
(2003) 01 PAT CK 0119

In the Patna High Court

Case No : Criminal Appeal (U/S) No. 30 of 1992

Sita Ram Sah

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-01-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 386

Citation : (2003) 1 PLJR 564

Hon'ble Judges : S.N. Pathak, J

Bench : Single Bench

Advocate : None, for the Appellant; Ali Mozaffar, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Pathak, J.—This appeal is (sic) rected against the judgment dated 25th March 1992, passed by Judicial Magistrate, 2nd Class, Samastipur in G.R. Na 403 of 1990, whereby and where under the 84 Of 1992 1 Respondents of this appeal were acquitted.

2. The Appellant had filed the complaint before the lower court alleging therein that the complainant had taken a particular Lichi orchard on the basis of registered Kabuliati Patta executed by the father of Respondent Kedar Prasad Pandey for a period of 29 years. When the complainant went to see his orchard on 8th July 1930. he found that Respondent Kedar Prasad Pandey and his wife Rajani Devi were getting some Lichi trees cut by labourers. The labourers were also cutting earth from the Lichi crove (sic-grove ?). Then the complainant protested, an altercation took place in which the Respondents, assisted by some unknown labourers fisted and slapped the complainant. One "Hero" cycle was also taken away by Kedar Pd. Pandey The branches of 25 Lichi trees were cut are taken away causing loss of Rs. 2000/- (two thousand) to the complainant. The complainant suffered loss of Rs. 5,000/- (five thousand) on account of loss of trees. He went to the Mukhiya who asked him to file complaint in court. The complainant gave plot numbers of the concerned plots as 2580 and 3451 (old).

The new number was 2974 having an area of 51 decimals.

3. The complainant had examined, in all, six witnesses. P.W. 5 a formal witness who brought on the record Ext-1 (Kabuliyat Patta). In cross-examination by the accused, he stated that he did not know whether there was signature of Kedar Prasad Pandey on kabuliat as a witness. He admitted that he had worked for the complainant in this case. P.W. 6 was also a formal witness who had proved the signature of the Advocate on the complaint petition (Ext-2). P.W. 4 was the complainant himself. P. Ws. 1 to 3 were the so-called eye witnesses to the occurrence.

4. The trial court analysed the evidence of each and every witness and dealt on their testimony in detail. The complainant had admitted that all of the witnesses produced by him were his own workers. So the trial court held that no independent witness was examined to support and corroborate the complainant, as far as the alleged occurrence of cutting of trees and taking away cycle of the complainant were concerned. The trial court also noted the alleged contradictions in the evidence of P. Ws. regarding the number of branches and the number of trees cut by the Respondents and as to how many branches were carried away. The P. Ws. were also discrepant as regards model of cycle that was carried away by the Respondents. The trial court further noted certain interpolations and overwriting in the alleged Patta (Ext-1) on the basis of which the complainant claimed to be the lease-holder of the Lichi grove. Ext-1 indicated that besides the complainant, there were four other lease-holders of the alleged Lichi Grove but none of them was examined to support the complainant's case as regards the alleged occurrence. The trial court held that the loss on account of cutting of trees occurred to all the lease holders and, therefore, non-production of other lessees by the complainant threw doubt about the alleged occurrence, especially when both the Respondents were admittedly Government servant. The trial court also doubted the veracity of the occurrence on the ground that the complainant had stated in his complaint petition that he had informed the Mukhiya regarding the alleged occurrence but the Mukhiya was examined as D.W. 1 who denied any information to him regarding the alleged occurrence by the complainant and his own advice to the latter for filing complaint in court. D.W. 2 was examined to bring on the record a particular undertaking (Ext-A) executed by Satya Narayan Sah and Raj Kishore San as also by Ram Bilas Sahni, the three other lease-holders, as per Ext-1 who had given undertaking that they will utilise the fruits for nine years and thereafter will surrender it to the owner. However, this document was a private document executed and produced on behalf of accused-Respondents and therefore, of course, not much reliance could be put on this document, but the trial court has noted that Ext-1 which was the basis of the complainant's claim over the concerned orchard was unreliable, because of certain interpolation in the same. I think, the trial court has rightly come to this view that admittedly the concerned orchard belonged to the father of Respondent Kedar Prasad Pandey. So unless the complainant proved by specific and positive evidence that he had taken the concerned orchard and some trees standing

inside the same on lease, he has no right to complain against Kedar Prasad Pandey for his act of cutting trees. Ext-1 shows that total area of the concerned plot was) 51 decimals, which was mentioned in the complaint petition. The lease deed (Ext-1) shows that plot Nos. 2580 and 3451 which were old plot numbers were combined in new plot No. 2974 and they had an area of 51 decimals, there was another plot in the lease deed which was plot No. 2516 having an area of 29 decimals. Admittedly, in the concerned Lichi orchard, besides the complainant, there were four other lease-holders. So the complainant had to prove that the Lichi trees which were cut by Kedar Prasad Pandey were cut from the leased portion of the grove in favour of himself (the complainant). The trial court had noted that P. Ws. were discrepant in describing the boundary of the exact place from where the Lichitrees were cut. In such a circumstance, unless the complainant proved by positive evidence that the Lichi trees were cut from his portion of lease, he has no case to succeed on the basis of his own testimony and supported by his own labourers, as it was held by the trial court. The non-support of the complainant's case by other lease-holders was also a circumstance which was noted by the trial court and which created genuine doubt in the mind of the lower court which recorded the order of acquittal against the Respondents. Moreover, the lease-deed (Ext-1) does not show that he had joined his father in creating the lease nor there is any signature of Kedar Prasad Pandey although he had figured as a witness. The settled law is that a witness is not bound by the contents of the deed. The aforesaid circumstances and the evidence on the record were interpreted by the trial court as having no positive and unimpeachable support to the complainant's case and it was under these circumstances that the order of acquittal was passed.

5. In this case, the Appellant's lawyer did not appear, when the appeal was called on for hearing. u/s 386 Code of Criminal Procedure, the Appellant against a judgment of acquittal need not necessarily be heard, unless he appears on call. The State lawyer was heard.

6. In the light of the aforesaid discussion upon the evidence and circumstances of the case, I think the judgment of the trial court did not suffer from perversity and unreasonableness necessitating any interference by this Court.

7. In the result, this appeal is dismissed.