
(1994) 05 PAT CK 0020

In the Patna High Court

Case No : Criminal Revision No. 309 of 1993

Sheo Prasad Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-05-1994

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 325, 34, 341, 379

Citation : (1994) 05 PAT CK 0020

Hon'ble Judges : N.K. Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Sinha, J.—Heard learned Counsel for the Petitioner and learned Counsel for O.P. Nos. 2 to 5.

2. The revision is directed against the judgment and order dated 27th February, 1993 of the 9th Additional Sessions Judge, Arrah, setting aside the judgment and order of conviction of the trial Court; namely the Court of Judicial Magistrate, Arrah. The Petitioner was the informant and O.P. Nos. 2 to 5 the accused in G.R. Case No. 1880 of 1987. The Nos. 2 to 5. were put on trial. for offences under Sections 341, 325 and 379/34 IPC and were sentenced to different terms of imprisonment for the offence under Sections 323 and 379 IPC. on appeal as already mentioned above. The Additional Sessions Judge was pleased to set aside the order of conviction and sentence passed against O.Ps.

3. Learned Counsel for the Petitioner stated that there was ample evidence adduced in course of the trial to support the conviction recorded against the O.Ps. by the Trial Magistrate and the learned Appellate Court had without appreciating the evidence on the record and almost completely ignoring the medical evidence with regard to the presence of injuries on the injured proceeded to take a view that the prosecution case had not been proved. I have perused the judgment of the appellate court in the light of the submissions made

by the learned Counsel for the Petitioner. Most of the witnesses who appeared to support the case as eye witnesses did not inspire confidence as many of them frankly admitted not to have made any statement before the Investigating Officer in support of the prosecution case. It is true that the I.O. was not examined but in view of the own admission of the witnesses that their statement in support of the prosecution case had not been recorded by the I.O., there was every reason to look upon their evidence with suspicion as the learned appellate court appears to have done. Learned Counsel for the Petitioner referred to page 5 of the trial court judgment wherein 4 injuries found on the person of the injured by the Doctor have been quoted. It appears that injuries (ii), (iii) and (iv) were all swelling but injury No. (i) was a semi circular swelling on the chest which had caused fracture of the 5th rib of the right side and 6th rib of the left side. Learned Appellate court has entertained serious doubts that such an injury which the Doctor described to be grievous would have been caused in the manner alleged by the prosecution i.e. by means of slaps and fists. Learned Counsel for the Petitioner argued at length that such a proposition that the aforesaid fracture could not be produced by fists could not be laid down as a rule. While the contention of the learned Counsel for the Petitioner may be true, it is difficult to find any fault with the reasoning of the learned appellate court as ordinarily fractures of two ribs could not be produced by fists alone. Ordinarily such fractures are produced when assault is made with the help of hard and blunt substance like rod etc. Be that as it may it is difficult to find any perversity in the reasoning of the learned appellate court. Another infirmity pointed out by the learned Counsel for the Petitioner in the judgment of the appellate court was the reasoning adopted that the two of the accused who were government servants would not have participated in a case of petty theft like the present one. Learned Counsel had serious objection for no such presumption could be drawn. In my opinion for a decision of the case it was not necessary to consider this aspect of the case. As already observed earlier the evidence adduced in course of the trial was not such that it inspired confidence and on the basis of which the prosecution case could be proved. The learned appellate court in taking such a view appeared to have acted reasonably and not otherwise. Thus it is not a case in which the exercise of the revisional jurisdiction of the court is called for to set aside an order of acquittal passed by the appellate court.

4. This revision application is accordingly dismissed.