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(2011) 04 PAT CK 0075

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 254 of 1995

Dibur Mian and Others — APPELLANT

Vs

The State of Bihar — RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 107
Penal Code, 1860 (IPC) — Section 147, 148, 323, 324

Citation : (2011) 59 BLJR 1955

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Advocate : Abhai Kumar Sharma, for the Appellant; Anil Kumar Singh, APP, for the Respondent

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellants have been convicted under Sections 324, 148 and 323 and sentenced to RI for two years, one year and six months respectively and further the Appellants No. 1, 3, 4 and 5 have been convicted u/s 147 IPC and sentenced to three months RI by the 1st Additional Sessions Judge, Bettiah in S. Tr. No. 513/87/26/95 by a judgment dated 18.09.1995.

2. The case of the prosecution is that on 26.09.1985 when the informant was guarding his fields the Appellants variously armed arrived there and assaulted the informant and one Putur Rout and Chandradeo Sah.

3. The prosecution in all examined five witnesses out of whom P.W. 1, P.W. 2 and P.W. 3 are on the factum of occurrence whereas P.W. 4 is formal and P.W. 5 is the Doctor who examined the two injured.

4. The Investigating Officer has not been examined by the prosecution and admittedly the present occurrence had taken place on account of land dispute for which a proceeding u/s 107 Code of Criminal Procedure was pending between them.

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5. In this background the objective evidence of the Investigating Officer and independent witnesses was essential so as to arrive at a conclusion that the prosecution had proved its case beyond all reasonable doubt. Unfortunately, the same has not been done and hence, I am inclined to allow this appeal and the judgment dated 18.09.1995 passed by the 1st Additional Sessions Judge, West Champaran, Bettiah in S. Tr. No. 513/87/26/95 is set aside. The Appellants are discharged of the liability of their bail bonds.

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