

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.330 of 1993

Against judgment and order of conviction and sentence dated 1st June, 1993
passed by Shri Anwar Ahmad, 3rd Additional Sessions Judge, Nawadah in
Sessions Trial No. 303 of 1984/101 of 1986.

- =====
- 1. Bachu Rajbanshi S/o Bandhu Rajbanshi aged about 35 years
 - 2. Babulal Rajbanshi S/o Bhade Rajbanhi aged about 25 years
 - 3. Daso Rajbanshi S/o Brihaspati Rajbanashi, aged about 60 years
 - 4. Janki Rajbanshi S/o Etwari Rajbanshi aged about 30 years
 - 5. Bandhu Rajbanshi S/o Brihaspati Rajbanshi aged about 68 years
 - 6. Sahdeo Rajbanshi S/o Bandhu Rajbanshi aged about 22 years
 - 7. Sarju Rajbanshi s/o Ganauri Rajbanshi aged about 22 years
 - 8. 8Kuleshwar Rajbanshi S/o Etwari Rajbanshi aged about 35 years
 - 9. Siya Rajbanshi S/o Bandhu Rajbanshi aged about 21 years
 - 10. Lakhan Rajbanshi S/o Prayag Rajbanshi aged about 30 years
 - 11. Arjun Rajbanhi S/o Daso Rajbanshi aged about 25 years
 - 12. Rajedra Rajbanshi S/o Bhade Rajbanshi aged about 30 years
 - 13. Binda Rajbanshi s/oPrayag Rajbanshi aged about 21 years
 - 14. Jagdish Rajbanshi S/o Pyare Rajbanshi aged about 21 years
 - 15. Sidheshwar Rajbanshi S/o Ganauri Rajbanshi aged about30 years
 - 16. BrahmdeoRajbanshi S/o Bishun Rajbanshi aged about 25 years
 - 17. Raman Rajbanshi S/o Ganauri Rajbanshi aged about 20 years
 - 18. Kamta Rajbanshi S/o hhotan Rajbanshi aged about 25 years
 - 19. Bhade Rajbanshi S/o JagoRajbanshi aged about 75 years
 - 20. Ram Chandra Rajbanshi S/o Gajo Rajbanshi aged about 25 years.

- All residents of Village Purnadih Tola of Mehhkuri PS Sirdalla, except
petitioner no. 20 who is resident of Village Rabio PS Sirdalla, District
Nawadah

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====



Appearance :

For the Appellant/s : Mr. Shailendra Kumar Sinha

For the Respondent/s : Mr. Abhimanyu Singh, APP

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 10-10-2017

Twenty appellants herein have filed this appeal challenging their conviction under Section 302/149 of the Indian Penal Code read with Section 379 and 411 IPC by judgment and order dated 1st June, 1993 passed by the 3rd Additional Sessions Judge, Nawada in Sessions Trial No. 303 of 1984/101 of 1986.

From the report received from the Superintendent of Police, Nawadah, it is seen that out of the 20 appellants, appellant no. 1 Bachu Rajbanshi son of Bandhu Rajbanshi, appellant no. 2 Babulal Rajbanshi son of Bhade Rajbanshi, appellant no. 5 Bandhu Rajbanshi son of Brihaspati Rajbanshi have expired and, therefore, the appeal so far as these appellants are concerned, stands abated. Accordingly, with regard to these appellants, namely appellant nos. 1, 2 and 5, the appeal stands dismissed as abated.

The remaining appellants, appellant nos. 3, 4, 6, 7, 8, 9 and 10, they have been convicted under Section 302/149 and 379 IPC to undergo life imprisonment and two years rigorous imprisonment,



respectively; and appellant nos. 11 to 20 have been convicted under Section 379 IPC and sentenced to undergo two years rigorous imprisonment.

It is the case of the prosecution that on 21.11.1983 at 8 A.M. a *fardi* was lodged by Sub-Inspector A.K.Singh to the effect that at 6 A.M. when Jagat Kishore Singh and Bangali Singh were going to Village Paroriya in search of labourers to harvest their standing paddy and making bundles of paddy, the accused (now dead), Bachu Rajbanshi, Siya Rajbanshi, Kuleshwar Rajbanshi, Lakhan Rajbanshi, Babulal Rajbanshi and one Sarjuga Rajbanshi, who died during the trial, armed with bomb, pistol and lathi surrounded them and attacked Jagat Kishore Singh with an intention to kill. Bangali was also seriously injured. They ran away after looting the paddy which was harvested. The amount of paddy looted was more than of Rs.1000/-. Based on the same, the accused were prosecuted.

Having heard learned counsel for the parties we find that the offence taken place on 21.11.1983 and the main accused persons who caused the injury, which proved fatal was caused by Bachu Rajbanshi who is now died. The accused persons who are named to be present along with arms and weapons like pistol and lathi were Sarju Rajbanshi, Siya Rajbanshi, Babulal Rajbanshi, Lakhan Rajbanshi. Babulal Rajbanshi has died during the pendency of this appeal as



indicated hereinabove and Sarjuga Rajbanshi had died during the trial itself. Others, namely, Sahdeo Rajbanshi, Siya Rajbanshi were minor during the commission of offence. As far as the other appellant who was responsible for offence committed under Section 302 IPC is concerned, namely, Binda Rajbanshi, had also died during pendency of the trial and there is no specific overt act attributed to the appellants Daso Rajbanshi, Janki Ranbanshi, Sarju Rajbanshi and Kuleshwar Rajbanshi to implead them for the offence under Section 302 IPC.. We find from the record that when the offence was committed on 21st November, 1983, Sahdeo Rajbanshi who is convicted under Section 302/149 IPC was only 12 years of age, Sarju Rajbanhi was also 12 years of age, Siya Rajbanshi was also 11 years of age. They were all minors and were required to be tried by the Juvenile Court and cannot be sentenced to undergo more than three years imprisonment. Therefore, their conviction under Section 302 IPC for life imprisonment is clearly unsustainable. As far as appellant no. 5 Bandhu Rajbanshi is concerned, he was 68 years of age when the offence was committed and it is informed to us that he is also dead. Appellant no. 3 Daso Rajbanshi is now according to the record more than 85 years of age and no specific overt act is attributed to him. He is convicted with the aid of Section 149 IPC and only shown to be present on the spot. Similarly is the case of Janki Rajbanshi who is



also shown to be present at the place of occurrence but no specific overt act is attributed to him.

That leaves only two appellants, namely, appellant Kuleshwar Rajbanshi and appellant Lakhan Rajbanshi, who have been convicted for offence under Section 302/149 IPC the evidence goes to show that except for showing them to be present in the spot no specific overt act is attributed to them. That being so, with regard to the first ten appellants who have been convicted under Section 302/149 IPC, the main accused who assaulted the deceased was Bachu Rajbanshi who has died during the pendency of the appeal and now with regard to the other appellants for the incident taken place in the year 1983, after a period of 34 years, it is not proper to sentence them to undergo the remaining period of jail sentence as they have undergone jail sentence between four to five years till now.

Similarly, accused-appellant nos. 11 to 20 have been convicted under Section 379 IPC to undergo rigorous imprisonment for two years and out of them Arjun Rajbanshi, Binda Rajbanshi, Sidheshwar Rajbanshi, Brahmdeo Rajbanshi, Raman Rajbanshi, Kamta Rajbanshi and Ramchandra Rajbanshi were all minors on the date of incident and, therefore, their trial by the regular court was not proper and their trial stands vitiated. They have also been in custody from a period eight months to one year and, therefore, now their



appeal has to be allowed and they be discharged from the proceeding.

As far the appellant no. 12 Rajendra Rajbanshi and appellant no. 19 Bhade Rajbanshi are concerned, Bhade Rajbanshi has already died and that leaves only one appellant, namely, Rajendra Rajbanshi who is also convicted for two years rigorous imprisonment under Section 379 IPC and it is sufficient and in the interest of justice to convict him and sentence for the one already undergone by him.

Even though there is an allegation of the accused persons using pistol, but from the postmortem report and the statement of the doctor none of the injured persons suffered any gun shot injury or injury caused by use of a fire-arm as is evident from the statement of PW 11 Dr. Jwala Prasad and the postmortem report at pages 83-84 of the paper book.

In the totality of the circumstances it is seen that the incident in question took place in the year 1983, i.e. 34 years back, prosecution in the trial court continued for 10 years, it was concluded in the year 1993, the appeal filed before this Court was taken up after 20 years, and in this process appellant no. 1 Bachu Rajbanshi who is the main accused person and instrumental in causing the injury has expired. Apart from him, two other appellants Babulal Rajbanshi and Binda Rajbanshi, i.e. appellant nos. 2 and 13, have also expired. Appellant no. 3 was more than 85 years of age when the offence took



place and no specific overt act is attributed to him. Appellant no. 4 has been convicted with the aid of Section 149 IPC and no specific overt act has been attributed to him. Appellant no. 6 Sahdeo Rajbanshi, appellant no. 7 Sarju Rajbanshi and appellant no. 9 Siya Rajbanshi were minor. Appellant nos. 8 and 10 Kuleshwar Rajbanshi and Lakhan Rajbanshi are only named in the F.I.R. There is no evidence to show as to what was the role played by them in commission of the offence. They are simply named as persons present at the time of commission of the offence.

That being so, the first 10 appellants, who have been convicted under Section 302 IPC are entitled to the benefit of being let off as there is no specific overt act by them for having committed the offence of murder, and as far as the remaining appellant nos. 11 to 20 are concerned, they are only convicted to undergo two years rigorous imprisonment for the offence under Section 379 IPC. They have been in custody ranging from 8 to 11 months and now after 34 years of the incident no useful purpose would be served by sending them back to custody, particularly when as indicated hereinabove most of the appellants, namely, Arjun Rajbanshi, Binda Rajbanshi, Sidheshwar Rajbanshi, Brahmdeo Rajbanshi, Raman Rajbanshi, Kamta Ranjabshi and Ram Chandra Rajbanshi were minor and, their trial stands vitiated.



Accordingly, the appeal is disposed of in view of the circumstances narrated and the appellants be released after discharging their bail bonds on the basis of the sentence already undergone by them.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	14/10/2017
Transmission Date	N.A.

