

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.231 of 1994

1. Nawal Kishore Singh
2. Nand Kishore Singh
Both sons of Sachidanand Singh.
3. Ramadhar Singh, son of Futuni Singh
4. Kedar Singh, son of Badaiyanath Singh
All resident of village Salariya, Police Station- Kesaria, District- Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 316 of 1994

Arun Singh, son of Kedar Singh, resident of village Salariya, Police Station
Kesariya, District- East Champaran, (Motihari).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 281 of 1994

Sachidanand Singh, son of Bhagwat Singh, resident of village- Subaiya,
Police Station- Kesaria, District- Champaran.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :
(In Criminal Appeal (DB) No. 231 of 1994)
For the Appellant/s : Mr. Rakesh Kumar Sinha
For the Respondent/s : Dr. Mayanand Jha, APP
(In Criminal Appeal (DB) No. 316 of 1994)
For the Appellant/s : Mr. Rakesh Kumar Sinha
For the Respondent/s : Dr. Mayanand Jha, APP
(In Criminal Appeal (DB) No. 281 of 1994)
For the Appellant/s : Mr. Rakesh Kumar Sinha
For the Respondent/s : Dr. Mayanand Jha, APP

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL



and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date : 14-10-2017

Appellant Arun Singh of Cr. Appeal (DB) No. 316 of 1994 and the four appellants of Cr. Appeal (DB) No. 231 of 1994 were held guilty by the learned Trial Court in S.T. No. 194/28 of 1990/92. Appellant Arun Singh was convicted under Section 302 and 148 IPC whereas appellants of Cr. Appeal No. 231 of 1994 were held guilty under Section 302/149, 147 and 323 IPC. At the time of judgment, it appears, appellant Sachidanand Singh of Cr. Appeal (DB) No. 281 of 1994 had absconded. The conviction was recorded against all the appellants except Sachidanand Singh in the aforesaid Sessions Trial on 12th May, 1994. The judgment of conviction in the case of appellant Sachidanand Singh of Cr. Appeal No. 281 of 1994 was recorded by the same Trial Judge in S.T. No. 197/56 of 1994/94 on 18.05.1994. He too was held guilty under Section 302/149, 147 and 323 of IPC. The maximum sentence imposed on the appellants either under section 302 or 302/149 IPC is to suffer R.I. for life. Assailing the judgments of their conviction, the present set of appeals are filed.

2. The prosecution case, as adumbrated in the First Information Report (Ext.1) lodged by P.W. 4 on 3.7.1987 at 4 p.m.



at the State Dispensary, Sahebganj is that Ganesh Rai (P.W.3) had land which was cultivated by the deceased as *bataidar*. Appellant Kedar Singh had also land contiguous thereto. On the relevant afternoon, appellant son was in the field. The deceased Laxman Rai abused the appellant Arun Singh of having cut *janera* and paddy crop from his field which was being carried by Arun Singh. A dispute arose over such cutting of crop from the field. The prosecution case is that the appellant Arun Singh called his family members which includes the appellants herein who were armed with danda and farsa. All the appellants herein, except Ramadhar Singh, were armed with lathi whereas appellant Ramadhar Singh had arrived armed with farsa. A quarrel ensued between them which was followed by exchange of hot tiff between the party. All the accuseds then started assaulting deceased Laxman Rai. The witnesses, including the informant, tried to intervene when they too were assaulted with lathi and danda. In the marpit, the deceased, P.W.1 Ramyash Rai, P.W.2 Ramnandan Rai, P.W.3 Ganesh Rai and P.W.4 Ram Chandra Rai (informant) received injuries caused either by hard blunt substance or the blunt part of farsa. The injureds went to the State Dispensary where, in course of treatment, Laxman Rai succumbed to the injury sustained by him on head caused by the blunt part of farsa wielded by appellant



Arun Singh. On recording the fardbeyan, investigation was assigned to and taken up by P.W.5 Guru Nand Sharma, who, on conclusion of investigation, led the charge-sheet leading to the present trial on the file of learned 6th Additional Sessions Judge, Motihari.

3. In order to prove the charges, the prosecution examined 07 P.Ws. P.W. 1 Ramyash Rai was present at the place of occurrence and has narrated the case as an eye witness. In course of the occurrence, he too received injury and was treated at Sahebganj State Dispensary. P.W. 2 Ramnandan Rai, P.W.3 Ganesh Rai and the informant (P.W.4) were also present at the scene of occurrence. They have narrated the ocular account of the prosecution case. All these P.Ws. in course of occurrence also received injuries at the hands of the appellants and were treated at the Sahebganj State Dispensary by P.W.6 Dr. Shaligram Singh. Their injury reports are on record as Exts. 3/2, 3/3, 3/4 and 3/1 respectively P.W.5 is the investigating officer of the case who conducted the investigation, got the post mortem held on the cadaver which is proved by Dr. B.P. Verma (P.W.7) as Ext.4. P.W. 6, as stated above, is the doctor who was then posted at Sahebganj State Dispensary and had treated the witnesses including the deceased. The injury report of the deceased Laxman Rai is Ext. 3.



In appreciation of the evidence adduced by the prosecution, the learned Trial Court held that charges framed against the appellants were proved beyond shadow of reasonable doubts. Accordingly they were convicted in the manner stated above. The defence of the appellants was their false implication in this case.

4. It has been submitted by the Counsel for the appellants that for the incident that occurred on the relevant date, appellant Nawal Kishore Singh had also lodged the case (Ext.D) against the deceased and P.Ws.1, 2, 3 and 4. In the said incident, appellants Nawal Kishore Singh, Nand Kishore Singh, Kedar Singh and Arun Singh had sustained injuries at the hands of the present prosecution side. The defence has brought on record their injury reports furnished by Dr. Ramakant Prasad Sinha (D.W.1) at the Kesaria State Dispensary. The relevant exhibits are Ext.A, A/1, A/2, A/3 respectively. Diverse submissions have been advanced on behalf of the appellants to criticize the judgment of conviction. It is contended that the manner of assault has not been properly established by the prosecution. The injuries sustained by several of the appellants at the hands of the prosecution party have not been explained. In fact, in course of their respective depositions, they have denied to have caused any injury to the appellants. The prosecution case becomes doubtful as the witnesses have not



narrated the true version. The main plank of the submission of the appellants is that even if the evidence on record produced by the prosecution is believed, the present case would not constitute an offence under Section 302 IPC. There was absolute lack of intention on the part of the said appellant to commit the murder of the deceased. It was unfortunate that he succumbed to the injury caused on head by appellant Arun Singh but there is complete lack of intention on the part of the appellants to commit the murder of the deceased. Our attention in this regard has been drawn to the relevant evidence in order to impress upon us that it was a case of free fight between two parties wherein both parties received injuries. In a case like this, particularly in the context of the evidence on record, it cannot be inferred that such assault with the blunt part of farsa on the head of the deceased was intended to cause his death.

5. Learned APP appearing for the State, on the other hand, submits that the judgment of conviction does not merit interference by this Court, particularly when from the evidence and documents filed on behalf of the defence, material aspects of the prosecution case stand admitted. The evidence of all the eye witnesses namely P.Ws.1, 2, 3 and 4 cannot be disbelieved as their presence at the scene of occurrence was natural. They had received



injuries in course of occurrence at the hands of the appellants. The evidence of an injured witness assumes greater significance/relevance. There is nothing in their cross-examination to discredit them.

6. We have carefully gone through the evidence on record. Counsel for the appellants has not been able to show any material discrepancy in the ocular description of the occurrence stated in Court by P.Ws. 1, 2, 3 and 4. These witnesses had also received injuries and were treated at the State Dispensary along with the deceased. The doctor attending on them has been examined as P.W.6. We have carefully gone through their injury reports (Exts. 3/1, 3/2, 3/3, 3/4). It is difficult to accept the contention of the appellant that they were self inflicted or manufactured injuries. Their evidence establish the place and time of occurrence, the manner of assault and the complicity of the appellants in the crime.

7. Having found the evidence adduced by the prosecution implicating the appellants in the crime truthful and reliable, the Court proceeds to examine the main submission of the Counsel for the appellants. It has been submitted that the evidence on record do not make out a case under section 302 IPC. There is nothing on record to show that there was any premeditation or pre-planning to commit the murder of the deceased. It was all on the



spur of the moment. No special preparation was made by the appellants. Both parties, it would appear from the record, had indulged in marpit. Intention to commit murder is the soul of the offence. If such intention is found lacking, the conviction of the appellants either under section 302 or 302/149 IPC would not be sustained.

8. We find from the post-mortem report as well as the injury report prepared in respect of the deceased that the injury found on head of the deceased was not caused by sharp cut weapon. It was a lacerated wound. Counsel for the appellants has, therefore, hammered before us that if the sharp part/portion of the 'farsa' was not used, this would eloquently indicate that the assaulter (appellant Arun Singh) had not intended to cause his death. If the appellants had come together armed with lathi and farsa and participated in the crime, the act of one would make the others accused accompanying him liable for the said act.

9. Having noticed the special features of the case emerging from the record, we have no hesitation in holding that the conviction of the appellants under section 302 IPC or under section 302/149 IPC as imposed by the Trial Court would not be sustained. There was no intention on the part of the appellants, particularly, appellant Arun Singh to cause death. However, the



evidence is replete on record to show that they had the knowledge of the consequences of such assault with a sharp cut weapon although from the blunt part on head. Taking into account the submissions made at the Bar and after perusing the relevant evidence produced by the prosecution, the Court has no hesitation in holding that the appellants were guilty of having committed offence punishable under Section 304 Part-II/149 IPC. The conviction recorded against them under Sections 147, 323 and 148 IPC are, however, maintained.

10. The occurrence was committed in the year 1987. The appellants had undergone the rigours of the trial for fairly long period of time. In our view, the ends of justice shall be sub-served if appellant Arun Singh who was the author of the assault on the head of the deceased is sentenced to suffer R.I. for 07 years with fine in the sum of Rs. 20,000/-. In default of payment of fine to further suffer R.I. for 01 year whereas rest of the appellants namely appellant Nawal Kishore Singh, Nand Kishore Singh Ramadhar Singh, Kedar Singh and Sachidanand Singh are directed to suffer R.I. for 05 years. As the Counsel for the appellants has not been able to point out to us the period of incarceration already undergone by the appellants, who are presently on bail, we cancel the bail bonds furnished by the appellants. They are directed to



surrender before the Court below to serve the remaining sentence,
if not already undergone by them.

11. With the modification in the conviction and sentence(s)
the appeals are dismissed.

(Kishore Kumar Mandal, J)

(Prakash Chandra Jaiswal, J)

Pankaj/-

AFR/NAFR	NAFR
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