it cannot be said that the informant was in exclusive possession of the land on that date.

6. P.W. 1 is another injured witness. He has stated in his evidence that on the date and time of occurrence, the accused persons assaulted the informant indiscriminately and thereafter this witness was also assaulted. This witness in his evidence has stated that the motive was that the accused persons have cut the seesam tree of the informant about 4-5 days ago. This witness admitted in his cross-examination that the informant and the accused persons are co-sharers but he tried to explain that the lands were partitioned.

7. P.W. 3 is a chance witness. According to him, he was going with his she-buffalo and when reached near the house of Ashesher Singh, he saw the appellants committing assault to the informant. This witness in his cross-examination stated that at the time of assault, there was none present there except him. According to this witness, he is the first person who came at the place of occurrence and others had come after him. This witness denied that the accused persons were also injured.

8. P.W. 5 has stated that when the altercation took place with regard to cutting of seesam tree, accused Tekan Singh caught the neck of Shiv Nandan Singh and at the behest of Lalit Singh, accused persons started assaulting informant. This witness also stated that near the house of Ashesar Singh, Ganeshi Singh assaulted the informant with bhala and Madan Singh assaulted with garasa. Thereafter other accused persons also assaulted with lathis. This witness also

supported the prosecution case like other witnesses.

9. P.W. 6 is the Investigating Officer of this case and he in his evidence has stated that he received rumour that Harinandan Singh and Ramji Singh of village Mahisaur are in Jandaha Hospital in injured condition. This witness went there and recorded fardbeyan of Harinandan Singh who put his signature on that. The fardbeyan has been marked as Ext. 2 and formal FIR has been marked as Ext. 3. This witness further stated that in course of investigation he had gone to the place of occurrence. According to this witness, the accused persons and the informant are the co-sharers. In the cross-examination, this witness has stated that he has not found any mark of trampling at the place of occurrence. This witness further stated that there was counter case also which was investigated by this witness itself.

10. P.W. 7 is Dr. Ujjawal Kumar Banerjee who on 16-9-1984 was posted at PAC Jandaha as Medical Officer and on that date he examined Harinandan Singh and found following injuries on his person:

(i) One incised wound 3 1/2' x 1/4' x 1/4' over right side of head.

(ii) One abrasion 2' x 1/6' ever lower half of left hand,

(iii) Incised wound 1 1/2' x 1/4' x 1/4' over upper half of left arm.

(iv) Incised wound 2 1/2' x 1/4' x 1/4' over middle of left lateral chest.

(v) Bruise 3' x 2' over right hip joint.

(vi) Bruise 2 1/2' x 1 1/2' over dorsal surface of left palm.

(vii) Bruise 3' x 2 1/2' over lower half of left thigh.

(viii) Bruise and dislocation over right shoulder joint (Bruise 3 1/2' x 2 1/2').

11. According to doctor, injury Nos. (i), (iii) and (iv) were caused by sharp cutting weapon. Injury No. (i) may be caused by farsa and injury Nos. (iii) and (iv) may be caused by bhala. Injury No. (ii) was caused by palm dental. Other injuries were

caused by lathi. This injury report has been marked as Ext. 4 (with objection).

12. This witness on the same day also examined Ramji Singh and found following injuries on his person:

(i) One lacerated wound 2' x 1/4' x 1/4' over left forehead.

(ii) One bruise 3' x 2' over left shoulder joint.

(iii) One bruise 2 1/2' x 1/2' over lower half of left arm.

(iv) Bruise 3' x 2' over left knee joint.

(v) Abrasion 2' x 1/6' below left elbow joint.

(vi) Bruise 2 1/2' x 1/2' over upper half of left back.

13. According to doctor, all the injuries were simple in nature and caused by hard and blunt substance. This injury report has been marked as Ext. 4/A (with objection).

14. The injury report of injured Harinandan Singh was not original but it was copy of the same and attested by the doctor. The injury report of Ramji Singh is the Xerox copy. The doctor has not stated that as to whether Xerox copy was the copy of original or its carbon.

15. It has been submitted by learned Counsel for the appellants that both the injury reports have been marked with objection because both are not original injury report, Ext. 4 injury report of Harinandan Singh is attested copy and Ext. 4/A injury report of Ramji Singh is Xerox copy and thus these are the secondary evidence and not primary evidence, There are some condition prescribed under the Evidence Act for taking into evidence of those injury reports, Those conditions are not available, The doctor has not stated what was the impediment of primary evidence with regard to injury report of Ramji Singh.

16. Learned Addl. P.P. has submitted that the injury reports have been proved by the doctor who has given the injury report. According to doctor, the injury reports

were written in the register of the hospital and he in his evidence admitted that he had examined both the injured. Under these circumstances, the injury reports are legally admissible even as secondary evidence.

17. The fact remains that only Xerox copy of injury report is with regard to injured Ramji Singh which has been marked with objection and no explanation has been given for non-production of original one. So in my opinion, the injury report of Ramji Singh cannot be looked into.

18. The case of the defence is that the accused persons have cut the seesam tree of their own land. This is not only the version of the defence, rather prosecution witnesses and the Investigating Officer have stated that the land from where the seesam tree was cut was joint property of informant as well as the accused persons. If the informant has stated that it was his exclusive property, then it was onus upon him to establish that the land from which the seesam tree was cut was his exclusive property but no such paper has been produced. The informant himself has stated that he was not having any paper to show partition, rather he has admitted that it was his Joint property. It has come in evidence that there was assault between the accused persons and the informant's men on the point of cutting seesam tree and both side received injury though the same was not stated by the prosecution. The Investigating Officer and the witnesses of the prosecution have stated that a case was also lodged by the accused persons with regard to an occurrence of the same date and time as has been alleged by the prosecution. It has come that the accused persons have also received injuries but the prosecution has remained totally silent as to under what circumstances, the appellants have received injuries on the same date and time as alleged in the prosecution case. It appears that the prosecution has not come with true version. Therefore, non-examination of injury on the side of the appellants and not slating about the counter case create doubt in the prosecution version and once deubt is created, then the benefit of the same is to be given to the accused persons.

19. After analysing the entire evidences on record, I am of the view that prosecution has not been able to prove the charges against the accused persons beyond the shadow of all reasonable doubts. Accordingly, the appellants are

entitled to be acquitted. In the result, the appeal is allowed and the judgment of conviction and sentence of the appellants is set aside. The appellants are also discharged from the liabilities of their bail bonds.

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