

(2011) 07 PAT CK 0214

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 195 of 1994

Ramasish Raut and Sivaji Raut

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 436

Citation : (2011) 07 PAT CK 0214

Hon'ble Judges : Gopal Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Prasad, J.—Heard learned Counsel for the Appellants and learned Counsel for the Respondent.

2. The Appellants have been convicted u/s 436/149 and 147 sentencing to undergo rigorous imprisonment 10 years and one year sentence to run concurrently.

3. The prosecution case, in short, is that on 08.10.1992 he was at his Darwaja. In the meantime he saw a mob from village Sonar, variously armed with lathis, Bhala and Garasa coming in his village. Further the case of the informant is that seeing the rioters he concealed himself and he saw that the rioters looting and setting fire in the houses of Muslim community, on the furdbeyan of the informant the FIR was lodged and after investigation charge sheet has been submitted. During the trial 43 witnesses have been examined.

4. Considering the aforesaid oral and documentary evidence the order of conviction have been recorded.

5. Learned Counsel for the Appellants contended that in this case only 15 persons have been charged for offence under Sections 436/149 for committing mischief by setting fire to the house of Muslim community in furtherance of their

common object and committed theft of article in their houses.

6. Learned Counsel for the Appellant contended that 15 persons charged for offence u/s 436/149 and 147 out of which 13 have been acquitted and the two person convicted on ground that there are two identifications against the two Appellants whereas the person acquitted had only one identification. It has further been contended that though the Appellants have two identification but the Appellant were identified as member of mob and no overt act assigned to them. It is further contended that 15 person charged for 436/149 out of which 13 acquitted then conviction of only two cannot be sustain with aid of 149.

7. However, so far the two Appellants concerned though they have been named by the P. Ws. 3 and 7 but no role has been attributed. However, P.W. 6 stated the name of the Appellant Ramashish Raut and Shivajee Raut only but no role has been attributed. Having regard to the facts no specific overt act has been assigned and hence it is difficult to infer that they were in the mob with a common object of the unlawful assembly for arson. Moreover, having regard to the facts that the Appellants are the father and sons.

8. Having regard to the facts that 15 persons were charged for office under 147 or 149 and out of the said 15 persons, 13 were acquitted. In such a situation the conviction of the two Appellants with add of 149 is not sustainable and hence in that view of the matter the order of conviction u/s 436/149 and 147 of the Indian Penal Code is not sustainable and hence under the facts and circumstances the order of conviction and sentence recorded u/s 436/149 and 147 of the Indian Penal Code is hereby set aside and appeal is allowed.