
(2011) 04 PAT CK 0103

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 203 of 1995

Fekan Yadav and Misri Yadav

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 326, 379

Citation : (2011) 04 PAT CK 0103

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anjana Prakash, J.—The Appellants have been convicted under Sections 307 and 323 IPC and sentenced to RI for ten years but no separate sentence has been passed u/s 323 IPC. The Appellant No. 2 has further been convicted u/s 379 IPC and sentenced to RI for two years by a judgment dated 05.07.1992 passed by the Sessions Judge, Madhubani in S. Tr. No. 127/93.

2. The case of the prosecution is that the accused persons variously armed entered the house of the informant on 05.06.1992 and thereafter Jailal Yadav (deceased) was assaulted with the fersa and on the orders of the Appellant No. 1 and Appellant No. 2 also assaulted the informant which hit him on his wrist. Subsequently a theft was also committed by the accused persons.

3. The prosecution in all examined ten witnesses out of whom P.W. 3 and P.W. 5 are tendered, P.W. 4 has been declared hostile, P.W. 9 is the formal and P.W. 1, P.W. 2, P.W. 6, P.W. 7 and P.W. 8 are witnesses on the point of occurrence and P.W. 10 is the Doctor who examined the injured.

4. From the evidence of P.W. 1, P.W. 2, P.W. 6, P.W. 7 and P.W. 8 there is no manner of doubt that the Appellants had in fact entered the house of the informant and thereafter assaulted him but from the facts of the case it does not appear that the assault was with the view to cause the death of the informant

since even though there was no intervening circumstance the assault was not repeated. Moreover, the Doctor has found two grievous injuries on the head whereas the three injuries have been found on non-vital parts. This evidently indicates that the intention was not to cause the death of the informant.

5. In view of such, the conviction of the Appellants is converted to one u/s 326 IPC and the sentence is modified to the period already undergone during trial under each count.

6. The appeal is dismissed with the modification as aforesaid.