

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.483 of 1992

Arising Out of PS. Case No. -8 Year- 1974 Thana - Harsidhi District- EASTCHAMPARAN
(MOTIHARI)

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1. JAWAHIR RAUT, SON OF BACHU RAUT.
2. BISHWANATH RAUT, SON OF BHAGAT RAUT.
3. BIRNEDRA RAUT, SON OF RAMASIS RAUT.
4. BACHCHAN RAUT, SON OF JAUJI RAUT.
5. BACHCHA RAUT, SON OF BHAGAT RAUT.
6. HARENDRA RAUT, SON OF RAMASHISH RAUT.
ALL RESIDENTS OF S.B. TOLA, P.S.-HARSIDH, DISTRICT-EAST
CHAMPARAN.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Deovind Kr. Singh, Adv.

For the State : Dr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI)

Date: 08-12-2016

Cr. Appeal (DB) No.483 of 1992 has been filed at the behest of six appellants, namely, Jawahir Raut, Bishwanath Raut, Birnedra Raut, Bachchan Raut, Bachcha Raut, Harendra Raut, who have been found guilty for an offence punishable under Section 147 IPC, 323 of the IPC, while Cr. Appeal (DB) No.484 of 1992 was filed on behalf of appellant Ramashish Raut who was found guilty for an offence punishable under Section 302 of the IPC, against common judgment of conviction and sentence. During pendency of appeals appellant/ convict Ramashish Raut died and as no fine was inflicted against him by the learned trial court while sentencing him for an offence punishable under Section 302 of the IPC, on account thereof, Cr. Appeal (DB) No.484 of 1992 abated.

2. All the appellants as named above have challenged the



judgment of conviction dated 28.09.1992 as well as order of sentence dated 29.09.1992 passed by First Additional Sessions Judge, East Champaran at Motihari in Sessions Trial No.97 of 1978 / 161 of 1981 whereby and whereunder they all have been found guilty for an offence punishable under Section 147 IPC as well as 323 of the IPC and each one has been directed to undergo R.I. for one year under Section 147 IPC and R.I. for six months under Section 323 IPC with a further direction of run the sentences concurrently.

3. As per fardbeyan which has been launched by Jamuna Raut (PW.5) on 25.11.1977, the prosecution case is that on the same day at about 07:00 AM, the accused persons came and began to uproot 'Kanda' (edible root) which was resisted by his father Horil Raut. On account thereof, it has been alleged that Ramashish began to assault his father and his brother. On hue and cry the other accused persons also came in support of Ramashish and began to assault the informant Jamuna Raut as well as his brother Kari Raut. The accused persons again came at his Darwaja where Ramashish Raut gave back portion of spade stroke over his father on account of which he sustained injury over his waist as a result of which he fell down and died. It has also been stated that as the accused persons intend to grab the land having settled in their favour, so they have committed the offence.

4. On the basis of the aforesaid fardbeyan, Harsidhi P.S. Case No.8/1974 was registered followed with investigation and after submission of charge sheet, offences being exclusively tribal by the court of Sessions, committed to the court of Sessions where trial trial commenced and concluded in the manner, subject matter of instant



appeal.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is of complete denial of the occurrence and further, of false implication. One DW has also been examined.

6. In order to substantiate its case, the prosecution had examined altogether seven PWs as well as have also exhibited Ext.-1 – Postmortem Report, Ext.2-Formal FIR, Ext.3-Fardbeyan, Ext.-4-Parcha. In likewise manner defence had also examined one DW.

7. During course of argument, it has been submitted on behalf of appellant that main accused Ramashish Raut who was convicted for an offence punishable under Section 302 of the IPC is dead and on account thereof, appeal having been filed on his behalf abated. Identification of appellants have not been found along with Ramashish sharing common object and so, appellants have been found guilty for an offence punishable under Section 147,323 of the IPC. It has also been submitted that occurrence is of the year 1977, the judgment is of the year 1991. At the time of judgment respective appellants were found aged about 40 years, 32 years, 65 years, 35 years and further considering the finding recorded by the learned trial court, it will be prudent to seek sympathetic consideration at the end of the court instead of stressing upon merit of the case. Furthermore, it has been submitted at the end of appellant that neither there happens to be adverse remark against the appellant, available on record suggesting criminal antecedent, nor there presence have been perceived to facilitate Ramashish to cause death of deceased. That being so appellants be directed to avail modification in sentence. The



learned Additional Public Prosecutor do endorses the view having expressed at the end of learned Amicus Curiae in the background of finding recorded by the learned lower court in consonance with the date of occurrence of the year coupled with the date of judgment of the year 1972.

8. After hearing respective parties coupled with finding recorded by the learned lower court against the appellants, we do endorse the view taken up by the respective course whereupon maintaining the conviction as recorded by the learned trial court against the appellant to the extent of Section 147 IPC as well as 323 of the IPC, each of the appellants is sentenced, period already undergone, under both heads, independently.

9. With the aforesaid modification in sentence, instant appeal is dismissed. In the background of the modification in sentence, each of the appellants is discharged from the liability of the respective bail bonds. The first page and last page of the judgment be handed over to the learned Amicus Curiae to facilitate him to procure his remuneration.

(Samarendra Pratap Singh, J.)

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	N.A.
CAV DATE	N.A.
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