

(2010) 03 PAT CK 0062
In the Patna High Court

The State of Bihar

APPELLANT

Vs

Bhajju Yadav (since dead) and Others

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 307, 323

Citation : (2010) 03 PAT CK 0062

Hon'ble Judges : Dharnidhar Jha, J;Akhilesh Chandra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dharnidhar Jha and Akhilesh Chandra, JJ.—The present Appeal has been filed by the State of Bihar for setting aside the finding of acquittal in respect of the accused persons who were put on trial by the learned 4th Additional Sessions Judge, Patna in Sessions Trial No. 549 of 1984. The impugned judgment of acquittal was passed on the 6th day of May, 1988.

2. At the time of admitting the appeal, there were a total number of ten respondents but, it appears from orders passed on 14.2.2006 and 3.11.2006 that on account of death of respondent Nos. 1, 8 and 9, the appeal as against them, had abated, leaving the appeal only against seven respondents.

3. The accused persons had been charged under Sections 307/149 and 323/149 of the IPC. The original respondent Bhajju Yadav (since dead) had been charged u/s 307 IPC.

4. The prosecution case, in brief, was that when the informant Ram Swarath Yadav (not examined) was fixing some poles for erecting a Palani, the accused persons armed variously with bhala, saif, farsa, iron rod, country made pistol and lathi, came there and asked the informant not to do it and in that course, also damaged the nad of his cow shed. The informant not desisting from his work, was chased to be assaulted by the accused persons. He fled away. However, his grand mother Barti Devi who was sitting there, was given a bhala blow on her

head by the deceased respondent Bhajju Yadav. P.W. 1 Krishna Devi and P.W. 3 Mishri Prasad Singh alias Yadav tried to intervene when Barti Devi was being assaulted but they too were assaulted by the accused persons. The injured persons and the informant raised alarm, as a result of which the accused fled away.

5. It was alleged that the accused persons wanted to take forcible possession of the land which belonged to the informant over which his cow shed was standing and, as such, the occurrence.

6. During the course of the trial, a total number of eleven witnesses were examined which included the injured Krishna Devi and Mishri Prasad Singh alias Yadav who were allegedly injured in course of the same incident. The informant of the case, namely, Ram Swarath Yadav had died and similar was the report as regards injured Barti Devi.

7. The learned Judge, passing the impugned judgment, considered the evidence of the witnesses and found that the evidence was suffering from many infirmities. The learned Judge found that the witnesses had improved on their statements on the most material part of the prosecution case making it unsafe to place reliance on their evidence and to convict the accused persons. The learned trial judge found that the I.O. of the case, P.W. 10 Bindeshwari Prasad Rai, who inspected the place of occurrence on the same day, did not find any Nad damaged nor did he find any sign of putting up a pole for re-constructing the Palani. Thus, the learned judge was of the view that the genesis of the occurrence was not established.

8. As regards the place of occurrence and the story of different witnesses being assaulted there, the learned judge found that no blood was found there nor any blood was seized either from the place of occurrence or from any where near it. The learned judge, thereafter, considering the evidence of P.W. 1 and P.W. 3, the two injured witnesses, in the light of the medical opinion, recorded a finding that the manner of assault as narrated by them was not being corroborated by the medical evidence. It was true that Barti Devi had not been examined but the allegation was consistently contained in her three fardbeyans that the deceased respondent Bhajji Yadav had pierced his Bhala somewhere on the forehead of Barti Devi. But, the doctor found lacerated, simple injury on her head. Thus, the learned judge found that the evidence on the manner of occurrence in the light of the medical evidence was suspect. Considering the above circumstances, the learned judge acquitted the respondents.

9. After having heard the parties in the present appeal and after having considered the evidence in the light of the findings recorded by the learned trial judge, we are of the view that the view which was taken by the learned trial judge in acquitting the respondents was also a probable view. We do not find any element of perversity in the findings recorded by the learned trial judge and as such, we find the appeal merit-less.

10. The present Government Appeal is, as such, dismissed. The living respondents were admitted to bail by the orders of this Court passed on 23.8.1988. They will stand discharged from the liabilities of their respective bail bonds.