

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.420 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

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1. Shyamnandan Dubey son of Late Parasa Dueby
 2. Prahalad Dubey @ Prahalad Duber son of late Paras Dubey
 3. Jhuna @ Sheo Kumar Debey son of Sri Shyamnandan Dubey
 4. Manoj Dubey @ Manoj Kumar Dwivedi son of Sri Shyamnandan Dubey
 5. Harishankar Dubey son of Sri Prahalad Dubey
 6. Girendra Rao son of late Deonath Rao

All are residents of village Katahari, P.S. Sathi, District West Champaran

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Bashishtha Narayan Mishra, Adv.
Mr. Sachida Nand Rai, Adv.
Mr. B.K.Mishra, Adv.

For the Informant : Mr. Pankaj Kumar, Adv.

For the Respondent : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 03-08-2018

A petition has been filed on oath stating that the appellant no.1 Shyamnandan Dubey has died on 25.7.2016 and the Death Certificate of the appellant no.1 has been filed as Annexure-1 to the Supplementary Affidavit filed on 23.7.2018 and further appellant no.2 (Pahalad Dubey @ Prahalad Duber) has also died and a certificate has been issued by Aanganbari Sevika. In such view of the matter, application against the appellant nos. 1 and 2 stands abated.

2. Further joint petition (I.A.No. 2188 of 2018) has been



filed on behalf of the appellants stating that during the pendency of this appeal, the matter has been compromised between the parties and the aforesaid petition has been signed by the wife of the informant as the informant has died as well as by the injured and the accused persons and a petition (I.A.No.2187 of 2018) for grant of leave of the Court under Section 320(2) of the Cr.P.C. has also been filed for grant of leave of this Court to compromise the case.

3. All the appellants have been convicted under Sections 148, 342, 324 and 325 of the Indian Penal Code and sentenced to undergo R.I. for one year under Section 148 of the IPC, R.I. for three years under Section 342 of the IPC and R.I. for the period of one year under Section 324 of the IPC against the appellant Nos. 2, 4 and 5 and R.I. for three years under Section 325 of the IPC against the appellant no.3.

4. Prosecution case in short is that on 15.1.1996, the appellants were armed with rifles and *Dabiya*, assaulted the informant and the appellant Shyamnandan Dubey, Prahlad Dubey, Manoj Dubey, Hari Shankar Dubey, Jhuna @ Shiv Kumar Dubey lifted him and took in the house of Manoj Dubey and Girendra Rao ordered to kill him, on that Manoj Dubey inflicted *Dabiya* blow causing injury on the right side of the head, Atul hurled *Dabia* causing injury to the left side of the informant and further alleged that



when the appellants came armed with rifle and *Dabia*, Babu Nand Dubey and Arun Dubey came for rescue and it is alleged that Shyamnandan Dubey inflicted injury on the head of Babu Nand Dubey by means of *Farsa* and Harishankar Dubey by *Bhala* causing injury on the right hand of Prahalad Dubey. The villagers assembled there and the accused persons fled away.

5. Post investigation, the charge-sheet has been submitted, cognizance has been taken and the case has been committed to the court of sessions, which ultimately came to the file of Sri Surya Narayan Mandal, 3rd Addl. Sessions Judge, Bettiah, vide judgment and order passed by Sessions Trial No.3 of 1997, convicting appellants as stated above and sentenced them accordingly.

6. Both the parties have filed a joint compromise petition and the petition for grant of leave of the Court for compromise the case. So far Section 342, 324 and 325 are concerned, Section 325 of the IPC is compoundable as per Section 320 of the Cr.P.C. and Section 324 of the IPC was also compoundable. So far Section 148 of the IPC is concerned, it is not compoundable.

7. Further the learned counsel for the appellants has submitted that in this case there is case and counter case, which will appear from perusal of the record also as a counter case has been brought as Ext. 'C' and Fardbeyan has been brought as Ext. 'D' and



Manoj Dubey has also received injury, as such submission of the learned counsel for the appellant is that no case under Section 148 of the IPC is made out as there was free fight between the parties as such it can not be said that the appellants had made unlawful assembly armed with danger weapons rather there was free fight between the parties in which both sides have received injuries. Further submission is that the offences under Sections 325 and 324 of the IPC is compoundable and the parties have compromised the case. In such view of the matter, conviction of the appellants under Section 148 of the IPC does not stand sustainable in the eye of law.

8. Heard learned counsel for the State. The learned counsel for the informant also supported that there was compromise between the parties by filing a petition for compromise and leave application for compromise. In such view of the matter, so far Section 324 and 325 of the IPC is concerned, it appears that they are compoundable as per leave of the court and Section 324 is compoundable and an application for joint leave has also been filed by both the parties. No doubt Section 148 of the IPC is not compoundable.

9. In such a situation, conviction of the appellants under Section 148 of the IPC does not appear to be proper and so far other Sections are concerned, they are compoundable, as such conviction of the appellants under Section 148 of the IPC is not sustainable in the



eye of law and conviction under Section 342, 324 and 325 is concerned, the case has been compromised between the parties, as such the aforesaid conviction and sentence are set aside and in view of the compromise, this appeal is disposed of and the appellant nos. 3 to 6 (Jhuna @ Sheo Kumar Debay, Manoj Dubey @ Manoj Kumar Dwivedi, Harishankar Dubey and Girendra Rao respectively) are on bail, as such they are discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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