

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.494 of 1992

Arising out of PS.Case No. -8 Year- 1991 Thana - District- VAISHALI(HAJIPUR)

- =====
1. Vishwanath Sahni, son of Phaguni Sahani.
 2. Lalu Sahani, son of Gonaaur Sahni.
 3. Ramashrey Sahani, son of Banshi Sahani.
 4. Lakhindra Sahni, son of Bharosi Sahni
 5. Baleshwar Sahni, Bharosi Sahni,
 6. Surendra Sahni, son of Munshi Sahni.
 7. Tuntun Sahni, son of Bansi Sahni.
 8. Ram Chandra Sahni, son of Jayapal Sahni.
 9. Gonaaur Sahni, son of Jayapal Sahni.
 10. Bharosi Sahni, son of Guja Sahni.
 11. Babu Lal Sahni, son of Bansi Sahni.
 12. Shyam Lal Sahni, son of Bansi Sahni,

All Residents of Village- Jatkauli, P.S. Vaishali, District- Vaishali

.... Appellants

Versus

The State of Bihar

.... Respondent

=====

Appearance :

For the Appellants : Mr. Arun Kumar Tripathy, Amicus Curiae.

For the Respondent : Mr. A.K. Sinha, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

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

Date: 26-08-2015

This appeal arise out of judgment of conviction, order of sentence dated 27,28.11.1992 passed by 2nd Additional Sessions Judge, Vaishali at Hajipur in Sessions Trial No. 25/92, whereunder the 12 accused persons put on trial, appellants herein, have been convicted for the offence under Section 302/149 of the Penal Code, Appellant Nos. 11, 12



have further been convicted for the offence under Sections 324, 148 of the Penal Code, Appellant Nos. 1 to 10 have further been convicted for the offence under Sections 323, 147 of the Penal Code, they have been sentenced to suffer Rigorous Imprisonment for life, three months under Section 302/149, 324 of the Penal Code respectively. Those convicted for the offence under Section 323 of the Penal Code have further been admonished. The sentences, however, have been directed to run concurrently.

2. Prosecution case, as set out in the First Information Report of informant Nathuni Rai (P.W.10) is that on 27.01.1991 he was returning home along with his brother Lakhendra Rai (P.W.9) after closing shop situate on Jatkauli River Bank. No sooner both reached near the house of Accused No. 11 Babu Lal Sahni, informant saw Accused No. 11 Babu Lal Sahni, Accused No. 12 Shyam Lal Sahni and other 12 accused persons named in the First Information Report variously armed with spear, Farsa forming an unlawful assembly, surrounded them and attacked his brother Lakhendra Rai who



became injured. Informant raised alarm whereafter his father came running to rescue them, was also assaulted by the members of the unlawful assembly and fell down. After his fall, Babu Lal Sahni, Shyam Lal Sahni assaulted him with Farsa, spear, thereby he became severely injured. Hearing the alarm Baiju Rai, Kailash Rai, Sitaram Rai also came to save the informant, his brother and father, they were also assaulted by the accused persons. Informant identified all the accused persons taking part in the assault, though it was night. Accused Nos. 11, 12 were armed with Farsa, Bhala, the other accused persons were armed with lathi. Informant also stated in the First Information Report that the occurrence took place because potato crop was stolen from his 1½ kathas of land in the previous night, he suspected the Sahnis to have indulged in the theft of potato. Informant also indicated in the First Information Report the name of the witnesses i.e. Basu Lal Sah, Nageshwar Rai, Satya Deo Rai and Doman Sah, who shall also disclose about the occurrence. After number of villagers collected, accused persons fled away. It is also stated in the

First Information Report that with the help of the villagers while his injured father, brother, uncle, Baiju Rai were being brought to hospital, his father succumbed to the injuries. His dead body had been brought to the Police Station on a push-cart, the other injured are being treated in the hospital.

3. Informant having read his statement put his signature over the First Information Report. In the light of the statement of the informant, First Information Report was registered on the same day, dispatched to court through Special Messenger for perusal by the Chief Judicial Magistrate, Vaishali who perused the same on 28.01.1991.

4. In the light of the First Information Report inquest on the dead body of Shyam Deo Rai was conducted by the Officer-in-Charge on 27.01.1991 at 11:00 P.M. in the premises of Vaishali Police Station in presence of Nathuni Rai, Jay Nandan Sah. Perusal of the Inquest Report indicate that Shyam Deo Rai suffered injury inflicted by Sharp cutting weapon. After inquest proceedings dead body of Shyam Deo Rai was sent for post mortem to Hajipur Sadar Hospital, where the body



was received in the morning on 28.01.1991, post mortem also conducted on the same day. Post Mortem Report also confirm that death of Shyam Deo Rai was on account of Injury Nos. 1, 3. Injury No. 1 is incised wound 3"x1/2"x scalp deep on left parietal region of scalp. Injury No. 3 is also incised wound 3 1/2"x1/2"x1/2" front of left leg in the middle. The other three injuries i.e. Injury Nos. 2, 4 and 5 are swelling, abrasion respectively. In the light of the contents of the First Information Report, further statement of the informant and police statement of the witnesses as also the contents of the Inquest, Post Mortem Report, the Officer-in-Charge being satisfied about the merit of the prosecution case submitted charge-sheet against 14 accused persons named in the First Information Report.

5. Pursuant to charge-sheet learned Chief Judicial Magistrate, Vaishali took cognizance, after supply of police papers to the accused persons the case was committed to the court of Sessions. Sessions Court framed charge against all the 14 accused persons under order dated 01.05.1992 to which the accused persons pleaded not guilty,

claimed to be tried. Later case of Accused Jainendra Sahni, Mahesh Sahni was separated as they claimed to be juvenile at the time of occurrence, they could not be tried along with other accused persons.

6. In support of the charge prosecution examined as many as 12 witnesses. P.W. 1 Nand Kishore Kunwar is an Advocate's Clerk, is a formal witness. P.W. 2 Nageshwar Rai, P.W. 3 Baiju Rai, P.W. 4 Basu Lal Sah, P.W. 5 Satya Deo Rai, P.W. 6 Sita Ram Rai, P.W. 7 Kailash Rai are co-villagers of the informant who came to the place of occurrence hearing the alarm raised by informant, his brother. P.W. 8 Kameshwar Prasad is the Medical Officer serving at Primary Health Centre, Saraiya, Muzaffarpur, examined P.Ws. 3, 6, 7 and 9 who claimed to have suffered injuries during the occurrence. P.W. 9 Lakhendra Rai, P.W. 10 Nathuni Rai are the injured, informant of the case and both were returning home after closing their shop situate at the bank of river Jatkauli, were initially attacked by the accused persons when they reached near the house of Accused No. 11. P.W. 11 Anwar Alam is the Civil Assistant Surgeon, who conducted post mortem

on the dead body of the father of the informant. P.W. 12 Uttam Singh is the scribe of the First Information Report, Investigating Officer of the case.

7. None had appeared to argue the appeal, we requested Sri Arun Kumar Tripathi, Advocate to appear in the case as Amicus Curiae. Sri Tripathi has assisted us by taking us through the First Information Report and the evidence of P.W. 10 Nathuni Rai the informant, P.W. 9 Lakhendra Rai brother of the informant who accompanied him at the time of occurrence as also the evidence of P.Ws. 3, 6 and 7, the three injured who came to the place of occurrence after P.W. 9, 10 were attacked when they reached near the house of Accused No. 11 by Accused Nos. 11, 12 and others. The deceased father of Nathuni Rai, Lakhendra Rai also came to the place of occurrence along with P.Ws. 3, 6, 7 and other villagers, had intervened to save his son whom the accused persons led by Accused Nos. 11, 12 wanted to assault as he was planning to implicate them in connection with the theft of potato in the previous night from his 1½ kathas of land. The intention of the accused persons led by Accused Nos. 11, 12 as is



evident from the evidence of the material prosecution witnesses was to assault P.Ws. 9, 10 and not Shyam Deo Rai who suffered Injury Nos. 1, 3 out of which Injury No. 1 was on the vital part of the body leading to his death. From the evidence of the prosecution witnesses it is evident that the author of injury Nos. 1, 3 is Accused Nos. 11, 12. Object behind the assault made by Accused Nos. 11, 12 being not to kill Shyam Deo Rai, their conviction under Section 302/149 of the Penal Code is required to be modified into one under Section 304 Part-I of the Penal Code. Both having remained in jail custody for more than eight years, as is evident from order dated 08.03.1999 passed in this appeal, we modify their sentence as well from Rigorous Imprisonment for life to period already undergone by them. Other appellants i.e. Appellant Nos. 1 to 10 having not been attributed to be the author of any grievous injury on the person of the deceased or any of the injured, P.Ws. 3, 6, 7, 9 and 10, their conviction under Section 302/149 of the Penal Code is modified and they are convicted for the offence under Section 324 of the Penal Code, sentenced to period already



undergone by them.

8. With the aforesaid modification in conviction, sentence the appeal is dismissed.

9. Let the operative portion of this order be forwarded to Secretary, Patna High Court Legal Services Committee so as to enable him to make payment of fee to Sri Tripathi as per the Rules.

(V.N. Sinha, J)

(Jitendra Mohan Sharma, J)

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

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