

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.693 of 2015**

Arising Out of PS.Case No. -54 Year- 2000 Thana -TURKAULIYA District-
EASTCHAMPARAN(MOTIHARI)

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1. Ramdeo Sah Son of Late Rudal Sah
2. Chandradeo Sah Son of Late Rudal Sah
3. Brahmdeo Sah Son of Late Rudal Sah
4. Banka Sah Son of Sri Maharaj Sah All residents of village - Baswariya Tola,
P.S. Turkaulia, District - East Champaran Appellant/s

Versus

1. The State of Bihar Respondent/s

with

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Criminal Appeal (SJ) No. 782 of 2015

Arising Out of PS.Case No. -54 Year- 2000 Thana -TURKAULIYA District-
EASTCHAMPARAN(MOTIHARI)

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1. Sakaldeo Sah son of Late Rudal Sah resident of village - Baswariya Tola, P.S. -
Turkaulia, District - East Champaran. Appellant/s

Versus

1. The State of Bihar. Respondent/s

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Appearance :

(In CR. APP (SJ) Nos.693 & 782 of 2015)

For the Appellant/s : Mr. Umesh Chandra Verma, Advocate
Mr. Abhishek Kumar, Advocate
For the Respondent/s : Mr. Binod Bihari Singh, APP
Mr. Sujit Kr. Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 25-07-2017

Cr. Appeal (SJ) No. 693/2015 wherein Ramdeo Sah, Chandradeo Sah, Brahmdeo Sah and Banka Sah are the appellants and Cr. Appeal (SJ) No. 782/2015 wherein Sakaldeo Sah is the appellant arise out of against common judgment of conviction dated 05.10.2015 and order of sentence dated 08.10.2015 passed by 2nd Additional Sessions Judge, East Champaran, Motihari in Sessions Trial No. 308 of 2015/23 of 2015 whereby and whereunder all the appellants have been found guilty for an offence punishable under Section 148 IPC and sentenced to undergo RI for 2 years, under



Section 341 IPC and sentenced to undergo SI for 7 days, appellant Sakaldeo Sah has been found guilty for an offence punishable under Section 307 IPC and sentenced to undergo RI for 7 years as well as fine of Rs. 10,000/- in default thereof, to undergo SI for six months additionally. No separate sentence has been inflicted for offence punishable under Section 324 IPC while remaining appellants have been found guilty for an offence punishable under Section 307/149 IPC and each one has been sentenced to undergo RI for 7 years as well as to pay fine of Rs. 10,000/- in default thereof, to undergo SI for six months with a further direction to run the sentences concurrently.

2. PW-5, Chanda Devi gave her Fard-e-beyan on 20.03.2000 at about 10 PM at the clinic of Dr. Ajay Kumar situated at Mohalla-Raja Bazar of Motihari Town stating therein that on the same day at about 7:00 PM, she was at her Darwaza. Deck was being played which was being enjoyed by her husband along with co-villagers. At that very time, Ramdeo Sah, Chandradeo Sah, Hunar Sah, Brahmdeo Sah, Sakaldeo, Lalbabu Sah, Harendra Sah,, Vikram Sah, Ramayana Sah, Ramagya Sah, Banka Sah and Langtu Sah, co-villagers forming an unlawful assembly having variously armed, raided her Darwaza and on an order of Ramdeo and Sakaldeo, they began to assault her husband with Lathi. Then thereafter, Banka gave dagger to Sakaldeo and ordered to kill whereupon Sakaldeo inflicted repeatedly Chhura blows over her husband causing injury over his



stomach. His intestine came out. There was profuse bleeding. Sundar, Madan, Nigam, Shankar, Virendra and other rushed to rescue her husband as well as also seen the occurrence. Then thereafter, injured was lifted to the clinic of Dr. Ajay Kumar where his treatment was going on. The motive for occurrence has been shown as, in absence of her husband who had gone to Kathmandu, Sakaldeo, Ramdeo and others brutally assaulted her for which a case was instituted. Accused persons were coercing to compromise the case and for that, they had also threatened her husband. They are insisting upon that either to compromise the case or they will have to lose their life.

3. After registration of Turkaulia PS Case No. 54/2000, the investigation commenced and concluded by way of submission of charge-sheet in different stages on account of which accused persons were taken up for trial in same manner subsequently, been amalgamated and then one trial was allowed to proceed which ultimately concluded in a manner, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has further been suggested that the date of occurrence was Holi and on the eve of Holi, the prosecution party got deeply boozed and during course of rejoicing the same having a bottle of wine in his hand, fell down whereupon broken piece of glass pierced his stomach causing injury which has been taken as a boon for



institution of this case in the background of longstanding enmity persisting amongst the parties. However, appellants did not produce oral nor documentary evidence in their support.

5. In order to substantiate its case, prosecution examined altogether six witnesses out of whom PW-1, Hira Lal Sah, PW-2, Bagar Sah, PW-3, Jhigan Sah, PW-4, Binod Kumar, PW-5, Chanda Devi and PW-6, Dr. Ajay Kumar. Side by side had also exhibited Ext-1, Formal FIR, Ext-Marked as 'X' Injury report.

6. As stated above, neither oral nor documentary evidence has been adduced on behalf of appellants.

7. Learned counsel for the appellant challenging the judgment of conviction and sentence recorded by the learned lower court has submitted that the learned lower court should have considered that it happens to be obligation on the part of the prosecution to substantiate its case beyond all reasonable doubt without considering the plea of the defence as well as whether defence has succeeded to substantiate the same. In order to buttress such plea, it has been submitted that so far instant case is concerned, the learned lower court had gone on wrong premise because of the fact that enmity as is evident, is admitted one. Enmity is a double edged sword. It may be a motive for commission of occurrence, in likewise manner, it may be a cause for false implication. Thus, the learned lower court should have properly scrutinized the evidence, which lean in favour of



appellants exposing their false implication and so, would have acquitted.

8. Furthermore, it has been submitted that I.O. has not been examined. It is admitted fact that both the parties have their houses adjacent to each other. From the evidence of PW-1, the injured if taken together with the evidence of PW-5, the informant, it is crystal clear that they both who happens to be husband and wife are not consistent over place of occurrence. That being so, the objective finding relating to the P.O. was necessary which, on account of non examination of I.O. is found completely cassaked whereupon interest of appellants are highly prejudiced. Then, it has been submitted that none of the independent witnesses have come forward to support the case of the prosecution. Whoever been examined, PWs-2, 3 and 4 have not supported the case of the prosecution and so, the evidence which now remained is of husband and wife, PWs-1 and 5 along with doctor, PW-6. It has also been submitted that right from initial stage, in order to give severity over the manner of occurrence, the informant PW-5, had stated that there was repetition of blow. Even during course of evidence, she had deposed that there was repetition of blow but neither PW-1 nor PW-6, Doctor had corroborated. The aforesaid eventuality is also suggestive of the fact that PW-5 was not at all an eyewitness to the occurrence.

9. Now remains the evidence of PW-1, the injured and



PW-6, the doctor. Coming to the evidence of PW-1, it has been submitted that it was a Holi. None had stated that at the Darwaza of accused persons, taperecorder was being played, youngsters were present. That means to say, it was the prosecution who was going with rave party and not the accused. Their activities were obscene. That being so, it could not be inferred even accepting that the parties were on strained relationship, that appellants were carrying intention to commit murder or injury was caused with knowledge that it was sufficient to cause murder. In worst case, considering the evidence in its totality the conviction and sentence recorded by the learned lower court under Section 307 IPC is not at all justified.

10. Learned APP refuting the submissions made on behalf of appellants, has submitted that making criminal trespass after forming an unlawful assembly being variously armed and manner whereunder PW-1, the injured was encircle and inflicted Chhura blow is indicative of the fact that in a pre-planned manner, the whole exercise was completed. It has also been submitted that from the evidence of doctor, it is evident that victim narrowly survived though 6" depth was sufficient to do away his life. Furthermore, it has also been submitted that injury report could not be properly brought up on record as original case diary containing injury report got missed as a result of which was substituted by carbon copy and so, the opinion which the doctor might have given subsequently, could not be



obtained, though substantiated his finding.

11. It has also been submitted that Evidence Act does not prescribe any kind of embargo during course of appreciation of evidence of the witness nor stick over number in order to substantiate the case and for that referred Section 134 of the Evidence Act. So, with the aid of Section 134 of the Evidence Act, it has been submitted that when the evidence of PW-1, the injured is to be taken along with evidence of PW-6, the doctor, it is found that the ocular evidence is found corroborated with the medical evidence and that being so, considering the nature of the injury, the part of the body where injury has been inflicted, the nature of weapon which the doctor had during cross-examination properly explained justify the finding recorded by the learned lower court. As such, the appeal is fit to be dismissed.

12. Admittedly, PWs-2 and 3 resiled from their earlier statement and on account thereof, they were declared hostile. However, so far injury over the person of PW-1, is concerned, PW-2 had corroborated the same and to that extent, his evidence is found acceptable .

13. Now before coming to the ocular evidence, first of all, evidence of PW-6, doctor is to be taken note of who had examined PW-1 on 20.03.2000 and found the following injuries:-

a) A straight cut on the front of abdomen ragged margin on right side measuring about 8 C.M. x 1 C.M. penetrating to the



abdominal cavity. On operation abdominal wall was found lacerated and peritoneum was pierced by the weapon. Mode of injury, Sharp weapon, Age of injury, within six hours.

14. During course of cross-examination at para-5, the defence had himself encircled its case in accordance with allegation by way of getting the answer at the end of the doctor that this injury could not have been on account of pointed glass, sickle, normal knife rather it could be only account of dagger blow. Certainly, dagger happens to be more dangerous weapon than the knife and so, its use ultimately exposed the intention or knowledge of the user.

15. After going through the evidence of PW-6, it is evident that during course of evidence he was confronted with photo copy of the injury report. Neither prosecution had asked for over genuineness of that very injury report whether it happens to be without any possibility of tampering and in likewise manner, the defence had also failed to cross-examine over its propriety and that happens to be reason behind that learned lower court had not accepted the injury report rather it has been marked as 'X' for identification. It is also evident from the deposition of the doctor that he had not gave his definite opinion regarding nature of the injury though had deposed that the same might have been issued subsequently. However, absence thereof, the nature of injury is lacking.

16. PW-1 is the victim. He had deposed that the



occurrence is of about 3 years 4 months. It was 7:00 PM. He was at his house and was hearing taperecorder. Some boys of his village were also present. It was Holi. During midst thereof, Ramdeo Sah, Chandradeo Sah, Banka Sah, Brahamdeo Sah, Sakaldeo Sah, Bikrama Sah, Lalbabu Sah, Harendra Sah, Langru Sah, Ramayan Sah, Ramagya Sah armed variously came. Banka Sah was carrying one Chhura. No sooner than their arrival, they began to assault. On the order of Ramdeo Sah, Banka Sah passed over Chhura to Sakaldeo Sah who inflicted Chhura blow over his stomach as a result of which, he sustained severe injury. Intestine came out. Then thereafter, he pressed the same and sat. He was taken to Motihari at the Clinic of Dr. Ajay Kumar where he was treated. As he was unconscious so, his wife got recorded her Fard-e-beyan. Later on, his statement was also recorded by the police. He had also stated that 5-6 months ago, he had instituted one case against accused persons for causing Maar-peat whereunder accused persons had gone behind the bar. After being released, they put consistent pressure to compromise which they refused and in the aforesaid background, this occurrence has been committed. He had also identified the accused in dock. During cross-examination at para-5, he had admitted that save and except Banka Sah, other co-accused belonged to same family. In para-6, he had admitted that on the eve of Holi, the used to take some sort of intoxicants but on that day, they had not taken. They had taken only



Coca Cola. They were rejoicing. About 30-40 persons were present. Holi song was going on. Then had denied the suggestion that they were creating obscene situation on account of intoxication. He had further stated that the aforesaid taperecorder belonged to Shambhu Singh. He had further stated that there was no quarrel with the accused persons on the same day. In para-10, he had further stated that Sakaldeo Sah had gone to jail and he was the person who was giving threatening and for that, he had complained before the S.P. In para-11, he had further stated that the accused persons had not objected over their activity. In para-12, he had further stated that accused persons were also sitting at their Darwaza. 10-12 persons were sitting who happens to be accused in the present case. He is unable to say whether accused persons were taking/consuming intoxicant. Then at para-14, he had stated that occurrence took place in front of his house. Nothing had happened on the road. In para-15, he had stated that darkness had not fallen at the time of occurrence. In para-16, he state that he was not assaulted by Lathi and not by Phatta. Seema was assaulted with Lathi and Phatta but how many times he was unable to say. He was simply given Chhura blow. In para-17, he had stated that accused persons came, encircled him without raising uproar. Some of them had thrown away the taperecorder. 30-40 boys were present who escaped but only Shambhu and Birendra remained there. In para-19, he had stated that there was no altercation. Sakaldeo pierced Chhura.



In para-20, he had stated that he had not tried to escape therefrom as he was encircled. Then there happens to be cross-examination over his status after sustaining of injury under para-21 and 22. In para-27, he had shown approximate length and breadth of the Chhura. Then had denied the suggestion that as they were in drunken state, on account thereof, they lost their control, fell down and sustained self inflicted injury.

17. PW-5 is the wife of the informant. She had deposed that on the alleged date and time of the occurrence, Jhigan Sah, Bagar Sah, Hunar Sah, Madan Sah along with her husband were at her *Darwaza* where taperecorder was being played. At that very time, all the accused, Ramdeo Sah, Chandradeo Sah, Banka Sah, Brahamdeo Sah, Sakaldeo Sah, Bikrama Sah, Lalbabu Sah, Harendra Sah, Langru Sah, Ramayan Sah, Ramagya Sah_variously armed with came and encircled her husband. On the order of Ramdeo, Banka gave Chhura to Sakaldeo who repeatedly (thrice) over her husband as a result of which, intestine came out. She began to cry. Villagers came and lifted her husband to Motihari where he was treated at the clinic of Dr. Ajay Kumar. Police came before whom, she had given her Fard-e-beyan. During cross-examination, she had stated that she took her husband to the clinic of Dr. Ajay Kumar where police came after having been informed. In para-9, she had stated that her husband remained admitted for 14 days. In para-15, she had stated that neither her



husband nor the accused persons had quarreled before the occurrence. In para-19, she had stated that accused persons came at her Darwaza, none of male was present. Only kids were there. Accused persons had not gone inside her house. Only one accused was carrying Chhura. Even seeing Chhura neither she nor her husband had gone inside the house as, the accused persons after coming to her Darwaza, encircled her husband. After sustaining injury her husband fell down on the earth. No repetition of blow was given. None tried to apprehend the assailant because of the fact that none was present. Then had disclosed that other accused were in drunken state but, he who gave Chhura blow was not drunk. Then at para-20, she had stated that Chhura was pierced. Her husband was taken to hospital. In para 22, she had stated that none other than her husband was assaulted by the accused persons. She had denied the suggestion that her husband sustained self inflicted injury on account of being intoxicated.

18. Though from the record it is apparent I.O. has not been examined but from the evidence of PW-1 and 5, it is apparent that they are consistent over place of occurrence. Furthermore, during course of argument appellant also failed to convince that on account of non examination of the I.O., their interest had been prejudiced. Furthermore, it has also been found from the record that though examination of PW-6, the doctor was there during course of which, no objection was raised on behalf of appellant and on account thereof, the



appellant is not in a position to challenge the same. However, nature of injury is not at all found properly identified at his end.

19. PW-5 had stated that her husband was admitted for 14 days at the clinic of PW-6 which is not at all found substantiated either by PW-1 or by PW-6. Apart from this, from the evidence of PWs-1, 5 as well as 6 there happens to be single Chhura blow over the person of PW-1 and from the evidence of PW-5, it is also evident that there was no male member present at her Darwaza at the time of occurrence and so, there was no intervening circumstance, even then as is evident from para-19 of PW-5 that no repetition of blow was given.

In State of *Madhya Pradesh v. Mohan* as reported in (2013) 14 SCC 116, it has been held as follows:-

13. High Court, in our view, while reducing the sentence, has not properly appreciated the scope of [Section 307](#), [IPC](#) under which the respondents were found guilty. The relevant portion of [Section 307](#) reads as follows:

“307. Attempt to murder.-- Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.”

14. High Court was of opinion that injuries has not been caused on vital parts of the body. In order to attract [Section 307](#), the injury need not be on the vital parts of the body. In order to attract [Section 307](#), causing of hurt is sufficient. If anybody does any act with intention or knowledge that by his act he might cause death and hurt is caused, that is sufficient to attract life imprisonment.



[Section 307](#) uses the word ‘hurt’ which has been explained in [Section 319](#), [IPC](#) and not “grievous hurt” within the meaning of [Section 320](#), [IPC](#). Therefore, in order to attract [Section 307](#), the injury need not be on the vital part of the body. A gun shot, as in the present case, may miss the vital part of the body, may result in a lacerated wound, that itself is sufficient to attract [Section 307](#). High Court is, therefore, in error in reducing the sentence, holding that the injury was not on the vital part of the body. Period undergone by way of sentence also in our view is not commensurate with the guilt established.

20. So, while perceiving the offence punishable under Section 307 IPC, it is apparent that it is not the nature of the injury which commands rather it is action of the accused which is to be taken into consideration. So far instant case is concerned there happens to be specific case that Banka Sah who was carrying Chhura had handed over it to Sakaldeo Sah who pierced the same. True it is that single injury has been given but depth of the injury speaks otherwise and further, from the evidence of the doctor, PW-6, the defence by way of cross-examination affixed as well as exposed the activity of the accused whereunder the doctor had said that this injury could not be caused by means of simple knife rather it could have been caused by a dagger.

21. That being so, the conviction and sentence recorded against Sakaldeo Sah under Section 307 IPC is found duly substantiated and in likewise manner, relating to Banka Sah as well as Ramdeo Sah under Section 307/34 of the IPC which is permissible under the garb of Section 222 of the CrPC. So far remaining



appellants are concerned, there happens to be clear-cut evidence on the score of their absence relating to active participation during course of occurrence, even suggesting that they have not hurled Lathi blow upon any other including PW-5 and so, the conviction and sentence recorded against appellant, Chandradeo Sah and Brahamdeo Sah are set aside. Cr. Appeal (SJ) No. 693/2015 relating to them is allowed.

22. Now coming to sentence relating to appellant, Sakaldeo Sah, needs no interference. With regard to Ramdeo Sah and Banka Sah, in the facts and circumstances of the case, the same is reduced to RI for 2 years retaining the fine amount as well as default clause. So far conviction against Sakaldeo Sah relating to Section 324 IPC is concerned, in the facts and circumstances of the case, the same is not attracted and to that extent, the judgment impugned is set aside.

23. Consequent thereupon, Cr. Appeal (SJ) No. 782/2015 filed on behalf of Sakaldeo Sah is dismissed with the aforesaid modification. So far Cr. Appeal (SJ) No. 693/2015 is concerned as found and held above, the appeal against appellants Brahamdeo Sah and Chandradeo Sah are allowed. So far Ramdeo Sah and Banka Sah are concerned, upholding the conviction, the sentence has been modified and in terms thereof, appeal is dismissed. Both the appellants are on bail, hence their bail bond is hereby, cancelled directing them to surrender before the learned lower court to serve out the remaining part of sentence failing which the learned lower court



will be at liberty to take proper legal recourse, while appellant Sakaldeo Sah is under custody which he will remain till saturation of the period of sentence.

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(Aditya Kumar Trivedi, J)

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CAV DATE	N/A
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Transmission Date	

