

Bindeshwari Prasad Vs. State of Bihar

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Court : Patna

Decided On : Apr-10-2001

Judge : Indu Prabha Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 324 and 325

Appeal No. : Cri. Appeal (SJ) No. 447 of 1989

Appellant : Bindeshwari Prasad

Respondent : State of Bihar

Advocate for Def. : Anant Prakash Sahay, A.W.P.

Advocate for Pet/Ap. : Chandra Shekhar Jha (Amicus Curiae)

Disposition : Appeal dismissed

Judgement :

Indu Prabha Singh, J.

1. Mr. Sunil Kumar counsel for the appellant has stated that he has received no instruction from his client, as such, he does not want to press this application. In such a situation Mr. Chandra Shekhar Jha is appointed as amicus curiae to assist the Court.

2. The sole appellant has been convicted under Section 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years. He has been further convicted under Section 325 of the Indian Penal Code and sentenced to undergo rigorous Imprisonment for three years with a fine of Rs. 500/-, in default, to undergo rigorous Imprisonment for six months. A direction has been given that if and when the fine will be realised, Rs. 300/- will be paid to the informant by way of compensation.

3. The prosecution case in short is that the informant had grown vegetables like lady finger, pumpkin, chilli etc. in plot No. 775 appertaining to Khata No. 502 situated south to the house of the informant. It has been stated that the appellant was plucking vegetables from the aforesaid field. When the informant protested the accused hurled filthy abuses. An altercation took place and the accused-appellant went to his house and brought a Fasuli and hurled two Fasuli blows on the person of the informant causing him injuries over his neck and forearm etc. The father of the informant came to intervene. The accused by brick-bats broke his one tooth. His another tooth was also affected by the injuries caused by brick-bats and became loose. After completion of the Investigation the police submitted charge-sheet, cognizance was taken and subsequently the trial concluded with the result as stated above.

The appellant pleaded not guilty.

4. It appears that both the injured were referred to State Dispensary, Sandesh and Dr. Diwakar Kamath examined both the injured and the injury reports issued by him are Exts. 1/1 and 1/2. The Officer-in-Charge was not satisfied by the injury reports as he felt that it was favourable to the accused and biased against the informant, and, therefore, he sent a requisition Ext. 2 to the Civil Surgeon for re-examination of the injured persons. However, it was reported by the Civil Surgeon-cum-CMO, Bhojpur on 20-5-1983 vide Ext. 1/3 that the wounds of Jaiprakash have been completely healed up and only the scars were present and, therefore, no definite opinion could be given regarding the nature of the injury and the weapon used Ext. 5 and Ext. 5/1 are the injury memo issued by the Of-ficer-in-Charge regarding Ram Bhajan Prasad and Jai Prakash respectively. As regards injury of

Ram Bhajan Prasad is concerned a medical board was constituted comprising of four doctors namely P.W. 6, Dr. B. Ram, Civil Surgeon as Chairman, P.W. 5, Dr. P.B. Ojha, Physician and Radiologist posted at Sadar Hospital, Arrah, Dr. R.K. Singh, Dental Surgeon and Dr. D.P. Singh. The report of the Medical Board is contained in Ext. 1 and it is dated 20-5-83. The findings of the board is that tooth was unhealthy diseased and oral by hygiene not good. The tooth in question namely upper left lateral incisor was found in the following condition; the socket healed completely, no broken root found. The opinion of the board was that because of its being loose the tooth has been detached due to any amount of force applied on it. Dr. B. Ram P.W. 6 in cross-examination has said that even due to slight pressure the tooth could have been dislocated. The evidence of both the doctors P.Ws. 5 and 6 is quite similar with regard to the injury of tooth.

5. In support of its case the prosecution examined altogether 7 witnesses. P.W. 1 is Chandrama Singh, P.W. 2 is Chandeshwar Sharma, P.W. 3 is Ram Balak Pandit, P.W. 4 is Jai Prakash, P.W. 5 is Dr. P.B. Ojha, P.W. 6 is Dr. B. Ram and P.W. 7 is Kailash Prasad, Investigating Officer.

The defence has also examined one witness, D.W. 1, Tung Nath Prasad.

6. P.W. 4, the informant has fully supported the case of prosecution as stated in the first information report, He has stated that the occurrence took place because he protested the appellant who was plucking vegetable which was grown by him in his own land, but the appellant claimed that the land belonged to him. He has stated that when he protested for plucking of the vegetables the appellant started abusing Win and after some altercation he rushed to his nearby house and brought a Fasuli and he assaulted him by the said Fasuli on his neck. He has further stated that P.Ws. 1, 2 and 3 came there and they also protested the same. His father wanted to intervene but he was also assaulted by brick-bats as a result of which his tooth was broken and one tooth became loose because of assault by brickbats.

7. P.Ws. 1, 2 and 3 have also supported the version of the informant, P.W. 1 has stated that altercation took place between the informant and the appellant and appellant brought a Fasull and he assaulted the informant causing injury on his

neck, When his father came to save him he was also assaulted by brick-bats resulting In breaking of his tooth. P.W. 2 has staled that while he was in front of the shop the informant was also in another shop. He stated that he was going to his house and after hearing Hulla he went to the place of occurrence and saw the occurrence. P.W. 7 the Investigating Officer of this case has stated that he came to the place of occurrence and found objective materials, blood and one tooth fallen on the ground, he also found vegetable trampled. It appears that Ext. A/2 is injury report issued by Dr. Diwakar Kamat who was not examined. He had given first aid to the in jured person but the I.O. of this case was not satisfied by that injury report issued by the Doctor, therefore, he sent a requisition to constitute a Medical Board.

8. From the evidence of P.Ws. 1, 2 and 3 it is apparent that the prosecution story has been proved. The doctors P.Ws. 5 and 6 have also corroborated the injuries on the person of the informant and his father. The I.O.P.W. 7 has also stated that he visited the place of occurrence and found objective finding on the place of occurrence. In view of above the Court below has rightly found the appellant guilty for the offence punishable under Sections 324 and 325 of the Indian Penal Code. I do not find any reason to interfere with the conviction of the appellant. From the trend of the examination of the witnesses it appears that the plea of the defence was that the eye-witnesses were interested and since they were servants of the informant their testimonies cannot be relied upon, but since the occurrence took place behind the house of the informant and the witnesses came at the place of occurrence hearing Hulla, therefore, they were most competent witnesses and their testimony cannot be discarded only because they were servant of the informant. Their evidence is consistent and trust inspiring.

9. Coming to the question of sentence learned counsel for the appellant submitted that the occurrence took place in 1983 and there was a dispute regarding the land between the appellant and the informant and there is no previous conviction against the appellant. Moreover, he has remained in jail for some time. Therefore, it requires consideration on the point of sentence. Keeping in view the aforesaid submission in my opinion ends of justice will be met if the sentence of this appellant is reduced to the period he has already undergone in jail custody with a

fine of Rs. 1000/- to be deposited by this appellant within three months from the date of receipt/production of a copy of this order, in default, to undergo rigorous imprisonment for one year. It is made clear that the amount of fine if and when realised from this appellant it shall be given to the informant, P.W. 4 Jai Prakash by way of compensation. With the aforesaid modification in sentence this appeal is dismissed.

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