
(2012) 10 PAT CK 0077

In the Patna High Court

Case No : Govt. Appeal (SJ) No. 2 of 2004 and Criminal Revision No. 285 of 2004

The State of Bihar

APPELLANT

Vs

Upendra Yadav @ Passenger Yadav and Others

Upendra Prasad Verma Vs The State of Bihar and Others

RESPONDENT

Date of Decision : 15-10-2012

Acts Referred:

Citation : (2012) 10 PAT CK 0077

Hon'ble Judges : Mandhata Singh, J

Bench : Single Bench

Advocate : S.N. Prasad, APP in G. app. SJ No. 2 of 2004 and Mr. Daya Shankar Prasad in Cr. Rev. No. 285 of 2004, for the Appellant; Vimala Kumari, Amicus Curiae in G. APP. (SJ) No. 2 of 2004 and Mr. S.N. Prasad, Assistant Public Prosecutor for the State in Cr. Rev. No. 285 of 2004, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Mandhata Singh

1. Prosecution cased initiated on Fardbeyan of one Bhola Prasad Yadav P.W.1, in brief, is that the then Minister, Sales Tax and National Saving Scheme, Govt. of Bihar Upendra Prasad Verma was a candidate of Janta Dal in election for member of Parliament from Munger Constituency. In connection with election campaign he along with his supporters including the informant reached Yadav Sewa Sadan Bhawan at Mohalla Lal Darwaza on 24.4.1996 at about 3.45 P.M. A meeting was held there. Now it is alleged that at about 4.30 PM, 10-12 local residents started brick-batting exhorting "Maro Maro". There was some scuffle also with the Hon"ble Minister. Informant rushed in rescue of the Hon"ble Minister but he along with Minister P.W.3, Bijay Yadav P.W.4, Narain Yadav P.W.2 and P.W.5 Birendra Kumar Verma sustained injuries. Constable Sagar Yadav intervened, carried the Minister to Sadar Hospital, Munger on his Motorcycle. Other injured persons also were treated there. A claim is made to identify the assailants by face.

2. The trial concluded in acquittal of accused respondents, validity of which has been questioned by filing an appeal by Govt. and a revision by Upendra Prasad Verma.

3. In all eight witnesses are examined in the case. They are P.W. 1 Bhola Prasad Yadav informant, P.W.2 Narayan Yadav, P.W.3 Upendra Prasad Verma, P.W.4 Bijay Kumar Rai, P.W.5 Birendra Kumar Verma driver of the Car, P.W.6 Shahab Mallick, P.W.7 Dr. Shanti Kumar Banerjee and P.W.8 Sudhir Kumar Singh body guard of the Minister.

4. In the case, incident of brick-batting and receiving of injuries by P.Ws 1, 3 and 4 are there but simple in nature is not disbelieved rather prosecution case is doubted/disbelieved on the point of identification of accused respondents by prosecution witnesses.

5. Of prosecution witnesses, P.Ws 1, 2, 4 and 5 are stating to not identify any of the assailants. P.Ws 3, 6 and 8 are there to state something on the point of identification. P.W.7 is a doctor who has issued injury reports which are not in dispute.

6. Now only statements of these witnesses are to be discussed if can be believed on the point of identification of accused respondents as assailants.

7. In Court P.W.6 is naming all the accused respondents but could not identify Kapildeo Yadav standing on the Doc. It transpires from the order dated 30.3.2005 that accused Kapildeo Yadav Respondent no. 2 is dead during the pendency of the appeal, as such, his name is deleted from the array of respondents. Further he did not identify rest of the accused respondents save and except accused Upendra Yadav but paragraph 9 of the case diary is relevant on this point. In the case diary he has named only accused Gorelal Yadav and Bijay Shankar Prasad not Upendra Yadav attention had also been drawn, so statement of this witness has rightly been disbelieved on the point of identification as identifying Upendra Yadav only in Court for the first time.

8. P.W.3 Upendra Prasad Verma himself is stating about pelting of brick-bat by accused Upendra Yadav @ Passenger Yadav but this much evidence has also appeared for the first time in Court otherwise in paragraph 4 in the Court he states that the Police did not record his evidence. His statement is recorded before the Police in paragraph 33 of the case diary in which he is not naming any of the accused respondents, attention is also drawn. So this witness has also rightly not been believed on the point of identification.

9. Last witness is P.W.8 who is claiming to identify accused Upendra Yadav among the members of mob but in Court he identified accused Bikram Singh, resident of village Bindwara as accused Upendra Yadav, so, rightly not believable on the point of identification of any of the accused respondents. Finding no mistake committed by the trial court in its judgment/order dated 19.2.2004 in Sessions Case No. 993/1997, this Govt. Appeal as well as Cr. Revision No. 285 of

2004 is accordingly, dismissed.