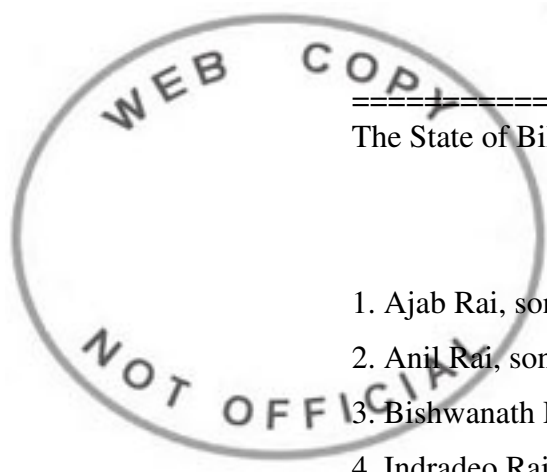




IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.11 of 1993

Arising out of P S.Case No. -66 Year- 1990 Thana -Patori District- Samastipur

The State of Bihar

.... Appellant

Versus

- 1. Ajab Rai, son of Late Ram Palak Rai
- 2. Anil Rai, son of Yogendra Rai
- 3. Bishwanath Rai, son of Ajab Rai
- 4. Indradeo Rai, son of Ajab Rai
- 5. Gajendra Rai, son of Indradeo Rai
- 6. Surendra Rai, son of Indradeo Rai

All residents of Village- Chandpur Dhamaun, P.S. Patori, District- Samastipur

.... Respondents

with

Criminal Appeal (SJ) No. 309 of 1992

Arising out of P S.Case No. -66 Year- 1990 Thana -Patori District- Samastipur

- 1. Ajab Rai, son of Ram Palat Rai (Aged about 80 yrs.)
- 2. Anil Rai @ Anil Kumar Rai, son of Jagendra Prasad
- 3. Viswanath Rai, son of Ajab Rai
- 4. Gajendra Rai, son of Laldeo Rai
- 5. Indradeo Rai, son of Ajab Rai
- 6. Surendra Rai, son of Indradeo Rai.

All residents of Village- Chandpur, P.S.- Patauri, District- Samastipur

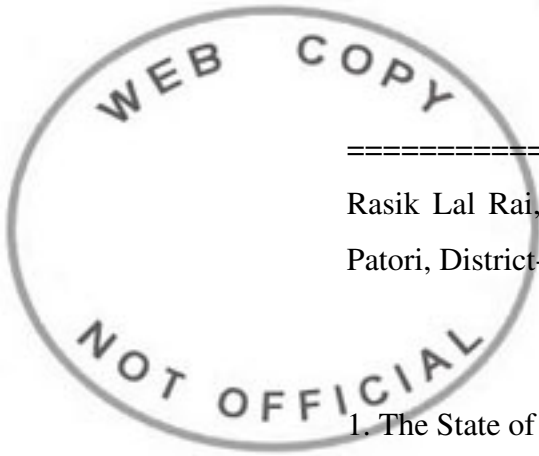
.... Appellants

Versus

The State of Bihar

.... Opposite Party.

with



Criminal Revision No. 145 of 1993

Arising out of P S.Case No. -66 Year- 1990 Thana -Patori District- Samastipur

Rasik Lal Rai, son of Bhola Rai, resident of Village- Chandpur Dhamaun, P.S.-
Patori, District- Samastipur

.... Petitioner

Versus

- 1. The State of Bihar
- 2. Ajab Rai, son of Late Ram Palak Rai
- 3. Anil Rai, son of Yogendra Rai
- 4. Bishwanath Rai
- 5. Indradeo Rai
- Both sons of Ajab Rai
- 6. Gajendra Rai
- 7. Surendra Rai,
- Both sons of Indradeo Rai,
- All resident of Village- Chandpur Dhamaun, P.S.- Patori, District- Samastipur

.... Accused-O.P. 2nd Party.

Appearance :

For the Appellant in
(Govt. Appeal (DB) No. 11 of 1993: Mr. Ashwani Kumar Sinha, A.P.P.
Mr. S.C. Mishra, A.P.P.

For the petitioner in Cr. Revision
No. 145 of 1993 : Dr. Rajesh Kumar Singh, Advocate.
For the State : Mr. Ashwani Kumar Sinha, A.P.P.
Mr. S.C. Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE V.N. SINHA)
Date: 24-03-2015

Present Government Appeal, Cr. Appeal and
Cr. Revision arise out of judgment dated 08.12.1992



passed by 2nd Additional Sessions Judge, Samastipur in Sessions Trial No. 42/32 of 1991/92, whereunder respondents in the Government appeal, appellants in Cr. Appeal have been held guilty of the charge under Sections 307, 148 of the Penal Code. Under Section 148 of the Penal Code all the convicts have been directed to suffer Rigorous Imprisonment for one year. Appellants Ajab Rai, Vishwanath Rai, Indradeo Rai have been directed to suffer Rigorous Imprisonment for seven years under Section 307 of the Penal Code. Appellant Ajab Rai has also been convicted for the offence under Section 109 of the Penal Code, directed to suffer Rigorous Imprisonment for three years. Appellants Anil Rai, Gajendra Rai and Surendra Rai have been directed to suffer sentence of three years Rigorous Imprisonment under Section 307 of the Penal Code. Appellants Anil Rai, Vishwanath Rai and Gajendra Rai have also been convicted for the offence under Section 342 of the Penal Code, directed to suffer Rigorous Imprisonment for one year. The sentences have been directed to run concurrently.

2. Prosecution case, as set out in the First Information Report of informant Rashik Lal is that while he was returning to his house from his forecourt situate in Villge Chandpur Dhamaun, Police Station- Patori, around 12:30 noon on 15.07.1990, reached near the entrance, the

accused persons variously armed with lethal weapons like *Lathia*, *Gandasa*, spear, firearms attacked him on the orders of Accused No. 1 Ajab Rai causing grievous injury, he fell down. Hearing the alarm of Rashik Lal, his nephew Ramadhar Rai came running to save his uncle, was caught by Indradeo Rai, Vishwanath Rai and Anil Rai, Ajab Rai inflicted *Gandasa* blow causing head injury to the nephew. Vishwanath Rai also gave spear blow to Ramadhar Rai after he fell down. While the assault was on, Fakira Rai also arrived and was assaulted by Indradeo Rai with spear on his head, Surendra Rai with *lathi* causing grievous injury. Wife of Fakira Rai, Dayawati also intervened to save them, was assaulted with *lathia*, *gandasa* by Ajab Rai causing injury on her left leg, whereafter she also fell down. While the assault on the men folk of the prosecution party was on, the female inmates of the house of the accused persons entered the house of the informant, carried away a box containing gold ornament and silver utensil worth Rs. 2500/-, clothes. The female inmates also carried away five bags of wheat causing damage to the belongings of the informant kept inside the house. Villagers named in the fardbeyan also came, saw the occurrence. The fardbeyan was recorded in the same evening at 8:00 P.M. by K. D. Singh, A.S.I., Town Police Station, Samastipur in Sadar Hospital which was





forwarded to Patori Police Station where Patori P.S. Case No. 66/90 was registered on 17.07.1990 for the offence under Sections 307, 380 and other allied Sections of the Penal Code against Ajab Rai and nine others including the five who were put on trial along with Ajab Rai. During investigation of the case Ramadhar Rai died on 26.07.1990 while in treatment at P.M.C.H. Police, however, submitted charge-sheet only against six who were put on trial.

3. In support of the charge, prosecution examined 15 witnesses including three Medical Officers and two Police Officers. P.Ws. 7, 12 and 13 are formal witnesses as they have proved First Information Report (Exhibit-3), endorsement on the fardbeyan (Exhibit-5/1) and endorsement on the Inquest Report (Exhibit-5/2). The seven other witnesses are the eye-witnesses of the occurrence including informant Rashik Lal Rai (P.W. 3), Fakira Rai (P.W. 6) and Dayawati Devi (P.W. 8).

4. Trial Court having considered the evidence on record i.e. evidence of informant and the other two eye-witnesses as also the evidence of the Investigating Officer (P.W. 10) and the doctors (P.Ws. 9, 11 and 15) concluded that the prosecution case of assault, as deposed by the witnesses in court including the official witnesses i.e. the Medical Officer who examined the three injured and one



deceased, offence under Section 302 of the Penal Code is not made out as accused persons used the firearm like a *lathi*, assaulted the injured with butt of the gun and other traditional weapons. One of the injured, nephew of the informant, Ramadhar Rai died after 11 days of the occurrence and from the injury, post mortem report it does not appear that the accused persons who assaulted him had any intention to kill Ramadhar Rai.

5. Learned counsel for the appellants in Cr. Appeal have assailed the aforesaid judgment with reference to the evidence of the informant, the two injured and submitted that close perusal of their evidence would indicate that none of the three, either the informant or the two injured, is the witness of the complete occurrence as from their version it would appear that they saw the occurrence only in part but deposed as eye-witness of the entire occurrence which does not appear to be true. Learned counsel also submitted that even accepting the prosecution version, as set out and proved by the prosecution party, the offence under Section 307 of the Penal Code is not made out as none of the appellants had any intention to kill either Ramadhar Rai or the informant or the other injured. At best the offence made out against them should have been under Section 326 of the Penal Code. In this connection, he also placed reliance on the

injury, post mortem report of the deceased and injury to the injured.

6. Counsel for the State has not only supported the judgment but also submitted in support of the Government appeal that offence under Section 302 of the Penal Code is made out as Ramadhar Rai who came to save informant Rashik Lal was inflicted *Gandasa* blow causing head injury, nature whereof clearly establish that the intention of its author was to commit his murder as Ramadhar Rai was preventing the author of his injury from assaulting Rashik Lal. He further submitted that the evidence of the two injured also make out a case of murder and the appeal should be allowed, respondent Ajab Rai be convicted for the offence under Section 302 and others for the offence under Section 302/149 of the Penal Code.

7. Having considered the rival submission of the learned counsel for the parties and the evidence of the informant as also the two injured, we are of the view that true it is that Ajab Rai inflicted *gandasa* blow on the person of Ramadhar Rai causing head injury but not only the nature of the said injury was simple but also there was no repetition of blow by Ajab Rai, further though the unlawful assembly was armed with firearm yet only the butt of the gun was used to inflict such injuries which can be caused by hard, blunt substance and in appreciation of



such fact, we are of the view that in view of the evidence on record, both ocular and medical, the offence proved in the present case is Section 307 and not 302 of the Penal Code. The court below has rightly held the respondents in the Government Appeal and appellants in the Cr. Appeal guilty of the offence under Section 307 and other allied Sections of the Penal Code and sentenced them accordingly. In the circumstances, we do not find any merit either in the Government Appeal or in the Cr. Appeal or in the Cr. Revision, which is dismissed. The sentence imposed on the respondents under the impugned judgment is modified to the extent that the period already undergone by them during trial as also during pendency of the appeal will meet the ends of justice. In the result, impugned conviction is upheld with modification in sentence.

(V.N. Sinha, J)

(Ahsanuddin Amanullah, J)

P.K.P./N.A.F.R.

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