
(2013) 12 PAT CK 0072

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 198 of 2001

Chabila Mahto and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Citation : (2014) CriLJ 987 : (2014) 2 RCR(Criminal) 932

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjana Prakash, J.—It has been submitted that the Appellant No. 7 died during pendency of the Appeal and, thus, the Appeal against him is dismissed as having become infructuous. The Appellants have been convicted under Sections 323, 342, 313 and 315, Indian Penal Code and sentenced to a period of ten years, one year, in default of which 2 years and for seven years respectively by a Judgment and order of conviction dated 26/28.6.2001 passed in Sessions Trial Nos. 204 of 1999/118 of 1996 by the 1st Additional Sessions Judge, Sitamarhi.

2. The Prosecution case as per the Complainant Bilash Ram which was initiated on a protest petition after final report was submitted is that on 2.1.1987 when his daughter-in-law P.W.-10 had gone to answer the call of nature in his field, she plucked a piece of sugarcane which was discovered by Appellant Chhabila Mahto who caught her and started raising alarm. The rest of the accused persons then came and assaulted with fists and slaps. A Panchayati was held in which the Complainant was fined a sum of Rs. 50/- which he deposited. Further, on 5.1.1987 his daughter-in-law gave birth to a still born child, whereafter he instituted the case.

3. During Trial, the Prosecution examined 13 witnesses. P.W.-1 Kudari Paswan, P.W.-3 Ram Kishore Singh and P.W.-4 Srichand Raut have not supported the case of the Prosecution and declared hostile. P.W.-2 Chaturi Mahto has been tendered.

P.W.-5 Birendra Kumar Singh is formal who has proved Exbt.-1 and P.W. 13 had proved certain documents like First Information Report and the Postmortem Report. The rest of the witnesses i.e. P.W.-6 Brahmadeo Ram, P.W.-7 Gagandeo Ram, P.W.-8 Dulhi Chand Ram, P.W.-9 Dahaur Paswan and P.W.-12 Upendra Mahto supported the case of P.W.-10 Malti Devi and P.W.-11 Bilas Ram, the Complainant.

4. During Trial, P.W.-10 Malti Devi stated that when she gone to case herself in the fields, she uprooted a piece of sugarcane which enraged the accused who raised an alarm upon which the rest of the accused persons came and assaulted her. On account of the assault, she suffered a miscarriage three days later. P.W.-11, the Complainant gave the same version as P.W.-1 in the Protest Petition.

5. On going through the records, I find that since initially Final Report was submitted and accepted by the Court and this case proceeded on the Protest-cum-Complaint petition, the Investigating Officer and Doctor could not have been examined. In absence of the positive Medical Report by a competent Doctor, evidently, the fact that P.W.-10 had suffered miscarriage on account of the assault by the present Appellants, cannot be said to be conclusively proved by the Prosecution. In absence of the same, it would be difficult to maintain the conviction of the Appellants under Sections 313 and 315, Indian Penal Code.

6. From the evidence of P.W.-10 the injured eye-witness, I find that she admits that she had instituted the present Complaint on instigation of one Upendra Mahto, P.W.-12, in whose house her father-in-law had worked and was an inimical terms with the accused persons. I also find that the Police found the case false whereafter the Complaint was instituted which renders the Prosecution case highly doubtful.

7. Hence, the Appeal is allowed. The order of conviction and sentence dated 26/28.6.2001 passed against the Appellants in Sessions Trial Nos. 204 of 1990/118 of 1996 by the 1st Additional Sessions Judge, Sitamarhi, is hereby, set aside. The Appellants are discharged from the liabilities of their respective bail bonds.