
(2011) 07 PAT CK 0215

In the Patna High Court

Case No : Criminal Appeal (S.J.) No. 173 of 1996

Lallu Mian and Hafiz Mian

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 324

Citation : (2011) 07 PAT CK 0215

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellant No. 1 has been convicted under Sections 324 and 323 of the Indian Penal Code and sentenced to rigorous imprisonment for two years and one year respectively whereas the Appellant No. 2 has been convicted u/s 323 of the Indian Penal Code and sentenced to rigorous imprisonment for one year by a judgment dated 22.7.1996 passed by the 1st Additional Sessions Judge, Bettiah, in Sessions Trial No. 246 of 1992/230 of 1995.

2. The case of the prosecution according to the Informant Jahir Alam is that on 12.5.1992 at about 9.00 P.M. when the Informant along with his friend Mafiz Mian were sitting on their Darwaza and enjoying some fruits, the Appellant No. 1 started abusing them at which the Informant's father brought him to his house but Appellant No. 1 followed him and started to assault with fists and slaps on the allegation that they had captured his land. Thereafter, Appellant Nos. 1 and 2 brought Farsa and Lathi from their house and assaulted the Informant on his head as well as one Siddique Mian was also assaulted when he attempted to intervene. His uncle was allegedly assaulted. During trial, the Appellants were charged u/s 307 of the Indian Penal Code but they were acquitted of the charges and convicted as mentioned above.

3. The defence pleaded false implication on account of the counter version in

which even the Appellant No. 1 had been injured and examined by Doctor PW-3 who was examined on behalf of the Defence as DW-1.

4. During trial the prosecution examined seven witnesses out of whom PW-3 is the Doctor who examined the injured. PW-5 is the Informant. PW-2 is formal and only on the factum of occurrence whereas PW-1 is a hear say witness. PW-4 is the other injured and PW-6 is the Investigating Officer. PW-7 is a formal witness.

5. The defence exhibited the F.I.R. of the counter case as also the injury sustained by the Appellant No. 1. From the evidence of the four material witnesses, I find that there is complete denial of the defence version and they have not explained injury on the person of the Appellant No. 1 which is in my view fatal to the prosecution since evidently the prosecution has suppressed the true version before the Court.

6. In view of such, the Appeal is allowed. The order of conviction and sentence passed against the Appellants in Sessions Trial No. 246 of 1992/230 of 1995 by the 1st Additional Sessions Judge, Bettiah, is hereby set aside.

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