

(2013) 12 PAT CK 0003

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 123 of 2002

Sheonandan Yadav and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 148, 149, 307, 324

Citation : (2013) 12 PAT CK 0003

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Advocate : Nagendra Pd. Singh and Mr. Rajeeb Kr. Singh, for the Appellant;
Indiwar Kumari, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Anjana Prakash, J.—The Appellants Sheonandan Yadav, Deonandan Yadav and Jay Ram Yadav have been convicted under Sections 307, 148 I.P.C. and 27 of the Arms Act and sentenced to R.I. for ten years, one year and one year respectively and Appellants Shri Krishan Yadav, Udit Yadav, Rajendra Yadav and Jagdish Yadav have been convicted under Sections 307 /149 and 148 I.P.C. and sentenced to R.I. for ten years and one year respectively by a judgment dated 29.1.2002 and 31.1.2002 passed by the 3rd Additional Sessions Judge, Aurangabad in Sessions Trial No. 84 of 1989/106 of 2001. The case of the prosecution is that on the date of occurrence Appellant No. 1 went to the house of Informant Musafir Yadav with a complaint that the she-goat of Chandar Yadav, uncle of Musafir Yadav, was grazing in the Sarso crop of Sheonandan Yadav. On this information Musafir Yadav protested, at which Appellant Sheonandan Yadav became angry and threatened the Informant. Thereafter he returned with the rest of the Accused persons and fired his pistol, due to which the Informant and others were injured.

2. During trial the prosecution examined seven witnesses in all. Out of whom, P.W. 4 Musafir Yadav is the Informant. He stated that on 4.11.1979 at about 5

A.M. the Appellant Sheonandan Yadav came to him to protest about his uncle's she-goat having grazed his crops. When he protested, the accused persons variously armed came to his house. Then Appellant Sheonandan Yadav, Deonandan Yadav and Jay Ram Yadav fired, on account of which his brother Krishna Yadav, Dharamdeo Yadav and Ramrati Devi sustained injuries. He alleged that the Appellants have fired in order to cause their death.

3. P.W. 2 Krishna Yadav is an injured, who supported the prosecution case. P.W. 1, P.W. 3 and P.W. 5 have given a different genesis of the occurrence. P.W. 6 Dr. Hanuman Ram examined the injured and found altogether six injuries on the person of the Informant Musafir Yadav caused by fire arm, two injuries on the person of Ramrati Devi, four injuries on the person of Krishna Yadav and one fire arm injury on the person of Dharamdeo Yadav.

4. It has been submitted on behalf of the Appellants that when P.W. 1 has given a different version of the occurrence, the non-examination of the Investigating Officer has caused serious prejudice to the Appellants inasmuch as the place of occurrence could not be ascertained. Moreover even conceding that the firing had been done evidently it was not with the intent to cause the death because despite absence of any intervening circumstance no further action was taken by any of the Appellants to cause the death of the injured. It appears that the occurrence had taken place in spur of moment in the midst of an altercation on a petty issue.

5. Considering such aspect of the matter, the conviction of the Appellants u/s 307 I.P.C. is converted to one u/s 324 I.P.C. and sentence is reduced to one already undergone by them during trial. The conviction u/s 27 of the Arms Act shall also entail the same sentence of the period already undergone by them during trial. Hence, the appeal is dismissed with modification in conviction and sentence as mentioned above.