

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 436 of 2012

Arising out of P.S. Case No. -55 Year- 2008 Thana -Rajpur
District- BUXAR

Mutur Rai S/o Arun Rai Resident of Village- Nagpur, Police Station-
Rajpur, District- Buxar.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

with

Criminal Appeal (DB) No. 416 of 2012

Arising out of P.S. Case No. -55 Year- 2008 Thana -Rajpur
District- BUXAR

Arun Rai S/o Late Raja Rai R/o Vill-Nagpur, P.S.-Rajpur in the
District of Buxar.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

Appearance :

(In CR. APP (DB) No.436 of 2012)

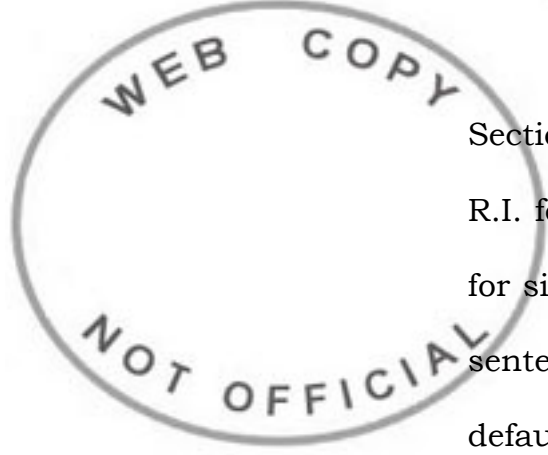
For the Appellant/s : Mr. Akhileshwar Pd. Singh, Sr. Adv.
: Ms. Anita Kumari Singh, Adv.
: Mr. Bimal Kumar-II, Adv.
: Mr. Abhishek Anand, Adv.
For the Respondent/s : Mr. Bindhyachal Rai, Adv.
For the State : Mr. A. K. Sinha, APP.
: Mr. S.C. Mishra, Adv.

(In CR. APP (DB) No.416 of 2012)

For the Appellant/s: Mr. Akhileshwar Pd. Singh, Sr. Adv.
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For the Respondent/s : Mr. Bindhyachal Rai, Adv.
For the State : Mr. A. K. Sinha, APP.
: Mr. S.C. Mishra, Adv.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)**Date: 21-04-2016**

01. The Appellants have been convicted under Section 302/34 of the Indian Penal Code and sentenced to R.I. for life and a fine of Rs. 10,000/- in default of which R.I. for six months as also under Section 27 of the Arms Act and sentenced to R.I. for four years and a fine of Rs. 5,000/- in default of which S.I. for fifteen days by a judgment of conviction and order of sentence dated 20/23.03.2012 by the Additional District & Sessions Judge-cum-Fast Track Court-III, Buxar in Sessions Trial No. 128 of 2009 arising out of Rajpur P.S. Case No. 55 of 2008 (G.R. No. 662 of 2008).

02. The case of the prosecution according to P.W. 2, Satendra Kumar Rai is that on 26.05.2008 at about 7.30 P.M when he along with his grand-father, Kapil Deo Rai had come to their ancestral village to settle their lands the accused persons tried to create a nuisance in such settlement showing that only they were the settlees. On 27.05.2008 while he along with grand-father was returning at about 8.30 P.M. from the fields the accused persons including the Appellants surrounded them. Thereafter, the accused, Mutur Rai fired at the back of the head of his grand-father on account of which he fell down then Appellant, Arun Rai and other accused persons assaulted him with "Farsa" and "Daab". He gave information about this occurrence to the villagers but by then

his grand-father had died and the accused had fled away.

03. During trial the prosecution examined six witnesses.

04. P.W. 1, Binod Sah is an independent witness who stated that on the date of occurrence at about 7.30 P.M. he saw the deceased coming along with the Informant and crossing his village. Just then he heard sound of firing so he reached there and saw that the Appellants firing at the deceased whereas the rest of them assaulting him with "Farsa" and Lathies. The motive for the occurrence was that the accused persons had wanted to grab the property of the deceased.

In cross-examination, he asserted that Kamla Ram, Lal Babu, Birendra Rakwar were present at the place of occurrence when the assault was taking place.

05. P.W. 2, Satyendra Kumar Rai is the Informant who supported the factum of the occurrence and that the Appellant, Mutur Rai had fired at his grand-father on the head on account of which he fell down and then the rest of the accused including the Appellant, Arun Rai assaulted him with "Farsa" and "Daab". When he ran away screaming he saw Binod Sah, P.W. 1 and Lal Babu Rai, P.W. 3 on the well. Seeing them the accused ran away. He stated that it was because the accused persons had wanted to grab their property his grand-father had been killed. He proves his

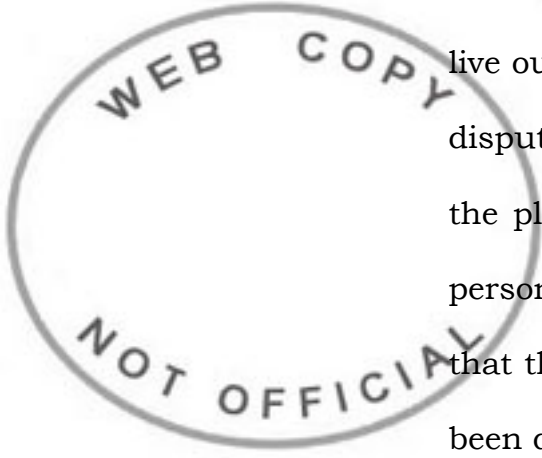
signature on the fardbeyan as (Exhibit-1).

In cross-examination, he stated that they used to live outside the village and had come recently only to settle the dispute of the land. He also explained that when he reached the place of occurrence no one was there except the accused persons and describes how exactly he was assaulted. He stated that the Chowkidar had come after the occurrence and he had been dispatched to the Police Station to inform the Police.

06. P.W. 3, Lal Babu Rai is the next eye-witness who stated that Nand Kishore Ram was his "Samadhi" and he had come to his village on the said date. He had heard sound of firing and then seen the Appellant, Arun Rai exhorting to kill Kapildeo Rai whereafter Kapildeo Rai fell down and the accused persons variously assaulted him with "Farsa". He saw the accused persons running away from the place of occurrence. He also found him dead when he reached there. He explained that it was on account of grabbing the lands of the deceased that this occurrence had occurred.

In cross-examination, he stated that he had heard the sound of firing at about 7.30 P.M. and when he reached the place of occurrence he had seen the accused persons running away towards the eastern side. The Police had allegedly arrived at mid-night and then he had left.

07. P.W. 4, Vijay Bahadur Rai is the son of the deceased and uncle of the Informant who was at Benaras on



the date of occurrence and had come to the village on hearing about it. He gave a hearsay account of the occurrence and that the Police had come whereafter prepared the inquest report on which he also signed. He explained that when he reached the village the Police had already arrived.

08. P.W. 5, Jitendra Kumar is the Investigating Officer who stated that on the date of occurrence he received information that an occurrence had taken place in Nagpur village at which he went there and recorded the fardbeyan of the Informant and proves the First Information Report as (Exhibit-2) and his signature as (Exhibit-2/1). He also prepared inquest report and examined witnesses. He describes the place of occurrence being the land in front of the house of Binod Sah where some houses were located. He thereafter submitted charge-sheet. In cross-examination, he stated that he had reached the place of occurrence at 6 A.M. in the morning and found Vijay Bahadur, P.W. 4 and the son of the deceased, Anil Rai. There is nothing else of note further in his cross-examination.

09. P.W. 6, Dr. Anil Kumar Singh proved the post-mortem report as (Exhibit-6) and found the following injuries on the person of the deceased:-

- (i) Rigor mortis in all four limbs and there were injuries which have blackening of right eye upper lid.*
- (ii) Lacerated wound just above left eye.*
- (iii) Lacerated wound about ½" diameter round on middle of scalp*



cavity deep, blackening round, margin inverted.

(iv) Lacerated wound on right side of scalp ½"x 1/6" into cavity deep, posterior, margin inverted and blackening around the margin present.

(v) Lacerated wound on left side of scalp 3"x ½" cavity deep with fracture of skull bone under neath it on margin inverted.

(vi) Lacerated wound on right side of scalp 2x ½" x1" cavity deep with fracture of skull bone under neath it, margin inverted.

(vii) Incised wound on right side of posterior aspect skull 2"x2" muscle deep.

(viii) Lacerated wound on right scapular region 1 ½"x ½" muscle deep and multiple abrasion on various sizes on neck and hand.

10. The Counsel for the Appellants submits that they have been falsely implicated on account of the previous land dispute and in fact there was no eye-witness to the occurrence. The further submission is that the Post-mortem Report does not corroborate the prosecution case.

11. However, we are unable to take a different view since we find that the Informant and independent witnesses P.W. 1, Binod Sah and P.W. 3, Lal Babu Rai have fully supported the presence of the Informant and the prosecution version is strengthened by the Doctor's evidence who found not only two fire-arm injuries but also other lacerated and incised wounds on the person of the deceased evidently caused by hard and blunt and sharp-cutting substance, thus, corroborating the prosecution case to its fullest extent. We also

find from the evidence of the Investigating Officer that there is no contradiction in the statements of witnesses which further gives reason to maintain the conviction. Hence, finding no merit in the Appeals, the same are dismissed.



(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	X
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