

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.388 of 2005

=====

1. Shushu Yadav @ Shishu Yadav, son of late Hirdaya Yadav
2. Ram Dayal Yadav, son of late Indra Deo Yadav
3. Ram Adhin Yadav, son of late Ganesh Yadav
4. Rajeshwar Yadav, son of late Hirdaya Yadav
5. Birendra Yadav, son of late Hirdaya Yadav
6. Ganga Ram @ Ganja Paswan, son of late Ram Lalan Paswan
All resident of village Kripalpur, P.S. Durgawati, Distt. Kaimur (Bhabhua).
..... Appellant/s

Versus

The State of Bihar
..... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Narendra Kumar, Adv.
Mr. Dharmendra Kumar Singh
For the Respondent/s : Mr. APP

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
ORAL JUDGMENT
Date: 07-09-2015

Heard learned counsel for the Appellants and State.

The Appellants have been convicted by a Judgment dated 23.6.2005 passed by the 1st Additional Sessions Judge, Katihar, in Sessions Trial No. 671/4 of 1992/2005 under Section 323/149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year and a fine of Rs.1,000/- each in default of which, further two months imprisonment.

The case of the Informant dated 28.6.1992 is that while he was providing fodder to his cattles, the accused persons variously armed came there and started digging the road. When the Informant protested, a dispute arose between them and then accused Hirdeo

Yadav @ Hirdya Yadav and Shishu Yadav assaulted Hira Singh with lathi on the head while the other assaulted him when he fell down. The Informant and his mother were also assaulted by the accused persons. Later Hira Singh died on account of which charges were framed under Sections 302/149 of the Indian Penal Code but the Appellant was acquitted of the said charges but convicted as mentioned above.

During Trial, the Prosecution examined thirteen witnesses, out of whom PW-3, 4, 6, 7, 9 and PW-10 are injured witnesses. PW-1 Sarjoo Yadav repeated the story with regard to the manner of assault and the complicity of the present Appellants. Similarly, PW-2 Mohar Singh stated that he came to the place of occurrence on shouts and witnessed the same and repeated the same story. PW-3 Dhanwanti Devi, PW-4 Lalan Singh, PW-6 Surendra Yadav, PW-7 Baijnath Singh all injured witnesses have also repeated the manner of occurrence as also the complicity of the Appellants. PW-8 is a formal witness. PW-9 Jineshwar Singh and PW-10 Dingar Singh Yadav also injured witnesses, supported the case of the prosecution. PW-11 Ram Bhagwan Rai, was the Investigating Officer who collected the injury reports of the injured witnesses whereas PW-12 is a Doctor A.K. Tiwary, who conducted the Postmortem of the deceased. He found only one injury on the head. It was evidently

attributed to the Hira Singh who was dead by then. It was under these circumstances that even while, the Appellants were acquitted of the charges under Sections 302/149, they were convicted under Section 323 Indian Penal Code.

On going through the evidence on record, I find that the manner of occurrence, place of occurrence and the complicity of the present Appellants is well proved and, hence, I do not find any merit in the Appeal, the same is dismissed.

Considering the period of custody undergone by the Appellants during Trial, the same is reduced to one already undergone by them. However, they shall be required to deposit the fine as directed by the Court below.

(Anjana Prakash, J)

S.Ali/-

U		T	
---	--	---	--