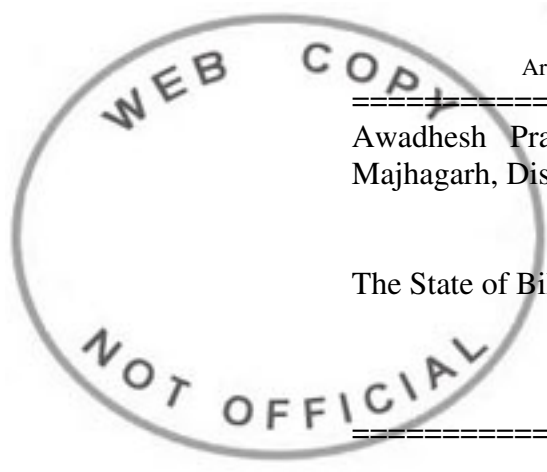




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.160 of 1993

Arising Out of PS.Case No. -83 Year- 1984 Thana -Gopalganj District- GOPALGANJ

Awadhesh Prasad, son of Paras Prasad, resident of Village Baluhin, P.S. Majhagarh, District Gopalganj

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 162 of 1993

Arising Out of PS.Case No. -83 Year- 1984 Thana -Gopalganj District- GOPALGANJ

Bijay Prasad, son of Pannalal, resident of Mohalla Islamia, P.S. Gopalganj, District Gopalganj

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 163 of 1993

Arising Out of PS.Case No. -83 Year- 1984 Thana -Gopalganj District- GOPALGANJ

Yogendra Prasad, son of Late Nageshar Prasad, resident of Mohalla Bari Bazar, Gopalganj, P.S. and District Gopalganj

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 167 of 1993

Arising Out of PS.Case No. -83 Year- 1984 Thana -Gopalganj District- GOPALGANJ

Kishori Prasad, son of Late Shri Thakur Prasad, resident of Village Baluhi Bazar, P.S. Manjha, District Gopalganj

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 242 of 1993

Arising Out of PS.Case No. -83 Year- 1984 Thana -Gopalganj District- GOPALGANJ

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Sheo Kumar Gupta, son of Shri Parmeshwar Prasad, resident of Gopalganj Town,
P.S. and District Gopalganj

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellants : Mr. Kanhaiya Pd. Singh, Sr. Advocate
Mr. Ravindra Kumar Singh, Advocate
Mr. Yogendra Prasad Sinha, Advocate
Mr. Ram Kishore Singh, Advocate
Mr. Rajnish Kumar Choubey, Advocate
Mr. Shailendra Kr. Singh, Advocate
Mr. Neeraj Kumar Gupta, Advocate

For the State : Mr. A.K. Sinha, APP
Mr. S.C. Mishra, APP
Mr. S.N. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: **HONOURABLE MR. JUSTICE V.N. SINHA**)

Date: 21-07-2015

Heard learned counsel for the parties.

2. These five appeals arise out of judgment/
order dated 20/22.03.1993, passed by 1st Additional Sessions
Judge, Gopalganj, in Sessions Trial No.152/1987 whereunder
appellants Awadhesh Prasad, Bijay Prasad, Yogendra Prasad
and Kishori Prasad have been convicted for the offences
under Sections 302/34, 323/34 of the Penal Code and
sentenced to suffer rigorous imprisonment for life. No
sentence has, however, been awarded to them for conviction
under Section 323/34 of the Penal Code. Appellant Sheo

Kumar Gupta has been convicted for the offence under Section 302 of the Penal Code and directed to suffer rigorous imprisonment for life.

3. Prosecution case, as set out in the fardbeyan of informant Ramesh Kumar Singh (P.W. 2) recorded by Sub-Inspector B.N.P. Srivastava of Gopalganj Police Station in Sadar Hospital, Gopalganj on 05.04.1984 at 9.30 A.M., is that he resides behind Gopalganj block and in the morning he was engaged in his studies. His friend Anil Kumar Dubey came between 7.30-7.45 A.M., both informant and Anil Kumar Dubey thereafter came to the college to ascertain about their admit card, examination centre and entered the Practical room of Physics Department where others were engaged in practical. Informant and Anil Kumar Dubey watched practical for sometime, meanwhile, alarm was raised from outside in the college campus. Informant and Anil Kumar Dubey came out and saw Subodh Kumar a student of 1st year (science) being assaulted by 7-8 persons. From amongst the assailants informant identified Sheo Kumar Gupta a student of 4th year and Yogendra Sah, resident of Bari Bazar and Kishori uncle of Shiv Kumar Gupta. Shiv Kumar Gupta and Kishori were armed with knife. Yogendra was armed with small revolver with six chambers. The other



two amongst the assailants were also College students but the informant did not remember their name, however, claimed that he can identify them by face. Besides the aforesaid others amongst the assailants were outsiders and not known to the informant. Anil Dubey, in the meantime, went near the place where assailants were assaulting Subodh, asked them as to why they were assaulting him whereafter Shiv Kumar Gupta and his uncle Kishori began to assault Anil with knife, who in order to save himself retreated. Informant having noticed the assault on the person of Anil Dubey rushed to save him. Yogendra pointed pistol towards the informant. The informant, however, in his attempt to save Anil from the assault hit Yogendra whose pistol fell down then one unknown attempted to restrain informant by assaulting him with lathi but the attack was somehow repelled. Meanwhile, the assailants having caused injuries on the person of Anil Dubey escaped towards east. Anil Dubey was carried to the hospital but before reaching the hospital he died. Police arrived at the hospital and recorded the fardbeyan in the hospital on 05.04.1984 at 09.30 A.M. in presence of two attesting witnesses, namely, Harendar Dubey (not examined) and Brij Bihari Dubey (P.W. 4), on the basis of which First Information Report was also



registered on 05.04.1984 at 11.00 A.M., dispatched to the court of Chief Judicial Magistrate, Gopalganj through special messenger but was received in the court on 06.04.1984, meanwhile inquest proceeding over the dead body of Anil Dubey was conducted on 05.04.1984 at 9.20 A.M. by A.S.I. Sagar Das in presence of Narendra Kumar Singh (P.W. 10) and Baidanath Singh (not examined). After inquest the dead body was sent to Sadar Hospital, Gopalganj for post mortem, which was conducted by Medical Officer, Sadar Hospital, Gopalganj on the same day at 9.30 A.M. In the light of the fardbeyan, further statement of the informant, police statement of the professors, students present in the College at the time of occurrence and the inquest, post mortem report the Investigating Officer submitted charge-sheet against the five accused persons. In the light of the charge-sheet cognizance was taken, case was committed to the Court of Sessions. Sessions Court framed charge under order dated 06.08.1991 to which the accused persons pleaded not guilty and claimed to be tried.

4. In support of the prosecution story, prosecution examined as many as 13 witnesses. P.W. 2 Ramesh Kumar Singh is the informant of the case, who accompanied the deceased to the College on the fateful day.



P.Ws. 1, 3, 5, 7, 9, namely, B.K. Das, Prakash Mishra, Arun Kumar Singh, Subodh Singh and Ravindra Nath Singh are the College teachers, students and demonstrator respectively and were present at the time of occurrence but while deposing in court they have not supported the occurrence and have narrated a version contrary to the prosecution case, as such, have not been fully relied upon by the trial court. P.W. 4 Brij Bihari Dubey is the brother-in-law of the deceased and attesting witness of the fardbeyan. P.W. 6 Om Prakash Singh is the maternal uncle of P.W. 7 (deceased). P.W. 8 Nawal Kishore Upadhyaya is a contractor, who was also present in the College at the time of occurrence, but he has also not supported the occurrence. P.W. 10 Narendra Kumar Singh is the inquest witness. P.Ws. 11, 12 Dr. I.N. Jha, Dr. R.B. Chaudhary are the medical officers serving in Sadar Hospital, Gopalganj. Dr. Jha conducted post mortem on the dead body of the deceased and Dr. R.B. Chaudhary examined Anil Dubey no sooner he reached the hospital and declared him brought dead. P.W. 13 Baidyanath Prasad Srivastava is the Investigating Officer of the case.

5. The court below considered the evidence of prosecution witnesses and found that P.Ws. 1, 2, 3, 5, 6, 8, 9 though claimed themselves to be the eye-witness of the



occurrence before the Investigating Agency, have not supported the prosecution case while deposing in court but the court below relying on the evidence of Subodh Singh (P.W. 7) injured student, who was being first assaulted by Sheo Kumar Gupta and others and to save him from the assault of Sheo Kumar Gupta and others Anil Dubey intervened and got killed, convicted the appellants.

6. Learned counsel for the appellants submitted that close perusal of the evidence of P.W. 7 would indicate that he has also given a version which is not corroborated by the medical evidence. In this connection, learned counsel pointed out with reference to the evidence of P.W. 7 that according to P.W. 7 when Anil Dubey intervened to save him Sheo Kumar Gupta and others began to assault Anil Dubey but there is only one injury on the person of Anil Dubey caused by knife, as such, the prosecution version that the others including Sheo Kumar Gupta were assaulting him does not appear to be corroborated by the medical evidence. Such being the position, judgment/ order dated 20/22.03.1993, passed by 1st Additional Sessions Judge, Gopalganj, in Sessions Trial No.152/1987 can not be sustained and is set aside. All the appeals are, accordingly, allowed. Appellants are on bail, are discharged of their

respective bail bonds.

7. Trial court is directed to conclude the proceedings taken against the informant for perjury under Section 193 of the Penal Code and submit report to this Court.

(V.N. Sinha, J)

(Jitendra Mohan Sharma, J)

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