
(2013) 12 PAT CK 0049

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 236 of 2001

Bishwanath Jha and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 144
Penal Code, 1860 (IPC) — Section 148, 149, 307

Citation : (2013) 12 PAT CK 0049

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Advocate : Murari Narain Choudhary, Mr. Vijay Kumar and Mr. Mohit Shrivastava, for the Appellant; Bipin Kumar, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellants No. 3-10 have been convicted u/s 307 /149 Indian Penal Code and sentenced to rigorous imprisonment for five years. The Appellants No. 1 and 2 have been convicted u/s 307 Indian Penal Code and sentenced to rigorous imprisonment for seven years as also u/s 148 Indian Penal Code and sentenced to rigorous imprisonment for one year. Appellant No. 2 has been convicted also u/s 27 of the Arms Act and sentenced to rigorous imprisonment for one year by the 3rd Additional Sessions Judge Madhubani, in Sessions Trial No. 66 of 1983 arising out of Benipatti P.S. Case No. 74/81 (GR No. 1042/81) by a Judgment and order of conviction dated 12/13.7.2001 The case of the Prosecution according to the Informant is that on 31.7.1981 at 6.15 P.M. an unlawful assembly comprising of the present Appellants came to the paddy fields of Sitasaran Jha and started to uproot the paddy crops. When PW-4 Saryug Saran Jha and Bibhuti Saran Jha made a protest, Appellant Bishwanath Jha inflicted a Farsa blow on the head of Saryug Saran Jha PW-4 and Appellant Charitar Yadav assaulted him with lathi. Further Bibhuti Saran Jha fired with his

gun to save the life of his brother Saryug Saran Jha due to which firing the mob became furious and started assaulting each other in which two Muslims of the village were killed and one Bihari Sahu received injuries. The reason for the occurrence was that the Appellant had wanted to grab the aforesaid land without any valid documents. He further stated that the occurrence had been seen by various persons. Even before the Trial started, three accused persons died including Charitar Yadav against whom there was an allegation of a specific overt act and, hence, only 10 accused persons were put on Trial.

2. The defence of the Appellants was that they had been falsely implicated by the Prosecution to save themselves in a murder case instituted against the Prosecution party by Daha Nadaf vide Benipatti P.S. Case No. 75 of 1981.

3. In support of their defence, they examined five witnesses and got a number of documents to demonstrate this fact. The specific case was that in fact, it was the Prosecution which had taken forcibly possession of the land, and hence they apprehended breach of peace and the Appellant Bishwanath Jha in the capacity of a Sarpanch, initiated a proceeding u/s 144 Cr.P.C. and on 31.7.1981 when Dalpati went to serve the notice on Sitasaran Jha, he refused to accept it, and instead of that, abused him. On the same day at 4.00 P.M. the said Sitasaran Jha armed with gun along with 12 other persons came to his door and started to abuse him and due to fear and to save his life, went inside the house. On hearing alarm, other villagers gathered and intervened. The fight continued for sometime, in course of which the Informant Saryug Sharan Jha chased some villagers and on account of firing, Mokim and Hamid were killed and one Bihari Sahu received serious injuries. The said Bihari Sahu has been examined as DW-4 who fully supports the version of the Appellant Bishwanath Jha. In this background of litigation, the examination of the seven witnesses examined on behalf of the Prosecution would have to be examined.

4. PW-1 Shiv Shankar Jha is the Informant who stated that the accused persons numbering about 100 started to uproot the paddy crops of Saryug Saran Jha at which he raised an alarm. When they restrained the accused persons from doing so, Saryug Saran Jha was assaulted. In order to save his life, Bibhuti Sharan Jha fired. PW-2 Amrendra Thakur also supported the version of PW-1 giving details in the manner in which the assault had occurred.

5. PW-3 Gore Kant Mishra stated about participation of the two deceased and injured and the Appellants in the present occurrence in which Saryug Saran Jha had received gun shot injuries. PW-4 Saryug Saran Jha gave the same version as the rest of the witnesses.

6. The consistent story is that the pellet hit him on his leg on account of which he fell down and, thereafter, the rest of the accused persons assaulted him with Farsa, Garasa and Bhala.

7. PW-5 is the Investigating Officer who stated that he had received the injury report of Saryug Saran Jha and the pellets recovered from his body in course of

investigation. He also found the objective evidence of uprooted paddy Plants from the Western side of the transplanted area and also found trampled paddy plants.

8. From the evidence of these witnesses, I find that undoubtedly they have supported their version of the occurrence. However, set in the background of a serious report of two persons having been killed and one injured and the Prosecution witnesses denying their participation in the same, I would be inclined to hold that the Prosecution case is not free from doubt.

9. Hence, giving benefit of doubt to the Appellants, the Appeal is allowed. The order of conviction and sentence dated 12/13.7.2001 passed against the Appellant in Sessions Trial No. 66 of 1983 arising out of Benipatti P.S. Case No. 74/81 (G.R. No. 1042 of 81) is, hereby, set aside. The Appellants are discharged from the liabilities of their respective bail bonds.