

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No. 314 of 1993**

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1. Rajendra Ram son of Mukhlal Ram.
2. Jagdish Raut son of Ramji Raut.

Both residents of Village Balua, Police Station – Paharpur, District – East Champaran.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

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**Appearance :**

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| For the Appellant/s  | : | Miss Anujashree Roy, Amicus Curiae       |
| For the Respondent/s | : | Mr. Ajay Mishra, Addl. Public Prosecutor |

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**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**

**and**

**HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)**

**Date : 06-11-2017**

Today again, on call, none appeared on behalf of the appellants. On last date also, there was non-appearance on behalf of the appellants. On last date i.e. 03.11.2017, while deferring the hearing of appeal in absence of learned counsel for the appellants, the Court had made it clear that if on the next date, again no one appears on behalf of appellants, the Court may propose to appoint Amicus Curiae to assist the Court. Since, today again, no one has appeared on behalf of the appellants and the appeal is of the year 1993, there is no reason to further defer the matter and as such, the Court



requested Miss Anujashree Roy, learned counsel, who was present in Court, to assist the Court, as Amicus Curiae, and she agreed for same.

2. Heard Miss Anujashree Roy, learned Amicus Curiae for the appellants as well as Sri Ajay Mishra, learned Addl. Public Prosecutor for the State.

3. The present appeal has been preferred by the appellants against the judgment of conviction and sentence dated 21<sup>st</sup> May, 1993 passed in Sessions Trial No. 240/10 of 1990 (arising out of Paharpur P.S. Case No. 23 of 1988) by the learned 4<sup>th</sup> Additional District & Sessions Judge, Motihari (hereinafter referred to as the 'Trial Judge'), by which, the appellants in the present case have been convicted under Section 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year.

4. It may be pointed out that two other accused persons namely Sonu Ram and Mokhtar Mian were also convicted by the aforesaid judgment dated 21-05-1993 by the learned Trial Judge for the offence under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. The said accused Mokhtar Mian was



further convicted U/S 324 of the I.P.C. & sentenced to undergo R.I. for one year. The said two accused persons had also preferred appeal before this Court, vide Cr. Appeal (DB) No. 282 of 1993 and Cr. Appeal (DB) No. 333 of 1993 respectively, but during pendency of these appeals, they died and their appeals stood abated.

5. Short fact of the case is that one Chandrika Raut, who is the informant of the present case, gave his *fardbeyan* before the officer incharge of the Paharpur Police Station on 05-03-1988 at 3:00 A.M. that on 04-03-1988 at 4:00 in the evening, while he was sitting near the door of his house alongwith his brother Gulli Raut, Bhulli Raut, Dwarika Raut, his father Bhoj Raut and mother Kushmi Devi, he saw that from the southern side, a *Hasseri* (mob) was coming towards them. It has been further stated by the informant that in the mob, there were about 12 (twelve) persons, including the appellants as well as the aforesaid deceased appellants namely Mokhtar Mian and Sonu Ram. It has been further stated by the informant in his *fardbeyan* that the accused Mokhtar Mian (deceased appellant in Cr.Appel (DB) No. 333/93) was carrying country-made gun, Jagdish Raut (appellant no. 2 of



the present appeal) was carrying *Ekari*, Rajendra Ram (appellant no. 1 of the present appeal), Tejman Mahto, Bhanu Ram, Harendra Ram and Subh Narain Mahto were carrying *Bhala*, while Mokhlal Ram, Sambhu Mahto and Satyanarain Raut were armed with *lathi*. All the aforesaid accused persons had come at the door of the house of the informant and immediately upon arriving there, Mokhtar Mian fired from the gun on the brother of the informant namely Gulli Raut. Gulli Raut received gun shot injury on left side of his waist and on the left side of his stomach, as a result whereof, his intestine came out, whereafter, he fell down on the floor. Thereafter, Mokhtar Mian fired for the second time on Gulli Raut, however; the same did not hit him. Then, Mokhtar Mian fired for the third time on the father of the informant namely Bhoj Raut hitting him on the left elbow. According to the informant, Sonu Ram (deceased appellant in Cr.Appeal DB No. 282/93) and Suraj Raut also fired from their country-made gun, however; nobody was injured. Thereafter, the appellant no. 2 (Rajendra Ram) hit from his *bhala* on the right side of the stomach of the informant, resulting in injury to him whereafter he had fallen down. The informant also



caught the *bhala* of Rajendra Ram (appellant no. 1), resulting in injury on his right hand. Thereafter, the brother of the informant Bhulli Raut came there to save his brother, whereupon, Jagdish Raut (appellant no. 2) had inflicted *Ekari* blow on the back of the brother of the informant resulting in grave injury to him. The informant and others had then made *hulla*, whereupon some villagers/neighbours came there. Upon the arrival of the villagers at the place of occurrence, the accused persons starting fleeing away and thereafter, the injured were taken to Paharpur Hospital. While the injured were being taken to Paharpur Hospital, on the way at about 8.00 in the evening, they were again surrounded by the accused persons and were again assaulted by them and thereafter, Mokhtar Mian fired from his gun on the left side of the chest of Gulli Raut from close range and Sonu Ram fired from his country-made gun on the right side of the chest of Gulli Raut, resulting in instantaneous death of Gulli Raut. Thereafter, the informant and his brother started shouting, resulting in the accused persons fleeing away.

6. On the basis of the *fardbeyan* of the informant namely Chandrika Raut, an F.I.R., vide Paharpur P.S. Case



No. 23 of 1988, was registered against 12 accused persons for the offences punishable under Sections 147, 148, 149, 302, 307, 324, 326, 447, 342 and 323 of the Indian Penal Code and Section 27 of the Arms Act, 1959. After conducting investigation, the police submitted chargesheet on 16-06-1988 and 31-10-1988 respectively against the accused persons. Thereafter, the order of cognizance was passed on 04-08-1989. After completion of all the formalities i.e. supply of police paper etc., the case was committed to the court of sessions on 13-09-1990 and thereafter, the charges were framed against the accused persons on 30-03-1991. During the course of the trial, total 11 witnesses were examined on behalf of the prosecution. During the trial, since no sufficient evidence was brought forward, seven accused persons were acquitted from the charges, however; Mokhtar Mian (deceased appellant in Cr.Appeal DB No. 333/93) and Sonu Ram (deceased appellant in Cr.Appeal DB No. 282/93) were held guilty and punished for the offence under Section 302 of the Indian Penal Code as well as Mokhtar Mian was further convicted U/S 324 of the IPC, whereas, the present appellants



were convicted and sentenced under Section 324 of the Indian Penal Code.

7. As aforesaid, the accused persons namely Mokhtar Mian and Sonu Ram have already died and their appeals have abated and the present appellants, who have been convicted under Section 324 of the Indian Penal Code and directed to undergo rigorous imprisonment for one year, have already undergone imprisonment for two months.

8. Miss Anujashree Roy, learned *Amicus Curiae* appearing on behalf of the appellants has submitted that the appellants herein are innocent, especially for the reason that though they are said to have inflicted injury on the person of the informant, however; no injury report has been either exhibited or brought on record so as to prove their guilt as well as from the evidence brought on record, it cannot be said that the prosecution has been able to prove its case beyond the pale of all reasonable doubt. It has also been submitted that the case is of the year 1988 and the sentence is of only one year, whereas, the appellants have already undergone imprisonment of about two months, hence, it would be



equitable to reduce the sentence to the period already undergone in custody.

9. Sri Ajay Mishra, learned Addl. Public Prosecutor submits that on perusal of the impugned judgment as well as materials on record, it is evident that the appellants have been rightly convicted under Section 324 of the Indian Penal Code, however; on the point of sentence, he has not seriously opposed the prayer of appellants for reducing the sentence on the ground that the alleged occurrence is of the year 1988 and since then, sufficient time has already elapsed.

10. In view of what has been discussed hereinabove and upon perusal of the materials on record, we find that the occurrence has taken place long back in the year 1988 and the injury report of the informant has not been proved which also creates a doubt about the actual incident, hence it would be in the interest of justice and equitable to reduce the sentence of the appellants to the period they have already undergone in custody.

11. Accordingly, while upholding the judgment of conviction dated 21.5.1993, the order of sentence dated



21.5.1993 is modified and the sentence is reduced to the period of custody already undergone by the appellants.

12. Accordingly, the appeal is allowed in part and both the appellants are discharged from the liability of their bail-bonds.

**(Mohit Kumar Shah, J.)**

Rakesh Kumar,J: I agree.

**(Rakesh Kumar, J.)**

Anay

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| AFR/NAFR          | AFR        |
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