
(2013) 11 PAT CK 0027

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 88 of 2002

Raghunandan Yadav and Ram Pravesh Yadav

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 25-11-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 34, 426, 448

Citation : (2013) 11 PAT CK 0027

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Advocate : Paras Nath, for the Appellant;

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The counsel for the Appellants submits that the Appellant No. 1 died during pendency of the Appeal. Hence, the appeal as regards to him is dismissed as having become infructuous. The Appellants have been convicted under Sections 307/34, 448 and 426 Indian Penal Code and sentenced to rigorous imprisonment for 7 months, 6 months and 3 months respectively passed by a Judgment and order of conviction dated 20/21.2.2002 by the Presiding Officer, F.T.C. No. III, Jehanabad, in Sessions Trial No. 156 of 1994/22 of 2002.

2. The case of the Informant is that on 30.11.1991 at about 5.30 P.M. while he was sitting at the door, he saw the Appellant cutting the ridge of his field to which he protested. The Appellants then variously armed, came near his house, abused him and even while the Appellant No. 2 caught hold of the Informant, the Appellant No. 1 gave a spade blow on his head on account of which he sustained serious injury.

3. During Trial, seven witnesses were examined out of whom PW-3, PW-4 and PW-5 have been declared hostile whereas PW-1 is the Informant and PW-2 is his wife. PW-6 is a formal witness. PW-7 is the Doctor who examined PW-1, the Informant and found simple injuries on his head.

4. The submission of the Appellant No. 2 is that even accepting the Prosecution case in its entirety as against the Appellant No. 2, the only allegation is of having caught hold of the Informant while the Appellant No. 1 assaulted him. There is no allegation of any assault by him.

5. Further, the admitted position is that the Appellant is the agnate of the Informant, the occurrence took place on account of land dispute in the facts of the case even if the Appellant No. 2 had caught hold of the Informant while he was being assaulted, the intent of causing death cannot be attributed to him. Hence, in view of the matter, the Appellant No. 2 be acquitted giving him benefit of doubt.

6. On the other hand, the counsel for the Informant submits that there is consistent evidence of PW-2 that occurrence which is supported by the rest of the witnesses including the Doctor. In circumstances when he caused injury on a vital portion of the Informant, the Appellant No. 2 does not deserve any leniency.

7. From the evidence of PW-1 the Informant, I find, he admitted that there was a family partition but the ridge was still under dispute. The factum of possession of the disputed ridge has not been conclusively proved by the Prosecution.

8. Having given my anxious consideration to the facts of the case, I find that in the event when independent witnesses i.e. PW-3, PW-4 and PW-5 have not supported the case of the Prosecution and the Investigating Officer who was the next independent witnesses has also not been examined, the Appellant No. 2 deserves to be acquitted giving him benefit of doubt.

9. Hence, the Appeal is allowed. The order of conviction and sentence dated 20/21.2.2002 passed against the Appellant No. 2 in Sessions Trial No. 156 of 1994/22 of 2002 by the Additional Sessions Judge, Presiding Officer, F.T.C. No. III, Jehanabad is, hereby, set aside. The Appellant No. 2 is discharged for the liability of his bail bond.