

Daud Sk and Ors. Vs. State of Bihar

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Court : Jharkhand

Decided On : Jan-23-2015

Appellant : Daud Sk and Ors.

Respondent : State of Bihar

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI ---- Cr. Revision No. 634 of 1998(P) ----- 1. Daud Sk.

2. Yusuf Sk.

3. Naimuddin Sk., All sons of late Karim Bux.

4. Subhan Sk.

5. Abdul Wahab 6. Md. Yahia 7. Md. Zakaria 8. Md. Numan, All sons of Safatulla 9. Yakub Sk., s/o Yusuf Sk..... Petitioner nos.1 to 4 and 9 r/o village Etwadanga,P.S. Barharwa, Distt- Sahibganj and Petitioner nos.5 to 8 are r/o village Kanhaidaiga, P.S.Barharwa, Distt- Sahibganj. Petitioners. Versus State of Jharkhand . Opp.Party. --- CORAM: HON'BLE MR. JUSTICE AMITAV K. GUPTA ---- For the Petitioner : Mr.Sunil Kumar Mahto, Advocate. For the State : Mr. Pankaj Kumar, APP. ---- 04/23.01.2015 This criminal revision is directed against the judgment and order of conviction dated 31.07.1998 passed by the Addl. Sessions Judge, Sahibganj in Cr. Appeal no.59 of 1980/180 of 1993 whereby the judgment and order of conviction passed by the Judicial Magistrate,

Ist Class, Rajmahal in G.R.Case no.307/97(T.R.NO.357/1980) convicting the petitioners, namely, Daud Sk.,Yusuf Sk.,Naimuddin Sk., Abdul Wahab, Md. Zakaria, Md. Numan and Yakub Sk. under Sections 147,148,323,324 and 325 IPC was up-held and the conviction of petitioners, namely, Daud Sk. and Subhan Sk. was modified from under Section 325 to Section 326 IPC and directed them to undergo imprisonment for nine months and the petitioners, Naimuddin Sk., Subhan Sk. and Abdul Wahab were found guilty under Section 324 IPC and the other petitioners were also found guilty for the offence under Section 147 and 323 IPC and petitioners, namely, Daud Sk., Naimuddin Sk. And Subhan Sk. were held guilty under Section 148 IPC and they were sentenced to undergo RI for six months, four months and six months and also four months and two months under Section 147 and 323 IPC and sentences were ordered to run concurrently.

2. Learned counsel for the petitioners has submitted that the appellate court and the trial court have failed to appreciate that all the witnesses are related and interested. That the Investigating Officer has not been examined and this has prejudiced the defence. That the appellate court and the trial court failed to appreciate that there is a land dispute. That the independent witnesses named in the FIR had not been examined which is indicative of suppression of the material facts. That Daud Sk. Subhan Sk. And Abdul Wahab had also sustained injuries and the prosecution has not been able to explain the injuries sustained by the petitioners. That the place of occurrence was the land on which the petitioners were laying claim and the informant were the aggressors and the petitioners had retaliated in self-defence. On the above grounds it is urged that the impugned judgment and order is fit to be set aside.

3. Learned A.P.P., while countering the arguments, has argued that there is no document to show that occurrence took place on account of land dispute. That all the petitioners armed with lathi, bhala and farsa had reached the place of occurrence and assaulted the informant and his son who were planting paddy on the said land. That P.W.1, the doctor, has proved the injury report of P.Ws.2,3 and 4. That all the injured have named the petitioners who were the members of unlawful assembly and had attacked the informant party. That P.W.7-informant has testified the assault by petitioner Daud Sk. with a pharsa blow on his fingers

and Naimuddin had also assaulted with pharsa on the thigh and Abdul Wahab assaulted with bhala and rest of the persons assaulted with lathi. That witnesses have deposed that petitioner-Subhuman Sk. assaulted with pharsa and other accused assaulted with lathi and all the injured were brought to the hospital for treatment. The injury report supports the oral testimony. That the impugned judgment and order has been passed after appreciating the material evidence and it does not warrant any interference.

4. Having heard learned counsels for the parties and on perusal of the impugned

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and materials on record, it is evident that though the petitioners claimed that occurrence had taken place on account of land dispute but no material or document has been produced to substantiate the defence of a bonafide land dispute. The trial court and the appellate court have considered and appreciated the evidence of the witnesses. The testimony of witnesses clearly shows that the petitioners had formed unlawful assembly and were variously armed with pharsa, bhala, lathi etc. and entered the field of the informant and started assaulting the informant and his sons with lathi and pharsa. The occurrence was witnessed by the grand-sons of the informant, namely, Sitabudalin. P.W.7 is the informant, who has testified that when he was in the 'sonabangla' field cultivating paddy crops then all the petitioners- accused persons came and petitioner- Daud Sk. gave a pharsa blow, Naimuddin Sk. gave bhala blow on the head and other petitioners had assaulted with lathi. That Subhan Sk. had assaulted his son, Rehman on his right hand with pharsa. That they were admitted in the hospital. P.W.2, the son of the informant, has supported the allegation of assault by Daud Sk. and Naimuddin Sk. on his father with pharsa. P.W.2 was also admitted in the hospital. P.W.3-Md. Mumtaz Ali was also assaulted and he has supported the case of the prosecution.

5. P.W.1 is Dr. V.S.Bhagat who examined P.W.3 and found incised wound on the back of the head and forehead and on the left finger and also found incised wound with dislocation of joint on the right palm of P.W.2. He has also examined P.W.7-informant and found incised wound on the palm and on the right knee and incised wound on the head. He opined that one of the injuries was grievous in nature and

he has proved the injury reports marked Ext.1 and 1/ 2. The injured were admitted in the district hospital at Malda and the discharge slip of the hospital has been proved. From the evidence of the witnesses it would be evident that there is a land dispute but this does not absolve the petitioners' culpability of having caused the injuries. Apparently the petitioners-party had also received injuries as per Exts. A and A/2 and a counter case was instituted bearing Barharwa P.S.Case No.1(10)/77 by the petitioners.

6. Thus, in view of the evidence on record, it is evident that case and counter case were lodged and it appears to be a case of free fight on account of the land dispute. However, the testimony of the witnesses points to the fact that the petitioners were the aggressors. No material contradictions have been brought-forth regarding the manner of occurrence.

7. In the backdrop of the evidence on record and the discussions made, this Court does not find any illegality or impropriety in the impugned

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of conviction.

8. However, considering the fact that the case is of the year 1980 and the petitioners have faced the rigorous of trial for nearly 35 years and they do not have criminal antecedents, they are sentenced for the period already undergone by them during trial and after conviction. They are on bail, accordingly, they are discharged of the liabilities of the bail bonds.

9. With the aforesaid modification in the sentence the revision stands dismissed. (Amitav K. Gupta, J.) Biswas.

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