
(2011) 07 PAT CK 0094

In the Patna High Court

Case No : Criminal Appeal (S.J.) No. 144 of 1996

Gangotri Singh, Ganesh Singh and Rajeshwar Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 324, 326, 34

Citation : (2011) 07 PAT CK 0094

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellants have been convicted under Sections 326 and 324/34 of the Indian Penal Code and sentenced to rigorous imprisonment for five years and one year respectively by the 3rd Additional Sessions Judge, Begusarai, in Sessions Trial No. 91 of 1986 by a judgment dated 12.7.1996.

2. The case of the prosecution according to the Informant Daya Shankar, PW-2 is that when he and his brother Harischandra Singh PW-1 were going to their house and reached at the house of Arun Singh, PW-4, all of a sudden, the accused persons variously armed came and surrounded them. Thereafter, Appellant No. 3 Rajeshwar Singh is said to have caught him whereas Appellant No. 2 Ganesh Singh is said to have caught Harishchandra Singh, PW-1, whereas one Nirdhan Singh (since deceased) gave a dagger blow on the neck of PW-1, but he tried to escape, on account of which, he sustained injuries on his hand. Thereafter, Nirdhan Singh (since deceased) gave a blow on the neck of his brother Harischandra Singh, PW-1, but it also did not hit him and instead caused injury on his chest. Other person allegedly brick bating. When an alarm was raised, PW-4 Arun Singh, PW-3 Lala Singh and PW-5 Yogesh Singh came and saw part of the occurrence.

3. The prosecution examined six witnesses out of whom PW-3 Lala Singh, PW-5

Yogesh Singh who are named in the First Information Report as eye witnesses have been declared hostile. PW-2 Dayashankar Singh and PW-1 Harischandra Singh are the two injured in the transaction whereas PW-6 Dr. Surya Bhushan Prasad Sharma has examined two injured. PW-4 Arun Singh is relative of the Informant. The Investigating Officer has not been examined in the present case.

4. It has been submitted on behalf of the Appellants that even considering the entire prosecution case since there is contradictory evidence with regard to the participation of the Appellants in this occurrence, they deserve to be acquitted. In this regard, the evidence of PW-1 Harischandra Singh and PW-2 Daya Shankar Singh is placed before the Court. From the evidence of PW-1 Harischandra Singh, it appears that the Appellant No. 2 had caught hold of him whereas Appellant No. 3 Rajeshwar Singh had caught hold of PW-2 Daya Shankar Singh. However, PW-2 himself does not support this fact that the Appellant Rajeshwar Singh had caught hold of him nor has he said anything about Appellant No. 2 catching hold of PW-1. Moreover, it is conceded that there was long standing land litigation between the parties for which a Title Suit No. 19 of 1981 was pending before the Court of Sub Judge as also a case by way of Muffasil P.S. Case No. 79 of 1982.

5. In light of the previous litigation, in my opinion, the non-examination of the Investigating Officer was extremely essential since he alone, could lend objective assurance to the prosecution case. In absence of the examination of the Investigation Officer, Appellants deserve to be given benefit of doubt, also for the reason that the occurrence had taken place in the middle of the village where the Appellants resided and their presence is well explained.

6. In the result, the Appeal is allowed. The order of conviction and sentence passed against the Appellants in Sessions Trial No. 91 of 1986 by the 3rd Additional Sessions Judge, Begusarai, is hereby set aside.

7. The Appellants are discharged from the liability of their bail bonds.