
(2011) 07 PAT CK 0122

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 106 of 1996

Md. Rasid Mia @ Abdul Rasid and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 323, 324

Citation : (2011) 07 PAT CK 0122

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellant Nos. 1, 2 and 3 have been convicted Under Sections 323 and 147 and sentenced to S.I. for three months under each count, whereas Appellant Nos. 4, 5 and 6 have been convicted u/s 148 I.P.C. and sentenced to S.I. for six months and Appellant No. 4 has also been convicted u/s 324 I.P.C. and sentenced to S.I. for one year by the 4th Additional Sessions Judge, Vaishali at Hajipur in Sessions Trial No. 139 of 1988 by a judgment dated 4.5.1996.

2. The case of the prosecution according to the informant Surendra Singh is that he had purchased the land in the village Sherpur Pyare and when he had gone to see his field on 10.9.1982 at about 12 Noon he saw that his Janera crops had been cut. He raised an alarm, at which Nathuni Mia armed with garasa, Habib Mia armed with farsa, Israil Mia armed with Barchhi, Kadir Mia armed with iron rod, Bhadai Mia and Rashid Mia armed with lathies came and thereafter Nathuni Mia is said to have given farsa blow on the informant, on account of which he fell down. The rest of the Appellants also assaulted him variously.

3. The defence of the Appellants was that in fact the land belonged to the Appellants and the khatiyani was filed vide Exhibit A. D.W.1 Halim Ansari stated that no occurrence had taken place on the date and time as alleged by the

informant. D.W.2 Abdul Sakur also stated that he was in his house and that no such occurrence had taken place fully corroborating the evidence of D.W.1.

4. During trial the prosecution has examined six witnesses in all. Out of whom, P.W.1 Braj Kishore Singh is an eye witness to the occurrence and he stated that on the date and time alleged while he was working in his field he saw an altercation between the informant and Nathuni Mia and thereafter an assault was made upon the informant. In his cross examination he stated that he was about 40-50 meters from the place of occurrence and when he rushed to the place of occurrence he saw the informant standing there with bleeding injuries.

5. P.W.2 Harinandan Singh is also an eye witness to the occurrence, who stated that while he was working in the field he heard hulla, at which he went to the place of occurrence and saw the Appellants assaulting the informant variously. He stated that his field was about 50 laggis from the place of occurrence.

6. P.W.3 Dip Narain Singh also deposed as an eye witness and more or less to the same effect as P.W.1 and P.W.2. P.W.4 Zahur Mian also an eye witness and stated that in his presence the informant had been assaulted.

7. P.W.5 Surendra Singh, the informant, reiterated his statement made in the fard beyan and that on account of the injuries caused by the Appellants he had become senseless, where after he was removed to the Hospital, where he was treated. P.W.6 Sachidanand Prasad is the part I.O. of the case but he is formal in nature since he had only submitted charge sheet in the matter.

8. On going through the evidence of the five eye witnesses, there is no manner of doubt that in fact the occurrence had taken place in the manner alleged, but in the absence of the doctor who corroborated the ocular evidence, it would be unsafe to rely on only the ocular evidence of the witnesses in the backdrop of civil litigation.

9. In the result, the appeal is allowed and the order of conviction and sentence passed against the Appellants on 4.5.1996 by the 4th Additional Sessions Judge, Vaishali at Hajipur in Sessions Trial No. 139 of 1988 is set aside. The Appellants are discharged from the liabilities of their respective bail bonds