

Cr. Appeal (SJ) No. 82 OF 1995

In the matter of an appeal under Section 374(2) of the Code of Criminal Procedure.

1. Kitar Sharma, S/o Late Kuldip Singh.
2. Kapildeo Singh.
3. Ram Chandra Singh.
4. Janardan Singh.
5. Bhim Singh. All sons of Sri Kitar Singh.
6. Chonho Singh @ Ramashish Singh, S/o Sunder Singh.
7. Binay Singh, S/o Ramashish Singh.
8. Bhola Singh, S/o Sito Singh.
9. Ram Kumar Singh @ Ghonghu Singh, S/o Sito Singh.

All R/o Village-Rampur, P.S.-Suryagarha,
District-Munger (New Lakhisarai)

.....(Appellants)

Versus

THE STATE OF BIHAR----- (Respondent)

For the Appellants	: Mr. Lalan Pd. Singh, Adv.
For the Informant	: Mr. A.K. Thakur, Adv.
	: Mr. Bijay Kumar Pandey, Adv.
For the State	: Mr. Jitendra Kumar Singh, APP.

P R E S E N T

THE HON'BLE JUSTICE SMT. ANJANA PRAKASH

Anjana Prakash, J.

1. The appellants have been convicted under Section 304(II) read with 34 IPC and sentenced to RI for seven years as also the appellant No. 1 has been convicted under Section 147 IPC and the rest under Section 148 IPC and they are sentenced to one year and two years respectively by a judgment dated 26.05.1995 passed by the 1st Additional Sessions Judge, Munger in Sessions Case No. 238 of 1988.

2. The case of the prosecution according to P.W. 8 is that when the deceased Ramdeni Singh was

returning to his house the accused persons variously armed assaulted him at three different places and subsequently the said Ramdeni Singh died.

3. The appellants were charged under Section 302/34 IPC but acquitted of the charges and sentenced as mentioned above. Since the Court was of the view that apart from one grievous injury the rest of the injuries sustained by the deceased were simple in nature and in the facts of the case the intention of appellants was not to cause death.

4. The prosecution in all examined ten witnesses out of whom P.W. 2, P.W. 3, P.W. 4, P.W. 5, P.W. 6 and P.W. 8 are eye-witnesses. P.W. 7 is formal in nature whereas P.W. 9 is the Investigating Officer and P.W. 10 the Doctor who had examined the injured deceased. Three court witnesses have been examined bringing on record certain documents.

5. On going through the evidence of the eye-witnesses, I find that they are consistent on the point of that the deceased was initially assaulted near a Mahua tree when he fell down having hit a stone and then further assaulted when he tried to hide himself under a cot of Jagdish Manjhi. The doctors found as many as 8-9 injuries of various sizes both cut as well as lacerated on the person of the deceased further corroborating the prosecution case that an assault had been made with

Farsa, Lathi and Bhala. The Investigating Officer also found objective evidence at the place of occurrence and the fact that even the courtyard of Jagdish Manjhi was visible from everywhere so the eye witness account can not be discarded.

6. In view of such consistent evidence, the appeal is dismissed but with modification that the appellants are convicted under Section 325/34 IPC and they are sentenced to a period already undergone since the occurrence is of the year 1987.

7. However, each of the appellants (if alive) will pay a sum of Rs. 1,000/- to the family members of the deceased within a period of eight weeks of receipt of notice from the Trial Court in this regard if they fail to do so an imprisonment of six months RI.

9. The appeal is dismissed with the aforesaid modifications.

(Anjana Prakash, J.)

**Patna High Court,
Patna,
Dated, the 22nd April, 2011.
NAFR/Vikash/-**