

CRIMINAL APPEAL No.281 OF 1993(SJ)

Against the judgment of conviction dated 8.9.1993 and sentence dated 10.9.1993 passed by Sri D. N. Barai Addl. Sessions Judge VII, Patna in Sessions Trial No. 425 of 1989.

1. Mohan Yadav @ Lal Mohan Yadav
2. Nirmal Yadav
3. Raj Nandan Yadav
4. Ram Sewak Yadav

.....

Appellants

Versus

The State of Bihar

.....

Respondent

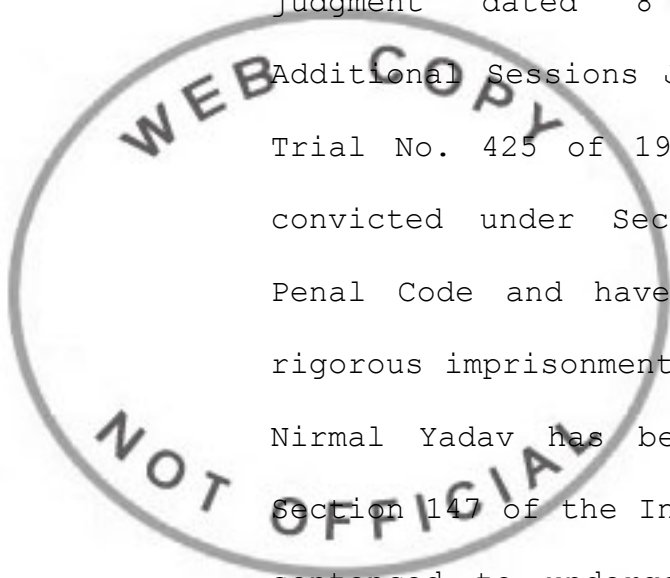
For the appellants : Mr. Nand Kishore Pd.No.II
For the State : Mr. Lala Kailash Bihari Prasad,APP

P R E S E N T

THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA

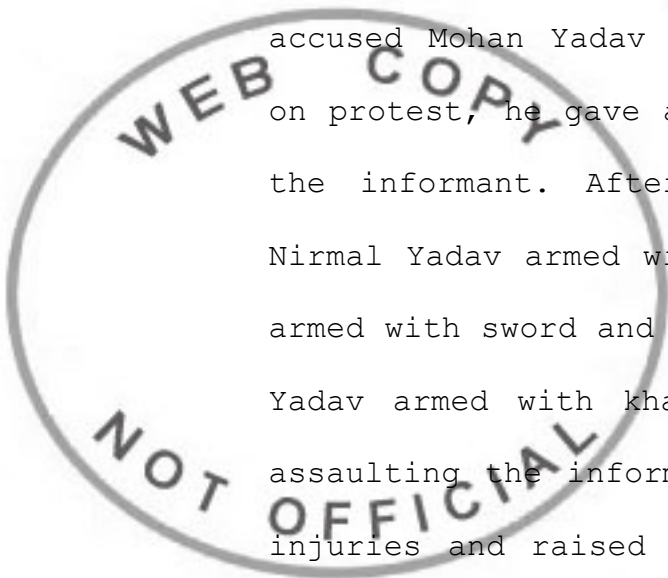
S.K.Sharma,J.

This appeal has been filed against the judgment dated 8th August,1993 passed by Additional Sessions Judge VII, Patna in Sessions Trial No. 425 of 1989 by which they have been convicted under Section 307/34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for seven years. Appellant Nirmal Yadav has been further convicted under Section 147 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for one year and rest appellants namely Mohan Yadav alias Lal Mohan Yadav, Raj Nandan Yadav and Ram Sewak Yadav have also been further convicted under Section 148 of the Indian Penal Code and have been sentenced to undergo rigorous



imprisonment for two years. The sentences were ordered to run concurrently.

The prosecution case relates to an occurrence dated 4.11.1986 at about 8.00 A.M. According to fardbeyan(Ext.3) of Ram Keshwar Yadav (P.W.3) which was recorded by police in Referral Hospital, Bihta against five accused persons including these four appellants which resulted in Bihta P.S.Case No. 281 of 1986 under Sections 324 and 323/34 of the Indian Penal Code, while he was returning home after giving round in his field and when reached in the Basti, he met accused Mohan Yadav who started abusing him and on protest, he gave a khanti blow on the head of the informant. After a little while accused Nirmal Yadav armed with lathi , Raj Nandan Yadav armed with sword and Ram Sewak Yadav and one Nemi Yadav armed with khanti came there and started assaulting the informant. The informant received injuries and raised hulla and on hearing hulla, informant's brother Ram Praveen Yadav (P.W.1) rushed there but by that time, the accused persons escaped. The motive of the occurrence was that about two years ago accused Mohan Yadav had grown sugar-cane in the field of the informant on



batai but he left to look after the same. Thereafter the informant started looking after the sugar-cane. The informant was brought to Bihta Referral Hospital where fardbeyan of the informant, as stated above, was recorded. The matter was investigated into and charge sheet was submitted under Sections 324, 323 and 307 of the Indian Penal Code. Thereafter cognizance was taken and thereafter the case was committed to the court of sessions. The trial proceeded. Charge under Section 307/34 of the Indian Penal Code was framed against all the five accused persons. Further charge under Section 147 of the Indian Penal Code was framed against accused Nirmal Yadav and under Section 148 of the Indian Penal code was framed against rest four accused. Charges were explained to the accused persons who pleaded innocence and preferred to face the trial. In the midst of trial, one accused Nemi Yadav died and the proceeding against him was dropped.

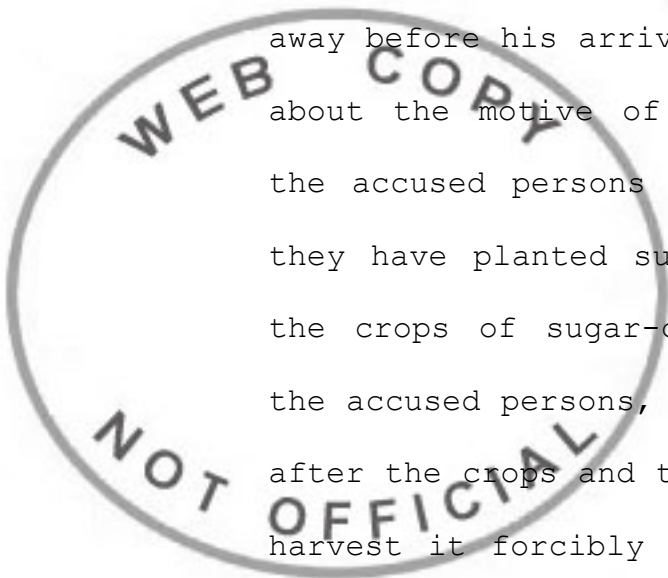
The defence of the accused persons was of false implication. Their further defence was that the prosecution party caused injuries to Sunama Devi wife of Nemi Yadav on 4.11.1986 in the early

morning when she went to attend the call of nature. She was assaulted with garasa on her head by the informant and when Mohan Yadav went to rescue her, he too was assaulted by garasa on his head. Further defence is that the informant with a view to save his skin from the consequence of Bihta P.S.Case No. 282 of 1986 which was filed for causing injuries to Mohan Yadav and Sonama Devi, has filed this false case. The defence has also examined one D.W. who is Dr.Ram Singh.

In order to prove its case, the prosecution has examined altogether four witnesses. They are : P.W.1 Ram Pravesh Yadav, P.W.2 Dr.Ram Singh, P.W.3 Ram Keshwar Yadav and P.W.4 Janardan Rai, Investigating Officer.

The informant is P.W.3 Ram Keshwar Yadav who is alleged to have received injuries at the hands of the appellants. He in his evidence has stated that on 4.11.1986 at 8.00 A.M. he was returning after giving round of his field and when reached near the house of accused Nemi Yadav (since dead), accused Mohan Yadav met who started abusing him and on protest, he assaulted this witness with khanti on his head causing injury to him. Thereafter rest accused persons

came and started assaulting the informant with their respective weapons as stated in the fardbeyan. This witness further stated that on account of indiscriminate assault, he received a number of injuries on his head, left shoulder, arms, legs and other places. This witness showed the mark of injuries on head and shoulder to the court which has been noted by the Presiding Officer in the deposition. This witness further stated that on hulla raised by this witness, his brother Ram Pravesh Yadav (P.W.1) came to the place of occurrence but the accused persons fled away before his arrival. This witness also stated about the motive of occurrence and stated that the accused persons were ploughing his land and they have planted sugar-cane in the field. When the crops of sugar-cane was being neglected by the accused persons, this witness started looking after the crops and the accused persons wanted to harvest it forcibly and due to that assault was made. This witness also stated that after receiving injuries, he was brought to Bihta Referral Hospital for treatment where his fardbeyan was recorded by the police. The fardbeyan has been marked as Ext.3. This witness



in his cross-examination has stated that he was loosing consciousness frequently, so he was not in a position to say the name of those persons who brought him to Hospital. This witness in his cross-examination also denied that on the date and time of occurrence, accused Mohan Yadav and Sonama Devi were also sustained injuries and he has specifically stated that he has not seen Moahan Yadav and Sonama Devi in the Hospital in injured conditions on the date of occurrence but in his cross-examination this witness has confessed about a case against him regarding assault on head of Sonama Devi. Initially he denied about the injury on Sonama Devi but later on this witness has stated that the said case was lodged only with a view to put pressure on him.

P.W.1 Ram Pravesh Yadav has supported the version of informant P.W.3. This witness in his evidence has stated that the accused persons committed various assault on the informant as a result of which he received a number of injuries and was brought to Bihta Referral Hospital for treatment. This witness in his cross-examination has stated that regarding an occurrence on the same date, one case was lodged by Mohan Yadav.

In that case, Sonama Devi was shown to have received injuries. From the evidence of this witness, it appears that he had gone to the place of occurrence after hearing cry. So it cannot be said that he is an eye witness.

P.W.2 is Dr. Ram Singh who on 4.11.1986 was posted as C.A.S. at Bihar Referral Hospital and on that date he examined Ramkeshwar Yadav and found following injuries on his person:

(i) One penetrating wound on chest in left anterior axillary line at the level of breast of 1 ½" (oblique depth) X ½" (length) x ¼ (width) dimensions.

(ii) One penetrating wound on the left shoulder joint at its upper end of 1" (long) x ½" (width) x 1" (depth) dimension.

(iii) one incised wound near left angle of mouth of ½"x1/4"x skin deep dimension.

(iv) Two incised wounds on the scalp (a) one in the middle of 2"x ½"x bone deep dimension (b) one left parietal area of 2 ½"x ½"x bone deep dimension.

(v) one incised small wound on right eye brow of ½"x ¼"x skin deep dimension.

(vi) one incised wound ½"x1/2"x skin deep

dimension on lateral surface of upper third of right arm.

(vii) one scratch on dorsum of right forearm.

(viii) One linear swelling of 3"x1/2" dimension on the back of upper third of right forearm.

According to doctor, injury nos. (i) and (ii) were caused by sharp edged pointed weapon. Injury Nos. (iii) to (vii) were caused by sharp cutting weapon and injury no.(viii) was caused by hard blunt substance. Opinion regarding injury no.(i) was kept reserved for observation. However, injury nos. (ii) to (viii) were simple in nature. This witness has stated that injury nos.(i) and (ii) might have been caused by bhala and khanti and injury nos.(iii) to (vii) might have been caused by lathi. This witness has stated in his evidence that he has submitted subsequent report as to injury no.(i) which was found dangerous to life. The injury report and subsequent injury report have been marked as Ext.1 and 2 respectively.

P.W.4 is Investigating Officer of this case who has stated in his evidence that he had

inspected the place of occurrence and examined the witnesses and submitted charge sheet. According to this witness, the injured was sent to Bihta Referral Hospital for treatment. This witness also stated that another case being Bihta P.S.case No. 282 of 19860 was registered and he has also investigated the said case and had submitted the charge sheet.

Defence has also examined one D.W. He is also Dr. Ram Singh who in his evidence has stated that on 4.11.1986 when he was posted at Bihta Referral Hospital had examined Lal Mohan Singh, appellant no.1 and found one incised wound on the scalp at its posterior side of 1" long x ½" wide x skin deep. According to doctor, injury was caused by sharp cutting weapon. The injury report has been marked as Ext.A.

This witness stated that he also on the same day examined Sonama Devi and found two following injuries on her person:

(i)one incised wound on middle of scalp 1 ½"x ½"x bone deep.

(ii)One rounded swelling of 1"x1"on dorsum of right hand.

According to this witness, injury

no.(i) was caused by sharp edged weapon and injury no.(ii) was caused by hard and blunt substance. The injury report has been marked as Ext.A/1.

Learned counsel for the appellants submitted that there is case and counter case with regard to the occurrence of the same date and time but the prosecution has not come with true version and has not explained about the counter case, rather it came later on at the behest of the defence. Therefore, the defence has supported the contradictions. Further submission is that there is no independent witness and only injured (informant) is the eye witness of the occurrence. It is also submitted that the motive of the occurrence has not been proved as no witness was produced by the prosecution on the factum of motive. The injured was never grievous because the Investigating Officer has not found any mark of violence at the place of occurrence. The injuries found on the person of Moahn Yadav and Sonama Devi which have been marked as Exts.1 and 2.

According to informant P.W.3, after sustaining injuries, he was brought to Bihta

Referral Hospital where his fardbeyan was recorded. P.W.1 has stated in his evidence that he came at the place of occurrence on hearing hulla. It appears that he is not the eye witness of the occurrence because he came later on. Therefore, the case is based on the sole testimony of P.W.3, the informant. P.Ws. 3 and 1 have not explained the circumstances relating to injuries on two persons on the side of the appellants. Out of two injured, one is lady. P.W.2 later on has also been examined as D.W.1. D.W.1 has stated in his evidence that he also examined Mohan Yadav and Sonama Devi and found injuries which have been mentioned above. This fact is apparent from the evidence of P.W.2 who has stated in his evidence that he also investigated the counter case and charge sheet was submitted. Therefore, there is case and counter case and the prosecution has not explained about the counter case. It has suppressed the vital information of the context of the counter case.

Learned A.P.P. Mr.Lala Kailash Behiri Prasad submits that the judgment of conviction and sentence of the appellants is perfectly

correct and requires no interference by this court.

For proving the charge under Section 307 of the Indian Penal Code, it must be proved that the accused had intention to do away with the life of the person. It appears that there was no such circumstance which could have justified the intention. The intention has not been proved. Taking into consideration all these circumstances, the conviction of the appellants under Section 307 of the Indian Penal Code is altered into the offence under Section 325 of the Indian Penal Code.

In this appeal, two applications have been filed; one compromise petition on behalf of both the parties and another for compounding the offences. In the compromise petition, it has been mentioned that both the parties are next door neighbours and out side the court they have settled the dispute and are living peacefully.

The conviction of the appellants now remained under Section 325, 147 and 148 of the Indian Penal Code. In view of restoration of cordial relationship between the parties, it is desirable that the offences be compounded which will be in

the interest of both the parties. Accordingly, the judgment of the court below is upheld with some modification in conviction but in view of above, the offences are compounded. In view of section 320(8) of the Code of Criminal Procedure, composition of the offences shall have the effect of an acquittal of the accused persons with whom the offences have been compounded. Hence, the appellants are acquitted of the charges. They are also discharged from the liabilities of their bail bonds.

In the result, this appeal is allowed in terms of compromise.

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

Patna High Court, Patna
The 7th March, 2008
Tahir/- (NAFR) .

