

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1009 of 2010

[Against the Judgment of conviction and order of sentence dated 14.7.2010 passed by the Sessions Judge, Saran at Chapra, in connection with Sessions Trial No. 15 of 2009]

Uma Rai @ Omprakash Rai, son of late Chandrika Rai, r/o village Newaji Tola, P.S. Revilganj, Distt. Saran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Manoj Kumar, Adv.
Mr. Raj Narayan Mishra, Adv.
For the State : Mr. S.C. Mishra, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 03-05-2016

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

2. Appellant Uma Rai @ Om Prakash Rai has been convicted for the offence punishable under Section 302 Indian Penal Code and sentenced to undergo life imprisonment with a fine for Rs.20,000/- in default of which to undergo further imprisonment for one year by a Judgment and order of sentence dated 14.7.2010 passed by the Sessions Judge, Saran at Chapra, in connection with Sessions Trial No. 15 of 2009.

3. The case of the Informant Arjun Rai (PW 5) son



of the deceased is that on 9.9.2008 at about 6:00 A.M., his father Dularchand Rai had gone to ease where the Appellant reached and started to fight on account of an earlier incident which had taken place about 2-3 days ago due to grazing of the paddy crops of the Appellant by the horse of the deceased. The villagers came and, thereafter, they went their own way. However, a little while later, the Appellant assaulted the deceased repeatedly on the neck on account of which he was seriously injured. As soon as he learnt about this occurrence, he ran there along with his uncle Jagdish Rai (PW 1). On seeing them, the Appellant allegedly ran away. During course of treatment, his father died and, therefore, the present Fard-beyan.

4. During Trial, the Prosecution has examined nine witnesses out of whom PW 1 (Jagdish Rai) is the cousin of the deceased who stated that on 9.9.2008 at about 6:00 A.M. when he was returning after a bath, he saw the Appellant assaulting the deceased with a '*Dhab*'. Whereafter, he was removed to the Hospital but he died later. He admitted that there was a previous enmity with the Appellant over a passage and that witnesses PW 3 (Panpati Devi), PW 4 (Shankar Rai), PW 5 (Arjun Rai) and PW 6 (Bhola Rai) who were known to him and belong to his family had reached there. His attention was drawn to the earlier statement that in fact, he has not stated about the Appellant assaulting 3-4 times and having him

reached the place of occurrence on hearing the screams of the deceased.

When we taken note of the statement given by the Informant in the First Information Report, we find that eye-witness account of this witness is not worth reliance since evidently he had also reached the place of occurrence along with the Informant and only seen the Appellant fleeing away from the place of occurrence. Hence, his version as eye witness is rejected.

5. PW 2 (Harendra Rai) is the son of the deceased who stated that he saw the Appellant assaulting the deceased and running away from there after which Jagdish Rai (PW 1), Shankar Rai (PW 4), Arjun Rai (PW 5) and Bhola Rai (PW 6) arrived there.

In cross examination he stated that he had come along with the Informant who was his uncle whereas Arjun Rai (PW 5) was his brother. He also stated that it was on hearing the cries of his father that he had reached the place of occurrence and when he reached there, he saw his father fallen down. It was at his shouting that Bhola Rai (PW 6), Arjun Rai (PW 5) and Jagdish Rai (PW 1) and about 50 persons had gathered there. He also conceded that there was previous enmity between their family and the Appellant.

6. PW 3 (Panpati Devi) wife of the deceased stated that she had gone to ease with her husband and when the deceased and

the Appellant started grappling with each other, in course of which he assaulted the deceased with '*Dhab*' and ran away.

In cross-examination, she stated that there was previous enmity between the Parties since last two years and that PW 2, PW 4, PW 5 and PW 8 all belong to the same family whereas Bhola Rai (PW 6) was co-villager.

7. PW 4 (Shankar Rai) cousin of the deceased who also appeared as an eye witness has stated that he had seen the Appellant and the deceased engaged in a physical fight by the Appellant in course of which he fell down and then was assaulted with a '*Dhab*' whereafter, the deceased died in the Hospital.

In cross-examination, he stated that contradictory to what was stated in the Fard-beyan it was not the horse of the deceased which had grazed the crops of the Appellant but horse of somebody elses. He further stated in his cross-examination that he ran to the place of occurrence on screams of his father and after his reaching, about 20-25 persons had arrived. It was suggested to him that in fact, the deceased had been killed because he used to steal cattle.

8. PW 5 (Arjun Rai) is the Informant and son of the deceased who repeated the version in the First Information Report and that on screams of his father, he had gone to the place of occurrence and seen the Appellant assaulting him with a '*Dhab*'. He

further stated that it was because the horse had grazed the crops of the Appellant that this occurrence took place.

In cross-examination, he stated that it took about five minutes for him to reach the place of occurrence after hearing the cries of the deceased and he did not inform anyone about the same. He also conceded that there was no earlier case between the Parties.

9. PW 6 (Bhola Rai) stated that in the morning of the occurrence, he saw the deceased and the Appellant grappling with each other in course of which he was assaulted with a 'Dhab' by Appellant on account of which he died.

In cross-examination, he stated that he had tried to extricate them but then had gone to ease himself and when he returned, he saw the deceased lying injured.

10. PW 7 (Dr. Rama Ballabh Singh) found the following injuring on the person of the deceased:

- i) *External incised wound 5" x 2" x bone deep over front of neck.*
- ii) *Incised wound 3" x 1" Muscle deep on the back of right shoulder*
- iii) *Incised wound 3" x 2" x Bone deep on the middle part of back of neck*
On Dissection-Thyroid Bone and major vessels (Arteries and veins) of front of neck are cut
- ii) *3rd and 4th cervical vertebrae and major vessels (Arteries & veins) are cut*
- iii) *All viscerae are pale and intact-cause of death*

Opinion:

In my opinion the cause of death is due to haemorrhage and shock caused by sharp cutting weapons.

11. PW 8 (Ashok Kumar Rai) is the Investigating Officer who proves the formal First Information Report (Ext. 3) and Postmortem Examination Report (Ext. 2). He stated that he inspected the place of occurrence which was an open field where several crops were growing. However, he did not know as to whose fields they were. His attention was drawn to the earlier statement of PW 1, PW 2 and PW 3 from which it appears that in fact, they had not described the manner of occurrence in such detail as they did in Court.

12. PW 9 (Dinesh Prasad) is a formal witness who proves the inquest report (Ext.5).

13. On going through the evidence of the Prosecution witnesses, it is difficult for us to accept that any of the witnesses had actually witnessed the assault by the Appellant. The admitted position is that they all ran towards the deceased which was in an open field where crops were sown all around and they only saw that the Appellant fleeing away from there. We further find that all the witnesses belong to the same family except Bhola Rai (PW 6). From their evidence one thing which all the witnesses have stated is that there was some kind of physical fight between the Parties in course of

which, the Appellant assaulted the deceased with a '*Dhab*', no doubt, repeatedly, but in the circumstances of the case, we would consider that the act of the Appellant would be punishable under Section 304 Part 1 Indian Penal Code. We are informed that the Appellant has remained in custody for about eight years. In such circumstances, on converting the conviction of the Appellant to one under Section 304 Part 1, we sentence him to the period already undergone by him.

With the aforesaid modification in conviction and sentence, the Appeal is dismissed.

(Anjana Prakash, J)

S.Ali/-

(Rajendra Kumar Mishra, J)

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Uploading Date	
Transmission Date	