

A NASIRUDDIN KHAN AND ORS.

v.

STATE OF BIHAR

(Criminal Appeal No. 3 of 2001)

JULY 29, 2008

B:

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

Penal Code, 1860; Ss. 304 Part-II and s.323:

C

Culpable homicide not amounting to murder and assault – Accused attack deceased with weapons and injured him – Right of private defence – Exercise of – Trial Court found them guilty of committing offences punishable u/s.304 Pt.I and s.323 IPC and sentenced them accordingly – Affirmed by High Court

D

– Correctness of – Held: Injuries suffered by accused simple and superficial in nature – Hence, High Court's judgment, so far as accused appellant No.1 is concerned, affirmed – However, in case of other accused persons, benefit of s.360 Cr.P.C. extended to them on executing the bonds of such amount as

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to be fixed by trial Judge – Directions issued – Code of Criminal Procedure, 1973 – S.360 – First offender – Release on probation of good conduct.

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According to the prosecution, on the fateful day, there arose a quarrel between the accused persons and the victim. Accused attacked the victim with weapons and injured him. When the villagers gathered, accused fled away. Injured was admitted to a hospital by the informant and, on the basis of his statement, complaint was lodged with the Police. Trial Court found accused persons guilty

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of committing offences punishable u/s.304 Part-I and s.323 IPC, convicted and sentenced them accordingly. Appeal filed thereagainst was dismissed by the High Court. Hence the present appeal.

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Accused-appellants contended that they exercised the right of private defence and, therefore, no offence was committed; that occurrence took place on 6.10.1981 and, therefore, in case of appellant No.1 the sentence should be reduced to the period already undergone and in case of other two appellants the provisions of Section 360 of the Code of Criminal Procedure, 1973 may be applied.

Disposing of the appeal, the Court

HELD: The High Court noticed that the injuries on the accused persons were superficial in nature. After analyzing the evidence, the trial Court and the High Court have found that there was no question of exercising the right of private defence. The trial Court and the High Court with reference to the evidence on record found that the so-called injury on 'N', one of the accused, has to be viewed with suspicion. Although he claimed and alleged that he had sustained bhala injury, the injury report discloses that the injury found on him by the Doctor indicated that he had suffered injury by hard blunt substance and the injuries were simple. Therefore, the High Court's judgment so far as the conviction and sentence of appellant No.1 is concerned is affirmed. However, considering the long passage of time and the period of sentence imposed, it would be appropriate to extend to appellant Nos.2 and 3 the benefit of Section 360 Cr.P.C. on entering into bonds of such amount as may be fixed by the trial Judge. (Para - 5) [429-F-H; 430-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 3 of 2001

From the Judgment and Order dated 13.1.2000 of the High Court of Judicature at Patna in CrI. Appeal No. 216 of 1989 (S.J.)

P.S. Mishra, Harshvardhan Thatagat, Shefali Jain, Sunita R. Singh and rajesh Prasad Singh for the Appellants.

A Gopal Singh, Manish Kumar and Vimla Sinha for the Respondent.

The Judgment of the Court was delivered by

B **Dr. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Patna High Court upholding the conviction of the appellant No.1 for offence punishable under Section 304 Part II of the Indian Penal Code, 1860 (in short the 'IPC') and sentence of 5 years and the other two appellants who were convicted for offence punishable under C Section 323 IPC and were sentenced to undergo rigorous imprisonment for one year.

2. Prosecution version as unfolded during trial is as follows:

D As per the Fardbeyan of Murtaza Khan (Ext.3), on 6.10.1981 at about 11.30 the informant was fixing pegs on his own sahan land to keep maize crops. Suddenly accused persons Nasiruddin Khan, Lajim Khan and Mehmood Khan came there and protested to the act of fixing of the pole. The informant replied that he was fixing the pegs on his own sahan and, E therefore, there was no question of any protest. He also asked the accused to get the land measured to ascertain whether the peg was being fixed on the land of the latter or on his own land. But Nasiruddin Khan, Lajim Khan and Mehmood Khan announced that the informant will not heed to reason and, F therefore, he should be assaulted. Thereafter, accused Majiruddin Khan brought a bhala and Qayamuddin Khan and Sadruddin khan brought lathis. Majiruddin handed over the bhala to Nasiruddin khan and went back to bring another bhala. Lajim Khan also brought a lathi from his home. Thereafter, informant's G brothers Salam Khan, Farman Khan and Kalam Khan sons of Munshi Khan appeared there and asked the accused persons not to indulge in assault. In the meantime, informant's brother Kalam Khan was subjected to assault with bhala by Nasiruddin H Nasiruddin Khan stood there with bhala in his hand and

Sadruddin Khan, Gayamuddin Khan and Lajim Khan assaulted Kalam Khan, Salam Khan and Farman Khan as also Munshi Khan. When the villagers gathered, the accused persons made good their escape. The injured Kalam Khan was brought to the hospital, where the informant gave his fardbeyan.

The trial Court on the basis of the evidence of nine witnesses found the accused guilty and sentenced them as aforenoted. In the appeal, the views of the Trial Court were affirmed.

3. Learned counsel for the appellants submitted that the appellants exercised the right of private defence and, therefore, no offence was committed. Additionally it is submitted that occurrence took place on 6.10.1981 and, therefore, in case of appellant No.1 the sentence should be reduced to the period already undergone. In case of other two appellants the provisions of Section 360 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') should be applied.

4. Learned counsel for the State on the other hand supported the judgments of the trial Court and the High Court.

5. The trial Court and the High Court found that this is not a case where it can be said that the appellants were exercising the right of private defence. The plea taken was that the accused persons also suffered injuries and, therefore, the defence version of false implication and exercise of right of private defence should be accepted. The High Court noticed that the injuries on the accused persons were superficial in nature. After analyzing the evidence, the trial Court and the High Court have found that there was no question of exercising the right of private defence. The trial Court and the High Court with reference to the evidence on record found that the so-called injury on Nasiruddin has to be viewed with suspicion. Although Nasiruddin claimed and alleged that he had sustained bhala injury, the injury report (Ex.B) discloses that the injury found on him by the Doctor indicated that the accused had suffered injury by hard blunt substance and the injuries were simple. Therefore, the High Court's judgment so far as the conviction and

- A sentence of appellant No.1 is concerned is affirmed. However, considering the long passage of time and the period of sentence imposed, we think it appropriate to extend to appellants Nos.2 and 3 the benefits of Section 360 Cr.P.C. on entering into bonds of such amount as may be fixed by the learned trial Judge. Appellant No.1 shall surrender to custody forthwith to serve remainder of sentence.

6. The appeal is disposed of accordingly.

S.K.S.

Appeal disposed of.