

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.397 of 2013

(Against the Judgment of conviction dated 24.04.2013 and Order of sentence dated 27.04.2013 passed by the Additional Sessions Judge-I, Madhepura, in Sessions Trial No.207 of 2000).

- 1. Suren Paswan, son of Late Siddhu Paswan.
- 2. Yogi Paswan, son of Late Chhedi Paswan.
- 3. Mahendra Paswan, son of Late Chhedi Paswan.
- 4. Binod Paswan, son of Rajendra Paswan.
- 5. Pramod Paswan, son of Rajendra Paswan.
- 6. Ramu Paswan, son of Late Khushilal Paswan.
- 7. Bhuto Paswan, son of Late Dukha Paswan.
- 8. Nako Paswan, son of Late Dukha Paswan.
- 9. Bauku Paswan, son of Yogi Paswan.
- 10. Sukrati Paswan, son of Late Tanuk Paswan.
- 11. Chandeshwari Paswan, son of Sukrati Paswan.

All residents of village-Yadupatti, P.S. Kumarkhand, District-Madhepura.

.... Appellants.

Versus

The State of Bihar

.... Respondent.

with

Criminal Appeal (DB) No. 574 of 2013

Rajendra Paswan, son of Late Babujan Paswan, resident of village- Yadupatti, P.S.- Kumarkhand, District- Madhepura.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

with

Criminal Appeal (DB) No. 576 of 2013

Narain Paswan, son of Late Siddhu Paswan, resident of village- Yaduapatti, P.S.- Kumarkhand, District- Madhepura.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

Appearance :

(In CR. APP (DB) No. 397 of 2013):

For the Appellants : M/s. Vikramdeo Singh and Nafisuzzoha, Advocates.

For the State : M/s. A.K. Sinha, A. Sharma and Ajay Mishra, A.P.Ps.

(In CR. APP (DB) No. 574 of 2013):

For the Appellant : M/s. Vikramdeo Singh and Nafisuzzoha, Advocates.

For the State : M/s. A.K. Sinha, A. Sharma and Ajay Mishra, A.P.Ps.

(In CR. APP (DB) No. 576 of 2013):

For the Appellant : M/s. Vikramdeo Singh and Nafisuzzoha, Advocates

For the State : M/s. A.K. Sinha, A. Sharma and Ajay Mishra, A.P.Ps.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 22-04-2016

All the Appellants have been convicted under Sections 307, 302 and 149 of the Indian Penal Code and Section 235 of the Code of Criminal Procedure and sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code and fine of Rs.10,000/-, in default of which, to undergo further rigorous imprisonment for one year. However, no separate sentence has been awarded under Sections 307 and 149 of the Indian Penal Code and Section 235 of the Code of Criminal Procedure.

2. The case of the prosecution, according to the Fardbeyan of the Informant Satya Narayan Yadav (P.W.8), is that a week earlier, 'Jhun-Jhuna' tree had been stolen from his land. Thereafter, he alongwith his son Bhupendra Yadav (P.W.2) went to demand an explanation from the Appellant Rajendra Paswan but instead they were



threatened of dire consequences. He then returned home. On the morning of 04.03.2000, the present Appellants came and started uprooting their saplings which was objected to by his son Bhupendra Yadav and brother Nand Kishore Yadav deceased. At this, the Appellant Narain Paswan ordered that all the persons should be killed so the Appellant Rajendra Paswan assaulted his brother Nand Kishore Yadav deceased on the head with 'Farsa' on account of which he fell down injured. Just then several villagers variously armed came and started to assault everyone. Appellant Narain Paswan assaulted the Informant with a 'Bhala' which hit on his left hand whereas Appellants Mahendra Paswan and Yogi Paswan assaulted his son with a 'Bhala' which hit him on his head. The rest of the Accused persons also assaulted. When they started screaming, Gulai Tatma (P.W.11), Bechan Ram (P.W.6), Naresh Yadav (not examined) came and saw the occurrence. The injured were then removed to the hospital where both were unconscious. Later on, Nand Kishore Yadav died.

3. During trial, the prosecution examined altogether 18 witnesses.

4. After going through the evidence of the witnesses on record, we conclude that in the facts and circumstances of the case no offence under Sections 302/149 of the Indian Penal Code is made out and, at best, Appellant Rajendra Paswan can be convicted under

Section 304 Part-I of the Indian Penal Code and the rest under Sections 323/149 of the Indian Penal Code, the reasons of which are enumerated hereinafter.

5. P.W.1 Raghunandan Yadav, the full brother of the Informant, is an eye witness, who stated that on the date of occurrence, the Accused persons came and started to uproot some saplings in which the assault took place and Appellant Rajendra Paswan assaulted the deceased with 'Farsa' on his head while others assaulted variously the Informant and others.

In cross examination, he denied that, in fact, a free fight had taken place between the parties but he had not seen anyone injured but admitted that there was a counter case in regard to the same occurrence. He described the place of occurrence and there is nothing else which is of any consequence.

It was suggested to him that, in fact, the land belonged to the Appellant Narain Paswan and he was not examined for the next two days while he was in the hospital.

His attention was drawn to the earlier statement that, in fact, he was not an eye witness to the occurrence and he had come on screaming and had not named the Accused persons.

6. P.W.2 Bhupendra Yadav, the son of the Informant and also an injured, also supported the factum of occurrence and that it took

place on account of uprooting the saplings.

In cross examination, it was suggested to him that, in fact, the land belonged to the Appellant Narain Paswan and it was they, who were aggressors. He conceded that there was an altercation for about five minutes and stated that there were about 11 persons from his side but none of them were armed nor had they assaulted the Appellants and others. However, he conceded that there was a case instituted by Appellant Pramod Paswan, which was going on.

7. P.W.3 Mahangu Yadav, the brother of the Informant, also supported the fact that there was an altercation going on between the parties in course of which the assault took place.

From his cross examination, it appears that the defence had tried to elicit from him that, in fact, the land belonged to the Appellants which was forcibly being grabbed by the prosecution. He denied that any of the Accused persons had been assaulted.

8. P.W.4 Maina Devi, the wife of the deceased Nand Kishore Yadav stated that while she was in her courtyard, she heard some screaming at which she went there and saw the occurrence. The reason for the occurrence was that the Accused persons were trying to forcibly take possession of their lands.

In cross examination, the defence had tried to elicit from her that, in fact, the lands belonged to the accused persons and it was the

prosecution which was trying to grab their lands. She stated that since she had become afraid, therefore, she went inside the house and did not come out.

Thus the evidence of this witness as an eye witness is untrustworthy.

9. P.W.5 Jaynarayan Yadav, son of Chhedi Yadav, is a formal witness who proves his signature on the seizure list as Ext.1.

In cross examination, he stated that nothing was recovered in his presence.

10. P.W.6 Bechan Ram has been declared hostile.

11. P.W.7 Deo Narayan Yadav is a formal Police Officer, who instituted the First Information Report.

12. P.W.8 Satya Narayan Yadav is the Informant, who reiterated the facts stated in the Fardbeyan that a week earlier his 'Jhun-Jhuna' tree had been stolen at which he had gone to the door of the Appellant Rajendra Paswan for its return, however, he did not return the tree and started altercating with him. Later, the accused persons came on his lands and started to assault him. When his son Bhupendra Yadav (P.W.2) and his deceased brother Nand Kishore Yadav, came they were assaulted. He specifically stated that it was the Appellant Rajendra Paswan who had assaulted the deceased with 'Farsa'. Then he was removed to the hospital where the Fardbeyan was given.

In cross examination, he stated that he was the person who had been assaulted first and also conceded that the possession of the land on which the tree was planted was disputed between the parties.

13. P.W.9 Shambhu Yadav, son of Mahangu Prasad Yadav, was declared hostile.

14. Similarly, P.W.10 Mantu Yadav, P.W.11, Gulai Tatma alias Gulai Das, P.W.12 Vinod Yadav, P.W.13, Vijendra Yadav, P.W.14, Ram Bahadur Yadav and P.W.15 Janardan Yadav did not support the case of the prosecution and have been declared hostile.

15. P.W.16 Md. Hafiz is a formal witness, who proves the Fardbeyan (Ext.4).

16. P.W.17 is Dr. Ratan Prakash, who conducted the Post-Mortem Examination of the deceased Nand Kishore Yadav and found the following injuries on his person.

External Appearance:

- (i). Lacerated wound on the skull of size 1" X ¼" X bone deep, transversely placed slightly to the left side of mid-line.
- (ii). Lacerated wound on the skull of size 1½ X 1/2 X muscle deep longitudinally placed on the mid-line on the vertex.

Internal Appearance:

- (a). On opening the skull and scalp:

Left partial bone was fractured near the external

injury no.(i). Large haematoma was present in the cerebral region of the brain.

(b). On opening the chest cavity:

Left chamber of heart was empty, right chamber was full of blood. Lungs-pale.

(c). On opening the abdominal cavity:

(i). Stomach- pale and empty.

(ii). Intestine-pale.

(iii). Spleen-congested.

(iv). Liver-pale.

(v). Kidney-pale.

(vi). Urinary bladder-a little amount of urine was present.

In the opinion of the doctor, the cause of death was shock and brain haemorrhage. The injuries were caused by hard and blunt substance like lathi.

Time elapsed since death-within 24 hours.

He proves the Post-Mortem Examination Report as Ext.5.

17. P.W.18 Kumar Subodh Sinha is the Investigating Officer, who stated that on 07.05.2000 he assumed the investigation and submitted the charge-sheet. However, he had not examined any witness.

18. We, thus, find that apart from family members of the Informant, no other independent witness has supported the case of the prosecution. Even Dr. Ratan Prakash (P.W.17) did not find injuries in

consistence with the prosecution case inasmuch as he found the injuries caused by hard and blunt substance and not by sharp cutting weapon like 'Farsa' as stated in the Fardbeyan.

19. In such circumstances, considering the genesis of the occurrence that the assault took place on the spur of the moment over uprooting of saplings upon the land which was claimed by both the parties and in the heat of moment without any premeditation, we would think that the Appellant Rajendra Paswan deserves to be convicted under Section 304 Part-I of the Indian Penal Code and sentenced to the period already undergone.

As for rest Appellants, even though there is an allegation that they assaulted the Informant and his son but there is no injury report to corroborate this fact. Hence, on their oral evidence, rest of the Appellants are convicted under Sections 323/149 of the Indian Penal Code and are sentenced to the period already undergone.

20. With the aforesaid modification in the conviction and sentence passed against the Appellants, these Appeals are dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/A.B. Bhardwaj

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