

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.76 of 2015**

Arising Out of PS.Case No. -188 Year- 2011 Thana -GAYGHAT District- MUZAFFARPUR

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Naga Rai @ Nago Rai, S/o Aseswar Rai, resident of village - Bhagwatpur Balour,
P.S. Gaighat (Benibad O.P.), District - Muzaffarpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Diwakar Prasad Karn-Advocate
Mr. Chandra Shekhar Anand-Advocate
For the Respondent/s : Mr. Abhay Kumar-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 01-09-2017

Appellant, Naga Rai @ Nago Rai has been found guilty for an offence punishable under Section 304 Part-II/34 of the I.P.C. and sentenced to undergo R.I. for 10 years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo S.I. for one year vide judgment of conviction dated 26.11.2014 and order of sentence dated 29.12.2014 passed by the 9th Additional Sessions Judge, Muzaffarpur in Sessions Trial No.13 of 2012.

2. Son of deceased, namely Dilip Rai (PW-7), gave his fard-bayan at D.M.C.H., Darbhanga on 21.07.2011 at about 11.30 A.M. where deceased, his father Ramprit Rai was taken for treatment on account of injury having inflicted by the appellant and for that, it



has been alleged by the informant that on 20.07.2011 at about 4.00 p.m. Nago Rai was assaulting his cousin aunt Lalo Devi. At that very moment, his father Ramprit Rai intervened and scolded Nago Rai why he was assaulting over which, an altercation took place and during course thereof, Nago Rai ordered his wife Sushila Devi, daughter Bibha Kumari, son Vikas Kumar to assault. Then thereafter, Nago Rai armed with Hansuli (Katta), Sushila Devi, daughter Bibha and son Vikas armed with lathi attacked upon his father during course thereof, Nago Rai gave Hansuli blow over right hand of his father causing severe cut injury as a result of which, he fell down. Subsequently thereof, others had assaulted with lathi and danda. Blood oozen out from the injury as a result of which, condition of his father deteriorated. He was lifted to D.M.C.H., Darbhanga where, during course of treatment, he died.

3. On the basis of the aforesaid fard-bayan, Ghaighat P. S. Case No.188 of 2011 was registered followed with an investigation. Because of the fact that appellant was apprehended on account thereof, chargesheet was submitted against him keeping the investigation pending against remaining accused persons which happens to be the basis for trial which ultimately culminated adverse to the interest of the appellant having been challenged under the



present appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, neither any DW nor any kind of document has been adduced on behalf of defence.

5. In order to substantiate its case, prosecution had examined altogether nine PWs, out of whom, PW-1 Amlesh Rai, PW-2 Lal Babu, PW-3 Khapru Rai, PW-4 Ram Sogarath Ram, PW-5 Lalo Devi, PW-6 Vinay Kumar, PW-7 Dilip Rai (informant), PW-8 Dr. Vijay Pratap Singh and PW-9 Ashok Mahto (I.O. of the case). Side by side, had also exhibited as Exhibit-1 series signature of informant as well as other witnesses over Fard-bayan, Exhibit-2 post mortem report, Exhibit-3 endorsement over fard-beyan.

6. The learned counsel for the appellant while assailing the judgment of conviction and sentence has submitted that the finding recorded by the learned lower Court happens to be perverse as well as inconsistent with the materials available on the record. To substantiate such plea, it has been submitted that prosecution failed to substantiate the actual place of occurrence. Some of the witnesses have stated that it happens to be a road while some have deposed that it happens to be field of Binod Rai. After going through the evidence



of PW-9, the I.O., it is apparent that none of the witnesses had disclosed the actual P.O. in likewise manner, the I.O. also failed to identify the P.O. properly. It has also been submitted that right from initial version, it is apparent that copious blood had fallen from the injury, but I.O. could not be able to locate the same. As such, the prosecution is found deficient one in substantiating the actual place of occurrence as a result of which, it could be safely inferred that the deceased might have sustained injuries at different place in different manner, but due to village politics, appellant's family has been roped in.

7. Furthermore, it has also been submitted that even considering the evidence available on the record in consonance with the evidence of PW-8, the doctor, it is apparent that appellant could not be held responsible for culpable homicide not amounting to murder, because of the fact that prosecution was itself negligent in providing medical facility at an earliest and that happens to be reason behind death of the deceased. Apart from this, it has also been submitted that the location of the injury allegedly caused by the appellant is also indicative of the fact that at the time of occurrence, neither appellant was carrying knowledge nor intention, nay nature of the injury suggest that it would have ultimately lent to death of the deceased. That being so, appellant could be held guilty for causing



injury by means of sharp cutting weapon and as the doctor, PW-8 failed to identify the injury to be grievous on account thereof, appellant should be convicted and sentenced for under Section 324 of the I.P.C. Furthermore, as the appellant remained under custody for more than three years, so, he be released as sentence already undergone.

8. On the other hand, learned Additional Public Prosecutor while controverting the submission made on behalf of appellant has submitted that the judgment of the learned lower Court happens to be well-laboured. Before arriving at a conclusion, the learned lower Court had scrutinized, analyzed, perceived, discussed all the probability visualizing from the evidence available on the record and then, labelled against the appellant to be guilty for an offence punishable under Section 304 Part-II of the I.P.;C. whereupon did not require interference. So, it has been submitted that instant appeal lacks merit and is accordingly, fit to be dismissed.

9. PW-8 a tutor at D.M.C.H. had conducted post mortem over the dead body of Ramprit Rai on 21.07.2011 at 3.30 p.m. At that very moment, he found the cloth soaked with blood, bandage was found over right forearm including elbow joint, which was removed and then, found one ante-mortem incised injury 1” below right elbow



joint over palmer aspect 6" x 4" x bone deep. It further exploration, it was found that there was cut of soft tissues muscle, blood vessel, bone. Margin of the wound was clean, regular and was full of blood as well as blood clots. The doctor had further opined that the injury might have been caused by heavy sharp cut weapon and the death was on account of haemorrhage and shock. Time elapsed since death within 24 hours. During cross-examination, the doctor had said that injury was not simple in nature and it could not be because of cut injury was upto bone deep. However, he had not mentioned the nature of injury in the post mortem. He had further stated that arm-elbow are not the vital part of the body. He had further stated that haemorrhage and shock was probable due to aforesaid ante-mortem injury.

10. PW-7 is the informant. He had deposed that deceased was his father. Occurrence had taken place about one and half years ago. It was 4.00 p.m. At that time, he was returning from a field. As soon as, he reached over road, he saw Nago Rai assaulting Lalo Devi along with his wife, son and daughter. His father protested why they are beating a woman over which, they indulged with his father and during course thereof, Nago gave Hansuli blow, which was prevented by his father with his right hand as a result of which, his right hand sustained severe cut injury. Then thereafter, wife, son, daughter of Nago Rai also assaulted him. He took his father to D.M.C.H. where



during course of treatment, he died. Local police official recorded his fard-bayan (exhibited), identified the accused. During cross-examination at Para-5, he had stated that his father was admitted at about 6.00 p.m. His father died after two hour. During midst thereof, he was being treated. In Para-7, he had stated that on being informed, police came on the following day at about 11-12 noon. He along with his brother, Rajesh Yadav, Rajesh Kumar and Ram Chandra Rai, Kamlesh, Lal Babu had accompanied him. Then at Para-9, he had stated that post mortem was conducted on the same day, dead body was handed over on the same day. They returned back along with dead body and then, funeral was conducted. In Para-10, he had stated that the I.O. of the case came at village 2-3 days after the occurrence and then, took his further statement. In Para-11, he had stated that his house lies 200 meters North to the P.O. House of accused lies 100 meters away from his house. P.O. lies 50 yards from the place of accused. P.O. happens to be South to their house. In Para-12, he had stated that he along with his brother Vinay Kumar and father had gone to scrap grass. In Para-14, he had stated that Lalo Devi was present at the P.O. In Para-15, he had stated that when they reached, they saw Nago Rai indulged in assaulting his aunt Lalo Devi. His father intervened, whereupon Nago Rai ordered his wife, daughter, son to assault over which, they all assaulted. His father was assaulted with



Hansuli also. In Para-16, he had stated that he knew difference between Hansuli and Katta as it happens to be lighter in weight than Katta. He had further stated that in fard-bayan, he had disclosed that accused had inflicted Hansuli blow. His father fell down after sustaining Hansuli blow. Then thereafter, he was assaulted with lathi. In Para-17, he had stated that his father was assaulted with lathi indiscriminately. 5-6 persons arrived at the Place of Occurrence. Then, had denied the suggestion that he along with his brother was not along with his father. He had further denied the suggestion that during course of stealthily cutting of grass, his father was assaulted.

11. PW-6 is Vinay Kumar, another son of deceased. He had deposed that deceased was his father. On the alleged date and time of occurrence, he along with his father were coming from field and during course thereof, they had seen Nago Rai indulged in assaulting Lalo Devi, whereupon his father rushed to rescue. Nago Rai directed his wife to assault. He himself inflicted Hansuli blow over his neck, which was prevented by his father with his hand as a result of which, his father sustained severe cut injury over his right hand. Wife, son, daughter of Nago Rai assaulted his father with Danda. They took father to D.M.C.H. where during course of treatment, he died. Identified the accused. During cross-examination at Para-2, he had stated that his statement was recorded by the police.



In Para-3, he had stated that at the time of occurrence, he was at the P.O. then had denied the suggestion that during course of his statement before the police, he had stated that at the time of occurrence, he was in the village. After coming to know about the occurrence, he rushed to the P.O. where his father was lying and blood was oozing out from the injury. In Para-4, he had stated that occurrence took place at the road. Occurrence was not committed in a field. He had further identified the P.O. as North-Khapru Rai, South-Binod Rai, East-West-Road. He had further stated that road happens to be three steps in width. Occurrence took place in the middle, during course of which, only one person was assaulted. Accused had assaulted with Hansuli. He had stated that deceased was assaulted with Hansuli. People did not try to apprehend Nago. After assault, Nago rushed to his house. Others had assaulted with lathi and danda. In Para-5, he had deposed that he had named son, daughter and wife of Nago Rai to be assailant of his father before the police. His father fallen down after assault and then thereafter, he was assaulted with lathi, danda. In Para-6, he had stated that blood had not fallen over the P.O. Then had denied the suggestion that no such type of occurrence had ever taken place.

12. PW-5 is Lalo Devi. She had deposed that on the alleged date and time of occurrence, she was going to bring grass.



When she reached near the field of Binod Rai, Sushila Devi indulged in an altercation joined by Nago Rai, Vikas, Bibha, who began to assault. Ramprit Rai came and intervened, whereupon they all began to assault Ramprit Rai, during course thereof, Nago Rai gave Hansuli blow causing injury over his right hand. Others have also assaulted with lathi and danda. Ramprit Rai was taken to D.M.C.H. for treatment, during course thereof, he died. During cross-examination, she had stated at Para-2 that she had got no dispute with Sushila and Nago. She knew Khapru Rai, but she does not know whether he has bamboo cluster. She does not know that Sushila, Nago had purchased bamboo from Khapru Rai and during course of taking away bamboo, her tiled roof became damaged and for that, she got a grievance. In Para-3, she had denied that she ever made statement before the police on that very score. She had further stated that she was not possessing Hasua. She had further denied that she had indulged in quarrel near the house of Nago. Again, she had denied that she had stated before the police that she indulged in quarrel with Sushila near the house of Nago Rai. She had further stated that at the time of quarrel only Sushila and appellant were present. While she along with Sushila were indulged in an altercation, appellant began to assault with fists and slaps. Ramprit Rai came in rescue, Nago was armed with Hansuli. Then had denied that she had not stated before the police that Ramprit



was assaulted with Hansua. She had further stated that she was assaulted by appellant Nago, his wife, daughter and son. She had named those persons before the police. In Para-5, she had stated that occurrence took place near the field of Binod Rai as well as Khapru Rai, blood had fallen over ground. There was copious blood. Then had denied the suggestion that no occurrence had taken place in a manner as suggested by her.

13. From the evidence of these witnesses, it is evident that indulgence of appellant along with family members during course of assault having over person of Lalo Devi is found intact and in likewise manner, intervention of deceased, whereupon appellant had inflicted Hansuli blow causing injury over his right hand, severely. From the evidence of these witnesses, it is also apparent that they also substantiated the place of occurrence.

14. However, now the evidence of other witnesses have to be seen whether they had corroborated or not? PW-1 during course of examination-in-chief had reiterated the version. During cross-examination at Para-2, he disclosed the boundary of the P.O. North-Khapru Rai, South-Binod Rai, East-West-Road. With regard to assault over Lalo Devi in Para-4, he had narrated the same as well as in Para-5 and 6, he had narrated the assault having inflicted over the person of



Ramprit Rai, deceased. In Para-6, he had also asserted that only one Hansuli blow was given. In Para-9, he had stated that blood had fallen over the P.O., barren soil was over the place of occurrence. He had not shown the P.O. to the I.O.

15. PW-2 during course of examination-in-chief, had stated like so. During cross-examination at Para-2, he had stated that in village relation, deceased happens to be his brother. He had further stated that there was no dispute since before amongst Nago and Ramprit. In Para-4, he had detailed how the Lalo Devi was being assaulted as well as intervention by Ramprit, deceased and in Para-5, the manner of assault over Ramprit by way of single blow at the end of Nago Rai.

16. PW-3 is Khapru Rai. During his examination-in-chief, he had corroborated the version. During cross-examination at Para-5-6, there happens to be contradiction. However, so far occurrence is concerned, he happens to be consistent.

17. PW-4 during examination-in-chief had substantiated the prosecution case. During cross-examination at Para-3, he had identified the P.O. North-Khapru Rai, South-Binod Rai, East-West-Road. In Para-4 and 5, there happens to be specific disclosure with regard to assault over Lalo Devi as well as Ramprit.



18. PW-9 is the I.O., who proceeded with the investigation after having been entrusted therewith. He had gone to P.O., recorded further statement of informant. He had also recorded statement of other witnesses, visited the P.O. Then had disclosed the identity of P.O. as South-Binod Rai, North-Binod Rai and East-West-Road, took statement of other witnesses, arrested Nago Rai, received post mortem report and then, concluded the investigation, submitted chargesheet. During cross-examination at Para-4 on the cross-examination of the defence itself, he had corrected the Place of occurrence by way of stating that the North and South boundary has been wrongly mentioned which he corrected. In Para-5, he had further admitted that he had not found any sign of occurrence at the P.O. He had not found blood over the place of occurrence. Then there happens to be his attention towards withdrawn the previous respective witnesses under Para-6 to 10 to the extent whatever been stated by the respective witnesses at an earlier occasion with regard to assault by Hansua. In Para-11, he had further stated that he had not seized the weapon.

19. From the evidence as recorded hereinabove, it is apparent that they all are consistent over assault having been made by Nago Rai, appellant by means of Hansua over Ramprit Rai, deceased which caused injury over his right hand and that it found corroborated



by the PW-8, the doctor. Some sort of exaggeration is there. Because of the fact that falsus in uno and falsus in omnibus is not at all applicable and further, the Court has been given an obligation to separate the grain from the chaff during course of appreciation of evidence, on account thereof, while considering the evidence those parts which happens to be exaggeration or inconsistent being the normal phenomenon on account of a lapse of time since after the occurrence, loss of memory or over enthusiasm.

20. It is no more under controversy that appellant had inflicted Hansuli blow which caused injury over forearm of deceased Ramprit Rai. Forearm is not a vital part of body and in normal phenomenon neither it could be found nor perceived that the injury having over forearm will ultimately cost life of an injured, but from the evidence of PW-8, it is evident that blood vessels were completely destroyed. Though there happens to be absence of cross-examination at the end of the appellant, on that very score, but to adjudge the event, it looks prudent to see *Exception 4 of Section 300 I.P.C.*

21. From the evidence adduced on behalf of prosecution, it is apparent that Lalo Devi was being assaulted by Nago Rai (appellant) and his son, daughter, wife with fists and slaps. It is further evident that deceased interested into the matter which sparked. No



repetition of blow was there. Injury happens to be over non-vital part of body. There happens to be absence of evidence that both parties were ever on strain relationship. In the aforesaid background, it might be inferred that by such activity, the assailant may have knowledge that it is likely to cause death, but without any intention to cause death or cause such bodily injury as is likely to cause death. That being so, the activity would attract application of Section 304 Part-II of the I.P.C. The view is found supported with *Muthu vs. State reported in 2008 CRI.L.J. 442* as well as *Ankush Shivaji Gaikwad vs. State of Maharashtra reported in A.I.R. 2013 SC 2454*, wherein it has been held:-

“9.....There is, in our opinion, considerable merit in that contention. We say so for three distinct reasons. Firstly, because even according to the prosecution version, there was no premeditation in the commission of the crime. There is not even a suggestion that the appellant had any enmity or motive to commit any offence against the deceased, leave alone a serious offence like murder. The prosecution case, as seen earlier, is that the deceased and his wife were guarding their Jaggery crop in their field at around 10 p.m. when their dog started barking at the appellant and his two



companions who were walking along a mud path by the side of the field nearby. It was the barking of the dog that provoked the appellant to beat the dog with the rod that he was carrying apparently to protect himself against being harmed by any stray dog or animal. The deceased took objection to the beating of the dog without in the least anticipating that the same would escalate into a serious incident in the heat of the moment. The exchange of hot words in the quarrel over the barking of the dog led to a sudden fight which in turn culminated in the deceased being hit with the rod unfortunately on a vital part like the head. Secondly, because the weapon used was not lethal nor was the deceased given a second blow once he had collapsed to the ground. The prosecution case is that no sooner the deceased fell to the ground on account of the blow on the head, the appellant and his companions took to their heels – a circumstance that shows that the appellant had not acted in an unusual or cruel manner in the prevailing situation so as to deprive him of the benefit of Exception 4. Thirdly, because during the exchange of hot words between the deceased and the appellant all that was said by the appellant was that if the deceased did not keep



quiet even he would be beaten like a dog. The use of these words also clearly shows that the intention of the appellant and his companions was at best to belabour him and not to kill him as such. The cumulative effect of all these circumstances, in our opinion, should entitle the appellant to the benefit of Exception 4 to [Section 300](#) of the I.P.C.

22. Furthermore, while identifying proper application in terms of Section 304 Part-I, Part-II of I.P.C., it has been explained taking recourse of earlier pronouncement and held under:-

“23. We may lastly refer to the decision of this Court in [Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh](#) (2006) 11 SCC 444 where this Court enumerated some of the circumstances relevant to finding out whether there was any intention to cause death on the part of the accused. This Court observed:

“...Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under [Section 302](#) or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to



altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under [Section 302](#), are not converted into offences punishable under [Section 304](#) Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under [Section 302](#). The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances :

(i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre- meditation;



(vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention...” (emphasis supplied)

24. Coming back to the case at hand, we are of the opinion that the nature of the simple injury inflicted by the accused, the part of the body on which it was inflicted, the weapon used to inflict the same and the circumstances in which the injury was inflicted do not suggest that the appellant had the intention to kill the deceased. All that can be said is that the appellant had the knowledge that the injury inflicted by him was likely to cause the death of the deceased. The case would, therefore, more appropriately fall under [Section 304](#) Part II of the



IPC.”

23. After close scrutiny of the materials having available on record, it is found and held that the learned lower Court had properly scrutinized the same while coming to the just conclusion, whereupon, is affirmed. Consequent thereupon, appeal is dismissed. Appellant is on bail, hence his bail bond is cancelled directing him 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 proceed against him in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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