
(2011) 08 PAT CK 0084

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 267 of 1998

Ratan Lal Singh and Yogeshwar Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 27, 307, 326

Citation : (2011) 08 PAT CK 0084

Hon'ble Judges : Gopal Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Prasad, J.—On repeated calls No. one appear on behalf of the Appellants.

2. Mr. Arun Kumar Tripathi, Advocate, appears and prays that he may be permitted to appear in this case as Amicus Curiae.

3. Prayer is allowed.

4. Ratan Lal Singh, Appellant No. 1 has been convicted for offence u/s 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and fine of Rs. 1,000/- and in default to undergo rigorous imprisonment for three months and further convicted u/s 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years and fine of Rs. 1,000/- and in default to undergo rigorous imprisonment for three months. Yogeshwar Singh, Appellant No. 2 has been convicted for offence u/s 307 of Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and fine of Rs. 1,000/- and in default to under rigorous imprisonment for three months.

5. The prosecution case as alleged in the Fardbeyan that about 6 P.M. that a he-buffalo left by the accused persons came at his Nad of the informant which was caused loss of crops then he talked with accused persons on which there was verbal altercation and accused Ratan Lal Singh fired at his brother Dipti Singh

and he got injury near his right ear. Bhanu Singh assaulted by Rami on Kamlesh Singh and Ram Lal Singh assaulted by lathi.

6. On the basis of Fardbeyan, F.I.R. was lodged. After investigation, charge sheet submitted. Cognizance taken and case committed to the Court of Sessions. After commitment, charge framed and during trial eight witnesses examined to support the prosecution case.

7. Defence of the accused persons that this is case and counter case and some of the persons are also injured from the defence side of defence and they also filed a complaint and prove injury. However, injury on the person of the accused persons are simple and superficial and left thumb and finger which are bruises and lacerated.

8. However, P.W.6 the doctor proved the injury as follows;

1. One lacerated circular of 1/6" diameter with Subconjunctive haemorrhage on the right eye With diminished eye vision.

2. Multiple superficial circular wound of 1/6" diameter on the face right side. Age of injury about 24 hours by fire arms and injury No. 1 has shown to be grievous and rest are simple.

9. Eight witnesses were examined in this case on behalf of the prosecution. One witness on behalf of the defence. However, learned lower court after considering the evidence and injury report of the prosecution and defence are simple and superficial and not on vital part of the body and hence disbelieve the prosecution case and counter case of the accused and convicted the Appellants as stated above in view of injury report as well as evidence.

10. Learned Amicus Curiae however submitted that injury No. 1 on the person of the brother of informant, though, stated to be grievous on the ground that doctor has opined that injury has cause diminished eye vision, but the injuries has not been shown to be dangerous to life and can not be said to have been caused with intention to kill. Hence order of conviction and sentence u/s 307 I.P.C. is not made out. It has further been contended that occurrence took place with regard to grazing he-buffalo and matter arises out of petty mater and injury is also as such to have not with intention to kill nor consequence even as such and there is No. mention of the degree of diminished vision. However, the occurrence is of the year 1986 and hence a lenient view may be taken.

11. Perused the record and the evidence of the witnesses, out of eight witnesses examined P.W. 1, 2, 3, 4, 5 and 7 supported the prosecution case that the occurrence took place due to grazing he-buffalo. P.W. 4 and 5 are injured. P.W. 6 is doctor who examined Dipti Singh and proved injury, but the doctor who examined Kamlesh Singh has not come to depose and injury report on Kamlesh Singh not proved by the Doctor. However, a counter case also proved by defence witness as Ext. A, A1 and A2 and injury report. However, injured got injury lacerated circular of 1/6" diameter with subconjunctive haemorrhage on the right

eye with diminished eye vision. However, there is No. mention about the degree by which it is diminished and other injuries are found to be simple. Hence injury pointed out can not said to have been inflicted with intention to kill and hence order of conviction and sentence recorded u/s 307 I.P.C. is not made. Hence order of conviction u/s 307 I.P.C. is substituted by Section 326 I.P.C.

12. However, taking into consideration the fact that occurrence is of the year 1986 and the prosecution has faced rigor of the criminal case since 1986, and is a case of case and counter case, injury on defence, though, simple and superficial as well as occurrence took place on petty matter of grazing he-buffalo.

13. Hence to end of justice shall meet under by sentencing the Appellants for the period already undergone and hence the appeal is allowed in part with modification of sentence.