

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.77 of 2003
Against the judgment of conviction and order of sentence dated 25th
January, 2003 passed in Sessions Trial No.137 of 1988 by Adhoc District
& Sessions Judge, Presiding Officer, 1st Addl. Fast Track Court, Siwan.

1. Fagu Sah, son of Shiv Lal Sah
2. Sukai Raut @ Sukai Yadav, son of Rewati Raut
3. Gama Raut @ Gama Yadav, son of Shiv Raut
4. Ram Surat Sah, son of Shiv Lal Sah
5. Surendra Raut @ Surendra Yadav, son of late Timal Yadav
All are resident of village- Bisunpura Mahuari, Police Station-
Maharajganj, District-Siwan.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Udit Nr. Singh, Advocate

For the Respondent/s :

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 05-01-2018

Appellants 1 to 4, namely Fagu Sah, Sukai Raut @ Sukai Yadav, Gama Raut @ Gama Yadav and Ram Surat Sah stand convicted for offences under Sections 148 and 324 of the Indian Penal Code and sentenced to undergo RI for two years on each count and appellant No.5 Surendra Raut @ Surendra Yadav has been convicted for offences under Sections 147/323 and sentenced to undergo one year RI.

The incident in question is said to have taken place on the morning of 30th of May, 1986 when the informant Anand Kumar Singh alias Bank Singh recorded the Ferdbeyan, Ext.-2, against seven accused persons. Apart from five appellants herein, two of



the accused namely Dharam Nath Raut and Timal Raut died during the course of the trial. The accused were prosecuted for offences under Section 307 IPC read with Section 149 of the Indian Penal Code and it was the case of the prosecution that with a common intention to commit murder of Chandeshwar Singh, Ajai Kumar Singh, Akshai Kumar Singh and one Anand Kumar in the village in question, the appellants assembled and assaulted the complainant with a deadly weapon, like Farsa and Lathi and caused injuries on their persons.

Having heard learned counsel for the appellants and on going through the records, it is clear that the main allegations of assault are made on Fagu Sah and Sukai Raut @ Sukai Yadav, appellant Nos. 1 and 2, who have died during the pendency of the appeal and the appeal so far as these appellants are concerned stand abated. As far as appellants Ram Surat Sah and Gama Raut @ Gama Yadav are concerned, omnibus and general allegations are made against them and it is said that they were tried to catch hold of the injured persons when they were being assaulted. As far as Surendra Raut is concerned, omnibus general allegations are made against him with regard to assaulting in the incident with a *lathi*. However, the facts that have come on record further goes to show that the Investigating Officer in the case has not been examined.



There are serious dispute with regard to occurrence of the incident and the place where the incident had occurred and on the complaint of the appellant No.4, a counter case bearing Maharajganj P. S Case No.66 of 1986 by the Maharajganj Police Station has been recorded and one of the persons in the appellants' side had sustained injury thereby he succumbed to it and died.

Taking note of the totality of the circumstances and the fact that with regard to present three appellants, who now survive, i.e. Gama Raut @ Gama Yadav, Ram Surat Sah and Surendra Raut @ Surendra Yadav, there are no specific overtact attributed to them and there are lacunaes that are indicated hereinabove, their conviction for the offences with the aid of Section 147 and 148 IPC, in my considered view, cannot be sustained. Accordingly, the appeal so far as appellant Nos. 3, 4 and 5, namely Gama Raut @ Gama Yadav, Ram Surat Sah and Surendra Raut @ Surendra Yadav are concerned, stand allowed. Their conviction are set aside. They are directed to be set free after cancellation of their bail bonds.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
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