

CRIMINAL APPEAL No.160 OF 1993(SJ)

Against the judgment dated 7.6.1993 passed by Sri
Vikash Kumar Sharma, 2nd Addl. Sessions Judge, Saharsa
in Sessions Trial No.8/35 1987/88.

1. Ram Bahadur Yadav
2. Ram Swarath Yadav
3. Karam Chand Yadav
4. Ram Chandra Yadav Appellants
Versus
The State of Bihar Respondent

For the appellants : Mr. Anil Kumar Mukund
For the State : Mr. R.B.S. Pahepuri, Addl. P.P.

P R E S E N T

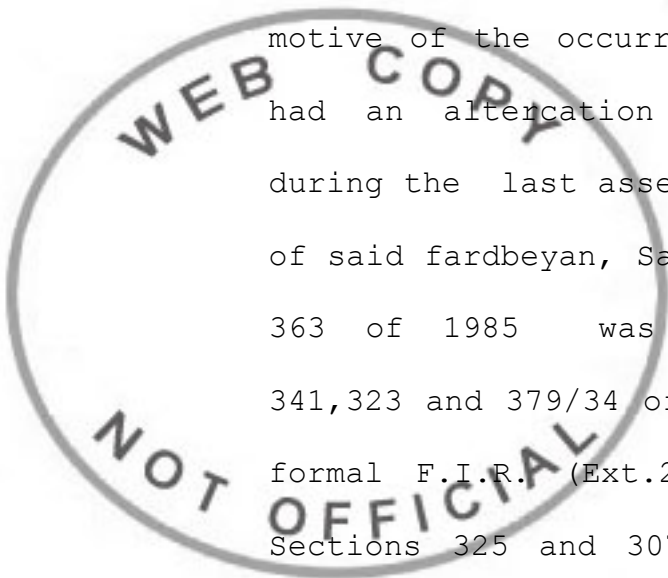
THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA

S. K. Sharma, J. Appellant nos. 2 to 4, namely, Ram
Swarath Yadav, Karam Chand Yadav and Ram Chandra
Yadav were found guilty under Section 323 of the
Indian Penal Code and were convicted thereunder
but in stead of substantive sentence, they have
been released on probation bonds of Rs.1000/-
with one surety for a period of one year to
maintain peace and be of good behaviour to the
effect that during the aforesaid period whenever
called upon they will appear in court and receive
the sentence and appellant no.1 Ram Bahadur Yadav
was found guilty under Sections 325 and 323 of
the Indian Penal Code and was convicted
thereunder and was sentenced to undergo rigorous
imprisonment for three years and six months

respectively by judgment dated 7.6.1993 passed by Sri V.K.Sharma, 2nd Additional Sessions Judge, Saharsa in Sessions Trial No. 8/35 of 1987/88. Both the sentences were ordered to run concurrently.

The prosecution case is based on fardbeyan (Ext.1) which was recorded on 4.12.1985 by Sri Suresh Prasad, Officer-in-charge of Bagaon police station (P.W.7) in Bariyahi (Bangaon) Hospital on the statement of Mahtab Tanti (P.W.6). According to fardbeyan, the informant had a piece of ancestral land measuring about 13 kathas 15 dhurs bearing cadastral survey plot no. 637 appertaining to Khata No. 43 of village Balha, Rahika Badh. On 4.12.1985 at about 8.00 A.M. the informant and his two sons Fuleshwar Tanti (P.W.3) and Suresh Tanti (P.W.4) and wife Kusma Devi (P.W.5) went to that field for sowing wheat crops. While the informant was ploughing field and his two sons were dropping the wheat seeds, all the accused persons armed with lathi reached there and asked the informant as to why he is ploughing the field and when it was replied by the informant that it was his ancestral land, accused Ram Chandra Yadav

exhorted others to assault. Thereafter accused Ram Chandra Yadav assaulted on the right hand and back of the informant and other accused assaulted Fuleshwar Tanti by lathi and Suresh Tanti sustained injury at his hands at the instance of accused Ram Bahadur Yadav. Thereafter, accused Ram Bahadu Yadav assaulted the infnormant's wife Kusma Devi with lathi and also snatched her silver hasuli from her neck. On hearing hulla, the villagers namely, Nirdhan Tanti, Swarup Tanti, Dukha Tanti, Chhotelala Mishra arrived and thereafter accused persons escaped. The motive of the occurrence was that the informant had an altercation with the accused persons during the last assembly election. on the basis of said fardbeyan, Saharsa (Bangaon) P.S.Case No. 363 of 1985 was registered under Sections 341,323 and 379/34 of the Indian Penal Code. The formal F.I.R. (Ext.2) was drawn. Subsequently, Sections 325 and 307 of the Indian Penal Code were added in the first information report on the prayer of the Investigating Officer. The injured were sent for treatment and their injury reports were brought on the record which have been marked Ext.3 to 3/3. The matter was investigated into



and after completion of investigation, charge sheet was submitted. The cognizance was taken and the case was committed to the court of sessions. The trial proceeded. Charges under Sections 307, 325 and 379 of the Indian Penal Code was framed against accused Ram Bahadur Yadav and charge under Section 323 of the Indian Penal Code was framed against all the four accused persons. Charges were explained to the accused persons who pleaded innocence and preferred to face the trial.

The defence of the accused persons was that there was dispute between the co-sharers of the informant regarding the share in the ancestral land and they have been falsely implicated due to previous enmity. The defence has also examined three witnesses and produced some document to show that land in question was purchased from Bahadur, Jagdish and others by them and they are continuing in peaceful possession of the said land since the date of purchase i.e. from November, 1985.

In order to prove its case, the prosecution has examined 10 witnesses. They are : P.W.1 Nirdhan Tanti, P.W.2 Chhote Lal Mishra,

P.W.3 Fuleshwar Tanti, P.W.4 Suresh Tanti, P.W.5 Kusuma Devi, P.W.6 Mahtab Tanti, the informant, P.W.7 Suresh Prasad, Investigating Officer, P.w.8 Shyam Sunder Khan, P.W.9 Dr.N.C.Jha and P.W.10 is Durga Kant Mishra.

P.Ws. 3 and 4 are the sons and P.W.5 is wife of the informant P.W.6 and these are the material witnesses of the occurrence and all the four persons were assaulted by the accused persons.

The informant P.W.6 in his evidence stated that on the date of occurrence i.e. 4.12.1985 at about 8.00 A.M. while he and his two sons namely, Fuleshwar Tanti and Suresh Tanti and wife Kusma Devi were at the field for sowing wheat, the accused persons came there and accused Ramchandra Yadav assaulted him with lathi on his right hand and back, accused Ram Bahadur Yadav assaulted Suresh Tanti and all the accused persons assaulted Fuleshwar Tanti. This witness also stated that accused Ram Bahadur Yadav also assaulted his wife Kusma Devi and he also snatched her hasuli from her neck. On halla, villagers came and thereafter the accused persons escaped. This witness stated in his evidence that

the injured including this witness were brought to hospital for treatment and there fardbeyan was recorded by the police.

P.Ws.3, 4 and 5 who are also injured have supported the entire prosecution case reiterating the same thing as has been stated by the informant and in cross-examination they remained intact.

P.W.9 is Dr. Naresh Chandra Jha (Suman). This witness has stated that on 4.12.1985 he was posted as Medical Officer, Banganwa State Dispensary Bariahi, and on that date he examined informant Mahtab Tanti and found following injuries on his person:

(i) Bruise with swelling over the right joint, dimension -3"x1/2".

(ii) Bruise with swelling over the right wrist joint, dimension -2"x1 1/2".

(iii) Multiple injuries i.e. bruises over the right scapular region.

All the above injuries were found simple in nature and caused by hard and blunt substance such as lalthi except injury no.1, the opinion regarding the nature of which was reserved for X-ray report.

This witness also examined P.W.5 Kusma Devi, and found following injuries on her person:

(i) Multiple bruises, indistinguishable, with profused swelling, over the back of the right side of chest, extending from lower portion of the scapula to iliac crest. Crepits was felt. As per this witness, the X-ray plate, done on 25.12.1985 showed fractures of 4th, 5th, 6th and 7th ribs and in his opinion the injury was grievous in nature and caused by blunt weapon such as lathi.

(ii) The parital plura of this injured was also injured. This injury may have caused her death. It had been caused due to injury no.(i).

This witness on the same day also examined Fuleshwar Tanti and found following injuries on his person:

(i) Bruise with abrasion on the left forearm (lower portion) size 1 ½" x 1".

(ii) Bruise with swelling over right scapular region size 2"X 1".

(iii) Bruise with swelling over the right calf muscle size 3"x1".

All the injuries were found to be simple in nature caused by hard and blunt weapon, such as, lathi except injury no.(i) regarding which opinion was reserved, awaiting the X-ray report.

This witness also examined injured Suresh Tanti on the same day and found following injuries on his person:

(i) One lacerated wound on the right cheek just on the side of the eye, size 1"x1/8".

(ii) One bruise on the left forearm just below the elbow joint, on the front, size 1 1/2"x1 1/2".

According to doctor, both the injuries were simple in nature and caused by hard and blunt substance.

The injury reports of the above four injured have been marked as Exts. 5 to 5/3.

The opinion of the doctor has tallied with the oral evidence of the prosecution witnesses.

All the material prosecution witnesses, as mentioned above, have stated that on the date of occurrence, all the accused persons assembled and caused various overt acts as a result of which they have received injuries. Therefore,

there is consistent evidence that on the date and time of occurrence, the accused persons have committed various overt acts as a result of which, the informant, his wife and others received injuries.

P.W.7, the Investigating Officer who in his evidence has stated that he had recorded the fardbeyan of the informant Mahtab Tanti. The fardbeyan has been marked as Ext.1. This witness has stated that he has investigated the matter and found four persons injured and he had prepared the injury reports which has been marked as Exts. 3 to 3/3. This witness further stated that he had visited the place of occurrence. This witness fully supported the prosecution case on the point of occurrence.

The defence has also examined three witnesses. Out of them, two namely, D.W.2 Guneshwar Lal Das and D.W.3 Jai Narayan Mandal are formal witnesses. They have simply proved the document i.e. the two sale deeds dated 22.11.1985 and 27.10.1969 respectively (Ext.A and A/a), Government rent receipt (Ext.B) standing in the name of defence party which show that the disputed land is in possession of the

defence party from the date of its purchase. D.W.3 Shiv Kumar Yadav has stated in his evidence that the defence party is in possession of the dispute land prior to the date of alleged occurrence.

The prosecution has also proved some documents which are Ext.5 (certified copy of the Cadestral Survey Khatian), Ext.7 (khatian of recent survey), both are with respect to plot no.637. The prosecution has also proved some rent receipts which are Exts. 4 to 4/4.

Learned A.P.P. submits that the judgment of the trial court is correct and requires no interference by this court.

After perusal of documentary evidences of both sides, it appears that the defence has purchased only 12 kathas of land out of 13 Khatas 15 dhurs and the defence on the date of occurrence wanted to take forcible possession of the entire land which resulted in assault on the date of occurrence.

After analyzing the entire materials on record, I am of the view that the prosecution has been able to prove the charges against the appellants beyond the shadow of all reasonable

doubts. So the conviction of the appellants is maintained.

It appears that three convicts namely, appellant no.1 Ram Swarath Yadav, appellant no.2 Karam Chand Yadav and appellant no.3 Ram Chandra Yadav were granted the benefit of Probation of Offenders Act and they were released on the execution of their probation bonds, as directed by the trial court.

On the point of sentence of convict appellant no.1 Ram Bahadur Yadav, it has been submitted by the learned counsel for the appellant that the occurrence is of the year 1985 and about 24 years have already passed and appellant has also remained in custody for sometimes during trial, so lenient view may be taken in the matter of his sentence and if his sentence is reduced to the period already undergone by him may be sufficient for the ends of justice.

I am in full agreement with the submission of the learned counsel for the appellant. Accordingly, the sentence of appellant no.1 Ram Bahadur Yadav is reduced to the period already undergone by him during trial which will be

sufficient for the ends of justice.

In the result, this appeal is dismissed
with modification in sentence, as stated above.

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

Patna High Court, Patna
The 27th February, 2008
Tahir/- (NAFR)

