

**CRIMINAL APPEAL No.200 OF 1993**

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Against the judgment of conviction dated 26.6.1993  
Passed by Sri Mishri Lall Choudhary, Ist Additional  
Sessions Judge, Muzaffarpur in Sessions Trial No.  
177/31 of 1988/90.

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1. Ram Ashish Pandit
2. Khenu Pandit
3. Butan Pandit
4. Tapeswar Pandit
5. Rameswar Pandit
6. Rudal Pandit
7. Jai Kishore Pandit
8. Lalu Pandit
9. Nunu Pandit

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Appellants

Versus

The State of Bihar & Another.....

Respondents

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For the appellants : Mr. Neeraj Kumar @ Asnidh  
For the State : Mr. Ali Muzaffar, Addl.P.P.

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**P R E S E N T**

THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA

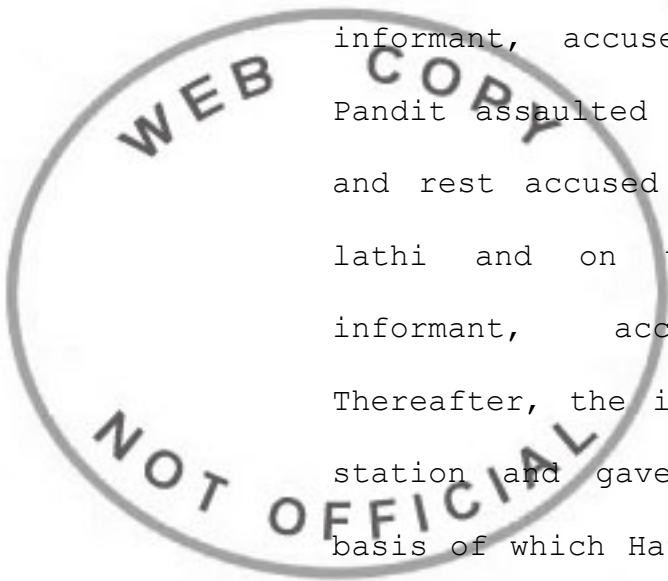
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**S.K. Sharma, J.**

This appeal has been filed by the  
above nine appellants against the judgment  
dated 26.6.1993 passed by Ist Additional  
Sessions Judge, Muzaffarpur in Sessions Trial  
No. 177/31 of 1988/190 whereby they were  
convicted under Sections 149, 323 and 324 of  
the Indian Penal Code but instead of any  
substantive sentence they were released under  
section 360 of the Code of Criminal Procedure  
on furnishing bond of Rs.3000/- (three  
thousand) each with two sureties of the like  
amount each for maintaining peace and good

behaviour for a period of one year.

The prosecution case is with regard to an occurrence dated 14.1.1987 at about 8.00 P.M. While the informant Ram Chandra Chaudhary (P.W.7) was going to his field for giving meal for his watchman, in the way, all the accused persons who were variously armed with bhala, farsa, lathi etc. came and surrounded the informant and at the exhortation made by Rudal Pandit to kill him, accused Lalu Pandit and Rudal Pandit himself gave farsa blow on the head of the informant, accused Butan Pandit and Khemu Pandit assaulted him with bhala on his hand and rest accused persons assaulted him with lathi and on the hulla raised by the informant, accused persons escaped. Thereafter, the informant went to the police station and gave a written report on the basis of which Hathuri P.S. Case No. 3 of 1987 under Sections 147, 148, 341, 324 and 307 of the Indian Penal Code was registered against all the accused persons. The matter was investigated into and after completion of investigation, charge sheet was submitted



under Sections 147,148,323,324 and 307 of the Indian Penal Code and after cognizance, case was committed to the court of Sessions. The trial proceeded and charge under Section 307/149 of the Indian Penal Code was framed against all the accused persons and explained to them who pleaded innocence and faced trial.

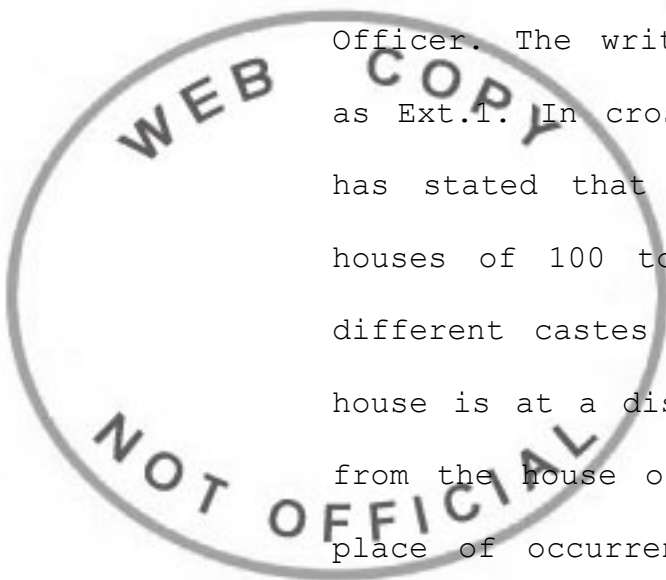
The defence of the accused persons from very beginning was of false implication and also that the informant's party wanted to remove Butan Pandit from his house and for that they wanted to demolish his house for which there was assault between both parties and a counter case was also filed. Further defence is that the prosecution has not come with true version as the filing of counter case with regard to same occurrence has been suppressed.

In order to prove its case, the prosecution has examined altogether eleven witnesses. They are: P.W.1 Ajay Kumar Chaudhary, son of the informant, P.W.2 is Mahakant Thakur who has been declared hostile. P.W.3 is Bipin Chaudhary, another

son of the informant. P.W.4 is Bishwanath Chaudhary who has not supported the prosecution case. P.W.5 is Dhiraj Thakur who has been declared hostile. P.W.6 is Ram Lakhan Rai who has been declared tendered by the prosecution. P.W.7 is informant Ram Chandra Chaudhary. P.W.8 is Sita Ram Chaudhary. P.W.9 is Vidha Nath Singh. P.W.10 Baijnath Singh is the Investigating Officer of this case. P.W.11 is Dr.Hari Kishun Pd. Thakur.

The informant (P.W.7) in his evidence has stated that on 14.1.1987 at about 8.00 P.M. he was going to his filed for giving the meal to his watchman. In the way, when he reached near the place of occurrence, all the accused persons encircled him and started assaulting him with farsa, lathi etc.. Order of assault was given by Rudal Pandit. Lalu Pandit and order giver Rudal Pandit assaulted him by means of farsa and he sustained injuries on his head and left eye brow. Thereafter accused Butan Pandit and Khenu Pandit gave bhala blow on his hand and rest accused persons assaulted

him with lathi. In his evidence, this witness has stated that when his son Bipin Choudhary came for rescue him, he was also assaulted by accused Tapeswar Pandit and Rameswar Pandit. In the meantime, people assembled and seeing them, the accused persons escaped. He was brought to Narma Government Hospital where he was treated and on the next day, he went to police station and gave written report upon which case was registered against all the accused persons. He has shown the place of occurrence to the Investigating Officer. The written report has been proved as Ext.1. In cross-examination, this witness has stated that in his village, there are houses of 100 to 120 people and people of different castes reside in his village. His house is at a distance of 20 to 25 laggis from the house of accused Butan Pandit. The place of occurrence is about 20 yards from his house. In his cross-examination, this witness has further stated that the land was being demanded by accused Butan Pandit from him and on refusal he wanted to take forcible possession of the land and in this connection



a case was lodged. No proceeding under Section 144 Cr.P.C. was initiated. This witness further stated that Plot no. 492 is in his possession and the house of Butan Pandit is not on this land but a proceeding under Section 145 Cr.P.C. was initiated with regard to southern portion of the said plot no. 492. A proceeding under Section 145 Cr.P.C. was decided against him and thereafter he preferred appeal. This witness further stated that Butan Pandit had never worked as a labourer under him. He denied the suggestion of the defence that he has constructed the house of Butan Pandit and disturbance was created after Butan Pandit left his job. A case has been instituted by Butan Pandit against him in order to save himself from this case. Therefore, this witness has fully supported the prosecution case and in cross-examination also he remained intact.

P.Ws.1 and 3, both are sons of the informant, have fully supported the prosecution case.

P.W.8 has stated that while he was

returning to his field after performing his duty, he saw Rudal Pandit and Lalu Pandit armed with farsa and they were fleeing away towards southern side from the place of occurrence. He also saw other accused persons, who were armed with bhala and lathi, escaping towards village Hathari.

P.W.10, the Investigating Officer, has stated that the informant came in injured condition and gave his written report. On the basis of his written report, the case was registered. This witness has proved the endorsement in the written report as Ext.1/1. This witness has stated that he took up investigation and issued injury memo of the injured which have been marked as Ext.2 and 2/1. He also proved the injury report of doctor as Ext.3 and 3/1. This witness also proved the formal F.I.R. as Ext.4. He in his cross-examination has stated that in course of investigation, he recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, inspected the place of occurrence and thereafter made over charge to another person.

P.W.11 is Dr.Hari Kishore Pd.Thakur who on 14.1.1987 was posted as Medical Officer in State Dispensary Narma and on that day he examined Bipin Kumar Choudhary and found following injuries on his persons:

(i) Swelling with tenderness 1½"X1/3"on left side frontal bone of forehead.

(ii) Bruise 2"X ½"on right arm.

The above injuries were simple in nature caused by hard and blunt substance.

On the same day, he also examined Ram Chandra Chaudhary and found following injuries:

(i) Torned skin 2 ½"muscle deep in right side parital bone of skull. Both the margin swallen had crushed.

(ii)Incised wound 2"x muscle deep on left side of frontal bone of skull.

(iii)Torned middle finger with lacerated mark in the middle.

According to the doctor, the age of the injuries was within 5<sup>th</sup> hour. Injury no.(ii) was caused by sharp cutting instrument and it was simple in nature and



the rest injuries were caused by hard and blunt substance and were also simple in nature.

Both the injury reports have been marked as Exts 3 and 3/1.

The defence has not examined any witness but has filed some documents. Ext.A is certified copy of the order dated 10.7.1987 passed in complaint case no.2 of 1987 instituted by Khenu Pandit against Ram Chandra Choudhary. Ext.B is the certified copy of the order dated 23.1.1991 passed in Case No. 140 of 1987 under Section 145 Cr.P.C. in which Ram Chandra Chaudhary was the first party and Butan Pandit was 2<sup>nd</sup> party.

In late stage, the prosecution has filed a certified copy of Khatiyani (Ext.5) to show that accused Butan Pandit had lands other than the disputed land and he has 1/3<sup>rd</sup> share in the lands of Khata No.90.

Considering the entire oral and documentary evidences, the trial court came to the conclusion that the prosecution has not been able to prove the charge under

Section 307 of the Indian Penal Code beyond all reasonable doubts and found that the prosecution has been able to prove the charge beyond all reasonable doubts under Sections 323,324 and 149 of the Indian Penal Code against all the accused persons and accordingly, all the accused persons were convicted thereunder.

After analyzing the entire oral and documentary evidences, I am of the view that the trial court has rightly convicted the appellants under Sections 323,324 and 149 of the Indian Penal Code and as such the judgment of conviction requires no interference by this Court.

On the quantum of sentence, the trial court has taken very lenient view and has given the benefit of provision of Section under section 360 of the Code of Criminal Procedure instead of awarding substantive sentence to the appellants taking into consideration that the case is of the year 1987, there is case and counter case and no previous conviction has been brought against them. Accordingly, the appellants were

released on furnishing bond of Rs.3000/- with two sureties of the like amount each for maintaining peace and good behaviour for a period of one year.

The judgment was delivered on 26.6.1993 and the bonds by the appellants were furnished for maintaining peace and good behaviour for a period of only one year and that period has already expired.

In the result, there is no merit in this appeal and the same is dismissed.

( **Shyam Kishore Sharma, J.**  )

Patna High Court, Patna  
The 13<sup>th</sup> February, 2008  
Tahir/- (NAFR).

