
(1999) 12 PAT CK 0018
In the Patna High Court
Case No : Criminal Appeal No. 204 of 1989

Kapildeo Yadav @ Kapil Yadav and Others	APPELLANT
Vs	
The State of Bihar	RESPONDENT

Date of Decision : 13-12-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323, 325, 34

Citation : (2000) 1 PLJR 934

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Advocate : N.K. Agrawal, B.K. Sinha, K.C.K. Sinha and D.N. Tiwary, for the Appellant; Lala Kailash Bihari Prasad for the State, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—The appeal has been preferred against the judgment and order of conviction dated 31.5.1989 passed by 5th Additional Sessions Judge, Munger in Sessions Trial No. 478 of 1982 whereby the appellants have been convicted for the offence u/s 325 / 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of rupees one thousand each and in default of payment to undergo rigorous imprisonment for one year each. Appellants, Kapildeo Yadav, Suresh Yadav and Banarsi Yadav have further been convicted for the offence u/s 323 of the Indian Penal Code, but no separate sentence has been awarded. The occurrence is alleged to have taken place on 8.3.1980 at about 7.45 A.M. First information report was lodged on the same day at about 5.30 P.M. It has been alleged that the appellants and one Naubat Yadav came and assaulted Domi Yadav with Lathi. It has also been alleged that the informant, Kamli Yadav, was also assaulted with Lathi. The motive of the occurrence was land dispute and litigation with Ram Swaroop Yadav, the brother of the informant. The informant went to inform Chaukidar, P.W.7. He also informed the Mukhiya, P.W.6. The informant thereafter went to the police station and on his fardbeyan first information report was lodged at about 5.30 P.M.

2. After investigation chargesheet was submitted for the offence u/s 302 / 34 of the Indian Penal Code and the case was committed to the court of sessions for trial.

3. The trial court acquitted Naubat Yadav and Ram Swaroop and he came to a conclusion that it is not a case u/s 302 of the Indian Penal Code rather it is a case u/s 325 of the Indian Penal Code and accordingly, convicted the appellants as indicated above.

4. The defence of the appellants was that they were innocent and were falsely implicated in this case out of enmity.

5. The prosecution in support of its case examined ten witnesses out of whom P.W.4 and P.W.8 were tendered. P.W.1, P.W.2 and P.W.3 claimed to be eye witnesses to the occurrence. P.W.6 is Mukhiya to whom the informant had given information. P.W.7 is Chaukidar, who went to the place of occurrence after the occurrence. P.W.9 is informant and P.W.10 is a formal witness. P.W.5 is a doctor, who held postmortem over the dead body.

6. The special feature of the case is that occurrence took place in the year 1980 i.e. more than 19 years ago. Charge sheet was submitted u/s 302 / 34 of the Indian Penal Code but the trial court did not find the appellants guilty u/s 302 / 34 of the Indian Penal Code rather the appellants were found guilty for the offence u/s 325 / 34 of the Indian Penal Code. The motive of the occurrence was alleged to be land dispute with Ram Swaroop, father of Naubat Yadav, who has been acquitted by the trial court. No motive has been alleged with regard to participation of these appellants in the occurrence. No appeal was filed against the acquittal nor any rule of enhancement was issued at the time of admission of this appeal. There are only three eye witnesses in this case. Those are P.W.1, P.W.2 and P.W.3 but their names are not mentioned in the first information report.

7. P.W.1 stated in his evidence that he met the informant while he was going to inform the Mukhiya, which creates doubt that he is an eye witness to the occurrence. P.W.2 stated in his evidence that he did not make any statement before any officer earlier. P.W.3 stated in his evidence that he went to the place of occurrence on hearing alarm. Therefore, the aforesaid piece of evidence creates doubt about their being eye witnesses to the occurrence. However, P.W.9, the informant, supported the prosecution case. However, the occurrence took place about twenty years ago. In such a situation, sending the appellants to jail after such a long time would not be in the interest of justice nor any useful purpose would be served. It has been informed by the learned counsel for the appellants that the appellants have already remained in jail for about six months. In that view of the matter, conviction of the appellants is maintained, however sentence awarded to the appellants is reduced to the period already undergone. However, they shall deposit the fine as awarded by the trial court, if not deposited, within a period of four months and in default of payment of fine, they shall undergo rigorous imprisonment for one year as has been ordered by the

trial court. Thus, the appeal is dismissed with the aforesaid modification.