
(2011) 04 PAT CK 0241

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 370 of 1994

Arun Kumar Mandal

APPELLANT

Vs

The State of Bihar and Shiv Shankar Thakur

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 302, 304, 307, 323

Citation : (2011) 59 BLJR 1847

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellant has been convicted u/s 304 Part II/149 I.P.C. and sentenced to R.I. for ten years by a judgment dated 27.9.1994 passed by the 1st Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 198 of 1993/8 of 1994.

2. The case of the prosecution is that on 18.1.1992 when the informant was in his shop, his son informed him that the accused persons were threatening his father to withdraw the case and when he refused to do so, he was thrashed. When he went there, he learnt that the accused persons have taken away his father from the house and later he found his father in injured condition, on account of which he was admitted in the

Hospital on 18.1.1992. The present First Information Report was instituted on 20.1.1992 initially for offences u/s s. 147, 452, 323 and 307 I.P.C., but later on Section 302 I.P.C. was added after the death of the deceased.

3. During trial the prosecution has examined nine witnesses in all even though there were only five witnesses named in the charge sheet. It appears from the analysis of evidence that P.W.1 is the informant, whereas the P.W.2 and P.W.3 are his sons and P.W.6 and P.W.7 are the wife and mother of the informant respectively, whereas the P.W.4, P.W.5 and P.W.9 are formal and P.W.8 is the

doctor, who held the postmortem examination.

4. From the evidence adduced on behalf of the prosecution, I find that not a single independent witness has been examined nor is there any explanation as to why the fard beyan was given two days after the occurrence. It also appears that all the witnesses have merely stated about the first part of the occurrence that the deceased had been thrashed by the accused persons. The doctor, four days after the occurrence, found abrasions on the external parts of the body of the deceased and some fractures, which were all allegedly caused by hard and blunt substance. Since it is difficult to conclude that the Appellant alone had caused the death of the deceased more so because there is no allegation that the deceased was assaulted by the Appellant with hard and blunt object.

5. In the result, the Appellant deserves to be acquitted on benefit of doubt and thus this appeal is allowed and the order of conviction and sentence passed against the Appellant on 27.9.1994 by the 1st Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 198 of 1993/ 8 of 1994 is set aside.