

(2011) 07 PAT CK 0103

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 275 of 1997

Shiva Shankar Thakur, Vijay Kumar Thakur, Nagendra
Chowdhary and Lalan Chowdhary

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 327, 427

Citation : (2011) 07 PAT CK 0103

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellant Nos. 1, 2 and 4 have been convicted u/s 147 and 427 I.P.C., whereas the Appellant No. 3 has been convicted u/s 148, 427 and 324 I.P.C. and whereas Appellant Nos. 1, 2 and 4 have been sentenced to S.I. for one month under each count and the Appellant No. 3 has been sentenced to S.I. for one month, two months and three months respectively by the 1st Additional Sessions Judge, Samastipur in Sessions Trial No. 198 of 1990/ 81 of 1996 by a judgment dated 10.9.1997.

2. The case of the prosecution according to the informant P.W.7 Rukmini Devi is that the occurrence took place on 13.11.1985 at about 12 Noon when the four Appellants came to her house variously armed and started cutting down guava and banana plants, she objected then she was chased by the accused persons. She however ran to her house to save herself but the Appellants also entered her house and assaulted her with lathi, danda and chhura.

3. The defence examined three witnesses and also brought on record Exhibit A, which was a sale deed dated 22.10.1975. The plea of the defence was that they had been deprived of their lands on account of action of the husband of P.W.7 the informant for which a Title Suit had been filed and they had been falsely implicated for this reason.

4. During trial the prosecution has examined thirteen witnesses in all. Out of whom, P.W.1 Shiv Karan Singh, P.W.2 Dhrub Narain Lal, P.W.9 Krishna Ballav Pd. Singh, P.W.10 Ram Prahlad Jha, P.W.11 Baleshwar Das, P.W.12 Gopal Das and P.W.13 Baleshwar Rai are formal witnesses.

5. P.W.8 Dr. Narendra Nath Sharma had examined the informant Rukmini Devi on 13.11.1985 and found two injuries on her person, one of which was stab wound on frontal head whereas another was swelling over right back of chest. Both the injuries according to him were simple in nature.

6. P.W.7 Rukmini Devi is the informant, who reiterated what she has stated in her fard beyan. P.W.3 Rajendra Thakur has given an eye witness account admitted in paragraph 4 that there were two Title Suits earlier pending between his family and the family of the accused Shiv Shankar Thakur and there 3 were also criminal cases pending between the parties. P.W.4 Mahendra Thakur is his own brother and he also admitted that there was a Title Suit between the family and he had deposed against accused Shiv Shankar Thakur in a criminal case. Both these witnesses have been partly disbelieved by the Trial Court since a doubt has been raised about the veracity of their statements.

7. P.W.6 Pitambar Rai, the next eye witness, is a chance witness, who stated that while he was going to village Shekhpur he saw the occurrence. He in paragraph 5 admitted that he had taken she-buffalo of Rukmini Devi on Batai. P.W.5 Ranjeet Thakur is the son of the informant, who gave a hearsay account since he was away at work at the time of occurrence.

8. Evidently P.W.3, P.W.4 and P.W.6 are not independent witnesses and were inimical to the accused persons. P.W.7 the informant herself is also inimical as is borne out from his evidence.

9. The defence witnesses examined on behalf of the accused and the documents create a reasonable doubt about the veracity of the prosecution case. The non-examination of the Investigating Officer also further dents the prosecution case.

10. Since it would be unsafe to rely on only partisan and inimical evidence of witnesses, this Court is not inclined to sustain the conviction of the Appellants.

11. In the result, the appeal is allowed and the order 4 of conviction and sentence passed against the Appellants on 10.9.1997 by the 1st Additional Sessions Judge, Samastipur in Sessions Trial No. 198 of 1990/ 81 of 1996 is set aside. The Appellants are discharged from the liabilities of their respective bail bonds.