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**(2012) 04 PAT CK 0081**

**Patna High Court**

**Case No:** Criminal Appeal (SJ) No. 160 of 1999

Tilak Rai and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

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**Date of Decision:** April 19, 2012

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 149, 307, 323, 325

**Hon'ble Judges:** Mandhata Singh, J

**Bench:** Single Bench

**Advocate:** Nand Kishore Prasad-2, for the Appellant; S.N. Prasad, Assistant Public Prosecutor, for the Respondent

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### **Judgement**

Mandhata Singh, J.

Appellant no.1 is dead. It is verified, found true and the same is accepted. So, the appeal on his behalf is abated. Heard learned counsel for the petitioner-appellants, except appellant no.1 and learned counsel for the State.

2. F.I.R. is lodged basing written report of Rameshwar Prasad, informant of the case which, in brief, is that informant along with his family members was in his house situated over plot no. 1103 purchased through a registered sale deed in name of his wife. It is alleged that accused persons including appellants armed with weapons forming an unlawful assembly came there, started to assault the informant with a view to disposes him from the aforesaid house. It is further alleged that Tilak Rai assaulted informant with his lathi on his head and other accused persons including appellants also assaulted him. It is further said that his brother Kameshwar Prasad came in his rescue who was assaulted by Hazari Rai and Doman Sao by means of lathi and others by brick-bats. In the meantime, it is further said that Ajay Kumar (P.W.2), Umakant Paswan (P.W.3), Nand Lal Paswan (P.W.1), Ram Ekbal Paswan (P.W.5), Sakaldeo Sao (P.W.6), Damodar Paswan and Sitavan Rai arrived and accused persons including appellants left the place of occurrence.

3. Trial ended in conviction and sentence to accused-appellants for the offence u/s 307 read with 149 of the I.P.C. by passing the impugned order, validity of which has been questioned through filing of this appeal.
4. In all 14 witnesses are examined on behalf of the prosecution. They are P.W.1 Nandlal Paswan, P.W.2 Ajay Kumar, P.W.3 Umakant Prasad, P.W.4 Umashanker Singh, P.W.5 Ram Ikwat Prasad, P.W.6 Sakaldev Singh, P.W.7 Chintaman Rai, P.W. 8 Kameshwar Prasad, one of the injured persons, P.W.9 Rambrich Mirdha, P.W.10 Rameshwar Prasad, informant of the case, P.W.11 Harinandan Singh, P.W.12 Dr. Kanhaiya Prasad, P.W.13 Dr. Premchand Jha and P.W.14 Dr. Shiv Kumar Prasad.
5. Six witnesses are examined on behalf of the defence also and they are D.W.1 Gouri Pandit, D.W.2 Krishna Pandit, D.W.3 Domni Devi, D.W.4 Dr. Gulam Rashul, D.W.5 Brajesh Prasad and D.W. 6 Kashi Nath.
6. Of prosecution witnesses, P.W.11 is I.O., who has investigated the case. P.W.12 is a Doctor, who has examined P.W.8 and P.W.10, informant of the case. P.Ws. 12 and 13 are relevant on the point that injury of informant on ear is grievous.
7. D.W.4 is a Doctor examined on behalf of the defence to state the injuries on person of appellants no.1 and 2. D.Ws. 5 and 6 are formal witnesses and D.Ws. 1, 2 and 3 are the witnesses to state purchase of the disputed house by accused-appellants.
8. Submission of learned counsel for the appellants is that parties were making their claim over the house as purchased from the daughter of real owner, counter case was also pending filed on behalf of appellant no.1 since deceased, injuries on person of member of both the parties, weapons used, affected part of the body, nature of injuries and number of assailants is not justifying the intention to kill. Only one injury is there on ear of the informant (P.W.10.) said grievous but caused by appellant no.1 since dead by means of lathi. Others are alleged causing injuries by lathi or brick bats, its number is four only and simple in nature on person of P.W.8.
9. In my view discussed factum is not justifying the observation of the Trial Court about causing of the injuries with intention to kill the informant or P.W.8. Injuries caused by appellants no.2 to 6 are justifying constitution of the offence u/s 323 of the I.P.C. Act of appellant no.1 if is extended as liability u/s 149 of the I.P.C. then only conviction even u/s 325 of the I.P.C. can be justified which appears proper in this case.
10. On the point of sentence, submission of the learned counsel for appellants is that incident occurred in the year 1993, circumstance prevailing as discussed, if is taken into consideration the period undergone in course of trial and after the conviction can be observed sufficient. I agree with submission on this point.
11. On the observations made above, evidence on record and circumstance of the case, this appeal is allowed in part. Conviction u/s 307 read with 149 of the I.P.C.

passed by the Additional District and Sessions Judge-X, Patna in connection with Sessions Trial No. 732 of 1993 is set aside that is converted/accepted for the offence u/s 325 read with 149 of the I.P.C. and on the point of sentence the same is modified/minimized to the period undergone by accused-appellants in course of trial and after the conviction. Accused-appellants are on bail. They are discharged from the liability of their bail bonds. Office is directed to send the records along with a copy of this Judgment to the Trial Court.