
(2011) 04 PAT CK 0115

In the Patna High Court

Case No : Criminal Appeal No. 34 of 1995 (S.J.)

Rajeshwar Rai and Mahesh Rai

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 307, 324, 34

Citation : (2011) 59 BLJR 1463

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anjana Prakash, J.—The Appellant No. 1 of Criminal Appeal No. 34 of 1995 and the Appellant of Criminal Appeal No. 37 of 1995 have been convicted u/s 307 I.P.C. and all the three Appellants have been convicted u/s 307/34 I.P.C. and sentenced to R.I. for five years by the 4th Additional Sessions Judge, Vaishali at Hajipur in Sessions Trial No. 268 of 1989/ 100 of 1992 by a judgment dated 30.3.1995.

2. The case of the prosecution is that on 27.4.1998 when the informant P.W.5 went to see his onion field he saw that there was certain trampling marks and when he questioned the accused persons they got enraged and the Appellant Jai Mangal Rai is said to have assaulted the informant with a chhura on his abdomen and when P.W.2 Ram Kailash Rai protested Appellant Rajeshwar Rai assaulted with a chhura on his neck and the rest of the accused persons assaulted with danda, fists and slaps.

3. During trial the prosecution has examined nine witnesses in all. Out of whom, P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.6 all belong to the same family, out of which P.W.2 and P.W.5 are the injured witnesses. P.W.8 and P.W.9 are formal witnesses on the fact that the Investigating Officer was dead. P.W.7 is the doctor, who examined the P.W.2 and P.W.5. One witness was examined on behalf of the

defence and some documents were brought on record to show that there was a counter case with regard to the same occurrence and P.W.2 and P.W.5 were named as accused in the said case.

4. On going through the evidence of the doctor, I find that the injuries sustained by the two injured i.e. P.W.2 and P.W.5 were on vital parts whereas the injury found on the person of P.W.5 was grievous in nature, the doctor opined that the injury of P.W.2 was simple in nature. However, P.W.3 has fairly conceded in his cross-examination that on the date of occurrence some onion plants have been damaged by the oxen of accused Mahesh Rai, on account of which he and others had assaulted the accused persons. One can safely assume that in fact the accused persons, if at all assaulted, did so in right of self defence of person and the intention of the accused persons was not to cause the death. All the witnesses have conceded this fact that there was counter version of the occurrence and, therefore, it is difficult to uphold the conviction of the Appellants u/s 307/149 I.P.C.

5. In view of the discussions made above, the conviction of the Appellants is converted to one u/s 324 I.P.C. and they are sentenced to the period already undergone.

6. In the result, the appeal is dismissed with the aforesaid observations.