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Court : Patna

Decided On : Dec-21-1999

Judge : R.N. Prasad and S.N. Pathak, JJ.

Appeal No. : Cr. Appl. (D.B.) No. 135 of 1987

Appellant : Suren Yadav @ Surendra Yadav and ors.

Respondent : State of Bihar

Disposition : Appeal Dismissed

Judgement :

1. The appellants have preferred this appeal against the judgment and order of conviction and sentence dated 26.3.1987 passed by IX, Addl. Sessions Judge, Munger in S.T. No. 437/85 whereby appellant Suren Yadav has been convicted for the offence under Section 302, I.P.C. and has been sentenced to undergo imprisonment for life. Appellant Awadhesh Yadav has been convicted for the offence under Section 307, I.P.C. and has been sentenced to undergo rigorous imprisonment for ten years. He has further been convicted for the offence under Section 323, I.P.C. and has been sentenced to undergo rigorous imprisonment for six months. Both the sentences have been ordered to run concurrently. Appellant Ram Ratan Yadav has been convicted for the offence under Section 324, I.P.C. and has been sentenced to undergo rigorous imprisonment for two years.

2. The case of the prosecution as has been stated in the fardbeyan is that one Khaltu Yadav gave his fardbeyan on 12.7.1984 at about 5.45 p.m. in the hospital that at about 12 O'clock he had gone to see his field and saw that appellant Awadhesh Yadav was grazing his kheri crop. He objected, on which there was altercation between them. Awadhesh Yadav called his men on which Suren Yadav came with country-made rifle and Ram Ratan Yadav came with Farsa. One Prakash Yadav came with Farsa and Vijay Yadav came with spear. On the order of Ram Ratan Yadav, Suren Yadav fired from the country-made, rifle which hit on the right, side of the chest due to which he fell down. Thereafter, Ram Ratan Yadav assaulted him with Farsa on back, Prakash Yadav on the left hand. On alarm raised his brother Adhik Yadav, his nephew Chandra Shekhar Yadav came there. Awadhesh Yadav again fired which hit the left hand of Chandra Shekhar Yadav. Awadhesh Yadav thereafter, assaulted Adhik Yadav with the butt of the rifle. On hearing sound of firing Jang Bahadur, Jagjiwan Yadav, Chunchun Yadav, Devanand Yadav, Uchit Yadav and others came there and they took the injured to Khagaria Hospital for treatment.

3. On the aforesaid fardbeyan, a case under Section 307 of Indian Penal Code was registered and investigation was taken up. During course of investigation the informant Khaltu Yadav died and as such case was converted under Section 302 of Indian Penal Code. On completion of investigation charge-sheet was submitted, cognizance was taken and the case was committed to the Court of session for trial. The trial Court acquitted Vijay Yadav and Prakash Yadav. However, convicted the appellants for the offences as indicated above.

4. The defence of the appellants was that they were innocent and were falsely implicated in this case. The occurrence did not take place in the manner as alleged by the prosecution.

5. The prosecution in support of its case examined 11 witnesses, out of whom P.Ws. 1, 2, 3, 4 & 5 claimed to have seen the occurrence. P.Ws. 6 & 7 are injured witnesses and they have also claimed to have seen the occurrence. P.W. 8 has stated that he had given the land on batai to the informant/deceased Kaltu Yadav. P.W. 9 recorded the fardbeyan of the injured/deceased P.W. 10 is Doctor who

examined the injuries on the person of the informant and also conducted post-mortem over the dead body. P.W. 11 is the Investigating Officer.

6. The defence has also examined two witnesses in support of its case. D.W. 1 is a doctor. He was examined to say that he examined injuries on the person of the appellant Suren Yadav and Awadhesh Yadav, D.W. 2 was examined to say that appellants Suren and Awadhesh were assaulted in same occurrence.

7. It is evident from the material on record that the occurrence took place on protest raised by the informant/deceased when Awadhesh Yadav was grazing kheri crop in his field. Appellant Suren Yadav is alleged to have fired on the informant causing injuries on his person. Appellant Awadhesh Yadav is alleged to have fired causing injury on the person of P.Ws. 6 & 7. Appellant Ram Ratan Yadav is alleged to have given Farsa blow on the back of the informant. Learned Counsel for the appellant pointed out that the Investigating Officer did not find blood at the place of, occurrence. The injured died after nine days. P.Ws. 1, 2, 3, 4 & 5 cannot be eye-witnesses to the occurrence as they came on hearing hulla and as such conviction of the appellant under Section 302 of the Indian Penal Code cannot be sustained.

8. In this regard, it would not be out of place to mention here that P.Ws. 6 & 7 are injured witnesses. Their presence at the place of occurrence cannot be doubted. They have stated in their evidence that on hearing sound of firing, they went to the place of occurrence and found the informant lying on the ground in injured condition. The appellants were there. They were variously armed. Subsequently also, firing was made causing injuries to them. One of the appellants, namely, Ram Ratan Yadav gave Farsa blow on the back of the informant in their presence. They were cross-examined at length but nothing cogent could be elicited to discard their evidence. Even though the submission of learned Counsel for the appellants is accepted that P.Ws. 1, 2, 3, 4 & 5 came at the place of occurrence on hearing hulla, their evidence cannot be thrown out as they had seen the appellants at the place of occurrence which corroborates the evidence of P.Ws. 6 & 7. Therefore, in our view, the prosecution has succeeded in establishing the case with regard to assault on the informant who died subsequently after nine

days and the witnesses P.Ws. 6 & 7. The Doctor, P.W. 10 examined the injuries on the person of the informant and subsequently, held post-mortem over the dead body. The Doctor has categorically stated that he found the injuries on the person of deceased caused by fire-arm and also sharp-cutting weapon, but in cross-examination the Doctor has stated that fecal matter had been found in his abdominal cavity, because the stitches of the intestines had been found open due to septic infection. It might have caused inflammation on the vital organs near the abdominal cavity which might have developed or resulted in septicemia. It might have caused infection in the blood also. Because of that, shock might have been caused resulting in his death. Therefore, from the evidence of the Doctor as stated above it is indicative of the fact that death of the informant was not due to the injuries sustained but due to septicemia. In such a situation, the conviction of the appellant Suren Yadav under Section 302 of the Indian Penal Code cannot be upheld. Since the evidence of witnesses is consistent on the point of assault and it is supported by the evidence of Doctor, P.W. 10, we are of the view that appellant Suren Yadav is guilty for the offence under Section 326 of the Indian Penal Code. So far as, appellant, namely, Awadhesh Yadav is concerned, the evidence of witnesses is consistent and is supported by the evidence of the Doctor. But from the evidence of the Doctor, it appears that injuries were caused on the hand and as such conviction of the appellants is converted under Section 324, I.P.C. So far as appellant Ram Ratan Yadav is concerned, the evidence of witnesses and the evidence of Doctor is consistent and as such the conviction under Section 324, I.P.C. is upheld. It has been stated by the learned Counsel for the appellants that they have remained in jail for specific time and the occurrence took place about 16 years ago. In that view of the matter after hearing the Counsel for the State, Mr. Lala Kailash bihari Prasad, appellant Suren Yadav is sentenced to the period already undergone and to pay a fine of Rs. 7,000/-. Appellant Awadesh Yadav is sentenced to the period already undergone and to pay a fine of Rs. 2,000/-. Considering the age of appellant Ram Ratan Yadav, he is sentenced to the period already undergone. The fine must be deposited in the Court within a period of three months. In default of payment of fine, appellant Suren Yadav shall undergo rigorous imprisonment for one year six months and appellant Awadesh Yadav shall undergo rigorous imprisonment for six months. In case of deposit of fine, the

same shall be paid to the sons of the informant.

8. Thus, the appeal is dismissed with the modification as indicated above.

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