

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.696 of 2015

Arising Out of PS.Case No. -104 Year- 1994 Thana -BIKRAMGANJ District- SASARAM (ROHTAS)

1. AKSHAY YADAV SON OF LATE SITA RAM YADAV @ JEETA RAM YADAV.
2. JUDGE YADAV SON OF LATE SITA RAM YADAV @ JEETA RAM YADAV.
BOTH APPELLANTS ARE RESIDENT OF VILLAGE - DIHRA, POLICE STATION - BIKRAMGANJ, DISTRICT -ROHTAS AT SASARAM.
..... APPELLANT/S
VERSUS
THE STATE OF BIHAR RESPONDENT/S
WITH

Criminal Appeal (SJ) No. 735 of 2015

Arising Out of PS.Case No. -104 Year- 1994 Thana -BIKRAMGANJ District- SASARAM (ROHTAS)

GAYA YADAV SON OF LATE SITA RAM YADAV @ JEETA RAM YADAV
RESIDENT OF VILLAGE- DIHRA, POLICE STATION- BIKRAMGANJ,
DISTRICT- ROHTAS AT SASARAM.
..... APPELLANT/S
Versus
THE STATE OF BIHAR RESPONDENT/S

Appearance:

(In CR. APP (SJ) No.696 of 2015)

For the Appellant/s : Mr. Ramchandra Singh, Adv.
Mr. Sankar Kumar, Adv.
Mr. J.K. Singh, Adv.
Mr. Lal Bahadur Singh, Adv.
For the State : Mr. Bipin Kumar, APP
Mrs. Abha Singh, APP

(In CR. APP (SJ) No.735 of 2015)

For the Appellant/s : Mr. Ramchandra Singh, Adv.
Mr. Sankar Kumar, Adv.
Mr. J.K. Singh, Adv.
Mr. Lal Bahadur Singh, Adv.
For the State : Mr. Bipin Kumar, APP
Mrs. Abha Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT
Date: 25-07-2017

Criminal Appeal (SJ) No.696 of 2015 as well as
Criminal Appeal (SJ) No.735 of 2015 arise out from common
judgment of conviction and sentence, on account thereof, heard



conjointly and are being decided by a common judgment.

2. Appellants, Akshay Yadav, Judge Yadav and Gaya Yadav have been found guilty for an offence punishable under Section 326/34 of the IPC and each one has been directed to undergo R.I. for ten years as well as to pay fine appertaining to Rs.20,000/- and in default thereof, to undergo R.I. for six months vide judgment of conviction and sentence dated 30.09.2015 passed by the Additional Sessions Judge, IXth, Rohtas at Sasaram in Sessions Trial No.314/1997.

3. Jag Narayan Yadav, PW.4 recorded First Information Report on 17.08.1994 at about 09:45 PM alleging inter alia that on the same day at about 06:00 PM his Pattidar Gaya Yadav, Judge Yadav and Akshay Yadav sons of Sita Ram Yadav were cutting the mound of his house whereupon he along with his son Brij Nandan Singh protested saying that on account of cutting of mound the house will collapse. However, accused persons did not pay heed to it as a result of which, altercation took place and during course thereof, Judge Yadav and Akshay Yadav ordered to kill whereupon, Gaya Yadav went to his house and came with Bhala and then, gave Bhala blow over Brij Nandan Singh with an intention to commit murder which cause injury at right intercostal region. Brij Nandan Singh fell down. Seeing this, all the accused persons fled away. With the assistance of his co-villager Ramashish Yadav, Guru Prasad Yadav



and others Brij Nandan Singh has been carried to police station.

4. On the basis of the aforesaid First Information Report Bikramganj P.S. Case No.104/1994 was registered whereupon the investigation commenced and concluded by way of submission of charge sheet which facilitated the trial before the court of Sessions meeting with instant result, the subject matter of instant appeal.

5. Defence as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial of the occurrence side by side false implication.

6. In order to substantiate its case prosecution had examined altogether five PWs out of whom PW.1 is Guru Prasad Singh @ Guru Prasad Yadav, PW.2 is Ram Ashish Yadav, PW.3 is Sohrai Prasad Singh, PW.4 is Jagnarain Singh and PW.5 is Dr. Ram Kishore Prasad. Side by side also exhibited Ext.a & 1/A-The injury report of informant and his son.

7. Learned counsel for the appellant has submitted that both the parties are close agnates as is evident from the evidence of PW.3. There was no dispute in between them since before. It has also been admitted that during rainy season the ridge are being repaired as deposed by, PW.4 (Para-9). Furthermore, it has also been submitted that there happens to be no criminal antecedent of the appellant. It was spur of moment instant occurrence took place without any intention as well as knowledge which is evident from conduct itself,



as neither repetition of blow was made nor vital part of body was aimed at. Furthermore, though the injury has been found grievous, which in the aforesaid facts and circumstances, did not warrant extreme punishment, as inflicted by the learned lower court. Furthermore, it has also been submitted that the injured Brij Nandan Singh unfortunately died before his evidence. It has also been submitted that from the evidence of PW.4 (para-6), it is evident that Brij Nandan Singh left three sons and a daughter. The occurrence is of the year 1994 and the appellants have faced rigor of trial for the last 25 years so, taking into account the cumulative effect, it has been submitted that the appellants who happens to be more than sixty years of age should be given special privilege in the background of the fact that they are ready to pay compensation in terms of Section 357 of the Cr.P.C. to a tune of rupees one lac which they are ready to deposit in favour of wife of injured Brij Nandan Singh coupled with sentence already undergone.

8. The learned Additional Public Prosecutor though opposed the submission but submitted that appellants have faced rigor at trial for 25 years, as well as there happens to be complete absence strain or acrimonious relationship amongst them, on account thereof, court may consider the aforesaid eventuality.

9. After considering the rival submission inconsonance with the facts of the case, the alternative submission having made on



behalf of appellant appears to be reasonable one is accepted whereupon, maintaining the conviction under Section 326 of the IPC, so far sentence part is concerned, same is modified as already undergone subject to payment of rupees one lac in lieu of compensation, which should be within four weeks from today, subject to condition that if there happens to be violation at the end of the appellants then in that event, the sentence so inflicted by the learned lower court will automatically survive whereupon, appellants will have to serve out the sentence so inflicted by the learned lower court along with fine. On deposit of amount, the learned lower court will notice the informant who will produce the wife of injured Brij Nandan Singh, since deceased and on proper identification the amount will be paid to her. The amount will be deposited by the appellants in the civil court. This appeals is disposed of in terms thereof.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
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