
(2011) 04 PAT CK 0237

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 259 of 1994

Ramashankar Singh, Anil Kumar Singh, Sunil Kumar Singh
and Gauri Shankar Singh, All Sons of Bir Bahadur Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 04-04-2011

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 307, 323, 448

Citation : (2011) 04 PAT CK 0237

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellant No. 1 has been convicted u/s 307 I.P.C. and 27 of the Arms Act and sentenced to R.I. for two years and five years respectively, whereas all the rest of the Appellants have been convicted u/s 448 I.P.C. and sentenced to R.I. for six months each and also a fine of Rs. 500/- each, in default of which sentence of one month R.I. by a judgment dated 26.7.1994 passed by the 2nd Additional Sessions Judge, Arrah in Sessions Trial No. 403 of 1993.

2. The prosecution case is that on 11.5.1993 at 7.45 P.M. when P.W.3, the informant, was sitting on his Dalan, the accused persons entered into his courtyard and the Appellant No. 1 is said to have fired at him causing injuries on the left chest as well as left arm whereas the Appellant No. 2 is alleged to have assaulted at the back of the informant, on account of which he fell down and then the rest of the accused persons committed theft.

3. The prosecution has examined nine witnesses in all. Out of whom, P.W.1, P.W.2 and P.W.3 are eye witnesses and P.W.4 and P.W.6 have been tendered, whereas P.W.5 is the doctor, who examined the informant (P.W.3) and P.W.7 proved the X-ray report of the informant. P.W.8 is the second Investigating

Officer and P.W.9 is the first Investigating Officer.

4. The defence of the Appellants was of false implication on the factum of identification.

5. On going through the evidence, it appears that P.W.1, P.W.2 and P.W.3 are full brothers and are on inimical terms with the Appellants and indeed the question of identification on account of the generator running at the place of occurrence has been developed during trial. Further, I find that no independent witness has been examined to corroborate the prosecution case. P.W.5, the doctor, found superficial injury on the person of P.W.3, the injured. It is undisputed that the Appellant No. 1 fired only once at the informant and there was no repetition despite there being no intervening circumstance. In absence of the same, it is difficult to conclude positively that an offence u/s 307 I.P.C. is made out against the Appellant No. 1.

6. In view of such, the conviction of the Appellant No. 1, namely, Ramashankar Singh is converted to one u/s 323 I.P.C. and he is sentenced to the period already undergone.

7. So far the Appellants, namely, Anil Kumar Singh, Sunil Kumar Singh and Gauri Shankar Singh are concerned, in the nature of evidence adduced by the prosecution, they are acquitted of the charges and discharged from the liabilities of their bail bonds and the order of conviction and sentence passed against the Appellants, namely, Anil Kumar Singh, Sunil Kumar Singh and Gauri Shankar Singh on 26.7.1994 passed by the 2nd Additional Sessions Judge, Arrah in Sessions Trial No. 403 of 1993 is set aside.

8. In the result, the appeal is allowed in part.