

(2011) 12 PAT CK 0044

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 30 of 1999

Rewati Singh and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 15-12-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 34, 380

Citation : (2011) 12 PAT CK 0044

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 State.

2. The appellants have been convicted for offence u/s 307/34 I.P.C. and have been sentenced to undergo rigorous imprisonment for seven years and further convicted for offence u/s 380 I.P.C. and sentenced to undergo rigorous imprisonment for three years.

3. The prosecution case as alleged by the informant, Rajesh Kumar Singh, P.W. 3 that while the informant was playing radio at about 7.30 P.M. on 27.08.1988, then Rewati Singh, Dewendra Singh, Rajendra Singh and Rabindra Singh came and abused the informant and assaulted by slaps and fists. Dewendra Singh throw him on the ground and press his neck and assaulted. Rabindra Singh took his watch, Rewati Singh took a tin box by entering into the house. Dewendra Singh took his radio. While accused person receding, the informant was threatened that if he will lodge the case then he will kill. It is alleged that Dewendra press his neck with intention to kill and accused persons vexed to grab his land.

4. On the Fardbeyan, F.I.R. was lodged for offence under Sections 307, 380 and other allied Sections of Penal Code and police after investigation submitted

charge sheet. During trial, three witnesses were examined. P.W. 1 Bijay Kumar Singh, P.W. Ram Khelawan Singh and P.W. 3 Rajesh Kumar Singh.

5. P.W. 1 has come to support the prosecution case and during his evidence has developed the prosecution case to the effect that Dewendra Singh start pressing the neck of the informant with iron rod and further developed the prosecution case that Rajendra Singh assaulted him by iron hammer on the eye of the informant. However, this witness has stated that mother of the informant was in the house. It has further been stated that P.W. 2 and P.W. 3 Ram Khelawan Singh is Mama of the informant and he has deposed against the accused persons. P.W. 2, Ram Khelawan Singh has also come to support the prosecution case with developed version of prosecution case as alleged in Fardbeyan about assault by iron hammer by Rajendra Singh to Rajesh Kumar Singh and pressing neck by iron rod. P.W.3. However, he has admitted that appellant No. 1 is his uncle full brother of his father and appellant No. 2 and 3 are his cousin. There is land dispute between him and accused persons. However, seven persons mentioned as witnesses mentioned in the charge sheet. Out of seven, only three have been examined. The I.O. and doctor who are charge sheet witnesses have not been examined in this case. Two witnesses who are material witnesses have not been examined in this case even the mother of the victim was present in the house at the time of occurrence has not been examined.

6. The trial court taking into consideration the evidence of witnesses however hold that none examination of the I.O. and doctor is not fatal to the prosecution and hold that from the evidence of the witnesses that accused persons intended to grab the property of the informant. The trial court further held that from the evidence it is also clear that accused persons entered into the house and assaulted the informant and his mother and the informant has fully supported the prosecution case and has stated that accused person pressing his neck by iron rod and two witnesses have supported the prosecution case and has convicted the appellants for offence u/s 307 read with Section 34 of the Penal Code as well as u/s 380 of I.P.C.

7. Learned Amicus Curiae has stated that prosecution has not been able to prove the charges.

8. However, taking into consideration the evidence of the witnesses, it is apparent that prosecution case in the First Information Report that three persons came and assaulted the informant by slaps and fists and pressed his neck and thereafter snatches watch, radio and a tin box with threat not to lodge a case. However, had their been any intention to kill the informant may not left the appellant by threatening not to lodge the case after snatching the articles when there was no intervening circumstance for the appellant to kill the informant. Though, prosecution case in the F.I.R. that his neck was pressed to kill. However, there is no mentioned of pressing neck by iron rod nor allegation about assault by hammer. However, prosecution at the stage of evidence has developed the story of pressing neck by iron rod and assault by iron hammer, the informant in

his First Information Report has not stated about assault by iron hammer, though, P.W. 1 and 2 have developed the prosecution story at the stage of evidence of assault by iron hammer. The doctor, though, charge sheeted witness has not been examined to prove the injury. The motive of the occurrence as alleged is grabbing of the land, the appellants are none else rather than full uncle of the informant and his two sons. The informant has stated in his evidence that his mother was present in the house, but mother has not been examined in this case. P.W. 1 has stated that at the time of occurrence his brother, sister were present. However, they have not been examined in this case.

9. However, taking into consideration the evidence of P.W. 1, 2 and 3, their evidence suffer from development and does not inspire confidence. Evidence regarding P.W. 1 and 2 appears to be chance witness and P.W. 2 in his evidence in cross-examination has stated that he reached at the place of occurrence after hulla.

10. Hence taking into entire circumstance, neither injury has proved only assertion that assault has been made only by slaps and fists and accused persons went after snatching watch, radio and tin box. However, had there been any intention to kill the informant. Accused persons may not have receded after taking watch, radio and tin box, but what have assertion to the extent that appellant have taking his land, but the allegation is only assault by slaps and fists. Injury has also not been proved, hence I find and hold that prosecution has not been able to prove the charges beyond all reasonable doubt for offence u/s 307 I.P.C. Doctor has not been examined nor I.O. has been examined to find objective evidence or the injury report. Hence story of theft by the appellants who are none else rather than uncle and cousin brother also does not inspire confidence.

11. Hence I find that prosecution has not been able to prove the charges beyond all reasonable doubt. Hence order of conviction and recorded by the lower court is hereby set aside and the appeal is allowed.