

CRIMINAL APPEAL No.155 OF 1993

Against the judgment and order of conviction dated 24.5.1993 and Sentence dated 25.5.1993 passed by Sri Ramnath, Ist Addl. Sessions Judge, Rohtas at Sasaram in Sessions Trial No.165/48 of 1987/90.

1.Rama Shankar Pandey
2.Lallan Dubey
3.Nandeshwar Dubey
4.Bindeshwar Dubey
5.Krishna Mohan Dubey
6.Krishneshwar @ Kishuneshwar Dubey
7.Bihari Singh .. Appellants

Versus

The State of Bihar... ... Respondent

For the appellants: Mr.Rewti Kant Raman, Advocate

For the State: Mr.jR.B.S.Pahepuri, Addl.P.P.

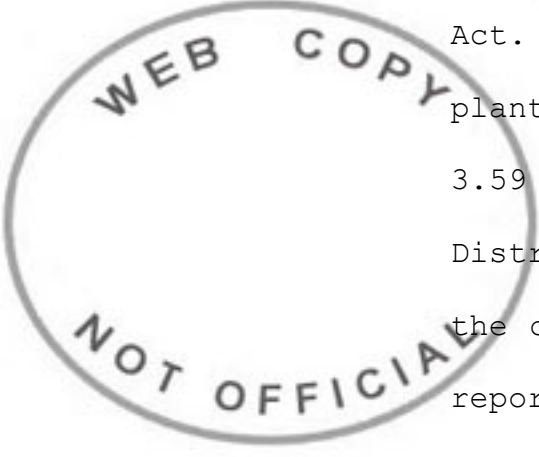
P R E S E N T

THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA

S.K.Sharma, J.

This appeal has been filed by the above seven appellants against the judgment dated 24.5.1993 passed by Ist Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No. 165/48 of 1987/90 by which they have been convicted under Section 353/34 of the Indian Penal Code and have been sentenced thereunder to undergo rigorous imprisonment for one year.

According to the prosecution case, Mukti Nath Dubey (P.W.3) gave a frdbeyan on 6.11.1984 before the Officer-in-charge, Kargahar Police Station which resulted in Kargahar P.S.Case No. 215 of 1984 under Sections 382, 353/34 and 307 of the



Indian Penal Code and under Section 27 of the Arms Act. In his fardbeyan, he alleged that he had planted his paddy in Plot No.10, Khata No.2 area 3.59 decimals of village Mathurapur, P.S.Kargahar, District Rohtas but the accused persons harvested the crops on the point of fire arms. The matter was reported to Dy.S.P., Sasaram upon which Officer-in-charge of Kargahar police station and other police officials visited the place of occurrence. Allegation is that the police officials and informant and his persons were fired upon by the accused persons while the police officials were discharging their official duties. In the meantime, one persons was caught who disclosed his name as Krishna Mohan Dubey whereas other accused persons succeeded in escaping. The case was investigated into and after completion of investigation, charge sheet was submitted under Sections 382, 353/34 and 307 of the Indian Penal Code and 27 of the Arms Act. Cognizance was taken and thereafter case was committed to the court of Sessions. Charges under Sections 382 and 353/34 of the Indian Penal Code were framed against all the accused persons and charges under Section 307 of the Indian Penal Code and 27 of the Arms Act were framed against accused

Rama Shankar Pandey and Lallan Dueby.


The defence of the appellants from the very beginning was that the lands belonged to them and they have been falsely implicated in this case due to land dispute.

Altogether 7 witnesses were examined on behalf of the prosecution. Out of whom P.W.1 Krishana Kumar Gupta is a formal witness who has proved a formal F.I.R.(Ext.1). P.W.4 Ram Bali Singh and P.W.5 Shyam Lal Tiwary have not supported the prosecution case and as such they have been declared hostile. P.W.2 Bans Narain Dubey, P.W.3 Mukti Nath Dbey (informant) and P.W.6 Rameshwar Dubey (son of the infsormant) were eye witnesses. P.W.7 Bachha Singh is the Investigating Officer of the case.

The trial court after analyzing the evidences of the witnesses on record acquitted all the accused persons from the charges under Sections 307 and 382 of the Indian Penal Code and 27 of the Arms Act and convicted them under Section 353/34 of the Indian Penal Code.

Argument of learned counsel for the appellants is that once the trial court has not found the allegation to be true under Sections 307





and other Sections, then it was incumbent upon the trial court to have acquitted the appellants from all the charges leveled against them. Further submission is that the genesis of the case under Sections 307 and 382 of the Indian Penal Code and 27 Arms Act has already failed and no evidence was brought on record to show that the accused persons have deterred the public servant from discharging their official duties. The trial court has also failed to consider the institution of title suit by the appellants claiming the lands to be their own which was pending. No evidence has come that the appellants were quarrelling with the informant with regard to lands in question. So the conviction of the appellants is beyond record.

I analysed the evidences of the witnesses. The appellants have been held guilty under Section 353/34 of the Indian Penal Code. So the evidence of the witnesses only with regard to that offence is being discussed.

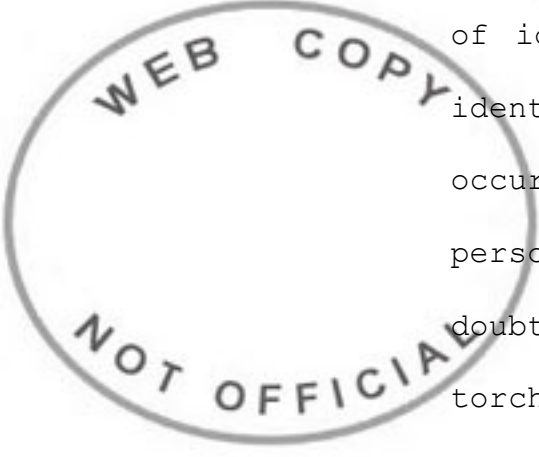
In order to prove the charge under Section 353/34 of the Indian Penal Code, the prosecution is required to prove that the criminal force was used or assault was made to public servants who were in execution of public duty as a public

servants or at that time, obstruction was made to the police officials by the appellants in discharging the official duties.

The evidence of the informant P.W.3 is that on 6.11.1984 at 7.00 P.M. the accused persons were cutting paddy crops and at that time one of the accused fired on the police party. The police also resorted firing asking them not to fire because they were the police officials. Despite that firing was done by the accused persons. One of the accused was apprehended at spot and others escaped. Similar is the evidence of P.W.6 and P.W.2.

Undoubtedly, the police personnels were restrained from discharging their public duty. A number of witnesses have been examined and all of them have supported the evidence that on the date of occurrence, the police was restrained to discharge its official duties and that was the only condition when conviction under Section 353 of the Indian Penal Code can be made. That condition was satisfied. Therefore, the trial court was right in coming to the conclusion that the police officials were restrained from discharging their official duties.

On the question of identification of the




accused persons, it has been argued that no means of identification has been cited. No torch or any identifying material has been described in the occurrence. So the identification of the accused persons, except one who was caught at spot, was doubtful as not a single witness has stated that torch light was flashed.

On the question of identification, I also found that nothing has been brought on the record as to under what means, the appellants were identified. The only circumstances comes that one of the persons was caught. So his identification is not under challenge whereas identification of other accused persons becomes doubtful because of non-disclosure of any source of identification of those persons.

Learned Addl.P.P. has submitted that from the evidences brought on record it appears that all the appellants in furtherance of common intention has committed the overt act and the trial court has rightly convicted and sentenced them.

After hearing learned counsel for the appellants and learned Addl.P.P. and after close analyzing of the evidences, it appears that the police personnels were deterred from discharging



their official duties. So the conviction under Section 353 of the Indian Penal Code is justified but on the question of identification of the appellants, I am of the view that no material regarding identification has been brought on the record. There was no case of the prosecution that even torch light was used or electric bulb was giving the light. In absence of any source of identification, it will be difficult to accept the prosecution story regarding identification of the accused persons. So identification of the accused persons, except accused Krishna Mohan Dubey who was caught at the spot, becomes doubtful. As accused Krishna Mohan Debey was caught at the spot, his identification has been proved beyond all reasonable doubts.

In view of the discussions made above, the conviction of appellant Krishna Mohan Dubey is upheld and conviction and sentence of other appellants are set aside. Accordingly, the appeal of appellants namely, Rama Shankar Pandey, Lallan Dubey, Nandeshwar Dubey, Bindeshwar Dubey, Krishneshwar alias Kishuneshwar Dubey and Bihari Singh is allowed. They are, accordingly, discharged from the liabilities of their bail bonds.

However, on the question of sentence of appellant Krishna Mohan Dubey, learned counsel submits that as he has remained in custody during investigation period, his sentence may be modified to the period already undergone by him which may be sufficient for the ends of justice.

Considering the submission, the sentence of appellant Krishna Mohan Dubey is modified to the period already undergone by him which shall be deemed to be sufficient for the ends of justice.

In the result, this appeal is allowed in part.

(Shyam Kishore Sharma,J.)

Patna High Court, Patna
The 16th January, 2008
Tahir/- (NAFR)



(Shyam Kishore Sharma, J.)