
(2011) 07 PAT CK 0118

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 183 of 1997

Suresh Singh, Lokai Devi and Jang Bahadur Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 161, 188
Penal Code, 1860 (IPC) — Section 147, 149, 304, 323

Citation : (2011) 07 PAT CK 0118

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anjana Prakash, J.—The Appellants of Criminal Appeal No. 183 of 1997 have been convicted u/s 304 Part II/149 I.P.C. and sentenced to R.I. for three and half years as also u/s 147 I.P.C. and sentenced to six months R.I. The Appellant No. 1 of Criminal Appeal No. 183 of 1997 has also been convicted u/s 323 and sentenced to R.I. for six months. The Appellants of Criminal Appeal No. 206 of 1997 have been convicted u/s 304 Part II I.P.C. and sentenced to R.I. for eight years as also u/s 147 I.P.C. and sentenced to six months R.I. The Appellant No. 2 of Criminal Appeal No. 206 of 1997 has also been convicted u/s 323 I.P.C. and sentenced to R.I. for six months by the 3rd Additional Sessions Judge, Bhabhua passed in Sessions Trial No. 53 of 1984/ 51 of 1997 by judgment dated 10.7.1997 and 11.7.1997 respectively.

2. The case of the prosecution according to the informant Sheo Shankar Singh (P.W.7) is that on 1.5.1983 while his father was cleaning the wheat in his khalihan located near the Boring, the accused persons variously armed came there and started objecting for collecting the wheat and an exchange of hot words took place between the parties. In the heat of the movement Appellant Rama Shankar Singh snatched a lathi from the hand of Jang Bahadur Singh and gave a lathi blow on the informant's father. Appellant Vijay Bahadur Singh on the

orders of Appellant Suresh Singh again assaulted his father with lathi, at which his father fell down and when the informant rushed to rescue his father, Appellant Vijay Bahadur Singh is also said to have assaulted the informant while Appellant Lokai Devi threw a brick bat at him. The informant also was injured and he fell down. On his alarm, a number of witnesses came and intervened and took the injured to the Hospital. Later on the father of the informant died. The reason for the occurrence is that a proceeding u/s 144 Code of Criminal Procedure was going on with regard to a certain piece of land and it is for this motive the occurrence took place.

3. During trial the prosecution has examined ten witnesses in all. Out of whom, P.W.2 Sheo Adhar Dubey, P.W.8 Harihar Prasad and P.W.10 Samsulhudda Khan are formal witnesses.

4. P.W.7 Sheo Shankar Singh, the informant, corroborated the prosecution case and that the accused persons assaulted his father on account of his stubbornness of not listening to them, when they forbade them for collecting the wheat. He once again stated that his father had been taken to Ramgarh Hospital for treatment, from where he was being taken to Bhabua Hospital, but on the way he died. So once again he brought him to Ramgarh Police Station.

5. The defence strongly disputed that the place of occurrence and that it was the possession of the Appellants and it was for this reason when the deceased was trespassing on their lands and he refused to move the occurrence took place.

6. P.W.1 Ramjee Singh, P.W.3 Ram Awadh Singh, P.W.4 Sheo Pujan Singh, P.W.5 Murlidhar Tiwary and P.W.6 have been examined as eye witnesses. However, P.W.6 has been partly disbelieved by the court below since he had not stated in his statement recorded u/s 161 Code of Criminal Procedure that he had seen the Appellants assaulting the deceased. P.W.4 Sheo Pujan Singh admitted that the Appellant Lokai Devi had filed a criminal case against his parents and uncle and they were convicted for the same. He also conceded that an Encroachment Case had been filed in the court of D.C.L.R., Bhabua. P.W.6 is the own brother of P.W.4 and, therefore, they are no doubt inimical witnesses. P.W.1 Ramjee Singh also conceded that he was a witness in a case u/s 188 Code of Criminal Procedure against the accused persons and, therefore, this witness is also inimical by his own admission.

7. Initial doctor who had examined the injured at Ramgarh Hospital has been suppressed by the prosecution. However the doctor, who conducted the postmortem on the dead body of Harbansh Singh has been examined as P.W.9. He stated that on 2.5.1983 at Bhabua Hospital he conducted the postmortem and found five injuries on the person of the deceased. One was an injury on the right side of the back of the head 3.1/2"x1/2"x bone deep whereas the second one was the fracture of the right little finger and the third was a lacerated wound in the front of the right little finger which was bone deep, fourth injury was on the front of the right fore arm whereas fifth injury was on the back of the left

elbow and also on the back of the left arm. On opening the chest he found that the lungs were normal but the deceased had a diseased heart and the lair of the heart mussels were found effected by the heart disease. In this context he was of the view that none of the injuries were sufficient to cause his death and the definite opinion in regard to it could not be given. The viscera was not preserved.

8. On going through the evidence of the witnesses, it is clear that the eye witnesses are partisan and inimical to the accused persons. Land dispute is admitted between the parties. Their evidence in the light of the evidence of the doctor, who has not definitely stated that the injuries were sufficient to cause death, would entitle the Appellants for acquittal of the charge u/s 304 Part II and 304 Part II/149 I.P.C. However since the witnesses have categorical stated in the evdience that it was the Appellants Rama Shankar Singh and Vijay Bahadur Singh, who assaulted the deceased with lathies and such injuries were found on the person of the deceased, in my opinion, they deserve to be convicted u/s 323 I.P.C. However in view of the fact that the occurrence had taken place in the year 1983 i.e. more than 28 years ago the period already undergone by the Appellants during trial would be sufficient in the interest of justice. The rest of the Appellants are acquitted of the charges since there is no positive, cogent and trustworthy evidence against them.

9. In the result, Criminal Appeal No. 183 of 1997 is hereby allowed and the order of conviction and sentence passed against the Appellants on 10.7.1997 and 11.7.1997 respectively by the 3rd Additional Sessions Judge, Bhabhua in Sessions Trial No. 53 of 1984/ 51 of 1997 are set aside. The Appellants are discharged from the liabilities of their respective bail bonds. Criminal Appeal No. 206 of 1997 is dismissed with aforesaid modification in conviction and sentence.