
(2011) 07 PAT CK 0079

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 81 of 1996

Rameshwar Yadav, Mahadeo Yadav and Ramavtar Yadav

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 304, 323, 34, 435

Citation : (2011) 07 PAT CK 0079

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellants have been convicted u/s 323 I.P.C. and sentenced to R.I. for six months and the Appellant Nos. 1 and 2 have further been convicted u/s 435/34 I.P.C. and sentenced to R.I. for five years and the Appellant No. 3 has also been convicted u/s 435 I.P.C. and sentenced to R.I. for five years by a judgment dated 3.4.1996 and 6.4.1996 passed by the 1st Additional Sessions Judge, Bettiah, West Champaran in Sessions Trial No. 399 of 1992/ 12 of 1995.

2. The case of the prosecution according to the informant is that on 3.1.1992 at about 10 A.M. when the Appellants were erecting palani over gairmazarua land adjacent to the house of the informant after removing the wood kept by the informant, his wife objected to it, but the accused persons got enraged and assaulted him as also set fire to the palani, on account of which it was burnt to ashes.

3. The defence of the Appellants was that there was a counter version of this occurrence and in fact the occurrence had taken place in a different manner and it was the prosecution, which was the aggressor. In the counter version the Appellants claimed that both sides had sustained injuries and in fact on account of the same one person from the accused side had died, due to which Mohan

Yadav was also later convicted u/s 304 Part II I.P.C.

4. During trial, the prosecution has examined sixteen witnesses. Out of whom, P.W.1, P.W.2, P.W.4, P.W.5, P.W.6 and P.W.9 are eye witnesses to the occurrence, whereas P.W.3 is a formal witness and P.W.8 is the doctor, who examined injured Mahanth Yadav, Jhawri Dev, Mohan Yadav and found mostly simple injuries on their person. P.W.16 was examined in the counter case i.e. Sessions Trial No. 5 of 1993 and his evidence has also been incorporated in the present trial.

5. There is no doubt that the three witnesses have sustained injuries but the manner in which the occurrence had taken place has not been truthfully depicted by the prosecution because there is absolutely no explanation about the injuries sustained by the accused persons, which is an undeniable fact now in view of the such cogent material as discussed in the judgment of the Trial Court. On this score alone, the prosecution case becomes suspicious and renders it untrustworthy and unreliable.

6. Therefore, this Court finds it difficult to sustain the conviction of the Appellants on the evidence of the witnesses, who evidently are keen to screen their own acts before the Court. The difficulty of the Court is that it can not construct a third case and has to decide the case in the light of the evidence adduced. Keeping in view this principle of law, I am unable to place reliance on the evidence of untruthful witnesses.

7. In the result, the appeal is allowed and the order of conviction and sentence passed against the Appellants on 3.4.1996 and 6.4.1996 by the 1st Additional Sessions Judge, Bettiah, West Champaran in Sessions Trial No. 399 of 1992/ 12 of 1995 is set aside. The Appellants are discharged from the liabilities of their bail bonds.