

(2024) 04 PAT CK 0049

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 299 Of 2013

Shanu Sah

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 18-04-2024

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 323, 341, 452

Citation : (2024) 04 PAT CK 0049

Hon'ble Judges : Rajesh Kumar Verma, J

Bench : Single Bench

Advocate : Shrinandan Prasad Singh, Mritunjay Kumar, Atul Prakash, Kumar Sameer, Gaurav Kumar, Anita Kumari Singh

Final Decision : Allowed

Judgement

1. Heard Mr. Shrinandan Prasad Singh, learned senior counsel appearing for the appellants and Mrs. Anita Kumari Singh, learned APP for the State.
2. The present appeal has been directed against the order dated 19.03.2013 passed by learned Ad hoc Additional District and Sessions Judge-1st, Aurangabad in S.Tr.No. 330/2005/17/2010 arising out of Rafiganj P.S. Case No.45 of 2005 under Sections 452, 341, 323, 307 and 34 of the Indian Penal Code.
3. The FIR was lodged on the statement of Md. Hanif Sah. The prosecution case in short, as per statement of informant (P.W.-1) is that on 24th of March, 2005, while the informant was sleeping with his family members in his house, he heard some sound and raised alarm. It is further alleged that his son-in-law namely Seraj Sah ordered to kill him, upon that all the accused persons assaulted him variously and thereafter they also assaulted his wife-Ashgar Khatoon.
4. Learned counsel for the appellants submitted that the appellants stand charged under Sections 452, 323, 341 and 307 of the Indian Penal Code, appellants denied that substance of charge and pleaded not guilty and claimed to face the trial. The learned trial court has been pleased to acquit the appellants

under Sections 341 and 307 of the Indian Penal Code but found sufficient materials in order to convict to the appellants under Sections 452 and 323 of the Indian Penal Code.

5. Learned counsel for the appellants submits that during trial altogether seven witnesses were examined in support of the prosecution case, out of whom P.W.6- Kalim Kha and P.W.2 Ibrar Siddiqi have been declared hostile and P.W.3 and P.W.5, namely, Md. Anwar Ansari and Jabar Sah are hearsay witnesses and P.W.1 Md.Hanif Sah who is also informant in the present case and he has also injured and P.W.4 Asgari Khatoon who is wife of the informant and both have supported the case of the prosecution and P.W.7 Dr. Kishore Kumar who examined both the injured persons (P.W.1 and P.W.4) he found that all the injuries of both the persons are simple in nature caused by hard and blunt substance and from a bare perusal of deposition of P.W.7, it appears that P.W.7 has stated that the injuries are superficial and can be manufactured easily. The defence has examined only one witness namely Kalima Sah and he has stated that there was a Talaque and compromise between the parties on 19.06.2012.

6. Learned counsel for the appellants submits that the learned court below after hearing the parties convicted all the three accused persons under Sections 452,323/34 of the Indian Penal Code and sentenced to all the accused persons under Section 452 of the Indian Penal Code and sentenced them to undergo imprisonment for three years and also imposed a fine of Rs.500/-each and in default of payment of fine a further sentence of one month has been awarded. All the appellants have been awarded six months sentence under Sections 323/34 of the Indian Penal Code. Learned counsel for the appellants submits that the learned court below has failed to appreciate that only evidence produced on behalf of the prosecution is the statement of the informant and his wife (P.W.1 and P.W.4) and they are interested persons. The statement of P.W.1 and P.W.4 have not been corroborated by any other evidence and the learned court below also failed to appreciate that the independence witness P.W.7, who has examined the P.W.1 and P.W.4, has stated that the injuries caused to two injured persons are superficial in nature caused by hard and blunt substance and in cross examination he stated that the injuries are superficial in nature and can be manufactured easily and it appears from the statement of the Doctor that he is not sure with regard to the injury inflicted upon P.W.1 and P.W.4 and apart from that the learned court below has failed to appreciate that the statement of D.W.1 that there has been a Talaque and compromise also between the parties and appellant No.2 is son-in-law and also sister's son of the informant and Kalim Sah is cousin of Shanu Sah, accused No.1 and also nephew of Hanif Sah and it appears that it is family dispute.

7. Perused the records of the case it appears that the learned trial court on the same set of evidence has been pleased to acquit the appellants under Sections 341 and 307 of the Indian Penal Code and convict the appellants under Sections 452 and 323 of the Indian Penal Code. The learned Trial Court has not

considered the evidence of D.W.1 who inform the court that both the parties are related to each other, the present occurrence took place due to some family dispute. Appellant No.2 is son-in-law and also sister's son of the informant. Appellant No.3 is cousin of appellant No.1 and also nephew of informant. Apart from the aforesaid the learned court also not considered the divorce paper (Ext-A), which suggests that appellant No.2 has given the divorce his wife, who is also cousin sister of the informant.

8. The evidence of P.W.7, Doctor who examined both the injured persons and found all the injuries are simple in nature and caused by hard and blunt substance. The P.W.7 also stated in his cross examination that the injuries are superficial and can be manufactured easily.

9. The prosecution witnesses particularly the P.W.1 (the informant) and P.W.4 there were vital contradictions and inconsistencies in the examination-in-chief and the cross-examination.

10. It is the duty of the prosecution to prove any criminal case beyond reasonable doubt. If the prosecution fails to prove its case beyond all reasonable doubt then benefit of doubt will be given in favour of accused persons.

11. This Court is of the view that the prosecution has failed to prove its cases beyond all reasonable doubt, but the trial court has passed the impugned judgment of conviction against the appellants. The impugned judgment does not show any noteworthy circumstances against the appellants. The impugned judgment and order passed by the learned trial court is liable to be set aside.

12. The appeal filed by the appellants is allowed, the impugned judgment of conviction dated 19.03.2013 and order of sentence dated 19.03.2013 passed by learned Adhoc Additional District and Sessions Judge-1st, Civil Court, Aurangabad in S.Tr.No.330 of 2005/17/2010 arising out of Rafiganj P.S.Case No.45 of 2005 are hereby set aside. The appellants are acquitted from all the charges levelled against them in the present case.

13. Let the appellants be set free at once, if they are not warranted in any other case.