
(2011) 05 PAT CK 0058

In the Patna High Court

Case No : Criminal Appeal No. 18 of 1995 (S.J.)

Mahendra Bhagat and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 03-05-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 304, 323

Citation : (2011) 05 PAT CK 0058

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellant Nos. 1, 2, 3, 4, 5, 7 and 8 have been convicted u/s 323 and sentenced to R.I. for six months, whereas the Appellant Nos. 4, 6, 7 and 9 have further been convicted u/s 304 Part II I.P.C. and sentenced to R.I. for ten years by the 6th Additional Sessions Judge, Siwan in Sessions Trial No. 121 of 1992 by a judgment dated 16.2.1995.

2. The case of the prosecution is that on 28.6.1991 a dispute arose between the parties over throwing away Pual which led to an assault on three injured, out of whom later Samraji died.

3. During trial the prosecution has examined nineteen witnesses. Out of whom, P.W.1, P.W.2, P.W.4 and P.W.18 are formal, whereas the P.W.10, P.W.11 and P.W.12 are tendered. P.W.5, P.W.6, P.W.7, P.W.8, P.W.9, P.W.13, P.W.14, P.W.16 and P.W.17 are eye witnesses. P.W.19 is the Investigating Officer, whereas the P.W.15 is the doctor, who had examined the three injured Ram Chandra Choudhary, Khublal Choudhary and Laldhari Choudhary. P.W.3 is the doctor, who held the postmortem examination of Samraji.

4. On behalf of the defence, two witnesses were examined to prove that in fact on the date of occurrence three lady inmates of the Appellants had been assaulted by the prosecution. P.W.19, the Investigating Officer, in paragraph 11

has also stated at when he had arrested Appellant No. 3 Ram Chandra Bhagat and Appellant No. 4 Lalji Bhagat on 28.6.1991 he had found injuries on their person, for which they were sent to Hospital for treatment.

5. Undoubtedly all the eye witnesses have supported the case of the prosecution but none of them have explained the injuries sustained by the Appellants which is an admitted position since even the Investigating officer has testified to the effect that two of the Appellants had been found injured. This non- explanation creates a serious doubt on the case of the prosecution that it has not narrated the true facts of the occurrence and under such circumstances this Court is unable to construct a third case. Moreover, even the Trial Court has disbelieved the evidence of the eye witnesses P.W.5, P.W.6, P.W.7, P.W.8 and P.W.13 to some extent and also opined that there were material contradictions in their statements as borne out from the evidence of P.W.19, the Investigating officer.

6. From the evidence of these witnesses, it is also not clear as to whether the disputed land where the occurrence had taken place was in possession of the Appellants or that of the prosecution and it appears that the occurrence had taken place while the accused were exercising the right of private defence of property and person.

7. In such view of the matter, the appeal is allowed and the order of conviction and sentence against the Appellants passed on 16.2.1995 by the 6th Additional Sessions Judge, Siwan in Sessions Trial No. 121 of 1992 is set aside. The Appellants are discharged from the liabilities of their bail bonds.