

Basant Das Vs. the State of Bihar

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Court : Patna

Decided On : May-19-2011

Judge : Anjana Prakash, J.

Acts : Indian Penal Code (IPC) - Sections 307, 326

Appeal No. : Criminal Appeal No.39 OF 1996 (S.J.)

Appellant : Basant Das

Respondent : The State of Bihar

Advocate for Def. : Mrs. Nirmala Kumari, Adv.

Advocate for Pet/Ap. : Mr. Amitesh Kumar, Adv.

Judgement :

1. The appellant has been convicted u/s.307 I.P.C. and sentenced to R.I. for ten years by the 1st Additional Sessions Judge, Darbhanga in Sessions Trial No.273 of 1994/ 3 of 1996 by a judgment dated 27.1.1996.
2. The prosecution case is that on 5.3.1994 while the informant was taking betel the appellant came there and assaulted him thrice with knife, on account of which he was severely injured.
3. During trial the prosecution in all examined five witnesses. Out of whom, P.W.3 is the brother of the informant and even though he attempted to give eye witness

account of the occurrence he conceded in his cross examination that he had reached the place of occurrence after some time when the occurrence was over. P.W.4, the only independent witness, has not supported the case of the prosecution. P.W.1 is the doctor, who examined the informant, whereas P.W.2 is the informant himself. P.W.5 is a formal witness. The Investigating Officer has not been produced by the prosecution.

4. On behalf of the defence, three witnesses were examined mainly on the point that there was a counter version of the occurrence vide Exhibit A by which the case of the appellant was that he was assaulted after having been abused by the informant and his two associates after a quarrel at the toddy shop of one Ram Chandra Das.

5. On going through the evidence of the material witnesses and the doctor as also the counter version which is a matter of record, in my opinion the conviction of the appellant u/s.307 I.P.C. is unwarranted. Therefore, it is converted to one u/s.326 I.P.C. It also appears that the appellant has remained in custody for more than two years which shall be sufficient sentence for his conviction u/s.326 I.P.C.

6. In the result, the appeal is dismissed with the aforesaid modifications.

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