

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.232 of 1992

Arising Out of PS.Case No. - 105Year- 1986 Thana -Sonepur District- SARAN

- =====
1. Shankar Rai, son of Asharfi Rai
 2. Chandeshwar Rai, son of Ram Sundar Rai
 3. Junar Rai, son of Bechari Rai
 4. Ram Sundar Rai, son of Bechan Rai
 5. Dineshwar Rai, son of Asharfi Rai
- All of Village- Pahaleja Balli Tola, at present Sahpur Diyara, Police Station-
Sonepur, District- Saran.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Rakesh Kumar Sinha, Advocate.

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

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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: 05-08-2015

This appeal has been filed assailing judgment of conviction, order of sentence dated 30.06.1992 passed by 5th Additional District & Sessions Judge, Saran, Chapra in Sessions Trial No. 238 of 1987, whereunder Accused No. 1 Shankar Rai has been convicted for the offence under Sections 302, 324, 148, 341 of the Penal Code, sentenced to suffer Rigorous Imprisonment for life, one year, one year for the offences under Sections 302, 324 and 148 of the Penal Code respectively. No sentence has



been awarded for the conviction under Section 341 of the Penal Code. Accused Nos. 2 to 5 have been convicted for the offence under Sections 326/149, 148 and 341 of the Penal Code, sentenced to suffer Rigorous Imprisonment for three years, one year under Sections 326/149 and 148 of the Penal Code respectively. No sentence has been awarded for the offence under Section 341 of the Penal Code. The sentences, however, have been directed to run concurrently.

2. Prosecution case, as set out in the First Information Report of informant P.W. 6 Yadunandan Rai is that he is resident of Village Pahleja Balli Tola, for the present residing at Shahpur Diara, Police Station- Sonapur, District- Chapra. On Saturday i.e. 15.04.1986 around 2:00 P.M he came to Sonapur Police Station and stated before the Officer-in-Charge that he has landed property in Kujara riverine bearing Tauji No. 5626 from which harvested Rahar crop was being carried on a tyre-cart driven by Arjun Rai, resident of Shahpur Diara (not examined). Informant, his nephew Kameshwar Rai deceased were also following the tyre-cart. Around 10:00 A.M. the



tyre- cart reached Panchhopa, informant saw Accused No. 1 Shankar Rai, Accused No. 5 Dineshwar Rai, Accused No. 4 Ram Sundar Rai, Accuse No. 3 Junar Rai, Accused No. 2 Chandeshwar Rai armed with spear, pistol, lathi, Gandasi, lathi respectively coming from the northern side, surrounding the tyre-cart and abusingly asking him to stop the tyre-cart. From amongst the miscreants Accused No. 1 Shankar Rai pierced his spear in the chest of Kameshwar Rai who having fallen down died at the spot. The informant was also attacked by Shankar Rai with his spear when he came to save Kameshwar causing injury on his right thumb. Another attempt was also made to attack informant causing injury on his left palm. The five accused persons ran away after killing Kameshwar and attacking informant. In the First Information Report itself informant stated that occurrence has been witnessed by Nasib Lal Rai (P.W. 4) and Arjun Rai (not examined) as also other local persons, resident of Village- Sabbalpur, Pahleja. The local persons also attempted to apprehend the accused persons but failed. In the First Information Report itself informant further stated that he has



enmity with the accused persons concerning land litigation which is pending in court. He also stated that he has been falsely implicated in a case by Shankar Rai who deposed against him in the said case and got him dismissed from the Railway service. Informant further contended that because of the enmity, the accused persons hatched a conspiracy, attacked him and killed his nephew at the place of occurrence itself. It is further stated that if the witnesses had not intervened, the accused persons might have killed the informant also.

3. Having made the statement informant requested the Officer-in-Charge to take appropriate action in the matter. The statement of the informant was read over to him, he having found the same correct, put his Left Thumb Impression over the First Information Report as he was unable to put his signature due to the injury in his right hand. Besides the informant Ganesh Prasad Rai, resident of Sabbalpur, New Tola, P.S.- Sonapur and Dineshwar Rai, resident of Barbatta (both not examined) also put their signature as attesting witness of the First Information Report. The First Information Report was

registered on 05.04.1986 at 2:00 P.M., dispatched from the Police Station to the court of Chief Judicial Magistrate, Chapra on the same day but received in court at Chapra on 07.04.1986.

4. Having registered the First Information Report, Officer-in-Charge came to the place of occurrence, conducted inquest proceedings on the dead body of Kameshwar Rai on 05.04.1986 at 3:00 P.M. From Column No. 6 of the Inquest Report (Exhibit-9) it is evident that Kameshwar Rai suffered one spear injury. The dead body was sent to Sadar Hospital, Hajipur for post mortem which was received in the Hajipur Sadar Hospital on 05.04.1986 at 6:30 P.M. The Autopsy Surgeon saw the dead body the next morning at 8:30 A.M., conducted post mortem also at the same time. The Post Mortem Report also confirm that deceased Kameshwar Rai suffered one incised, penetrating wound 2"x3/4"x opening in the chest cavity on the left side of the chest 1½" above the left nipple- penetrating the left lung and heart through and through. In the light of the First Information Report, Inquest, Post Mortem Report as also further statement of the informant and the police



statement of the witnesses, the Officer-in-Charge found the case true and submitted charge-sheet. After submission of charge-sheet cognizance was taken and accused persons summoned. After service of police papers on the summoned accused, case was committed to the court of Sessions. The Sessions Court framed charges against the five accused persons under order dated 03.03.1990 to which they pleaded not guilty, claimed to be tried.

5. In support of the case, prosecution examined as many as eight witnesses. Dr. Rameshwar Nath Upadhyay served as Medical Officer, Incarge in Sonepur Primary Health Centre, examined informant Yadunandan Rai (P.W. 6) on 05.04.1986 at 2:35 P.M. and found the following injuries on his person :

(1). one punctured wound $\frac{3}{4}$ "x $\frac{1}{2}$ " x $\frac{1}{2}$ " on the right palm waive of the thumb and index finger with lacerated margin adjacent to right thumb.

(2). Swelling of index, middle and ring finger of the right hand each measuring $1\frac{1}{2}$ "x $\frac{3}{4}$ "

(3). One cut wound 1 "x $\frac{1}{4}$ "x skin deep on right hand middle finger distal phalanx.

(4). One lacerated wound with swelling $\frac{1}{2}$ "x1/8"x skin deep on right thumb distal phalanx middle part near nail.

In Paragraph 3 of his evidence Dr. Upadhyay categorically stated that Injury No. 1 was caused by sharp and pointed weapon, such as, spear, Injury Nos. 2, 4 by hard, blunt substance and Injury No. 3 by sharp cutting weapon. He also opined that Injury No. 3 is possible by sharp edge of spear. Injury Nos. 2, 4 are possible if one is wounded by spear blow. Dr. Upadhyay also proved his Injury Report (Exhibit-1). P.W. 2 Krishna Rai has claimed himself to be an eye-witness of the occurrence but he is not witness of the occurrence as per the First Information Report. P.W. 3 Shyama Prasad Rai is a formal witness as in his presence Inquest Report of the deceased Kameshwar Rai (Exhibit-9) was prepared and he has proved his signature over the Inquest Report, which has been marked as Exhibit-2. P.W. 4 Nasib Lal Rai is also a witness of the occurrence, is named in the First Information Report as the eye-witness of the occurrence. P.W. 5 Dr. Ram Gopal Munka served as Civil Assistant Surgeon, Sadar Hospital, Hajipur on



06.04.1986, he conducted post mortem on the dead body of Kameshwar Rai. He has proved the Post Mortem Report (Exhibit-3), stated in his evidence that deceased Kameshwar Rai suffered one incised, penetrating wound, details whereof has been indicated in the Post Mortem Report, which was caused by a sharp, pointed substance, such as, spear. P.W. 6 Yadunandan Rai is the informant of the case. P.W. 7 Surendra Singh is Advocate's Clerk and appears to be a formal witness. P.W. 8 Akhileshwar Prasad, the then Officer-in-Charge, Sonapur Police Station, conducted the investigation and submitted charge-sheet.

6. Learned counsel for the appellants submitted that the conviction of the five appellants is required to be set aside as prosecution story unfolded by informant (P.W. 6) in the First Information Report as also by the eye-witnesses while deposing in court does not indicate the true version of occurrence as has been reported by the prosecution party. In this connection, it is pointed out that Accused No. 1 Shankar Rai has no enmity at all with the informant as he was never instrumental in getting him



implicated in any false case, securing his conviction which became the basis of his dismissal from Railway service. In this regard, reference is made to Paragraph 10 of the evidence of the informant himself. Perusal of the said paragraph indicates that the informant conceded in court that he was dismissed from Railway service as stolen railway property was recovered from his house and that he was never made accused in any other case by the informant during the period of five years while he served the Railways. Learned counsel for the appellants further referred to the evidence of P.W. 1 Dr. Rameshwar Nath Upadhyay as also his evidence as D.W. 2. It is submitted that if the evidence of P.W. 1 and D.W. 2 Dr. Rameshwar Nath Upadhyay is carefully read, this Court will have no difficulty in concluding that Dr. Upadhyay first examined the informant in Sonapur Primary Health Centre on 05.04.1986 at 2:35 P.M. and found as many as four injuries on his person and that on the same day at about 2:50 P.M. he examined Accused No. 1 Shankar Prasad Rai and also found as many as six injuries on his person, namely, (1) one incised wound 1¼" x ¼" x ½" (deep) on left hand,



middle finger, palm, surface middle phalanx (2). One incised wound $\frac{3}{4}$ "x $\frac{1}{4}$ " x skin deep on right palm second metacarpal region (3). One bruise with abrasion 1"x $\frac{3}{4}$ " on left forearm back part middle (4). One bruise 5 $\frac{1}{2}$ " x 1" on right chest front and lower part/direction (5) one abrasion $\frac{1}{2}$ "x $\frac{1}{2}$ "on right knee joint outer part and (6). One bruise 3 $\frac{1}{2}$ " x 1" on left thigh lower and outer part.

7. Learned counsel for the appellants submitted that injuries found on the person of appellant Shankar Rai, though simple, but is indicative of the fact that the occurrence as alleged by the informant has not taken place in the manner in which it is said by the informant. Shankar Rai having suffered injuries, may be simple in nature, and examined few minutes after the medical examination of the informant by the same doctor, indicate that both the assault on the person of the informant, the deceased as also on the appellant Shankar Rai had perhaps taken in one transaction. It is submitted that it was incumbent upon the informant to have disclosed about the assault made on the person of Shankar Rai in the First Information Report itself.



According to the learned counsel informant appears to have withheld the other part of occurrence i.e. about assault on the person of Shankar Rai as he did not want to disclose the true version of the occurrence, may be in his anxiety to implicate the appellants, which is established from the evidence of Dr. Rameshwar Nath Upadhyay, D.W. 2 as he has categorically stated that on the date of occurrence itself, he examined Shankar Rai in the Sonapur State Dispensary and found as many as six injuries on his person. There is yet another aspect which is not explained by the prosecution even by the then Officer-in-Charge, Sonapur Police Station (P.W.8) as he has failed to explain the delay in receipt of the First Information Report in Court. The occurrence is said to have taken place on 05.04.1986 at 10:00 A.M. Report was made at the Police Station on the same day at 2:00 P.M. First Information Report was also registered almost at the same time and dispatched from the Police Station to the court at Chapra also on the same day but the same reached the court at Chapra on 07.04.1986 i.e. after delay of a day, which is not explained by the prosecution and is indicative



of some confabulation being going on between informant and the Officer-in-Charge about whom to include as the assailant of the deceased. It is also not understandable as to why Arjun Rai who was driving the tyre-cart on which the Rahar harvest was being carried from the field to Balli Tola has not been examined though two witnesses P.Ws. 2, 4 who carried their wheat bundles on their head have been examined. P.W. 2 Krishna Rai is not named in the First Information Report as a witness of the occurrence. In the circumstances, it may not be safe to place reliance on his deposition. So far P.W. 4 Nasib Lal Rai is concerned, his evidence that he carried the wheat bundle on his head, was walking along with informant and his nephew deceased who were just following the tyre-cart does not appear to be reliable as if Nasib Lal Rai was carrying wheat bundle on his head, he will not leisurely move with the informant and his nephew behind the tyre-cart.

8. For the reasons indicated above, we are satisfied that the appellants deserve grant of benefit of doubt. They are acquitted of the charge levelled against them. The appeal is allowed,

impugned judgment of conviction, order of sentence is set aside, appellants are discharged from the liability of their respective bail bonds.

(V.N. Sinha, J)

(Jitendra Mohan Sharma, J)

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

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