
(2012) 08 PAT CK 0003

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 386 of 1994

Rama Mahto and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 425, 452

Citation : (2012) 08 PAT CK 0003

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : Nagendra Sharma, for the Appellant; Sujit Kumar Singh, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—There are nine appellants before this Court. Counsel for the appellants submits that Peyare Mahton and Ram Balak Mahton, sons of Chamru Mahton have died during pendency of the appeal. Such statements have been made on the oral instruction of the client. In view of the oral instruction received by the Counsel for the appellants, it is not essential to ascertain these facts by asking for a report which would unnecessarily delay the disposal of the appeal, especially in view of the order I intend to pass. This appeal arises out of the judgment of conviction and the order of sentence dated 30th November, 1994 passed in Sessions Trial No. 318 of 1984 by the 1st Additional Sessions Judge, Patna, whereby the Trial Court has found and held the appellants guilty for the offences punishable u/s 323 of the Indian Penal Code to undergo rigorous imprisonment for one year and u/s 452 of the Indian Penal Code to undergo two years.

2. The prosecution case has been instituted by Parmeshwar Mahton, P.W.7 who has stated that, his brother had returned home after selling ice-cream at Fatuha, when the accused persons entered his Angan and began to assault to Ramjiwan Mahton (P.W.1) with lathi and bricks. In the First Information Report it is specially

mentioned that all of them were armed with lathies except for Nand Mahto who was armed with a brick with which he assaulted Ramjiwan Mahto. There is an allegation that when the ladies of the house tried to intervene, they too were assaulted, it is said that the informant, Ram Dulari Devi (P.W.3) and Ramrati Devi (P.W. 5) received injuries in the said occurrence. The motive of the occurrence as disclosed in the First Information Report is that the starter and the switch of the Pump belonging to Rama Mahto had been stolen from his field, he had visited a "Tantrik" who had perhaps disclosed the name of Ramjiwan Mahton (P.W.1) as the man who had committed the theft. It is alleged that on the basis of the aforesaid suspicion, this occurrence had taken place.

3. The defence case is that a case was instituted by Rama Mahto, alleging theft and in order to save himself and Ramjiwan Mahton the case was instituted making completely false allegations.

4. Five witnesses have been examined in this case. The injury report has not been produced. The doctor has not been examined in this case to support the injuries.

5. Under these circumstances, the Court has examined as to whether the evidence of the five witnesses is sufficient to convict the appellants.

6. P.W.1 Ramjiwan Mahton in his examination-in-chief has made specific allegation against Arjun Mahton. He said that he has given a blow with iron rod on the head, whereas Peyare Mahton, appellant no. 2 caught hold of his neck.

7. Counsel for the appellants points out that P.W. 1 Ramjiwan Mahton has stated in his evidence that he was not examined by the Investigating Officer in this case. He has also not supported the case that the females of the house were assaulted. It is, therefore, submitted that Ramjiwan Mahton has not supported the manner of occurrence and has not even explained the injuries that he received during the occurrence. Besides which it does appear strange that the Investigating Officer had not examined him although he was injured in the occurrence.

8. P.W. 2, Ramkali Devi, sister of the informant claims that she went to the place of occurrence and that P.W. 1 Ramjiwan Mahton was assaulted by all the accused persons. It is alleged that Arjun gave blow on the head. This witness denies that a counter case was filed in which Rama Mahto received injuries.

9. P.W. 3, Ram Dulari Devi is the niece of the informant. She claims that she was injured in the occurrence and that she received a Bhala injury on the leg. Ram Dulari is a chance witness who was visiting the informant. She is not a permanent resident of the place. Both P.Ws. 2 and 3 claim that they have received injuries but this aspect of the matter has not been supported by bringing the injury report on record.

10. P.W. 4, Shyama Devi is the sister of the informant. According to her she had seen Palak Mahto pressing the neck of P.W. 1. She has not made any specific

allegations against any of the accused persons, although she states that P.W. 1 was assaulted by a Farsa. The statement of Shyama Devi is contrary to the statement of P.Ws. 1, 2 and 3 as well as the informant as none of the witnesses have disclosed that any of the appellants were armed with a "Farsa".

11. P.W. 5, Ramrati Devi, the wife of the informant has stated that she came to the place of occurrence i.e. the "Angan" after the assault was over. She has specifically stated that the persons standing in the dock are not the persons involved in the occurrence. Thus this witness is not an eye witness to the occurrence.

12. P.W. 7 is the informant of this case. He has changed the version of the occurrence. According to him when the fight began he could not reach near Ramjiwan. He does not make any specific allegation against Arjun. The informant evidence in Court, varies with his version in the First Information Report regarding the manner of occurrence. Firstly he states that Arjun is said to have assaulted Ramjiwan with a saif, which is not the case made out in the First Information Report or for that matter by P.Ws. 1, 2, 3, 4 and 5. All of them have stated that the injuries were by Lathi. He further states that he was not able to reach anywhere near Ramjivan as the accused persons had surrounded him and therefore he could not come to the help of Ramjiwan. In his chief, he does not state that the ladies of the house were assaulted which is in contradiction to the case made out by him and the ladies who are witness in this case.

13. After considering the evidence, it is obvious that the witnesses have tried to make out a case that Ramjiwan was assaulted on the ground that he was suspected of stealing the starter and main switch of the pump belonging to Rama Mahto. The evidence by the witnesses is unbelievable as all the witnesses contradict each other regarding the manner of occurrence, besides which the injury reports have not been exhibited in this case. The doctor has not been examined to support the injuries which would be essential in a case where the allegation is of assault in order to determine whether the ocular evidence matches the medical evidence. The informant in fact has changed the manner of occurrence and his evidence contradicts the evidence of the injured, P.W. 1 as well as the other witnesses on major aspects regarding the manner of assault.

14. Considering all these facts, this Court finds that there is insufficient evidence to make out a case under Sections 323 and 425 of the Indian Penal Code. The judgment of conviction and the order of sentence dated 30th November, 1994 passed in Sessions Trial No. 318 of 1984 by the 1st Additional Sessions Judge, Patna is set aside. The appellants are acquitted of the charges levelled against them. They are also discharged from the liabilities of their bail bonds furnished earlier in this case. This appeal is allowed.