
(2011) 08 PAT CK 0152

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 28 of 1997

Shesh Nath Singh and Kamleshwar Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 307, 323, 324

Citation : (2011) 08 PAT CK 0152

Hon'ble Judges : Gopal Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Prasad, J.—On repeated calls no one appears on behalf of the Appellants.

2. Mrs. Rina Sinha, Advocate appears and prays that she may be permitted to appear in this case as Amicus Curiae.

3. Prayer is allowed.

4. Heard learned Amicus Curiae and learned Counsel for the State.

5. Accused Shesh Nath Singh and Kamleshwar Singh have been convicted for offence u/s 324 of Indian Penal Code and sentenced to undergo rigorous imprisonment for one year and further convicted for offence u/s 148 I.P.C. and sentenced to undergo rigorous imprisonment for three months. Accused Babulal Singh is ordered to execute a bond of Rs. 5000/- with two sureties of the like amount each for keeping peace and be of good behaviour for a term of two years and to appear and receive sentence if so called upon by the court for the offence u/s 148 of Indian Penal Code. Accused Janardan Singh, Baleswar Singh, Dudh Nath Singh, Bijay Bahadur Singh, Ragho Singh and Banka Singh are ordered to execute bond of Rs. 5,000/- each with two sureties of the like amount each for keeping peace and maintaining good behaviour for a period of two years and to appear and receive sentence when called upon by the court for the offence under

Sections 147 and 323 of Indian Penal Code.

6. The prosecution case as alleged that eight accused persons came with variously arms and punched the prosecution party and assaulted the informant and his brother Birendra Singh.

7. On the basis of Fardbeyan, F.I.R. was lodged. After investigation charge sheet submitted. Cognizance was taken for offence u/s 307 I.P.C. and the case was committed to the Court of Sessions.

8. During trial thirteen witnesses were examined on behalf of the prosecution and three witnesses were examined on behalf of the defence. The defence has also adduced documentary evidence Fardbeyan and injury marked as Ext. A, B, C and D series.

9. Learned Amicus Curiae contends that there is a case and counter case and other side also injured and received injuries which is Ext. D series which has been proved by the Doctor who has been examined as D.W. 3.

10. Learned Amicus Curiae has further contended that learned lower court did not consider at this aspect or mentioned about the injury.

11. Learned Counsel for the State has contends that, though, injuries found on the person of the prosecution side and the injury found on the person of the defence side are also found simple in nature.

12. However, taking into consideration the evidence, though, defence and the prosecution witnesses supported the prosecution case, but some of the evidence as observed by the lower court are not in conformity with the F.I.R. and the accused persons have also assaulted even received injury by Bhala which is against the evidence of the prosecution side. However, there is case and counter case and there is injury on both sides and both cases mentioning the time of occurrence at 4.30 P.M. is same, only there is variation in the place of occurrence.

13. However, having regard to the fact that injury of both sides are simple and superficial and Doctors of both sides proved the injury report which corRespondent to the period of occurrence, but injury of defence has not been able to prove the case beyond reasonable doubt.

14. Hence, order of conviction and sentence recorded by the lower court is not sustainable and is hereby set aside and the appeal is allowed.