
(2012) 02 PAT CK 0056

In the Patna High Court

Case No : Criminal Appeal (SJ) No.328 of 1999

Raja Ram Singh and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 23-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107
Penal Code, 1860 (IPC) — Section 147, 323

Citation : (2012) 02 PAT CK 0056

Hon'ble Judges : Mandhata Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mandhata Singh, J.—Prosecution case initiated on written application of one Vijay Singh in short is that on 26.3.1988 at 10.00 AM while he (informant) was returning from his field, came near flour mill of Dinesh Singh, all the accused persons surrounded him. Of them Raja Ram ordered to kill responding thereon Moti Lal Singh assaulted the informant by means of Grassa on his forehead, he fell down thereupon accused persons assaulted him with fist and slap. In the meantime his wife came in his rescue who also was assaulted by them.

2. A proceeding u/s 107 Cr.P.C. was pending in between the parties. There was enmity in between them.

3. After concluding the trial, the result is conviction and sentence to accused appellants for the offence under sections 323 and 147 of the Indian Penal Code.

4. In all 12 witnesses are examined in the case and they are P.W.1 Shambhu Singh, P.W.2 Nandjee Singh, P.W.3 Amar Dayal Singh, P.W.4 Bhagwan Singh, P.W.5 Ram Dulari Devi, P.W.6 Dinesh Singh, P.W.7 Gorakh Nath Singh, P.W.8 Ram Dular Singh, P.W.9 Om Prakash Singh, P.W.10 Nand Keshwar Singh, P.W.11 Vijay Singh informant of the case and P.W.12 Tarkeshwar Prasad.

5. Of them, P.Ws 3, 4, 7 and 12 are tendered for cross-examination in which also

there appeared nothing to corroborate or disbelieve the prosecution case. Rest of the witnesses are there to state taking place of the incident and causing of assault by accused appellants also either by means of Lathi or slap and fist, with minor discrepancies (contradiction) there was nothing to disbelieve them, accordingly, they have been believed by discussing all such infirmities on behalf of defence.

6. For the incident of same time and same place a counter case is lodged on behalf of one of the accused appellants namely Dev Karan Singh against the informant party but in the instant case taking place of the incident is denied and no case is pleaded for right to private defence. So, I find no infirmity in conclusion reached by the trial court in convicting accused appellants for the offence under sections 147 and 323 of the Indian Penal Code.

7. Now remains the sentence, on this point submission of learned counsel for the appellants is that enmity was there in between the parties and a case u/s 107 Cr.P.C. was pending that is the case of prosecution itself. The only prayer on behalf of accused appellants is that they are entitled for the benefit under the Probation of Offenders Act. However, they remained in custody though for four days only but in the discussed circumstance that can be observed sufficient on the point of sentence. I agree with the submission of learned counsel for the appellants.

8. In the result, the appeal is partly allowed on the point of sentence only that (sentence) is modified and minimised to the period already undergone by the appellants.

9. The conviction of the appellants is affirmed with modification in sentence as mentioned above making further observation that any of the offences does not fall under the offence concerning moral turpitude. Appellants shall stand discharged from their liabilities of respective bail bonds and set at liberty.

10. Copy of judgment along with lower court records be sent back to the trial court forthwith.