
(2011) 09 PAT CK 0087

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 386 of 1998

Kedar Sao, Arjun Sao and Yamuna Sao @ Jamun Sao

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 34

Citation : (2011) 09 PAT CK 0087

Hon'ble Judges : Gopal Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Prasad, J.—Heard learned Counsel for the parties.

2. This appeal has been filed u/s 304(II)/34 of the Indian Penal Code and have been sentenced to undergo Rigorous imprisonment for five years. In the prosecution case as alleged that in the night of 9-10 June, 1995 at about 03:45 A.M., the informant was about to go out Kedar Sao caught hold of him and asked why he sat on the cot of his wife and started assaulting. In the meantime Arjun Sao and Jamun Sao came there and also assaulting them by Lathi and Danda and on Halla co-villager Birendra and Rajesh came. The motive of the occurrence is that Sita Sao has taken away the money and for which the occurrence has taken place.

3. On the written report dated 10.06.1995 F.I.R. was lodged and the investigation proceeded. However, the victim died after six days of his treatment at hospital and the charge-sheet submitted cognizance taken, finally the trial proceeded for offence u/s 302/34 after framing of charge and during the trial 9 witnesses have been examined and one defence witness was also examined. The doctor however, found six injuries on the person of the deceased which are:

(1) Swelling 3" x 2"= over right elbow (2) 2" x 1"= lacerated wound over left palm (3) 4" x 2"= swelling over left arm (4) 3" x 2" x 1"= lacerated wound over

and below left knee (5) 2" x 1"/ 2" x 1"/2"= lacerated wound over right knee and 2" x 1"= abrasion over left buttock and it was opined that the death caused due to shock and hemorrhage due to above mentioned injuries.

4. The trial Court after considering the oral and documentary evidence convicted the Appellant u/s 304 part II in view of the fact that victim died after six days and nothing has been brought on record to show that he was adequately treated when the injuries were not found on the vital part of the body and the possibility of the dying of the deceased due to other reason cannot be ruled out.

5. Learned Counsel for the Appellant however contends that the injuries found by the doctor were not on the vital part of the body and the occurrence took place as apparent from FIR with regard to the petty matters. Hence as per the nature of the allegation it cannot be inferred that there was intention to kill and the assault alleged by the lathi and danda and hence under the facts and circumstances, since the Kedar Sao has already remained in jail for six months, Arjun Sao remained in jail for two years seven months and Jamun Sao remained in jail for two years eight months during the investigation trial and even after conviction. Hence, a lenient view may be taken.

6. However, perused the records and the evidence of the defence there is allegation of assault by lathi and danda. The injury reports suggested that the injury of the arm and leg and it is not the vital part of the body and the lower court has also observed the injury are not on the vital part of the body and the cause of death does not indicate by the injury inflicted. The occurrence is of 1995 and Appellant suffer due to protracted litigation hence having regard to the facts and circumstances the ends of justice shall meet by sentencing the Appellant for the period already undergone by them in jail and hence the appeal is dismissed with modification in sentence.