

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.159 of 1994

Against the judgment of conviction and order of sentence dated 16.03.1994
passed in Sessions Trial No.149 of 1993 by 2nd Additional Sessions Judge,
Munger.

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1.Sukhdeo Yadav son of Teetu Yadav
2.Dasrath Yadav son of Sukhdeo Yadav
both resident of village Pachna, P.S.Sheikhpura in the district of Munger
..... Appellant/s

Versus

State of Bihar
..... Respondent/s

with

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Criminal Appeal (DB) No. 222 of 1994

Against the judgment of conviction and order of sentence dated 16.03.1994
passed in Sessions Trial No.149 of 1993 by 2nd Additional Sessions Judge,
Munger.

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Brahamdeo Yadav, son of Sri Sukhdeo Yadav, resident of village Pachna,
P.S.Sheikhpura in the district of Munger.
..... Appellant/s

Versus

State of Bihar
..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mushtaque Alam, Adv.
For the Respondent/s : Ms. S.B. Verma, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 19-06-2018

Challenge in the present Criminal Appeal is to the judgment
dated 16th day of March, 1994 passed by the learned 2nd Additional
Sessions Judge, Munger, in Sessions Trial No.149 of 1993. By the
impugned judgment, the present appellants along with two other



accused were held guilty for the offences under Section 302 read with Section 34 of the Indian Penal Code. They were sentenced to undergo rigorous imprisonment for life. During the pendency of the present appeal, the two other convicts namely, Brahamdeo Yadav in Criminal Appeal (DB 159 of 1994) and Sukhdeo Yadav (in the present appeal) died and, therefore, the appeals preferred by them stood abated. This appeal now survives only with respect to the convict Dasrath Yadav.

The prosecution case is based on the Fardbeyan (Ext.3) of one Indradeo Paswan who alleged that on 28.01.1993 Sukhdeo Yadav (since deceased) had taken away Khesari crop from the field of the informant which was seen by the father of the informant. There had been a quarrel between the ladies of the family of Sukhdeo Yadav and that of the families of the informant over this issue. It is alleged that at 09.30 A.M when the informant went with his father to prepare his Khalihan near Pachna Chowk, the accused Sukhdeo Yadav, Dasrath Yadav and Brahamdeo Yadav lashed with Lathi in their hand came there. Brahamdeo Yadav (since deceased) assaulted father of the informant on his head by Lathi because of which the father of the informant fell down and became unconscious. Accused Dasrath Yadav gave a Lathi blow on the father of the informant which hit left hand finger of his father. It was further alleged that when the informant tried to save his father, accused Brahamdeo Yadav



assaulted the informant by Lathi which hit the left hand of the informant. It is stated that on Hulla many people assembled at the place of occurrence but the accused persons fled away.

The Fardbeyan of the informant was recorded on 29.01.1993 giving rise to Sheikhpura P. S. Case No.15 dated 29.01.1993 under Section 323/307 of the Indian Penal Code and Section 3 of the Prevention of Atrocities on Schedule Caste and Schedule Tribes Act, 1961. After two days, on 31.01.1993, Sections 302 and 34 of the Indian Penal Code were also added in the First Information Report because of the death of the father of the informant in course of his treatment. The formal First Information Report has been proved as Ext.4.

After investigation, police submitted a charge-sheet and cognizance was taken, thereupon, the case was committed to the Court of Sessions for framing of charge. Charges were framed under Sections 302/34 as well as Section 323 of the Indian Penal Code.

The defence version was a complete denial of the occurrence as alleged by the prosecution. The defence took a plea that in the morning of 29.11.1993 at 7 to 8 A.M the children of the house of the accused on the one side and the children of the house of the informant on the other side quarreled with each other and due to which quarrel took place between the females of the accused and that



of the informant family, according to the defence, in course of that quarrel Gharib Paswan (father of the informant) went to assault the wife of the accused Brahamdeo Yadav and he slipped and fell down on the stairs of the house and sustained injuries on head and Indradeo Paswan (informant) either got injury on his person manufactured or he sustained injuries while sitting on Tractor.

In the trial Court prosecution examined as many as 8 witnesses, out of them P.W.1 Sia Sharan Paswan, P.W.2 Brahmddeo Paswan and P.W.4 Kishun Paswan claimed to be eye witnesses of the occurrence. The informant deposed as prosecution witness no.5 and proved his Fardbeyan (Ext.3). P.W.3, Sudhir Kumar is the Doctor who had performed the post mortem examination on the dead body of the deceased. P.W.3 has proved the post mortem report as (Ext.2). P.W.8 is Doctor R.P.Jaiswal, who examined the injuries present on the person of the informant. P.W.8 has proved the injury reports as Exts.7 and 7/1 respectively. P.W.7 Ram Bachan Singh is the Investigating Officer who had recorded the Fardbeyan (Ext.3) and had drawn the formal F.I.R (Ext.4). He had prepared the injuries slips which were proved as Exts.6 and 6/1 respectively. P.W.7 had directed Shiv Chandra Rai (P.W.6) to investigate the case and P.W.6 had recorded the subsequent statement of the informant as also prepared the inquest report (Ext.5).



P.W.8, Dr.R.P.Jaiswal has proved the following injuries on the person of the deceased and the informant as well:-

I. Lacerated injuries on forehead 2" x ½" x skin deep on right side above the right eye about 4" above. He found bone fractured and the patient was unconscious getting frequent convulsion.

II. Abrasion on left finger at dorsal aspect ½" x ½". The age of injuries was found within 24 hours. Injury no.1 was of grievous nature and injury no.2 was of simple nature. Both the injuries were caused by hard and blunt substance.

On the same day he examined Indradeo Paswan (P.W.5) and found the following injuries on his person:-

I. Abrasion on left elbow 1"x ½".

II. Swelling on right hand 2"x 1".

The age of injuries was within 24 hours. The injuries were of simple nature caused by hard and blunt substance.

P.W.3, Doctor Sudhir Kumar had performed the post mortem examination on the dead body of Garib Paswan and in course of post mortem examination he found the following injuries on the dead body:-

I. Lacerated wound 2"x ½" scalp deep on the forehead of right side ½" above right eye brow.

On dissection he found extra vasation of blood under the



scalp and also fracture of right parietal bone. On opening the scalp he found extra-vasation of blood over the meninges. On opening of meninges blood clot was found present on brain substance of right side.

II. He also found abrasion on the little finger on the dorsal aspect of left hand $\frac{1}{2}$ "x $\frac{1}{4}$ ".

In his opinion, death was due to injury on vital organ (brain) both the injuries were caused by a hard blunt substance such as Lathi. Time elapsed since death was within 12-18 hours.

Taking into consideration the statements of the prosecution witnesses and the injuries report, the learned Trial Court held that one day prior to the occurrence i.e., on 28.01.1993 Sukhdeo Yadav uprooted the Khesari crop from the field of the informant and the deceased apprehended him on the spot and released him after abusing him and for the above occurrence, in the evening of 28.01.1993 and in the morning of 29.01.1993, the females of the accused persons and the females of the house of the informant quarreled with each other and due to that quarrel all the three accused persons jointly and together came to the place of occurrence where Brahamdeo Yadav gave Lathi blow on the head of the deceased and as a result he fell down on the ground and became unconscious and then Dasrath Yadav (appellant) gave him one Lathi blow causing injury in the little finger of the left



hand of the deceased and when Brahmdeo Yadav gave second blow of the Lathi to the deceased, the informant, Indradeo Paswan tried to prevent and as a result he sustained injury on elbow joint of left hand.

Learned counsel representing the sole surviving appellant Dasrath Yadav has submitted before us that it is evident from the findings recorded by the learned trial Court that there had been a quarrel over a petty issue between the families folks of the two families which led to the present occurrence. It is however submitted that the evidence categorically shows that this appellant had not given the fatal blow and had not repeated the Lathi blow on the deceased. The only Lathi blow given by Brahmdeo Yadav (since deceased) proved fatal and caused death of Garib Paswan. The Lathi blow allegedly given by this appellant hit on the finger of the left hand. The Doctor has found only abrasion on the left finger on the dorsal aspect of left hand $\frac{1}{2}$ "x $\frac{1}{2}$ " which is of simple nature. It is submitted that the conviction of the appellant under Section 302 with the added Section 34 of the Indian Penal Code cannot be sustained because there is no evidence on the point of common intention to cause death of the father of the informant.

Learned A.P.P for the State has supported the impugned judgment. It is submitted that this appellant had gone to the place of occurrence with the co-accused and had assaulted the deceased.



After hearing learned counsel for the appellant and learned A.P.P for the State as also on perusal of the materials available on record, we find that the prosecution has not been able to prove the common intention allegedly shared by the appellant to kill the father of the deceased. We also find that the single Lathi blow attributed to this appellant is said to have fallen on the finger of the left hand and the injury report proves only abrasion on the finger of the left hand which is simple in nature. There is no repetition of Lathi blow and more over the quarrel between the children and the women of both sides have been found by the learned trial Court.

Considering the evidences available on the record, we are of the view that conviction of the appellant under Section 302 read with Section 34 of the Indian Penal Code cannot be sustained. We are, however, of the view that the prosecution has been able to prove the charge under Section 323 of the Indian Penal Code against the appellant. In the nature of materials which we have discussed hereinabove, the conviction of the appellant under Section 302 read with Section 34 of the Indian Penal Code is set-aside, altered and reduced to conviction under Section 323 of the Indian Penal Code. We also reduced the sentence of the appellant to the period already undergone. The appellant who is in custody is directed to be released forthwith.



The appeal is, accordingly, allowed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

AFR/NAFR	
CAV DATE	
Uploading Date	06.07.2018
Transmission Date	06.07.2018

