

(2021) 03 PAT CK 0168

In the Patna High Court

Case No : Criminal Appeal (Sj) No. 413 Of 2021

Gigal Yadav @ Vidyanath Yadav And Ors

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 18-03-2021

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r)(s), 3(2)(v)(a), 14A(2)
Indian Penal Code, 1860 — Section 34, 302
Arms Act, 1959 — Section 27

Citation : (2021) 03 PAT CK 0168

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Yogesh Chandra Verma, Nishant Kumar Sinha, Sadanand Paswan

Final Decision : Allowed

Judgement

1. Heard learned counsel for appellants and learned Spl. PP for the State.
2. Learned counsel for the appellants is expected to honour his undertaking given in the instant case for depositing the requisite court fee and to remove the defects as pointed out by office when called upon to do so.
3. The appellants have preferred the present appeal under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the refusal of prayer for regular bail vide order dated 09.10.2020, passed by learned Additional District Judge-X-cum-Special Judge, (SC/ST Act) Patna in BarhPS Case No.153 of 2020, Special case No.208/2020 registered under 302/34 of the Indian Penal Code, Section 27 of the Arms Act and Sections 3(1) (r)(s), and 3(2)(v)(a) of the SC/ST Act.
4. The prosecution case alleges that the informant had gone to attend the call of nature and when he was returning he saw his son along with some friends. Thereafter, co-villagers, six in numbers, including the appellants have surrounded

him and allegation against appellant Nos 1 and 2 is that they have fired upon the victim, whereas the appellant No.3 is stated to be one who was exhorting the appellant Nos. 1 and 2 to fire upon the victim.

5. The case diary had earlier been called for; the same has been received.

6. The learned senior counsel has submitted that from perusals of the material collected during the course of investigation, the prosecution case of indiscriminate firing by three persons, including the appellant Nos 1 and 2 stands falsified as there is only one gun shot injury found in the postmortem report as well as the inquest report, which have stated regarding one wound of entry and exit on the victim. That coupled with the statements of witness who claims to be an eye witness recorded in paragraph No. 35 of the case diary makes it abundantly clear that appellant nos. 1 and 2 have not fired upon the victim. In fact, it is co-accused Gauri who has fired upon him whereas regarding appellant Nos 1 and 2, there is statement that they had caught hold of the victim. Regarding the appellant no.3, there is no specific overt act alleged by the prosecution. The appellant nos. 1 and 3 are stated to be in custody since 16.06.2020, whereas appellant no.2 is stated to be in custody since 19.06.2020. The appellant nos. 1 and 2 have no criminal antecedents whereas appellant No.3 is also accused in one another case, details of which have been mentioned in the supplementary affidavit i.e. Barh PS Case No. 114 of 2020.

6. The learned Spl. PP has opposed the prayer for bail by submitting that the case of the prosecution regarding indiscriminate firing has been supported by other witnesses during the course of investigation. The appellant Nos. 1 and 2 have allegedly fired upon the victim also.

7. Considering the rival submissions, this appeal is allowed. The impugned order dated 09.10.2020 passed by learned Additional District Judge-X-cum-Special Judge,(SC/ST Act) Patna, in Barh PS Case No.153 of 2020, Special case No.208/2020, is set aside. Let the appellants, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) each with two sureties of the like amount each to the satisfaction of learned Additional District Judge-X-cum-Special Judge,(SC/ST Act) Patna, in Barh PS Case No.153 of 2020, Special case No.208/2020, subject to the following conditions:-

(i) That one of the bailors will be a close relative of the appellants who will give an affidavit giving genealogy as to how he is related with the appellants. The bailor will also undertake to inform the Court if there is any change in the address of the appellants.

(ii) That the appellants will be well represented on each date and if they fail to do so on two consecutive dates, their bail bond will be liable to be cancelled.