

Sadre Alam Vs. State of Bihar

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Court : Patna

Decided On : Sep-10-2007

Judge : Madhavendra Saran, J.

Acts : Indian Penal Code (IPC) - Sections 304, 306, 307, 323 and 326

Appeal No. : Criminal Appeal (SJ) No. 148 of 1993

Appellant : Sadre Alam

Respondent : State of Bihar

Advocate for Def. : A.H.M. Rahman and Mustaque Alam, APPs

Advocate for Pet/Ap. : Rana Pratap Singh and Rajesh Kumar Singh, Adv.

Disposition : Appeal dismissed

Judgement :

Madhavendra Saran, J.

1. This appeal has been preferred against the judgment and order dated 29.4.1993 passed by Sri B.B. Verma, 3rd Additional Session Judge, West Champaran, Bettiah in Session Trial No. 112/1990 arising out of Shikarpur PS case No. 25/1990 whereby he convicted appellant Sadre Alam Under Section 304 (part II) of Indian Penal Code (in short as Code) and sentenced him to undergo R.I

for 10 years as also Under Section 323 of the Code for a period of three months. However, the sentences have been ordered to run concurrently.

2. The prosecution case, in short, is that informant Kuer Yadav on 3.2.1990 at about 12 Noon when he returned back home from the distillery he was informed that appellant along with others was constructing house on his land. The informant went there and found that appellant had encroached his part of land in constructing the house. The informant requested the appellant to stop the construction as they had encroached part of his land but his request was ignored and he was threatened that if he interfered he shall be assaulted. When the son of informant named. Munna Yadav stopped the appellant and others he was assaulted by the appellant with Chhura at his hand. In the meanwhile, informant's another son Ram Keshwar Yadav snatched the chhura from the hands of the appellant upon which the appellant picked up a tangi (axe) and struck on the head of the informant who sustained injuries. He further stated that his father Sukar Yadav was also assaulted who succumbed to the injuries in the hospital. The other son of informant named Prem Yadav was also assaulted. On halla the villagers arrived and saved informant's party. The appellant and others, however, managed to run away. The alleged occurrence took place due to land dispute. The fard bayan of informant was recorded on 3.2.1990 at 13.00 hours by the police at Narkatiyaganj hospita On the basis of fard bayan of the informant the police registered Shikarpur PS case No. 25/1990 and after concluding investigation submitted charge sheet. Cognizance was taken and the case was committed to the Court of Session for trial. After trial learned 3rd Additional Session Judge, West Champaran, Bettiah convicted and sentenced the appellant as mentioned above. Against the said conviction and sentence the appellant has preferred the present appeal before this Court.

3. The defence version was that on 3.2.1990 at about 8 AM the accused persons were repairing their shed on their own lands. The informant and his sons came there and demolished the shed and assaulted appellant Sadre Alam and Harun Ansari with knife, farsa and lathi for which Harun lodged FIR with Shikarpur police and the case was registered as Shikarpur PS case No. 26/1990 and in this case also charge sheet was submitted Under Sections 306 and 307 of the IPC.

According to accused the informant and his sons were aggressors and they had taken law in their own hands.

4. To bring home the charge the prosecution examined 12 witnesses who are PW1 , Md. Aftab Alam, PW2, Sudhanshu Jha, PW3, Dr. B.K. Bhutt, PW4, Tej Narayan Das, PW5, Laxmi Yadav, PW6, Dhrub Yadav, PW7, Prem Prasad Yadav. PW8, Nathuni Rai, PW9, Munna Prasad Yadav, PW10, Dasrath Yadav, PW11, Kuerdeo Yadav and PW12, Ram Keshwar Yadav. The defence also examined 2 witnesses in defence who are Md. Ijhar (DW1) and Awadhesh Prasad (DW2).

5. Dr. B.K. Bhutt on 5.2.1990 was posted as Civil Assistant Surgeon in M.J.K. Hospital, Bettiah. On the same day at 11.30 AM he performed post mortem examination on the dead body of Sukar Yadav son of Bandhu Yadav and found following ante mortem injuries on his person;

(i) Swelling 2 'x1' over parietal region of scalp in the middle;

(ii) Eccymosis 1'x 1/2' on the left cheek;

(iii) Abrasion 1'x 1/2' in medial side of right hand.

6. On dissection he found that there was communicated fractures on both parietal bones. The meninges were lacerated and large quantity of blood clots were present. In the opinion of doctor the death was due to shock and haemorrhage as a result of head injury (injury No. 1) caused by hard and blunt substance. Time elapsed since death and post mortem held about 24 hours. Post mortem report is exhibit-1.

7. Now the question is as to who caused the above injuries and in what manner they were caused.

8. To substantiate the charge of assault the prosecution produced the evidence of PWs 5, 6, 7, 8, 9, 10, 11 and 12.

9. PW11 is the informant. He stated that on the date of alleged occurrence at about 11-12 noon he received information that accused were constructing house by encroaching upon his land. He went there and found that accused had

encroached about 2 1/2 cubit over his land. He asked the accused persons not to fix pegs over his land. His request was ignored. When Munna Yadav (PW9) went to stop them accused Sadre Alam assaulted him with chhura which caused injury on his hand. Then Ram Keshwar Yadav (PW12) snatched chuura from his hand. Sadre Alam then picked up axe and gave 3 blows on the person of the informant due to which he sustained injuries on head and hand. The other two accused assaulted him by means of lathi. He further deposed that when his father Sukar Yadav intervened accused Sadre Alam assaulted on his head and other two accused assaulted on his face and hand. Informant's son Prem Prakash Yadav was also assaulted. As a result of assault his father became senseless. The informant and his father were taken to Narkatiyaganj hospital. His father was referred to Bettiah hospital where he died. He further deposed that police recorded his statement at Narkatiyaganj hospital.

10. PW12 (Ram Keshwar Yadav) is the son of informant. He stated before the court that he was working in his potato field. He saw the accused persons fixing pegs by encroaching upon his land. He called his father. Munna Yadav also came with them, Munna stopped them from fixing pegs upon which Sadre Alam gave chhura blow which caused injuries on his hand. He snatched chhura from Sadre Alam. He further stated that thereafter Sadre Alam assaulted his father with axe and the rest accused assaulted him with lathi. Sadre Alam also assaulted Sukar Yadav on his head by means of blunt portion of tangi (axe) and other accused assaulted him with lathi. Prem Prakash Yadav was also assaulted in the incident. The injured were taken to Narkatiyaganj hospital. As the condition of Sukar Yadav was serious so he was referred to Bettiah hospital where he succumbed to the injuries.

11. PW7 (Prem Prakash Yadav) is another son of informant. According to this witness also Sadre Alam assaulted on the head of Sukar Yadav by means of blunt portion of tangi (axe) and when Sukar Yadav fell down other accused assaulted with lathi. He admitted in his cross examination that he was working in his potato field from the morning. In para 4 he stated that his father Sukar Yadav was also with him. According to this witness the work of construction started from 11 AM and when two roofs were put towards north the trouble started.

12. PW9 (Munna Prasad Yadav) is another son of informant. It appears from his evidence that his statement was recorded in Bettiah hospital on 5.2.1990 at 7.00 hours by the police. The same is exhibit-5. He also stated in court that Sadre Alam assaulted his grand father Sukar Yadav on head by means of blunt portion of the tangi (axe) and other two accused assaulted with lathi. Due to assault his grand father became unconscious. According to this witness his father Kuerdeo Yadav and brother Prem Yadav also received injuries in the incident. He also received injuries on his hand by chhura.

13. Similar is the evidence of PWs 5, 6 and 10.

14. From the evidence of aforesaid witnesses it appears that on the alleged date of occurrence at 11-12 noon the accused were constructing shed after encroaching about one cubit and odd in the land of informant and on protest Sukar Yadav was hit by Sadre Alam on head with blunt portion of axe. It also appears that in the said incident informant Kuerdeo Yadav and his two sons Prem Prasad Yadav and Munna Yadav were also assaulted.

15. It was contended on behalf of appellant that fard bayan of informant was recorded just one hour of the occurrence but he named Sadre Alam as the assailant and later on two more persons Harun Ansari and Ejajul were added as accused which is after thought. This Court does not find any merit in the argument of learned Counsel because FIR is not an encyclopedia. It need not contain an exhaustive account of the incident. FIR is also not a catalogue nor does one cannot expect a just informant who is in distress to give such graphic details. Simply because all the details are not disclosed in the FIR it cannot be inferred that the author of the FIR was not aware of the details at the time he got recorded the FIR. There is no rule of law that an accused whose name is not mentioned in the FIR is entitled to acquittal. According to PW11 in para 13 he had disclosed the name of Ejajul and Harun before the police. Therefore, such omission would not be of any consequence.

16. Learned Counsel then referred to the evidence of PW4 (Tej Narayan Das) and submitted that according to this witness the accused were constructing their house, the informant protested and then there was free fight between both party.

Brick and stones were hurled and he found Sukar Yadav lying on the ground. Learned Counsel submitted that evidence of this witness gives death blow to the entire prosecution case. It is true that there is such evidence of this witness but simply because one prosecution witness did not support the prosecution case and so entire evidence cannot be disbelieved.

17. Learned Counsel then drew attention of the court towards some contradictions appearing here and there in the evidence of witnesses to show that they are not trustworthy. In this connection, he pointed out that according to PW6 the trouble started over putting of the roof whereas according to PW10 the accused were fixing pegs after encroaching about one cubit and odd land of the informant. In this connection, it has to be kept in mind that the improvements or contradictions are invariably found in testimony of even wholly truthful witnesses when they are made to depose of the occurrence after a gap of about one or two years. Capacity of a human brain to retain minute details of the occurrence varies from man to man. From the evidence of prosecution witnesses it is clear that alleged incident took place when the work of constructing shed started.

18. It was next contended that on 3.2.1990 at 8 AM the accused were constructing and repairing their shed in their own lands. The informant and his sons came there and demolished the shed and assaulted Sadre Alam and Harun with knife, farsa and lathi for which Harun lodged FIR with Shikarpur police vide Shikarpur police case No. 26/1990 and in this case charge sheet has been submitted Under Section 326 and 307 and other sections of the IPC. He contended that prosecution has not given any explanation as to how the accused sustained injuries. In this connection he referred to exhibits A, B and C.

19. Exhibit A is formal FIR of Shikarpur PS case No. 26/1990, Exhibit-B is fard bayan of the said case and Exhibit-C is charge sheet. It appears that occurrence of Shikarpur PS case No. 26/1990 took place on 3.2.1990 at 8 AM. The occurrence of the present case as mentioned above had taken place at 12 noon on 3.2.1990. The injury report of injured persons of Shikarpur PS case No. 26/1990 was not brought on record and, therefore, it is difficult to know nature of the injuries found on the injured of the said case. Moreover, two occurrences took

place at two different times and so they cannot be regarded as counter version of each other.

20. After examining the oral and documentary evidence, this Court is now in a position to say that the findings recorded by the trial court are not erroneous and contrary to evidence. The view taken by the trial court in convicting the appellant Under Section 304 (part II) of the IPC is quite reasonable. I find no infirmity in the judgment. The trial court, therefore, has rightly convicted the appellant.

21. Now coming to the question of sentence, I find that appellant is facing this criminal prosecution since the year 1990. A period more than 16 years has already elapsed. It is settled view that punishment should be proportionate to the gravity of offence but passing of time is a good ground for imposing lesser sentence. It further appears from the lower court record that after arrest appellant, Sadre Alam remained in jail for a pretty long period and at the time of conviction also by the trial court he was in custody.

22. In the aforesaid facts and circumstances, the sentence of 10 years R.I as imposed, by the trial court is reduced to five years R.I Under Section 304 (part III of the IPC. The sentence as imposed Under Section 323 of the IPC requires no change. Both the sentences shall run concurrently.

23. With the above reduction in sentence, this appeal is dismissed.

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