

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.187 of 1994

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

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1.Gorakh Yadav son of Late Dhanukdhari Yadav

2. Sonpa Devi wife of Late Dhanukdhari Yadav

3. Santi Devi wife of Gorakh Yadav

All are resident of village- Niazipur, P.S- Semari, Dist- Buxar

4. Ram Beyas Yadav son of late Chijan Yadav

5.Dhangagari Devi wife of Ran Beyas Yadav

Both are resident of Village Ahirawali, P.S- Buxar, Dist- Buxar.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Miss. Monika

For the Respondent/s : Mr. S.C.Mishra

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 08-01-2018

No one appears on behalf of the appellants on repeated call. Mr. Shiwesh Chandra Mishra Learned Additional Public Prosecutor is present for the State.

2. It would appear from perusal of the previous order dated 02.01.2018 that on that very date also, no one had appeared on behalf of the appellants to pursue this appeal. Therefore in the aforesaid circumstance, Miss Monika, Advocate is appointed as amicus curiae for the appellants so



that she could place the case of the appellants and to assist this Court.

3. We heard Miss Monika, learned amicus curiae appearing for the appellants and also Shiwash Chandra Mishra learned APP for the State.

4. This Criminal Appeal has been preferred by five appellants against judgment of conviction and sentence order dated 26.02.1994 and 28.02.1994 respectively passed by the learned Additional Sessions Judge, Buxar in Sessions trial no. 485 of 1991 arising out of Buxar(Industrial) P.S.Case No. 36 of 1990 by which and whereunder he convicted the appellant no. 1 under sections 304 and 323 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life under section 304 of the Indian Penal Code but no separate sentence was passed for the offence punishable under section 323 of the Indian Penal Code.

5. The appellants nos. 2 to 5 namely, Sonpa Devi, Shanti Devi, Ram Beyas Yadav and Dhangagri Devi respectively were convicted under section 337 of the Indian



Penal Code and the appellant no. 4 namely, Ram Beyas Yadav was sentenced to undergo simple imprisonment for six months and to pay a fine of Rs. 500/- and in default of payment of fine, he was ordered to undergo R.I for one month. The appellant nos. 2, 3 and 5 were sentenced only to pay a fine of Rs. 500/- each and in default of payment of fine, they were ordered to undergo simple imprisonment for one month. The other accused, namely, Harakh Yadav and Manti Devi were acquitted of the charges.

6. PW- 2, namely, Ramdayal Yadav gave his fardbeyan on 10.02.1990 at 12 midnight at government hospital, Buxar to A.S.I, Buxar Police Station to this effect that on the same day at about 5 p.m he came to the shop of one Mohar Sah and while taking tea, the appellant no. 1 namely, Gorakh Yadav came there and started slapping him upon which he went running to his door but he was chased by the appellant no. 1. The son of PW-2 namely, Sukhari Yadav (PW-1) came running there and tried to save him but he was, too, assaulted by the appellant no. 1 by means of lathi as a



result of which Sukhari Yadav sustained injury on his head and hand etc. PW-1 and PW-2 raised alarm which attracted PW-3, deceased Shankar Yadav and PW-5 Kabutri Devi, who came there and tried to save PW-1 and PW-2 but in the meantime, the appellant no. 2 to 5 also came there and started pelting stones. However, in the meantime appellant no. 1 gave single lathi blow causing head injury to the deceased Shankar Yadav, who fell down on the ground. On alarm raised by the informant and other injured persons witnesses assembled there PW-1, PW-2, PW-3 and one Mohari Devi as well as deceased Shankar Yadav sustained injuries. The reason behind the alleged occurrence is said to have plucked tomato from the field of the informant.

7. On the basis of fardbeyan of PW-2, Buxar Town (Industrial) P.S. Case No. 36 of 1990 under section 323, 337 and 307/34 of the Indian Penal Code was registered and formal F.I.R was drawn up under the aforesaid sections against the appellants.

8. The Investigating Officer PW-7 took the charge of



investigation. The deceased Shankar Yadav was referred to BHU for treatment but he died in course of treatment. The investigating Officer recorded the statements of witnesses, collected post mortem report and after completion of investigation, submitted charge sheet against the appellants and others. The cognizance and commitment was done in usual course and, accordingly, the appellants as well as other accused were put on trial before the court below. The appellant no. 1 was separately charged for the offences punishable under sections 302 and 323 of the Indian Penal Code whereas appellant nos. 2 to 5 and other accused were charged for the offences punishable under sections 302 and 323 of the Indian Penal Code.

9. In course of trial, the prosecution examined, altogether, eight witnesses and also got exhibited inquest report signature of informant as Exhibit 1, requisition Exhibit-2, fardbeyan Exhibit-3, formal F.I.R Exhibit-4, inquest report Exhibit- 5, injury report Exhibit-6 series and post mortem report Exhibit-7. The statements of appellants



and other accused were recorded under section 313 of the Cr.P.C in which they denied the prosecution case. No evidence was adduced by the appellants as well as other accused in support of their defence but from perusal of cross-examination of prosecution witnesses as well as statements made by the appellants and other accused under section 313 of the Cr.P.C it is obvious that the defence of the appellants and other accused was totally denial of the prosecution evidence. The trial court, having scrutinized the evidences available on the record, passed the impugned judgment of conviction and sentence order in the manner as earlier stated.

10.Learned Amicus curiae appearing for the appellants assailed the impugned judgment of conviction and sentence order submitting that there are several contradictions in depositions of prosecution witnesses but the court below did not take note of the aforesaid contradictions and passed the impugned judgment of conviction and sentence order. She further submitted that the learned trial court held that the appellant no. 1 gave single lathi blow to



deceased die to sudden provocation but the learned court below convicted the appellant no. 1 for the offence punishable under section 304 of the Indian Penal Code whereas, at best, a case under section 325 of the Indian Penal Code was made out because the appellant no. 1 had no intention to kill the deceased. She further submitted that the learned court below held in the impugned judgment that the prosecution had ample opportunity to improve the prosecution case and to implicate innocent persons but even then the learned court below convicted the appellants.

11.On the other hand, learned Additional Public Prosecutor appearing for the State supported the judgment of conviction and sentence order of the appellants arguing that the injured witnesses as well as informant have consistently stated that it was appellant no. 1 who gave lathi blow causing head injury to the deceased Shankar Yadav as a result whereof deceased Shankar Yadav died in course of his treatment whereas other appellants assaulted the other injured persons by pelting stones.



12. Having heard the above stated contentions of both the parties, we went through the record. We find that injured witnesses as well as informant have supported the prosecution case and defence could not succeed to elicit anything on the basis of which, the prosecution case could be doubted. No doubt, there are some minor contradictions in the depositions of the prosecution witnesses but the aforesaid minor contradictions do not go to the root of the prosecution case and, therefore, we do not find any ground to interfere into the judgment of conviction and in our view, the learned court below rightly passed the judgment of conviction.

13. As we have already stated that the learned court below convicted the appellant no. 1 for the offence punishable under section 304 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life and, therefore, now, it has to be seen as to whether the punishment awarded to the appellant no. 1 is proportionate to the offence committed by him or not. It would appear from perusal of the impugned judgment that the learned court below, having



marshaled the evidences, came to the conclusion that the alleged occurrence took place on account of sudden provocation. Admittedly, appellants and deceased are descendants of common ancestor and it is obvious that only single blow was given by the appellant no. 1 in a quarrel which suddenly took place between the deceased and the appellant no.1. The lower court record reveals that the appellant no. 1 was remanded by the court below on 20.04.1990 and during entire trial he remained in custody. Moreover, the appellant no. 1 was ordered to be released by this Court on 20.05.1994 and, subsequently, he appears to have already been released. Therefore, it would appear from the aforesaid fact that the appellant no. 1 remained in custody for more than four years and, therefore, we are of the view, that in the facts and circumstances of the present case, the ends of justice would be met if the appellant no. 1 is sentenced for the period already undergone by him in course of trial and during pendency of this appeal instead of sending him to serve life imprisonment.



14. So far as the appellant no. 4 is concerned, he was aged about 55 years old on the day of pronouncement of impugned judgment which was, admittedly, pronounced on 26.02.1994 i.e more than 23 years ago and now, appellant no. 4 become more than 70 years old. Appellant nos. 2, 3 and 5 are ladies and they have been only punished with fine by the trial court for the offence under section 337 of the Indian Penal Code. Therefore, in the aforesaid circumstance the ends of justice would be met, if the appellant no. 4 is sentenced to period already undergone by him in course of trial. So far appellants no. 2, 3 and 5 are concerned, the imposition of fine upon them is set aside and they are ordered to be released after due condemnation giving benefit of probation of first offender Act.

15. In view of the aforesaid discussions, the impugned judgment of conviction dated 26.02.1994 passed by the learned Additional Sessions Judge, Buxar in Sessions trial no. 485 of 1991 arising out of Buxar(Industrial) P.S.Case No. 36 of 1990 dated, is hereby, confirmed but the



sentence order dated 28.02.1994 stands modified in the manner as stated above.

16. In the aforesaid manner this appeal stands dismissed with the above modification in sentence order.

17. Let first and last page of the copy of the judgment be handed over to learned amicus curiae for needful.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	25.01.2018
Transmission Date	

