
(2011) 07 PAT CK 0233

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 229 of 1997

Mundrika Yadav and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 34

Citation : (2011) 07 PAT CK 0233

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjana Prakash, J.—It has been submitted that the Appellant Nos. 1, 2 and 3 are now dead and the Mukhiya certificate has been brought on record by the supplementary affidavit. In view of such, the appeal of Appellant Nos. 1, 2 and 3 abates.

2. All the Appellants have been convicted u/s 307/34 I.P.C. but whereas Appellant No. 1 was sentenced for three years the rest of the Appellant was sentenced to R.I. for five years. Appellant Nos. 3 and 5 have further been convicted u/s 323/34 I.P.C. and sentenced to R.I. for six months by a judgment dated 23.8.1997 passed by the 8th Additional Sessions Judge, Patna in Sessions Trial No. 370 of 1990.

3. The case of the prosecution according to the informant Dr. Shyama Prasad, who was a Homeopathy doctor, is that while he was examining his patients on 24.9.1989, Appellant Mundrika Yadav came to his clinic with a lathi and asked him for a sum of Rs. 5000/-. The informant refused, at which Appellant Suraj Yadav armed with a farsa, Seetal Yadav armed with an iron rod, Mithilesh Yadav armed with a bhala, Surendra Yadav with a lathi and ramesh with a lathi came and started variously assaulted him. When his son Om came to save him, the accused persons also assaulted him and also committed mischief and theft of

articles kept in his clinic.

4. The defence of the Appellants was that in fact they were innocent and it was the informant, who had assaulted Appellant Suraj on account of a very minor dispute which had taken place over throwing of ashes in the drain. The Appellants also brought on record Exhibit A, which was the fard beyan, Exhibit B is the First Information Report, Exhibit C is the injury report of Appellant No. 2 Suraj and Exhibit D is the charge sheet which was submitted in the case against the informant and others.

5. During trial the prosecution has examined seven witnesses. Out of whom, P.W.5 Shyama Prasad is the informant, whereas P.W.4 Om Shankar is his son. These two witnesses were the injured witnesses. P.W.6 Rajnath Yadav is the Investigating Officer, whereas P.W.7 is Dr. Vishwanath Prasad, who examined the two injured. P.W.1 Sunil Kumar, P.W.2 Deo Sharan Yadav and P.W.3 Brahamdeo Singh are the witnesses on the point of occurrence, out of which P.W.2 did not support the case of the prosecution and was therefore declared hostile. During trial P.W.5 Shyama Prasad once again stated that while he was sitting in his clinic on 24.9.1989 Appellant Mundrika Yadav came with a lathi and asked him for 5000/- rupees and when he refused to give him the rest of the accused persons variously armed came and assaulted him. He specifies who had assaulted whom at which part of the body. P.W.4 Om Shankar is son of the informant, who stated that while his father was examining the patients and he was sitting on Verandah Appellant Mundrika Yadav came there and asked him for 5000/- rupees and when he refused to pay he assaulted him. When he himself intervened in the matter he was also assaulted by the accused persons. The accused had run away on seeing the other witnesses coming to the place of occurrence. P.W.1 Sunil Kumar stated the same fact as P.W.4 and also specified as to which of the accused persons had hit on which part of the body and by which of the weapon. P.W.3 Brahamdeo Singh also stated that while he was sitting at the clinic the occurrence had taken place. None of the witnesses admitted the factum of the counter occurrence or that the Appellant Suraj Yadav had been assaulted in this occurrence. P.W.6 Rajnath Yadav, who is the Investigating Officer, testified that in fact there was a counter version of the occurrence in which Appellant Suraj Yadav had been assaulted and hurt.

6. Evidently the prosecution had suppressed true version of the case and it is not open to the court to construct a third case in absence of the true version.

7. In the result, the appeal is allowed and the order of conviction and sentence passed against the Appellants on 23.8.1997 by the 8th Additional Sessions Judge, Patna in Sessions Trial No. 370 of 1990 is set aside. The Appellant are discharged from the liabilities of their respective bail bonds.