
(2013) 12 PAT CK 0001

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 38 of 2002

Sahtu Sao, Jitendra and Shyam Babu

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 05-12-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 325, 34

Citation : (2013) 12 PAT CK 0001

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Advocate : Manoj Kumar-I, for the Appellant; R.B. Roy " Raman ", APP, for the Respondent

Final Decision : Allowed

Judgement

Anjana Prakash, J.—It has been submitted that during the pendency of the Appeal Appellant No. 1 died and, therefore, his Appeal has become infructuous. The Appellants have been convicted u/s 325/34 IPC and sentenced to RI for two years whereas the Appellant Nos. 1 and 3 had further been convicted u/s 323 IPC and sentenced to RI for one year and the Appellant No. 2 has been convicted u/s 323/34 IPC and sentenced to RI for one year by the Additional Court No. -II, Patna in S. Tr. No. 903 of 1992/237 of 2001 by judgment and order dated 19.01.2002.

2. The case of the Informant, Kameshwar Rajak was that the eastern wall of the house was common with the accused persons. On the date of occurrence while the informant was raising a partition wall the accused persons started to abuse him. They then climbed over the roof and started abusing the mason and stopped the work and demolished the raised wall. At this a quarrel was initiated in which the accused Jitendra Sao armed with farsa whereas the accused Sahtu Sao and Shyambu armed with lathi assaulted on the head of the informant and left shoulder, waist, left leg and below knee of the informant. They then assaulted his father, Chaturdeo Rajak and brother, Vijay Rajak with fists and

slaps and lathi.

3. The defence of the Appellants was of complete denial and that the genesis of occurrence was not entirely true.

4. During trial the prosecution examined eight witnesses out of whom P.W. 1, Sanjay Kumar and P.W. 5, Rajesh Rajak are the material eye-witnesses. P.W. 2, Vijay Kumar injured has not supported the case of the prosecution. P.W. 3, Ramji Singh and P.W. 4, Jawala Prasad have also been declared hostile. P.W. 6, Kanhaiya Prasad Singh is the Investigating Officer whereas P.W. 7, Dr. Ram Gopal Singh is the Medical Officer. P.W. 8 is the Doctor who examined the informant at P.M.C.H.

5. It appears that before the trial could be taken up the informant, Kameshwar Rajak passed away and hence he could not be examined. Hence, the injuries on his persons proved by P.W. 7 and P.W. 8 have no value. As for the injuries on Vijay Kumar P.W. 2 since he himself has not supported the case of the prosecution his injuries proved by P.W. 7 also has become redundant. His injury report with regard to one Chaturdeo Rajak is also of no value to the prosecution for the same reason.

6. P.W. 1, Sanjay Kumar is the own nephew of the informant who supports the case of the prosecution and that the informant and his father was examined by the Doctor. It was suggested to him that he had not been examined by the police or had not stated that the accused persons had climbed over the roof and stopped the work and thereafter Sahtu Sao, Jitendra Sao and Shyam Babu had assaulted on the head on account of which he had become injured.

7. P.W. 5, Rajesh Rajak who is the brother-in-law of the informant admitted that he did not give a statement immediately after the occurrence but did so after ten days of the same. It was suggested to him that he had not stated before the Investigating Officer that Appellant, Sahtu Sao had assaulted Chaturdeo Rajak on the head with lathi on account of which he fell down and was injured or that hand of Kameshwar Rajak had been fractured or that on account of assault his mother and sister had been assaulted or that there was a counter-case instituted against the informant and P.W. 2 and others.

8. P.W. 6, the Investigating Officer stated in paragraph 11 that Chaturdeo Rajak father of Informant and Appellant No. 4, Shyam Babu had been treated at the hospital from where they were arrested. They had instituted a case numbered as 160/1986. P.W. 1 had not stated before him that the accused persons had climbed over the roof and thereafter assaulted Chaturdeo Rajak on the head on account of which he was injured. P.W. 5 had also similarly not stated the above.

9. The submission of the Appellants is that in the background fact that the brother of the informant who is injured had not supported the case of the prosecution. The evidence of rest of the witnesses appears to be not founded on length.

10. Moreover, the eye-witness, P.W. 1 is fit to be disbelieved since P.W. 6, the Investigating Officer contradicts his eye-witness account. It also appears that P.W. 5 was examined ten days after the occurrence and denied the counter-version the prosecution case. Hence, he is fit to be disbelieved. I am inclined to accept the submission raised on behalf of the Appellants for the reasons aforesaid and in view of the discussion of the evidence of the witnesses. Hence, the appeal is allowed and the order of conviction and sentence passed against the Appellants on 19.01.2002 by the Additional Court No. -II, Patna in S. Tr. No. 903 of 1992/237 of 2001 is set aside. The Appellants are discharged of the liability of their bail bonds.