
(2011) 05 PAT CK 0090

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 204 of 1995

Devnandan Yadav, Ganauri Yadav and Birja Yadav

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 03-05-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 307

Citation : (2011) 05 PAT CK 0090

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellants have been convicted u/s 307/149 I.P.C. and sentenced to rigorous imprisonment for 7 years as also u/s 148 I.P.C. and sentenced to rigorous imprisonment for 2 years by the learned 2nd Additional Sessions Judge, Gaya in Sessions Trial No. 38 of 1994/244 of 1991 by the judgment dated 6.9.1995.

2. The prosecution case is that on 26.10.1984 one Salim Mian of village Bheria had been killed for which a case has been instituted against the Appellant No. 1. The Appellant No. 1 demanded contribution from the villagers for defending himself and when the informant refused to do so, he was assaulted with Gadasa, Lathi and Saif. Finally five persons were charge sheeted but two of them were assessed to juvenile on the date of occurrence and the trial was spilt up.

3. During trial the prosecution examined 7 witnesses out of whom P.W. 5 is the informant whereas P.W. 1 and 2 are the injured eyewitnesses, P.W. 4 is the doctor and P.W. 3 and 6 have been tendered whereas P.W. 7 is the Investigating Officer.

4. The defence of the Appellants was that in fact the present case was a counter blast of Belaganj P.S. Case No. 112 of 1984, in which the informant of the present case and others were proceeded against for assaulted on one Shyam

Bihari causing his death and also injuries to three Appellants. The defence witnesses were also examined in support of this contention.

5. P.W. 3 who is the informant of the case has admitted that there was a counter version of the occurrence in which he was an accused. P.W. 1 who is the cousin of the informant has also admitted that he was also an accused in the counter version instituted for commission of murder of Shyam Bihari, however, he denied injuries on the persons of the Appellants. P.W. 2 also a cousin of the informant and injured, denied the fact that he had seen any injuries on the person of the Appellants but conceded that on the same date a case was instituted for commission of murder of Shyam Bihari Yadav, in which he is an accused. P.W. 4 is the doctor who had examined Sheo Bhajan Yadav the informant P.W. 3 and found two injuries but both of them were simple in nature. Similarly the injury of one Ram Chandra was also found simple, P.W. 1 Kamta Yadav had sustained one sharp cutting injury of Pinna right ear which was opined to be grievous in nature whereas the rest of the three injuries were simple in nature except one injury on the person of P.W. 2 the rest were simple in nature, P.W. 7 is the Investigating Officer has testified the factum of the counter version and the fact of the death of Sham Bihari Yadav for which he had prepared the inquest report as exhibit-C, the Appellant No. 1 who happened to be the brother of the deceased examined himself as D.W. 1 and stated that the members of the prosecution party appeared with deadly weapons and assaulted Shyam Bihari on account of which he died.

6. On going through the evidence on record it is admitted position that there was a counter version of the occurrence and in fact the Appellants had also sustained injury in the transaction but the same was stoutly denied by the prosecution party giving an impression the prosecution case was not a truthful depiction of the occurrence.

7. In view of such, this Court is not inclined to accept the prosecution case as the correct version of the occurrence and, therefore, on this ground alone the Appellants deserves to be acquitted. In the result, the appeal is allowed and the order of conviction and sentence passed against the Appellants by the learned 2nd Additional Sessions Judge, Gaya in Sessions Trial No. 38 of 1994/244 of 1991 by the judgment dated 6.9.1995 are hereby set aside and they are acquitted of their respective charges. The Appellants are discharged from the liabilities of their respective bail bonds.