
(2011) 04 PAT CK 0069

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 75 of 1995

Teni Yadav and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 324, 326

Citation : (2011) 04 PAT CK 0069

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellants are aggrieved with the judgment dated 17.5.1995 passed by the learned 1st Additional Sessions Judge, West Champaran in Sessions Trial No. 80 of 83/ 43 of 95 by which the Appellant No. 10 has been convicted u/s 326 I.P.C. and sentenced to rigorous imprisonment for 5 years and a fine of Rs. 1000/- in default of which 6 months rigorous imprisonment, all the Appellants have been convicted u/s 324 I.P.C. as also u/s 326/149 I.P.C. and sentenced to rigorous imprisonment for 5 years and fine of Rs. 1000/- in default of 6 months and 2 years u/s 324/149 I.P.C.

2. It appears from the order sheet that the Appellant No. 4 was impersonated by his brother and sent behind the bars after conviction. For this impersonation, a separate case has been instituted against the Appellant No. 4 but it does not have any bearing on the facts of this case.

3. The prosecution case is that when the informant Jaleshwar Yadav (P.W.6) had gone to see his fields he saw some armed accused persons cutting sugar cane crops from the field of Dhanesh Yadav. When the accused saw the informant he was fired at by Appellant No. 10 on account of which he sustained some injuries when the co-villagers intervened they were fired at on account of which Bijali Yadav, Kariman and Deena sustained injuries.

4. The prosecution in all examined 10 witnesses out of whom P.W. 5, 9 and 10 have been declared hostile, P.W. 7 is a formal witness and P.W. 8 is the doctor who examined the injured, P.W. 1, 2, 3 and 4 are the witnesses on the factum of occurrence, P.W. 6 is the informant.

5. The defence of the accused was that they had bona fide claim over the lands by title and possession since the year 1920 and if at all such an occurrence had taken place, it was in right of private defence of property.

6. On going through the evidence of the doctor, I find that he had found 12 injuries on the person of P.W. 2 and 6 injuries on P.W. 3 whereas 3 injuries on the person of P.W.6 the informant. Most of the injuries sustained by the 3 injured and on the non vital parts and simple in nature. One Deena is said to have sustained a serious injuries on the head but he has not supported the case of the prosecution on the point of identification of the accused. Since the prosecution case is largely dependent on the factum of possession of the alleged land which has seriously been disputed by the accused persons one needs to scrutinize evidence in this regard.

7. It appears that P.W. 1 has stated that there was no dispute with regard to title of the said land between the parties. P.W. 2 has stated that he did not know since when the lands were in their possession nor could say as in whose name the lands stood. P.W. 3 the nephew of the informant has merely said that there was some dispute between the parties but what was the nature of dispute he could not say. P.W. 4 has stated that he did not know any dispute between the parties and what was the nature of dispute between them. P.W. 5 has merely stated that the dispute was between the accused and one Dhanesh Yadav. P.W. 6 has also stated that the dispute was between the accused persons and Dhanesh Yadav.

8. Evidently, Dhanesh Yadav could not be examined since he had died one year after the occurrence but even though Bijali Yadav who happened to be the son of Dhanesh Yadav, has not been able to give convincing details about the factum of title or possession.

9. In view of the land dispute and a clear assertion that the assault had taken place in right of private defence of property, the Appellants cannot be convicted that the aid of Section 149 I.P.C. As for the individual acts of the accused persons, I find that the witnesses have only stated about the Appellant No. 10 of having fired an injured P.W. 2 and 6, whereas these three injured witnesses have not been stated any specific overt act against any of the Appellants.

10. From the evidence of the doctor, I find that the three injured have sustained simple injuries except one injury found on the person of P.W. 2 which is on the right foot which is a cut injury.

11. It has been submitted that the Appellant Nos. 2, 10 and 12 have died and therefore their appeals stands abated and in their regard no order is being passed.

12. Under the circumstances, the appeal is allowed and the conviction and sentence of the Appellant Nos. 1 and 3 to 9 and 11 passed by learned 1st Additional Sessions Judge, West Champaran in Sessions Trial No. 80 of 83/ 43 of 95 by the judgment dated 17.5.1995 are hereby set aside and the Appellants are discharged from the liabilities of their bail bonds.