

(2011) 07 PAT CK 0149

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 34 of 1994

Roop Lal Rai and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 06-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 436

Citation : (2011) 07 PAT CK 0149

Hon'ble Judges : Gopal Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Prasad, J.—Heard learned Counsel for the Appellant Nos. 1 and 4 who have been convicted u/s 436/149 and Appellant Nos. 2, 3 to 8 who have been convicted u/s 436 and have been sentenced to undergo rigorous imprisonment for 10 years and further the Appellants have been convicted u/s 147, 148 and have been sentenced to undergo rigorous imprisonment for 1 year. The prosecution case as alleged that a mob of about 150-200 persons came armed with lathi, bhala, farsa with raising slogans and setting fire and the informant identified 17 persons out of the said mob. The informant and others concealed themselves in a paddy field and sugarcane crop mobs the south of the road. It is also alleged that the rioter set on fire about 24 houses of the Muslim community including the informant's house. The occurrence alleged to be took place on 8-10-92. However, the farde-beyan was recorded on 21-10-92. On the farde-beyan, F.I.R. was lodged, cognizance taken and case have been committed to the Court of Sessions and after commitment charges were framed 22 witnesses were examined and after considering the order and documentary evidence out of 17 accused persons, 9 were acquitted and the Appellants who are 8 in number have been convicted and sentenced as stated above.

2. The learned Counsel for the Appellants, however, contended that there is delay in lodging the F.I.R. and the F.I.R. has been lodged after 13 days. It has further

been contended that just after the occurrence the police party and high police officials visited the place of occurrence and even a police picket was established in the village, even then there is delay in lodging the F.I.R. It has further been contended that the Government announced compensation to persons whose house has been burnt and thereafter the cases were lodged for compensation (Muawaja). It has further been contended that almost all the witnesses named by the accused persons but out of the 17 accused in same set of evidence. It has further been pointed out that though the witnesses have named the accused persons but the attention of the witnesses have been drawn with regard to their earlier statement before police and even the contradiction has been recorded by the I.O. In several paras of the evidence of the I.O. P.W. 22 had written from Paras 31 to 37 and the attention has also been drawn to the material witnesses, P. Ws 1, 2, 3, 4, 6, 8, 10, 12, 13 and 14 and there is material contradiction regarding the participation of the accused in the riot and hence the evidence of the witnesses are suffered from contradiction. Hence, the evidence of 6 prosecution witnesses are not reliable, trustworthy or worthy of confidence to be relied for conviction.

3. The learned Counsel for the State, however, pointed out that the learned Lower Court has recorded the conviction after considering the evidence of the witnesses and even taken into consideration the contradiction and has recorded the finding in Para 27 of the judgment were the learned trial Court found the participation of Appellant No. 1 reliable by P.W. 3 and the participation of the Appellant No. 2 from the evidence. P.W. 14 and the participation of the Appellant Nos. 3, 4, 5, 6, 7 and 8 by are reliable evidence or P. Ws. 10, 2, 4, 2, 6, 10.

4. Hence taking the respective submissions, the question for consideration whether the order of conviction and sentence recorded by the trial Court is sustainable and whether the prosecution has been proved the charges beyond reasonable doubts.

5. However, taking into consideration the evidence, it is apparent that it is a case of rioting in which there is allegation that after hearing the slogans of a mob of 150 to 200 persons, the informant kept himself conceal in paddy and sugarcane field and thereafter claims to have seen the occurrence from the paddy and the sugarcane field which has across the road from the houses. However, the F.I.R. was lodged after 13 days of the occurrence and though the police pickets open and the high officials visited the place of occurrence from the very next day of the occurrence and there is no proper explanation for delay in lodging the F.I.R.. However, from the perusal of the record, it is apparent that the witnesses have named indiscriminately the accused persons in their evidence. However, the attention has been drawn and it has been found that the most of the witnesses though deposed and taken the names of the accused person during the trial had not named the accused persons during his statement before police and hence their statement suffers from contradiction. However, the learned Lower Court in Para 20 also recorded its finding and has found the identification of the

Appellants by only one reliable evidence for few Appellant has been recorded to have identification more than 2, who had Jagannath Ram and the Sukh Dev Paswan.

6. However, having regard to the facts and circumstances the connection the connection on basis of only one or two identification without specific over act when majority of the evidence of witness suffer from contradiction is not sustainable in the Appellants are entitled to benefit of doubt.

7. The order of conviction and sentence recorded by the Learned Court below is hereby set aside and the appeal is allowed.