

CRIMINAL APPEAL No.177 OF 1993

Against the judgment of conviction and sentence dated 25.5.1993 passed by Sri Pashan Xaxa, Ist Addl.Sessions Judge, Munger in Sessions Case No. 656 of 1983.

1. Ram Naresh Singh	
2. Ashok Singh @ Ashok Kumar Singh	
3. Arjun Singh Appellants
	Versus
The State of Bihar Respondent

For the appellants : Mr.Awadhesh Kumar Singh
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

All the above three appellants have filed this appeal against the judgment dated 25.5.1993 passed by Ist Additional Sessions Judge, Munger in Sessions Case No. 656 of 1983 by which they have been found guilty under Sections 324 of the Indian Penal Code and have been convicted and sentence thereunder to undergo rigorous imprisonment for three years. Appellant Ram Naresh Singh has been further found guilty under Section 27 of the Arms Act and has been convicted and sentenced thereunder to undergo rigorous imprisonment for two years but his sentences were ordered to run concurrently.

According to the prosecution case, on 7.2.1981 Mithilesh Singh (P.W.4), brother of the

informant Subodh Singh and his cousin Nepali Singh (P.W.3) had gone to attend the call of nature and they saw that the accused persons namely, Arjun Singh and Naresh Singh cutting mango tree in the field of informant. They made protest against cutting the mango tree. The accused persons ran to assault. They raised hulla. The informant Subodh Singh after hearing noise who at that time on the road came to the place of occurrence. Thereafter, accused persons resorted to firing. One firing missed but second firing caused injury to Nepali Singh who received pellet injury. Accused Ram Naresh Singh also assaulted Nepali Singh on his head. Dsspite injury, injured Nepali Singh and Mithilesh Singh caught Ram Naresh Singh and they snatched his pistol. At the time of snatching pistol, accused Arjun Singh assaulted with saif on the head of Mithilesh Singh. When the informant Subodh Singh went to rescue, accused Arjun Singh assaulted him with saif causing injuries in his fingers. The land dispute was the genesis of the occurrence. All the injured were taken to Barbigaha Hospital where police came and recorded fardbeyan of Subodh Singh (Ext.3) and on the basis of which formal F.I.R. was drawn up.

Case under Sections 323 and 324 of the Indian Penal Code and 25A/27 of the Arms Act was instituted. The matter was investigated into and after completion of investigation, charge sheet was filed under Sections 307, 326, 324 and 323 of the Indian Penal Code and 25(A) Arms Act against the accused persons. Cognizance was taken and the case was committed to the court of sessions. The trial proceeded. Charges under Section 307 and 326 of the Indian Penal Code were framed against all the three accused persons and further charge under Section 27 Arms Act was framed against accused Ram Naresh Singh which were explained to the accused persons. They denied the allegation and faced the trial.

The defence of the accused persons was that there was a land dispute and the members of other side were aggressors. Further defence was that accused Ram Naresh Singh had also received injuries and on his statement, Barbigha P.S. Case No. 17 of 1981 was registered against the informant Subodh Singh (P.W.6), Nepali Singh (P.W.3) and Mithilesh Singh (P.W.4). That case resulted in Sessions Trial No. 665 of 1983.

In order to prove its cases, the

prosecution examined altogether 11 witnesses. P.W.1 Vijoy Kumar Singh has been declared hostile. P.W.2 Sachidanan Singh has supported the prosecution case. P.W.3 Nepali Singh, who is one of the injured, has supported the prosecution case. P.W.4 Mithilesh Kumar Singh has also supported the prosecution case. P.W.5 Dr.Muneshwar Prasad Singh has examined the injured. P.W.6 Subodh Singh is the informant of this case. P.W.7 Jagdambi Pd.Yadav has proved the sanction report (Ext.5) which contains the signature of District Magistrate (Ext.6). P.W.8 Narendra Prasad is a formal witness and has proved the F.I.R. (Ext.7). P.W.9 Deopati Mishra is the Investigating Officer of this case. P.W.10 is Tranjeet Singh Kendra who at the relevant time was Sergeant Major. He has stated that a country made pistol was sent to him for examination and he examined the same and submitted his report (Ext.13). P.W.11 Chandrika Singh has proved the rent receipts (Exts. 14 to 14/4).

The defence has also examined one witness namely, Ram Naresh Singh, who has proved Hukumnama, Ulfikewala and Kewala relating to year 1945, 1927 and 1950 and they have been marked as

Exts.A, B and C respectively. The rent receipts were also marked Exts. D and D/1 which bear signatures of Braj Kishore Pandey, Karamchari. Parcha forms EXts.E and E/1 bears the signatgure of Jitendra. Dues clearance certificate Ext.F bears the signature of Balmukund Dubey.

P.W.5 Dr.Muneshwar Prasad Singh has stated that on 7.2.1981 he was posted as Incharge Medical Officer in Barbigaha State Dispensary and at about 9.55 A.M. he examined Nepali Singh and found following injuries:

(i) Incised wound 2 ½"x1/2"x1/4"on the right side of scalp caused by sharp cutting weapons such as garasa.

(ii) Lacerated wound ½"x1/4"x depth not probed on right leg six inches below the knee joint on radial aspect.

Both the injuries, according to opinion of the doctor, were simple in nature.

On the same date and time, doctor also examined Mithilesh Kumar Singh and found following injury:

(i) Incised wound 6"x 1"bone cut on the right side of scalp caused by sharp cutting weapon which was found

grievous in nature.

On the same day, the doctor also examined Subodh Kr.Singh and found following injuries:

- (i) Abrasion $\frac{1}{2}$ "x $\frac{1}{8}$ " on the palmar surface of the left thumb.
- (ii) Abrasion $\frac{1}{2}$ "x $\frac{1}{2}$ " on the palmar surface of the left index finger.
- (iii) Abrasion $\frac{1}{2}$ "x $\frac{1}{4}$ " on the palmar surface of the left middle finger.
- (iv) Abrasion $\frac{1}{2}$ "x $\frac{1}{4}$ " on palmar surface of left ring finger.
- (v) Abrasion $\frac{1}{4}$ "x $\frac{1}{2}$ " on the palmar surface of the left little finger.

According to opinion of the doctor, all the injuries were simple in nature.

Informant Subodh Singh (P.W.6) in his evidence has stated that on the date and time of occurrence, the accused persons came and committed various acts as a result of which injuries were caused to him and other persons. The evidence of this witness has been supported by Mithilesh Kumar Singh (P.W.4) and Nepali Singh (P.W.3). Some other witnesses have also supported the prosecution case.

The trial court after considering the entire evidences found the accused persons not guilty under Sections 307 and 326 of the Indian Penal Code and found them guilty only under Section 324 of the Indian Penal Code. One of the appellant namely, Ram Naresh Singh, was also found guilty under Section 27 of the Arms Act. The appellants were convicted and sentenced thereunder, as stated above.

Learned counsel for the appellants have submitted the prosecution witnesses have supported the fact that on the date and time of occurrence, there was assault as a result of which the injuries were caused to the informant and others but the prosecution has not explained the circumstances in which other side also received injuries on their persons. The injuries of the other side has also been brought on record by the same very doctor who has examined the injured of prosecution side. Learned counsel for the appellants further submits that non-explanation of the injuries of other side suggests that the informant and his persons have not come with true version and have suppressed some material facts and on this assumption, some

doubt is created in the prosecution version and once doubt is created, the same will be benefited to the appellants.

It appears that there is case and counter case and not only this, due to lapses of time, the appellants and the prosecution party have arrived at some amicable settlement of the genesis of the occurrence which is a land dispute. Today, a compromise petition has been filed mentioning therein that out of the disputed land of 31 decimals, a plot of 11 decimals of land in plot no.760 from north has been given to Ram Naresh Singh and others (appellants of this appeal i.e. Cr.Appeal No.177 of 1993) and 22 decimals of land in the said plot from south has been given to Subodh Singh (informant of this case) and others who are appellants in Cr.Appeal No. 156 of 1993.

Though the case is not of compoundable nature, the same has been compromised between the parties out side the court and as such the genesis of the occurrence has vanished. It also appears that the prosecution has not come with correct and true version of the occurrence.

Taking into consideration all the facts

and circumstances of the case, I am of the view that the prosecution has not been able to prove the charges beyond all reasonable doubts against the appellants and the judgment of conviction and sentence of the appellants is fit to be set aside.

In the result, this appeal is allowed and the judgment of conviction and sentence is set aside. The appellants are also discharged from the liabilities of their bail bonds.

(Shyam Kishore Sharma, J.)

Patna High Court, Patna
The 30th January, 2008
Tahir/- (NAER) .

