

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.473 of 1992

Arising Out of PS.Case No. 13 Year- 1982 Thana –Guthani District- SIWAN

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1. Rabindar Lohar Son of Raksa Lohar
 2. Nigina Lohar son of Sitaram Lohar
 3. Shyam Sundar Lohar son of Nagina Lohar

All residents of Village Sarphora, PS Guthani, District Siwan

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Avnish Kumar Jha

For the Respondent/s : Mr. Mayanand Jha, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 15-01-2015

This appeal is preferred on behalf of accused nos. 2, 3 and 4 in Sessions Trial No. 86 of 1983 on the file of 6th Additional Sessions Judge, Siwan.

The case of the prosecution was that on 26.3.1982 at 8.30 A.M. one Sri Manager Kumhar noticed that the appellants herein and other persons, namely, Sheo Kumar Dubey and Rakchha Lohar were making attempt to erect thatched palani at the rear side of his house and he i.e. Manager Kumhar objected to the same. It is said that there was a scuffle between Manager Kumhar on the one hand and the accused, on the other, and in the process appellant no.1 (accused no.4) gave a “farsa” blow on the head of Manager

Kumhar. PW 3 nephew of the Manager Kumhar is said to have made an attempt to intervene, but he too was beaten by appellant no.1 on various parts of the body. Information about the incident reached the police and they recorded the statement of PW 3 at 11 o'clock when he was undergoing treatment in the hospital. He narrated the entire incident and stated that his uncle Manager Kumhar died while being shifted from the place of occurrence to the hospital.

The prosecution conducted detailed investigation, and thereafter filed a charge-sheet against four accused. Offence punishable under Section 324, IPC was alleged against accused nos. 1 to 3 and offence under Section 302, IPC against accused no.4, i.e. the 1st appellant herein.

Before the trial court, PW 1 to PW 10 were examined and certain documents were filed. On the basis of oral and documentary evidence before it, the trial court acquitted accused no.1. It convicted accused no.2 i.e. the 2nd appellant for offence punishable under Section 324, IPC and imposed the sentence of rigorous imprisonment for one year. Accused no. 3 i.e. the 3rd appellant was also convicted for the offence under the same Section and sentence of imprisonment for three months was imposed. So far as accused no.4 (appellant no.1) is concerned, he was convicted for the offence punishable under Section 304, IPC and he was sentenced to undergo imprisonment for life. Hence this appeal.

Sri Avnish Kumar Jha, learned counsel for the appellants submits that the prosecution failed to prove the case pleaded by it beyond all reasonable doubts. He submits that there was a case and counter case between the two groups, and a separate case, being PS Case No.14 of 1982 was instituted at the instance of the accused-

appellants, but the trial court did not take note of the same. He further pleaded that PW 1 to PW 3 were not consistent in their evidence and the prosecution also did not bring on record, the so-called material object with which the crime is said to have been committed. He has urged other contentions also.

Sri Mayanand Jha, Learned Public Prosecutor, on the other hand submits that PW 1 to PW 3 have supported each and every aspect mentioned in the FIR, which is made part of record and the defence was not able to point out any serious contradiction therein. He contends that if there existed any counter case, it was for the appellants to point out the same and at any rate the counter case cannot be treated as a fact in issue or relevant fact, in the present case. He submits that the trial court has analyzed the oral evidence adduced before it from the correct perspective and as per the principle of law and rendered the judgment.

That the death of the deceased has taken place is beyond any pale of doubt. The appellants and certain others were accused of committing the same. The appellants could have made meaningful effort to rebut the accusation had they at least, disputed their presence on the scene of occurrence. The record discloses that the appellants did not dispute their presence at that place and, on the other hand, admitted the quarrel and /or scuffle between themselves; and the deceased and his supporters. Once the appellants did not dispute their presence at the place of occurrence, the scene shifts to the proof of involvement of the appellants. The burden squarely rests upon the prosecution.

The crucial evidence is that of PW 3. He is the one, from whom the statement in relation to the occurrence was recorded; and more than that, he is an injured witness. It is fairly well settled that



the version of an injured witness; gains more acceptability compared to ordinary witnesses; unless his very presence is doubted. In the lengthy cross-examination made on behalf of the appellants, it was not even suggested that PW 3 was not present on the spot. The witness states that he has seen the appellants attacking the deceased and when he tried to intervene, he too was inflicted injuries. He categorically stated that the appellant gave a severe blow to the deceased with “farsa”. His evidence was not shaken, in any manner.

The evidence of PW 1 PW 2 who are said to have rushed to the spot on hearing the commotion; is also consistent. The investigation officer has narrated the fact noticed by him during investigation and nothing was elicited to the contrary, from him. The medical evidence also supported the case of the prosecution. Under these circumstances, we find it difficult to disconnect the appellants herein, from the crime.

One thing which, however, impresses us is that there existed a serious dispute between the deceased and appellants in relation to the land and the same is evident from Ext. 12, the decree obtained in Title Suit No. 205 of 1980. The attempt of the appellants was only to erect the hut, whereas the deceased seriously objected to it. This is not a case where the appellants made a pre-meditated attempt to commit the murder of the deceased. They were only raising the hut and the incident occurred when the deceased came and objected to it. There was every justification for the deceased to object but it is difficult to hold that the appellants wanted to cause the death, intentionally. In our view, the case of appellant no.1, i.e. Rabindra Lohar fits into Part I of Section 304, IPC. We are not inclined to disturb the conviction and sentence awarded to accused-

appellant nos. 2 and 3.

We, therefore, partly allow the appeal (a) upholding the conviction and sentence awarded by the trial court to appellant nos. 2 and 3 and (b) modifying the conviction against 1st appellant, i.e. Rabindra Lohar to be the one under Section 304, Pt.I of the Indian Penal Code and modifying the sentence, to be one ten years rigorous imprisonment.

In case the appellants have served the sentence ordered against them, they shall be set at liberty. On the other hand, if they have not undergone the imprisonment for that period, they shall surrender before the concerned jail forthwith. The jail authorities shall set off the period during which the appellants herein served the sentence including the one during the trial, against the sentence, to that extent.

(L. Narasimha Reddy,CJ)

(Gopal Prasad, J)

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