

Sheopujan Chamar and others

Vs

State of Bihar

Criminal Appeal No. 484 of 1979

(A.M. Ahmadi, V. Ramaswami, M. Fathima Beevi JJ)

19.02.1991

JUDGMENT

1. The five appellants have appealed against their conviction and sentence. Appellant No. 1 has been convicted under Section 326 and has been ordered to suffer rigorous imprisonment for two years. He has also been convicted under Section 148 and has been sentenced to suffer rigorous imprisonment for one year. Both the sentences were ordered to run concurrently. The remaining four accused have been convicted under Section 324 / 149 and each one of them is sentenced to suffer rigorous imprisonment for six months. The appellant No. 2 has further been convicted under Section 148 and sentenced to suffer rigorous imprisonment for six months. Both the sentences were ordered to run concurrently.

2. This Court while granting special leave directed the appellants to continue on bail. We have heard the learned counsel for the appellants as well as the State Government. The conviction of the appellants is essentially based on the testimony of the informant, Jagdish Gosain. The evidence of Dr. K. P. Singh shows that the informant had three wounds, namely (i) one penetrating wound 1 1/2" x 3" on the right side of the chest below the axilla entering into the chest cavity; (ii) one penetrating wound 1/3" x 1/3" x 1/3" on the lateral side of right buttock; and (iii) one swelling 2" x 2" on the left side of back below the scapular blade. The appellant No. 1 was armed with a spear and it is, therefore, obvious that injury No. 1 could have been caused by him. The appellant No. 2 was armed with a Barchha and he could have caused injury No. 2. The remaining three appellants were armed with lathis and any one of them could have caused the third injury. The medical evidence supports the say of the informant. Both the Courts have accepted his version notwithstanding his antecedents and we see no reason to differ.

3. Mr. Garg, the learned counsel for the appellants, submitted that having regard to the nature of the injuries and the passage of time, this Court should reconsider the question of sentence. He also pointed out that the appellant No. 1 is now 70 years of age and there would be no point in directing him to go to jail. The learned counsel for the State Government, however, submitted that having regard to the seriousness and location of the injury caused by appellant No. 1, he does not deserve any sympathy, although in his view the remaining appellants could be dealt with leniently. We are inclined to agree with this submission of the learned counsel for the State Government. We find that the appellant No. 1 was the principal offender and he pierced the spear in the chest of the victim. Fortunately it missed the heart otherwise it would have proved fatal. We also find that all the appellants had submitted proof of surrender on 10-1-1979 and they were ordered to be released on bail on 16th April, 1979. We do not know if they were in prison as under-trials before their conviction. So far as appellants Nos. 2 to 5 are concerned, we alter the sentence to one already undergone. However, so far as appellant No. 1 is concerned, we see no reason to interfere. The

appeal, so far as appellant No. 1 is concerned, will stand dismissed while in regard to the appellants Nos. 2 to 5 the order of sentence will stand modified as stated above. The appellant No. 1 will surrender to his bail. The bail bonds of appellants Nos. 2 to 5 will stand cancelled. The appeal will stand disposed of accordingly.

Order accordingly

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