
(2011) 05 PAT CK 0059

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 258 of 1994

Raj Kumar Sah, Krishna Sah and Prabhunath Prasad

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 34, 452

Citation : (2011) 05 PAT CK 0059

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellants have been convicted under Sections 307/34, 452 and 323 IPC and sentenced to RI for five years, one year and three months respectively by the 1st Additional District and Sessions Judge, Saran, Chapra in S. Tr. No. 273/85/95/87 by a judgment dated 17.08.1994.

2. The case of the prosecution is that on the night of 01.08.1984 the Appellants came into the house of the informant and Appellant No. 1 assaulted the informant with the farsa on his head, Appellant Nos. 2 and 3 assaulted him with lathi. The reason for the occurrence is that there was a dispute between the parties for ancestral land and two months prior to this occurrence 107 proceeding was initiated between the parties.

3. The prosecution in all examined eleven witnesses out of whom P.W. 1. Manager Sah who injured is the brother of the informant, P.W. 2 is the mother of the informant, P.W. 3 is the wife of the elder brother of the informant, P.W. 6 is the wife of the informant, P.W. 8 is the brother of the informant, P.W. 9 is the informant, P.W. 11 is formal and P.W. 10 is the Doctor whereas P.Ws. 5 and 7 are tendered witnesses.

4. The defence brought on record various documents to demonstrate that in fact there was land dispute between the parties and they had been implicated on

account of such land dispute. In fact the two injured had been assaulted by unknown thieves but the Appellants were falsely implicated on account of land dispute.

5. On going through the evidence of the interested witnesses, I find that they are relatives interse and there are material discrepancies and their evidence which gives the Court impression that the prosecution had developed this case to ensure conviction of the Appellants. The Investigating Officer has not been examined nor has any independent witness been examined by prosecution. In the background of active land dispute between the parties, in my opinion, non-examination of independent witnesses is fatal to the prosecution.

6. In the result, the appeal is allowed and the judgment dated 17.08.1994 passed by the 1st additional District and Sessions Judge, Saran, Chapra in S. Tr. No. 273/85/95/87 is set aside. The Appellants are discharged of the liability of their bail bonds.