

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 336 of 2003

Arising out of P.S. Case No. -null Year- null Thana -null
District- BHOJPUR

- =====
1. Raja Ram Sao, Son of Parashuram Sao.
 2. Durga Sao, Son of late Hira Lal Sao. Both resident of Village-
Pachaina Bazar, Police Station-Koilwar in the district of Bhojpur.
- Appellant/s

Versus

The State of Bihar. Respondent/s

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Appearance :

For the Appellant/s : Shri Akhileshwar Prasad Singh, Sr. Adv.
Mr. Abhishek Anand, Adv.

For the Respondent/s : Mr. Jayant Kumar Sharan, Adv.

For the State : Mr. R. B. Roy "Raman" APP.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 29-06-2015

This appeal is directed against the judgment of conviction and sentence dated 06.06.2003 passed by the Additional Sessions Judge-cum-Presiding Officer, F.T.C.-IV, Bhojpur at Ara in S.Tr. No. 212 of 1990, by which both the Appellants have been convicted under Section 304(1), 307 and 148 IPC and sentenced to undergo R.I. for ten years, five years and two years respectively.

The case of the Informant is that on the date of occurrence the accused persons variously armed started ploughing his field with tractor at which he protested. It was then a free fight ensued in which some persons were injured. Ganga Sao is said to have died later on during treatment. Initially, a case was instituted under Section 307 IPC to which Section 302 IPC was later added.



During trial the prosecution examined three witnesses on the point of occurrence. Whereas P.W. 7 was the Doctor who proved injury of P.Ws. 1, 2 and 3. P.W. 8 is the Doctor who had conducted Post-mortem Examination Report and P.W. 9 was the Investigating Officer. P.W. 10 is a formal witness, the affidavit sworn by appellant Durga Sao.

After the examination of P.Ws. 1, 2 and 3 who consistently named Jawahar Sao and Hari Sao also as one of the culprits the Court summoned them under Section 319 Cr.P.C. and they were also tried. P.W. 1, 2 and 3 were re-examined as P.Ws. 4, 5 and 6 respectively.

The submission of the Appellants is that P.W. 1 had admitted in his evidence that the land claimed by the accused persons was purchased by them and, hence, they laid a bona fide claim over the same. P.W. 3, Rajkumar Sao also admitted the factum of the counter-case instituted by the accused persons.

In such circumstances, the Counsel for the Appellants submits that when the defence has proved various documents with regard to their claim over the land as also injuries on their person the prosecution case should have been discarded. If, at all, they were acting in the manner alleged it was only in assertion of defence of private property.

Having gone through the judgment of conviction and the records received herein, I find that both the parties had claimed the lands in question. There is no explanation by the prosecution with regard to the injuries on the person of the accused in which circumstances the prosecution case becomes doubtful and not a faithful narration of the prosecution case.

Hence, the judgment of conviction dated 06.06.2003 as against the Appellants passed by the Additional Sessions Judge-cum-Presiding Officer, F.T.C.-IV, Bhojpur at Ara in S.Tr. No. 212 of 1990 is, hereby, set aside and the appellants are discharged of the liabilities of their bail bonds.

The Appeal stands allowed.

Vikash/-

(Anjana Prakash, J.)

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