

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1119 of 2012

Arising Out of PS.Case No. -null Year- null Thana -null District- -

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1. Lal Deo Rai S/O Sri Ramanand Rai Resident Of Village- Terasiya, P.S- Ganga Bridge, District- Vaishali.

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 1084 of 2012

Arising Out of PS.Case No. -169 Year- 2006 Thana -null District- VAISHALI(HAJIPUR)

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Munna Rai

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No.1119 of 2012)

For the Appellant/s : Mr. Hitesh Suman, Advocate

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

(In CR. APP (DB) No.1084 of 2012)

For the Appellant/s : Mr. Alok Kumar Alok, Advocate

Mr. Manmohan Kumar, Advocate

For the Respondent/s : Mr. S.N. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
and

HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 22-12-2017

Appellants in both the appeals have challenged the Judgment of conviction dated 5th October 2012, passed by Shri Bashishtha Shukla, Additional Sessions Judge –II, Vaishali at Hajipur, in Sessions Trial No. 498 of 2009, whereby appellant Laldeo Rai (A-1), was held guilty



under Section 302, 147, 447, and 504 of Indian Penal Code (for short "IPC"), as well as under Section 27 of the Arms Act, and appellant Munna Rai (A -2) was held guilty under Section 147, 447 and 504 of the IPC.

2. P.W. 5 (Rameshwar Rai), father of the deceased lodged the fardbeyan (Ext. 1) on 19.05.2006 at 7. A.M., which was recorded by PW -8, the Officer In-charge, Gangabridge Police Station. Based on the fardbeyan, a formal F.I.R (Ext. 3) was drawn.

3. According to the prosecution case, the incident had occurred on 18.05.2006, which was the date of poll for Panchayat election. P.W. 5 was contesting for the post of Panch, whereas, one of the co-accuseds, namely, Gama Rai, was also contesting for the said post. It is alleged that at about noon, the appellants and six others named in the fardbeyan reached at the *darwaza* of the informant and started question the assembly of several persons at his *darwaza*, on which wordy quarrel ensued. It is alleged that PW -1, being son of the informant, tried to intervene whereafter one of the co-accuseds slapped him. The wordy quarrel aggravated, wherein, it is alleged, another co-acused inflicted a *garasa* blow on the informant (PW -5), which was warded off. At the orders of another co-accused, a firing was also made at PW -5, which, he managed to escape unhurt. In the meanwhile, A-1, Laldeo Rai is said to have fired at the eleven years



old son of the informant from his country made pistol, which hit him in his forehead. Thereafter, the accused persons brick batted and left the scene of occurrence. Immediately, the injured was carried to Gangabridge police station on way to Patna. The police personnel at the police station advised him to first rush to Patna Medical College and Hospital (for short "PMCH") for treatment. By the time, the victim could reach the PMCH, Patna, he was declared brought dead. The informant returned to the village as his wife was in a state of shock and was senseless. The following morning the fardbeyan was lodged, when PW -8, visited the house of the informant (PW-5). PW -8, himself took up the investigation. Inquest over the dead body was done at the PMCH, Patna. The dead body was then sent for postmortem examination. PW -6 was then posted as the Associate Professor, Forensic Medicine, PMCH, Patna, who held the autopsy on 19.05.2006 at 3.00 P.M. and found following ante mortem injuries.

(i) An entry wound of $\frac{3}{4}$ " x $\frac{1}{2}$ " size on right side of forehead 2 $\frac{1}{2}$ " right from mid line and $\frac{1}{4}$ " above right eye brow margin lacerated, inverted and blacken.

The postmortem report proved by the doctor is Ext. 2.

4. According to PW-6, the death had caused due to head injury, hemorrhage and shock. The injury was inflicted with fire arm. PW -8, concluded the investigation. However, the appellants by that time had



not surrendered and as such the investigation was handed over to another Police Officer, who only led the charge-sheet. Filing of the charge-sheet finding the accusations true against the appellants gave rise to the present trial on the file of learned Trial Judge.

5. In order to prove its case beyond pale of reasonable doubts, the prosecution examined 8 PWs, besides exhibiting the documents.

6. PW -1 (Ravindra Rai), PW -2 (Laxman Rai), PW -3 (Harendra Rai) are the three sons of informant, who were present at the place of occurrence and have narrated the ocular description of the occurrence. PW-4 is the wife of the informant and mother of the deceased. PW -5, is the informant himself. PW -6, is Dr. Arun Kumar Singh, Autopsy Surgeon, who authored the autopsy report (Ext. 2), PW -7 (Dharamnath Singh) is the formal witness, who proved the formal F.I.R.

7. In consideration of the evidence on record, the learned Trial Court having found the evidence of PWs 1 to 5, consistent on the time of occurrence, place of occurrence and manner of occurrence held the appellants guilty in the manner noted above.

8. We have heard both the counsels in the two appeals as well as Mr. S. N. Prasad, learned counsel for State.

9. The findings of the guilt recorded by learned Trial Court have mainly been challenged on two counts. It is stated that the first version



of the case has not been brought on record. PW -5 (informant) is stated to have made a statement before the Pirbahore police Station at PMCH, Patna, which has not been brought on record. The F.I.R present, was recorded on 19.05.2006 at 7. A.M. Secondly, it has been submitted that although there is evidence on record to show that several villagers had assembled at the place of occurrence but the prosecution, has not produced any independent witness. PWs 1 to 3 are the sons of informant, whereas, PW -4 is the wife. Lastly, it has been argued that considering the facts which have clearly galvanized during the trial, the conviction of appellant, namely, Laldeo Rai under Section 302 of the IPC would not be sustainable in law. Reliance in this regard has been placed on a decision of Hon'ble Supreme Court in the case of **Arjun and Anr. Etc. vs State Of Chhattisgarh** reported in **2017(2) PLJR 167(SC)**.

10. Learned counsel appearing in support of A-1, Munna Rai has submitted that conviction of the appellant under Section 447 of IPC is wholly unsustainable as the evidence led by the prosecution indicate that occurrence had been committed outside the house, while the informant and the witnesses were present along with others under the tree. He also questioned the conviction of the appellant under Section 147 of the IPC. Other submissions advanced on behalf of A-1 were adopted.



11. Counsel for the State has supported the finding of guilt recorded by the learned Trial Court. He would urge that evidence of PWs 1 to 4 give full credence to the prosecution case adumbrated by PW -5 in the fardbeyan and in course of his evidence in court. It has also been submitted that the postmortem report (Ext -2) also supports the prosecution case. The defence has not been able to point out any material contradiction in their evidence to discredit them.

12. Dealing with first contention of the appellant, the court makes it plain that there is no legal principle in law that witnesses, who are relatives be treated as interested witnesses. The courts in recent years have found a usual phenomenon. Even neighbours don't like to get involved in criminal matters and depose against the criminal unless there is a good cause. As a legal principle the courts have held that evidence of a close relative should be scrutinized by the court with care as a rule of prudence and not as a rule of law. Keeping in focus the said principle, we have analyzed the evidence of PWs 1, 2 and 3. They are consistent on every material particulars of the prosecution case. Although they have been cross-examined at length but on a deeper scrutiny, it appears that barring few minor discrepancies the defence has not been able to discredit them by eliciting material contradiction in their evidence or even inner contradictions in the testimonies of PWs 1 to 4. PW -5, as noted above, was a candidate at



the election, which he lost. According to him, the dispute had arisen over assemblage of several unknown persons at the *darwaza* of the informant on the day of poll. As a protest the appellants and other accuseds including the contesting candidate against the informant had arrived there to question assemblage of such persons. Whereafter, the wordy altercation, took place. As deposed by PWs 1 to 3, the informant has also deposed that first PW -1, being son of the informant, tried to intervene to pacify the quarrel but he was slapped and pushed aside by one of the co-accuseds. Thereafter assault was inflicted on the informant by a *garasa*, which he escaped. Another co-accused, thereafter, fired at him, which again he managed to escape unhurt. Thereafter A-1, Laldeo Rai, fired at the deceased causing injury in his temporal/forehead region. Further case made out by him is that the mob that had assembled started brick- batting before leaving the place. We also find from his evidence that first statement if any made by him at the Pirbahore police station at Patna was when he visited the hospital the next morning at 10. A.M. to take the dead body of his son after postmortem. Prior thereto, PW -8 has visited the house of the informant and recorded his fardbeyan at 7. A.M. in the morning of 19.05.2006. It is, therefore, explicit that fardbeyan (Ext. 1) was the first version of the prosecution case. That apart, the defence has not cross-examined either the informant or the I.O on this point.



Even no suggestion to this effect was given to them. In a situation like this, the contention of the defence that first version of the prosecution case has been suppressed by the prosecution does not appear well grounded.

13. The last and important limb of submission of the appellant no. 1 is that the facts clearly manifesting from the evidence on record would show that the mob consisting of the appellants had reached the *darwaza* of the informant, primarily to object the assemblage of several unknown persons on the day of poll. A suggestion to this effect was given by the defence to PWs 2 and 5 that the assemblage of the several persons at the *darwaza* of the informant on the date of poll was initially objected by them, whereafter, a wordy quarrel had broken out, in which, firing was resorted to from both sides. Further evidence is that PW -1, intervened in the quarrel to pacify, whereafter, one of the co-accuseds slapped and pushed him aside. The hot tiff (*Bakjhak*) further continued and in that process, it is alleged, a *garasa* blow was first given to the informant by one of the co-accuseds, which the informant warded off. Thereafter one of the co-accuseds fired at the informant, which he again managed to evade. Then A-1, Laldeo Rai is stated to have shot on the deceased, who was feeding the cattle close by. So far as the injury caused to the deceased from the close range is concerned, we find divergence in the evidence. It is



not difficult for us to gather from the fardbeyan and evidence led in support that the purpose of the mob assembled at the *darwaza* of the informant on the relevant date was to ensure driving away of the several outsiders, who had assembled on the day of poll at the *darwaza* of the informant. The accuseds were apprehending poll rigging by the informant, a contestant at the election against co-accused of the present case. To be precise, the informant himself in the fardbeyan has stated that the purpose of the mob was to commit *marpit*. What is further unfolded at the trial is that the hot tiff continued between the co-accused Gamar Rai and the informant for sometime. Both of whom, as noticed, were contesting the election for the post of Panch. While the scuffle was on, PW -1, intervened, who was only fisted and slapped. The scuffle, however, continued in which, firstly, the informant, who was contesting the election, was picked up for assault. However, he saved himself. The appellant – Lal Deo Rai, then fired which unfortunately hit the eleven years old son of the informant. He was nowhere earlier involved in the scuffle. He received the injury while feeding the cattle in the '*bathan*' situated close by.

14. Having highlighted the aforesaid facts clearly establish at the trial, the Court shall advert to the judgment on which the defence has placed reliance in support of said contention. In the case of Arjun



(supra), the Hon'ble Apex Court having noted the special feature of the case in paragraphs 19, 20, 21, 22 and 23 observed as under :-

“20. To invoke this exception (4), the requirements that are to be fulfilled have been laid down by this Court in [Surinder Kumar vs. Union Territory of Chandigarh](#) (1989) 2 SCC 217, it has been explained as under:-

“7. To invoke this exception four requirements must be satisfied, namely,

(i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.....”

21. Further in the case of [Arumugam vs. State, Represented by Inspector of Police, Tamil Nadu](#), (2008) 15 SCC 590, in support of the proposition of law that under what circumstances exception (4) to [Section 300](#) Indian Penal Code can be invoked if death is caused, it has been explained as under:- “9.

“18. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to [Section 300](#) Indian Penal Code is not defined in [the Penal Code](#), 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what



shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'."

22. The accused, as per the version of PW-6 and eye witness account of other witnesses, had weapons in their hands, but the sequence of events that have been narrated by the witnesses only show that the weapons were used during altercation in a sudden fight and there was no pre-meditation. Injuries as reflected in the post-mortem report also suggest that appellants have not taken "undue advantage" or acted in a cruel manner. Therefore, in the fact situation, exception (4) under [Section 300](#) Indian Penal Code is attracted. The incident took place in a sudden fight as such the appellants are entitled to the benefit under [Section 300](#) exception (4) Indian Penal Code.

23. When and if there is intent and knowledge, then the same would be a case of [Section 304](#) Part I Indian Penal Code and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then the same would be a case of [Section 304](#) Part II Indian Penal Code. Injuries/incised wound caused on the head i.e. right parietal region and right temporal region and also occipital region, the injuries indicate that the appellants had intention and knowledge to cause the injuries and thus it would be a case falling under [Section 304](#) Part I Indian Penal Code. The conviction of the appellants under [Section 302](#) read with [Section 34](#) Indian Penal Code is modified under [Section 304](#) Part I Indian Penal Code. As per the Jail Custody Certificates on record, the appellants have served 9 years 3 months and 13 days as on 2nd March, 2016, which means as on date the appellants have served 9 years 11 months. Taking into account the facts and circumstances in which the offence has been committed, for the modified conviction under [Section 304](#) Part I Indian Penal Code, the sentence is modified to that of the period already undergone."

15. What is important in the given facts of the case is to examine whether the appellant – Lal Deo Rai had taken undue advantage or



acted in a cruel or unusual manner or not. If these factor are not present then, as submitted by learned counsel for the appellant no. 1, the case would fall under Section 304 (Part –I) of the IPC as indisputably the injury found on the deceased caused by the fire arm, conclusively proved the intention and knowledge of the assaulter, however, the element of pre meditation is absolutely lacking. On careful scanning the evidence of the witnesses narrating the ocular account of the occurrence, it is difficult to find that the appellant – Lal Deo Rai had acted in a cruel or unusual manner. We are also unable to find that in scenario presented at the time of occurrence, the appellant Lal Deo Rai had taken any undue advantage. At the cost of repetition, the Court would note that the evidence on record is divergent so far as the distance from which the deceased was shot at. Some of the witnesses have stated that the deceased was shot at from a very close range, whereas, some of them have stated that the deceased was fired from distance of 4 to 5 ft. It is unfortunate that the minor son of the informant became the victim of the occurrence but the evidence on record is replete to demonstrate that the accused persons had appeared at the *darwaza* not for killing anyone but to question the assembly of large number of outsiders at the *darwaza* of the informant on the day of poll. The prime purpose of the accused(s) was to scare away the host of persons, whom the informant had got



assembled at *darwaza* on the day of poll. The deceased was never the target. There is nothing on record that the appellant had pre-meditated to do away with the life of the deceased or anyone.

16. Coming to the case of appellant – Munna Rai, who has been convicted under Section 147, 504 and 447 of the IPC, it is found from the evidence on record that the place of occurrence is outside the *darwaza* of the informant. Counsel for the appellant has seriously questioned the conviction of appellant under Section 447 of the IPC. It has also been submitted that this appellant was merely a spectator present in the mob/assembly, he had not participated in any manner in the assault. We find that considering those facts, the trial court convicted the appellant only under Section 147, 447 and 504 of the IPC. It has come in evidence that the occurrence had taken place outside the house of the informant.

17. In the light of the discussions made above, the court finds substance in the submission of learned counsel for appellant – Munna Rai, that conviction under Section 447 of IPC is not substantiated. However, his presence as a member of mob, which became violent and resorted to assault causing death of son of the informant, is well proved. His conviction under Section 447 of IPC is set aside. His conviction under Section 147 and 504 of the IPC is upheld. For the



singular reason the conviction of A-1, under Section 447 is also held unsustainable in law.

18. For the reasons noted above, in our view appellant – Lal Deo Rai could more appropriately be convicted under Section 304 (Part –I) of the IPC. His conviction under Section 302 is altered to Section 304 (Part –I) of IPC. He is directed to suffer R.I. for 10 years under Section 304 (Part –I) of IPC and to pay a fine of Rs. 10,000/- (Rs. Ten Thousand) and in the event of non payment of fine, he will additionally suffer R.I. for six months. His conviction under Section 447 IPC is set aside. However, conviction of A-1, under Section 147 and 504 IPC and sentence awarded thereagainst by the trial court are upheld.

19. So far appellant – Munna Rai, is concerned, his sentence to suffer R.I. for one year under Section 147 of the IPC is reduced and he shall suffer R.I. for 06 months under Section 147 of the IPC. His sentence under Section 504 to suffer R.I. for 06 months shall remain unaltered. The sentences awarded on both the appellants shall run concurrently.

20. As appellant – Munna Rai is on bail, his bail bonds are cancelled and he is directed to surrender to suffer the remainder of the sentence (s) imposed on him.



21. With the aforesaid modification in conviction and sentence, these appeals are dismissed.

(Kishore Kumar Mandal, J)

(Vinod Kumar Sinha, J)

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CAV DATE	
Uploading Date	
Transmission Date	

