
(2011) 04 PAT CK 0194

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 252 of 1994

Jag Narain Singh @ Jagdeo Singh and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 325, 34

Citation : (2011) 04 PAT CK 0194

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anjana Prakash, J.—The Appellants have been convicted u/s 323 and 325 I.P.C. and sentenced to rigorous imprisonment for 1 year and 3 years respectively with an additional fine of Rs. 1000/- each in default of further sentence of 6 months rigorous imprisonment for the offence u/s 325 I.P.C. by the judgment dated 28.7.1994 in Sessions Trial No. 463 of 1990/ 90 of 1991 by the learned Additional Sessions Judge XI, Gaya.

2. The case of the prosecution is that on 22.3.1989 an altercation arose between the parties over a minor matter in which the accused persons are supposed to have assaulted the informant with lathi due to which he was seriously injured.

3. The case was initially charged u/s 307/34 I.P.C. but were acquitted and the Appellants have been convicted as mentioned above.

4. The prosecution in all examined 9 witnesses out of whom P.W.1, 2, 3, 4, 5, 6 and 7 are alleged eye-witnesses to the occurrence, P.W.9 is the doctor who examined the injured and P.W.8 is the injured himself. The Doctor P.W.9 who examined the two injured eye-witness opined that the injuries of P.W.8 were seven in number but all of them were simple in nature and mostly on non-vital parts. The injuries of Karu Yadav were 2 in numbers one of which was opined as grievous in nature. However, Karu Yadav has not been examined; therefore,

substantially the prosecution has failed in its duty to bring the primary evidence before the court. Since the eye-witnesses have given vivid picture of the genesis of the occurrence and the assault having been made by the accused persons, I am inclined to accept the same.

5. In my opinion, in the facts of the case the Appellants be convicted u/s 323 I.P.C. but they be acquitted u/s 325 I.P.C. They are sentenced to a period already undergone by them during trial but the fine deposited by them shall not be returned to them despite this modification in conviction and sentence.

6. In the result, the appeal is dismissed with the modification mentioned above.