

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.421 of 1994

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1. Ram Waran Kuar (84 yrs), son of late Sheo Deni Kuer alias Ram Waran Sharma.
 2. Arun Kumar Sharma
 3. Ajit Kumar Sharma
 4. Mantu @ Ramesh Kumar Sharma, sons of Sri Sukhdeo Sharma
 5. Sakal Deep Sharma (72 years), son of late Basawan Sharma,
All resident of Village- Veenam Parsa, P.S. Revilganj, District- Saran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mrs. Punita Kumari Singh, Advocate
For the Respondent/s	:	Mrs. S.B. Verma, A.P.P.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-01-2018

This appeal under Section 374 (2) read with Section 389 Cr.P.C. has been filed by the five appellants namely Ram Waran Kuar, Arun Kumar Sharma, Ajit Kumar Sharma, Mantu @ Ramesh Kumar Sharma and Sakal Deep Sharma and another accused Ram Pyare Sharma who were prosecuted for the offences under Sections 148, 302 read with Section 34 I.P.C. in Sessions Trial No. 190 of 1986 by the 2nd Additional Sessions Judge, Saran, Chapra.

As far as the main accused person Sri Ram Pyare Sharma is concerned, he has not filed any appeal against his



conviction for offence under Section 302/34 I.P.C. The remaining appellants have filed this appeal challenging their conviction under Sections 302/34 I.P.C.

Of the five appellants herein appellant Ram Waran Kuar namely Appellant No. 1 was 84 years of age in the year 1994 when he was convicted and Appellant No. 5 Sakal Deep Sharma was 72 years of age at that point of time and now it is reported that both of them have died and, therefore, the only question now remaining in this appeal is with regard to the conviction of appellant Arun Kumar Sharma, Ajit Kumar Sharma and Mantu @ Ramesh Kumar Sharma.

It is the case of the prosecution that on 14.05.1985 at about 8.45 P.M. in the village in question situated in district Saran the informant Munni Lal Sharma was sitting at his Dalan when Ram Waran Kuar called him from outside and when Munni Lal Sharma came out, it is said that all the accused persons attacked and assaulted him and the accused Ram Pyare Sharma, who has not preferred any appeal, took a Bhala and inflicted a Bhala injury on the right chest of the informant. The informant was taken to the hospital where he died. From the statement of P.W. 14 Dr. R.K. Singh it is clear that the deceased died because of the single injury caused by a Bhala blow given



by Ram Pyare Sharma. The medical report speaks about an incised penetrating wound on the right side of the chest. This is the single injury and the author of the injury is none other than Ram Pyare Sharma who had caused the injury with a Bhala. Even in the dying declaration of the deceased recorded as Exhibit-3 the deceased has stated that on 14.05.1985 when he was sitting in his Dalan he was called by appellant Ram Waran Kuar and he speaks about Ram Pyare assaulting him with a Bhala. However, he makes an omnibus statement that the other accused were present and appellant Sakal Deep Sharma instigated for killing.

From the entire narration of fact as is made out and from the fardbeyan it is seen that it is appellant Ram Pyare Sharma who assaulted the deceased with a single Bhala blow which caused the fatal injury and it was the appellant Ram Waran Kuar, who is no more, who instigated assault on the deceased. As far as the present three appellants now alive namely Arun Kumar Sharma, Ajit Kumar Sharma and Mantu @ Ramesh Kumar Sharma are concerned, except that they were present on the spot, there is no specific overt act attributed to them nor is there any evidence to show that they have actively participated in the assault. On the contrary available on record is



a counter case instituted against the informant and the complainants on a report made by Ram Pyare Sharma on the same day i.e. on 14.05.1985 at about 12.30 P.M. wherein Police Station Case No. 53/85 has been registered against the appellants and a perusal of the same goes to show that there has been a family dispute due to adoption of one Munni Lal Sharma in the year 1980 and distribution and a loss of property due to this adoption.

Taking note of the totality of the circumstances, it is clear that now as far as this appeal is concerned, pertaining to the three appellants, as detailed hereinabove, no specific overt act is attributed to them. They are not shown to have made any active participation in the commission of the offence and the main architect of the injury caused which proved fatal is Ram Pyare Sharma who has been convicted under Section 302 I.P.C. and who is not an appellant before us.

Accordingly, in the facts and circumstances as are detailed hereinabove, we see no reason to uphold the conviction of the present three appellants now in the facts and circumstances that have come on record. Accordingly, we allow this appeal, set aside the judgment passed by the trial court, as far as these three appellants namely, Arun Kumar Sharma, Ajit



Kumar Sharma and Mantu @ Ramesh Kumar Sharma are concerned, acquit them of the charges levelled against them and they are discharged from the liability of their respective bail bonds.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P./-

AFR/NAFR	N.A.F.R.
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