

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.519 of 2011

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Nandjee Singh Yadav, Nandjee Singh, S/o Ram Prasad Yadav, R/o Vill. Salempur,
P.S. Bikramganj, District – Rohtas

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dharendra Kumar Sinha

Mr. Birendra Kumar

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

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 04-05-2016

Heard learned counsel for the Appellant and learned
counsel appearing on behalf of the Additional Public Prosecutor.

2. The Appellant has been convicted under section
302 I.P.C. and sentenced to undergo Rigorous Imprisonment for
life and a fine of Rs. 10,000/-, in default of which further Rigorous
Imprisonment of six months by a Judgment dated 24/26.03.2011
passed by the 3rd Additional Sessions Judge, Rohtas at Sasaram in
connection with Sessions Trial No. 163 of 2009/21 of 2009 arising
out of Bikramganj P.S. Case No. 33 of 2008 corresponding to G.R.
No. 231 of 2008.

3. The case of the prosecution according to Budh
Narayan Singh, the Informant (P.W.9) is that on 21.03.2008

Appellant Nandjee Singh came on his *Pan Gunti* and started to abuse and assault him at which his younger brother Nagendra Singh, the deceased and Nagdeo Singh (P.W. 2) came there. On seeing them, the Appellant ran away. However, while they were going to inquire about this occurrence, in the meanwhile, they met the Appellant and 5 others variously armed who started to assault both the brothers. Appellant is said to have assaulted the deceased with a rod on his head on account of which, he fell down injured. Later, during treatment he died at the Sub-Divisional Hospital and hence, the present First Information Report.

4. During trial, the prosecution examined 10 witnesses. On going through the evidences, we find that it is not a case under section 302 I.P.C. but one which is punishable under section 304 Part-1 since the Appellant appears to have exceeded his right of private defence of person as would be evident from the discussion which follows;

5. P.W.1 Sita Ram Singh stated that at 7:30 pm. an altercation and assault took place and the Appellant assaulted the deceased on the head with rod on account of which he fell down injured.

In cross-examination, he stated that even the wife of the Appellant was present at the place of occurrence, who had a

brick in her hand but he denies the fact that the Appellant had instituted a counter case and nor did he know that the prosecution had assaulted the Appellant.

While describing his relationship with the Informant, he stated that he happened to be his nephew and he had come along with him. He conceded that he had not given a detailed version of the occurrence and had merely asserted that the Nandjee had assaulted them. He described the topography of the place of occurrence being close to *Pan Gumti* of Harish Mian and the house of Harish Mian was 500 steps away from the *Pan Gumti* and so was that of the accused.

6. P.W. 2 Nagdeo Singh is the brother of the Informant, who stated that at about 7:30 pm. on the occasion of Holi, when he had gone to kirana shop, the accused persons started assaulting his brother deceased Nagendra Singh. The Appellant is said to have specifically assaulted on the head of the deceased due to which he fell down unconscious. When he was taken to the Hospital, he was declared dead. He stated that the *Pan Gumti* of his brother, the Informant Budh Narayan Singh is towards the South of the village whereas his own house was 100 yards on the North and that the house of the Appellant was about 200 yards on the south-west of his house.

He described the topography of the village and denies assault as also that in fact, it was the prosecution party who were gone to the house of the Appellant on that particular date.

He conceded that a case under section 307 I.P.C. was instituted against them, in which he was bailed out but the allegations were false. He further stated that he had become unconscious when he was assaulted.

His attention was drawn to the earlier statement that in fact, he had said earlier that after having heard about the abuse by the Appellant, the two brothers had gone to the *Gumti* of the Informant and thereafter, proceeded to the house of the Appellant to make inquiries.

7. P.W. 3 Shiv Adhar Singh is hearsay and inquest witness but in cross-examination, he specifically asserted that he had not seen the occurrence as also that P.W.2 Nagdeo Singh and P.W. 9 the Informant had not told him any thing about the occurrence.

He denies the factum of seeing the family of the Appellant in the Hospital nor did he know about any injury having been sustained by the Appellant. He specifically stated that he was not examined by the Police.

After denying all this, he conceded that of the same

occurrence, the Appellant had instituted a case.

8. P.W. 4 Dadan Singh is also not an eye witness to the occurrence and conceded that he had not been examined by the Police.

9. P.W. 5 Janeshwar Singh has been declared hostile.

10. P.W. 6 Paras Nath Singh gives another version. He stated that he had heard that there was a fight between the two parties and did not know as to how the deceased had died. He also stated that he had not been examined by the police.

11. P.W. 7 Shankar Dayal Singh did not disclose as to how the deceased died but merely stated that a fight had taken place between the Informant and the Appellant. He also was not examined by the Police. He denied knowing as to where the fight had taken place and described that the *Pan Gumti* of the Informant was out side the village.

12. P.W. 8 Dr. Vinod Shankar Chauhan, who conducted the Postmortem of the deceased and found following injuries on his person :

On External Examination:

i) Both eye lids swollen and bluish in colour.

ii) One lacerated wound 3 ½'' x ½'' x up to bone

deep on right occipital region with fracture of occipital bone.

iii) Lacerated wound right parietal region 1" x ¼" x scalp deep, fracture upper end of left Tibia.

On Dissection :

Heart empty, lungs normal, stomach partial digested food articles, small intestine liquid and gas, large intestine – foecal matter and gas.

Both kidney normal, urinary bladder empty, brain and meninges congested and extradural haematoma.

He proves the Postmortem Report as Exhibit-1.

13. P.W. 9 Budh Narayan Singh is the Informant, who had stated that at about 7:00-7:30 pm., he was in his *Pan Gumti* the Appellant and Mahesh Singh came with rods and started to abuse him. Thereafter, they went away, but they returned again along with Ram Prasad Singh and once again started abusing him. The Appellant had come with an iron rod and Mahesh Singh and Ram Prasad Singh with lathi. The Appellant assaulted the deceased Nagendra Singh with iron rod on his head, on account of which he fell down unconscious. Thereafter, Mahesh Singh assaulted him with *lath.i* When he and his brother Nagdeo Singh (P.W. 2) came

and tried to intervene, they were also assaulted on account of which they became unconscious. He testifies that he gave *fardbeyan* at the Hospital, which is marked as Exhibit-2.

In cross-examination, he denied that in fact, he and his brothers including the deceased had gone to the house of the Appellant and assaulted them. He stated that he did not have only knowledge about the case having been instituted against him by the Appellant, but later on he stated that he was on bail in a case instituted by the Appellant. He also gives the entire details of the case. He asserted that only the occurrence which he had stated had taken place between the parties and none else.

He further stated in his cross-examination that Dadan Singh (P.W. 4) had come and informed him that the accused persons were assaulting his brother Nagendra Singh, the deceased at which he was at that time in his *Pan Gumti* so he went to the place of occurrence and found them assaulting him. Till such time, the deceased had not fallen. It was only after Nagdeo Singh (P.W. 2) had reached there. The deceased had been assaulted before he had reached. Then he stated that the accused assaulted him on account of which he became unconscious and regained consciousness only in the Hospital.

He described the place of occurrence being



trisection and that the accused lived adjacent to it on North-West corner and corroborated that the house of the Appellant was North of the place where the occurrence had taken place. He also stated that he had seen the Appellant, accused Mahesh Singh, Ram Prasad Yadav and wife of Ram Prasad Yadav namely Lagmano Devi at the Hospital but he had not seen any injury on their person. It was suggested to him, in fact, his brother and he had gone to the house of the Appellant and it was then that this occurrence had taken place.

From the evidence of this witness, it appears that he has conceded that neither he, nor his brother, Nagdeo Singh was an eye witness to the actual assault upon the deceased. He has also materially contradicted himself by adding the name of Mahesh Singh also assaulting the deceased, which he had not stated in the *fardbeyan*.

14. P.W. 10 Bholi Paswan is the Investigating Officer, who instituted both the cases and also investigated both of them together. While describing the place of occurrence, he stated that it was at the door of the Appellant Nandjee as also from evidence, it appears that there was a free fight between the parties, on hearing of which he had gone to the place of occurrence. He confirmed the fact of the counter case and that the Appellant had

also sustained injuries and was arrested at the Hospital itself.

15. As mentioned above, it is, thus, clear from the evidence of this witness that the Appellant was also injured in the same transaction and there was a counter case instituted in this regard against the prosecution party. The Investigating Officer further found the place of occurrence to be that of the door of the Appellant in which circumstances it is evident that even if the Appellant had assaulted the deceased, at best, it would be a case of exceeding his right of private defence and hence, liable for conviction under section 304 Part-I I.P.C.

16. Under such circumstances, we dismiss the Appeal but convert the conviction of the Appellant to under section 304 Part-I I.P.C. and reduce his sentence to the period already undergone by him.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Shailendra/-

AFR/NAFR	NAFR
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