

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.6 of 2006

Arising Out of PS.Case No. -0 Year- null Thana -null District- BHABHUA (KAIMUR)

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1. Kalpnath Yadav son of Jokhan Yadav, resident of village Budadih, P.S. Jamania, Distt. Gazipur (U.P.)
 2. Ram Sundar Yadav son of Shiv Lakhan Yadav
 3. Jitendra Yadav son of Balmukund Yadav, both resident of village Akorhi, P.S. Dugawati, Distt. Kaimur at Bhabhua, Bihar

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. R.K. Singh, Advocate
Mr. Vivekanand Singh, Advocate
For the Respondent/s : Mr. Raghunandan Kumar Singh, APP
For the Informant : Mr. Raghunandan Kr. Singh, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 26-04-2016

Appellant No.1 Kalpnath Yadav has been convicted and sentenced to R.I. for one year under Section 147 I.P.C. and R.I. for 10 years and fine of Rs.5,000/- under Sections 304 I.P.C., in default of which simple imprisonment for another six months and Appellant No.2 Ram Sundar Yadav has been convicted and sentenced to R.I. for 2 years under Sections 148 & 324 I.P.C., R.I. for 3 years and fine of Rs.3000/- under Section 326 I.P.C., in default of which simple imprisonment for another six months and Appellant No.3 Jitendra Yadav has been convicted under Sections 147, 323 I.P.C. and has been released under Section 3 of Probation of Offenders Act and fine of Rs.1000/- under Section 5 of Probation of Offenders Act by judgment dated 29.11.2005 passed by the A.D.J., Fast Track Court No.V, Bhabhua, Kaimur in Sessions Trial No.678 of 1994 (44 of

2005) arising out of Durgawati P.S. case No.54 of 1994.

2. The case of the Informant Barmati Dervi is that on 15.8.1994 at about 8 A.M. the accused persons variously armed came and started to assault her husband with arms, on account of which he fell down injured. She also sustained injury when she tried to intervene. On her hulla several persons came and extricated them. So the accused fled away. When she reached home she learnt her sons had also been assaulted. The reason for the occurrence was land dispute. After a full dressed trial the Appellants were convicted as mentioned above.

3. During trial the prosecution examined eight witnesses. P.W.1 Sunil Kumar stated that on the date of occurrence while he was playing, one of the Appellants assaulted him, which information his sister went to give to his parents, at which they both came from the fields where they were working. The accused also went there and started to assault them, on account of which his father died. He repeats that the reason for the occurrence was an earlier dispute. He stated that the accused persons had assaulted his brother and himself also and had chased them inside the house where they were further assaulted and villagers had gathered on their hulla. Immediately the police came and sent the injured to the Hospital. He identified all the accused persons. In cross examination he stated that one Shiv Narain Singh was his uncle, who was in jail in connection with a murder case and the accused persons were his own agnates.

4. P.W.2 Dr. Ranjeet Kumar conducted the postmortem examination of the deceased Balram Singh Yadav on 15.8.1994 and found the following injuries on his person :

External examination :

- (i) Swelling 3"x2½" with deformity wrist & palm on right side.
- (ii) Swelling diffused with bruise 2"x2" on right forearm.
- (iii) Swelling with bruise 4"x3" on right shoulder.
- (iv) Diffused swelling with deformity in lower and outer of forearm.
- (v) Bruise 6"x3" on right side of lower part of back.
- (vi) Bruise 3"x2" middle right side of back.
- (vii) Diffused with deformity on lower end of right side of leg.
- (viii) Swelling with deformity lower end of thigh right side.

Internal examination :

Skull bone NAD. Neck NAD. Brain substance congested. Lungs intact and congested. Part left chamber empty. Right chamber full of dark blood. Stomach empty. Liver, spleen, gall bladder, pancreas and both kidneys intact with slightly congested. Urinary bladder empty and intact. There is fracture of lower end of right radius, upper end of right tibia, lower end of right tibia. Lower end of right and lower part of right tibia and fibula.

He stated that individually the injuries were not dangerous to life but combined together they were sufficient to cause death.

5. P.W.3 Sanjay Singh @ Satyendra Singh, who is the son of the Informant and deceased as also the brother of P.W.1, stated that while he was playing, his parents were in the field, the accused persons came variously armed and started to assault his brother P.W.1 and himself. He then became unconscious and regained the same only in the Hospital. He alleged that all the accused persons had caused the death of his father. He further stated that blood stained earth had been seized in his presence and he proves his signature on the seizure list. About the topography he stated that the temple where he was present was about 50 yards from the village and the place was heavily populated. However no person came while the assault was taking place and even after they had screamed. He also conceded that the accused persons were his uncles.

6. P.W.4 Sabita Kumari, who is the sister of P.W.1 and P.W.3, stated that on the date of occurrence the accused persons had assaulted her two brothers and her father and also mother, due to which they were all referred in the Hospital. She identified all the accused persons. However she stated that no other co-villager was present where her brothers were present. From her evidence also it appears that the place of occurrence was heavily populated. It was

suggested to her that in fact the land belonged to the Appellants and they had trespassed on the same and tried to grab it.

7. P.W.5 Barmati Devi is the Informant, who repeats her version in the First Information Report and also that her two sons and daughter were also assaulted. In cross examination she stated that she was unable to give full details of the land and none of the co-villager came there when the assault was taking place. She explained the relationship inter se the accused persons and that earlier no assault ever had taken place between the two families.

8. P.W.6 Ram Narayan Yadav stated that on hulla he went to the place of occurrence near the temple and saw P.W.1 and P.W.3 injured and thereafter saw the Informant and the deceased also injured. He was declared hostile.

9. P.W.7 is Dr. Shri Narayan Mishra, who examined Sunil Kumar (P.W.1), the Informant (P.W.5), Sanjay Singh @ Satyendra Singh (P.W.3) and Savita Devi (P.W.4). Several injuries were found on their person as well.

10. P.W.8 Shyam Sunder Pandey is the Investigating Officer, who went to the place of occurrence of having heard that members of two families had fought with each other. He inspected the place of occurrence as also instituted the First Information Report, which is Exhibit 6 and prepared the injury reports as Exhibit 6 series. He also prepared the inquest report, which is Exhibit 8 and inspected the place of occurrence. In cross examination there is nothing which is

notable.

11. D.W.1 Mahendra Rajak is on the point of alibi of Kalpnath Rai.

12. It has been submitted on behalf of the Appellants that even though the occurrence had taken place in full public view, no independent witnesses supported the factum of occurrence. The fact that both the parties belonged to the same family is not disputed nor is the fact of earlier land dispute.

13. On the other hand, the Counsel for the Informant submits that the witnesses who have been produced by the prosecution may belong to the same family but they were all injured and, therefore, their evidence is worth credence.

14. In the manner of occurrence we find that there is a suggestion that both the families had fought with each other for reasons of land dispute. There was no earlier incident in this regard and it is not explained as to why suddenly on that particular day this assault took place. Hence genesis of occurrence as narrated by the Prosecution appears shrouded in mystery. The nature of injuries also do not suggest that there was knowledge that death could be caused on account of causing it.

15. Hence, while discussed the appeal, we are inclined to hold that at best the Appellant No.1 is liable for conviction under Section 325 I.P.C. his sentence deserves to be reduced to the period already undergone and compensation of Rs.25,000/- to be payable to

the family/heirs of the Informant on proper verification. Conviction of Appellant No.2 is also converted to one under Section 325 I.P.C. and his sentence is also reduced to the period already undergone with further compensation of Rs.10,000/- to the family/heirs of the Informant on due verification. The compensations shall be paid within six weeks from the date of receipt of this judgment. There shall be no interference in the conviction and sentence of Appellant No.3.

16. With the aforesaid modification in conviction and sentence, the appeal stands dismissed.

(Anjana Prakash, J)

Narendra/-

AFR/NAFR	NAFR
CAV DATE	
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