

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.339 of 1994

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1. Bijay Sapera S/o Lakhan Sapera
 2. Ashok Sapera S/o Chhota Sapera
 3. Suresh Sapera S/o Lakhan Sapera
 4. Feku Sapera S/O Lakhan Sapera

All are residents of Village – Maksudpur, P.S. – Shahjahanpur, District – Patna.

.... Appellants/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellants/s : Mr. Ranbir Singh, Amicus Curiae

For the Respondent/s : Mr. Bipin Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 22-02-2018

As nobody has appeared on behalf of the appellants and the case is of the year 1994, I deem it appropriate to appoint Mr. Ranbir Singh as an *Amicus Curiae* to assist the court.

2. Challenge in this appeal is of judgment of conviction dated 06.06.1994 and order of sentence dated 09.06.1994, passed by Sri Deo Narayan Barai, the then Additional Sessions Judge - VII, Patna, in Sessions Trial No. 333 of 1990, by which the appellants were held guilty and convicted under Section 304 Part –II read with Section 149 of the Indian Penal Code (hereinafter referred to as the “IPC”) as well as under Section 147 of the IPC, stood convicted under Sections 354 of and was sentenced to undergo R.I. for six months.

3. Prosecution case as per the written statement of Basdeo Sapera (informant/P.W. 2) in short is that on 16.03.1990 at about 3. A.M., a



quarrel and marpit took place between the Ganni Sapera and Sardar Sapera over the second marriage of bride and bride groom as a result of which Lakhan Sapera and Sardar Sapera sustained injuries on their hands. The deceased Binod Sapera intervened in the said quarrel and pacified the matter and, thereafter, all the concerned persons moved to their house. It is further alleged that at 5 P.M. all the accused persons including the appellants armed with lathi went to the house of deceased Binod Sapera and started abusing upon which the deceased protested. Thereafter, all the accused persons including appellants assaulted the deceased Binod Sapera due to which he succumbed to his injuries. On the basis of the above written statement, Shahjahanpur P.S. Case No. 10/90 was registered against the appellants and other accused persons.

4. Police after investigation submitted charge-sheet. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Sri Deo Narayan Barai, the then Additional Sessions Judge - VII, Patna for Trial and disposal. Charges were framed under Section 147 and 302 read with Section 149 of the IPC.

5. In order to prove its case, prosecution has examined altogether eight witnesses, they are; P.W. 1 - Chandradeo Sapera, P.W. 2 – Basdeo Sapeara (informant), P.W. 3 –Sardar Sapera, P.W. 4 – Dr. Ashok Kumar Yadav, who examined the deceased, P.W. 5 – Marni Devi, P.W. 6 – Rajan Sapera, P.W. 7 - Manoj Kumar Sapera and



P.W. 8 – Hira Nand Jha (Investigating Officer).

6. From the side of defence also two witnesses have been examined, they are Yadunandan Prasad and Lakhan Sapera, co accused of this case has also been examined as court witness.

7. Apart from the above, following documents have been brought on record and marked as Ext. 1 – Signature on fardbeyan, Ext. 2 – Post mortem report, Ext. 3 – Formal F.I.R and Ext. 4 – Inquest report

8. From the side of defence following documents have been exhibited, they are; Ext. A. – Injury report of Lakhan Nut, Ext. B – Copy of order sheet on the complaint petitioner and Ext. C – F.I.R.

9. Defence of the appellants as per the statement recorded under Section 313 Cr.P.C and from the trend of cross-examination, is of false implication and in fact the deceased received injuries in some other manner.

10. Learned Trial Court after considering the evidence available on record, though not found the case true under Section 302 read with Section 149 of the IPC, however, convicted the appellants under Section 304 Part –II read with Section 149 of the IPC as well as under Section 147 of the IPC and sentenced them in the manner as stated above.

11. Contention of learned *Amicus Curiae* is that in this case almost all the witnesses are related witness, which will appear from fact that P.W. 1 is the own brother of P.W. 2 (informant), P.W. 4 is the wife of deceased and P.W. 5 is the brother of informant and further P.W. 7



has also been tendered for cross-examination and non examination of any independent witness in this case has certainly casts a doubt on the manner occurrence as alleged by the prosecution as it is the defence case that a dacoity was committed in the night in the house of Lakhan Nut, in which he and others were assaulted by the appellants and other accused persons and on hulla, they were chased by the villagers, who assaulted the deceased and others and evidence of I.O. also shows that there was case and counter case and Ext. A to C also supports the defence case. It has further been argued that co-accused Lakhan Sapera has also been examined in this case and he has supported the defence version but the Trial Court has not considered the aforesaid fact of the matter and has also not considered the counter version of the case only on the ground that same has been filed by the defence to save their skin. Further submission of learned counsel for the appellants is that though the allegation is believed to be true, however, it is an admitted fact that there was no intention of the appellants to kill the deceased and as stated above, he had received injury while caught by the villagers and due to non treatment, he succumbed to his injuries and, therefore, there is no application of Section 304 of the IPC rather the petitioner at best be convicted under Section 325 of the IPC, the trial court without considering all these facts has convicted the appellants under Section 304 Part –II read with Section 149 as well as 147 of the IPC, which is out and out perverse and not sustainable in the eye of law.



12. Learned counsel for the respondent – State defended the judgment of trial court and submitted that evidence of witnesses is consistent on the point of assault to the deceased by the appellants and others and further the evidence of doctor also corroborate the evidence of witnesses and, therefore, there is no infirmity in the impugned judgment and conviction of appellants under Section 304 Part – II read with section 149 of the IPC as well as under Section 147 of the IPC.

13. On the background of rival contention, from perusal of the evidence, it appears that P.W. 2 is the informant in this case and he has categorically stated that in the morning of alleged date of occurrence, there was altercation between Ganni Sopera and Sardar Sopera over the second marriage of bride and bride groom as a result of which Lakhan Sopera and Sardar Sopera sustained injuries on their hands. The deceased Binod Sopera intervened in the said quarrel and pacified the matter and then the dispute was over. His evidence further shows that later on accused persons including appellants came to the house of deceased Binod Sopera and dragged him out and brutally assaulted him. This witness has also been cross-examined at length and a suggestion was also given to him with regard to defence version of dacoity by the deceased and others, however, he denied the said suggestion.

14. Other witnesses have also supported the prosecution version. No doubt, they are relative of the informant and deceased but in spite



of their cross – examination, there is nothing to cast doubt on the veracity of evidence of these witnesses. Further the prosecution case also found corroboration from the evidence of Doctor (p.W.4), who has found following injuries on the person of the deceased;-

- (1) One abrasion 6" x 1" was found on the right leg.
- (2). One bruise 6" x 4" was found on the right elbow with slight swelling.
- (3) One lacerated wound 1" x 1/2 x 1/4" was found in between the left index and middle finger. The margins were irregular and bruised and infiltrated blood clots. Dorsum of the left hand was found swelled.
- (4) One bruise 5"x1" size was found on the back of the right side of the chest.
- (5) One bruise 1/2" x 1/2" size was found on the upper part of the abdomen on the left side with some depression. On opening the abdominal cavity spleen and stomach were found ruptured. The abdominal cavity was filled with blood and blood clots and partially digested food materials.
- (6) One bruise 6"x 1" was found on the front of the head more on the left side. On removal of scalp underlying tissue were filled with blood and blood clots and left parietal and temporal and frontal bones were found fractured. On opening of cranial cavity subdural and extradural haematoma were found.



15. This witness has also stated that injury nos. 1 to 4 were simple in nature, whereas injury nos. 5 to 6 were dangerous to life in ordinary course.

16. Defence has come with a case that a dacoity was committed on which deceased and others were chased by the villagers and assaulted by them, which caused some injuries to the deceased, however, that fact also supports the prosecution case with regard to assault on the deceased.

17. So far the defence version is concerned, except injury report and counter case lodged by the co-accused Lakhan Sapera and the evidence of Lakhan Sapera, there is nothing on record to support the defence version of dacoity, whereas, there is ample evidence available on record so as to show that on the alleged date of occurrence deceased Binod Sapera was assaulted and he received injuries and witnesses have named the appellants and others, however, no specific allegation has been mentioned and this is why the trial court has convicted the appellants under Section 304 Part –II and not under Section 302 of the IPC. I find force in the submission of learned *Amicus Curiae* that the trial court has not taken into consideration the fact that the determinative facts to decide the nature of the offence are the intention or the knowledge to commit a crime. In the instant case, the facts and circumstances speak for themselves that the accused had no such intention or requisite knowledge that by causing such injury, if death is caused, he would be guilty of murder.



18. On consideration of evidence, it appears that the deceased after receiving injuries, was not taken to hospital for treatment and due to that he succumbed to his injuries and further, there is contradiction about the time of death of the deceased as in the F.I.R, it has been mentioned that he died in the night, whereas, in the statement, it has been mentioned that he died in the morning. Furthermore, there is nothing available on record to show that that the appellants assaulted the deceased intentionally in order to kill him rather the deceased was an outsider and had nothing to do with the dispute with regard to second marriage and even according to the prosecution case, he was assaulted only because he intervened in the quarrel between Ganni Sapera and Sardar Sapera.

19. Considering the facts and circumstances of the case and the evidence available on record, it appears that evidence does not justify the conviction of appellants under Section 304 Part –II of the IPC and the appellants could have more appropriately be convicted under Section 325 of the IPC.

20. Accordingly conviction of appellants under Section 304 Part –II read with Section 149 is modified to a conviction under Section 325/149 of the IPC, however, conviction of appellants under Section 147 of the IPC is upheld. Further, it appears that the appellants were sentenced to undergo R.I. For seven years under Section 304 Part –II read with Section 149 and R.I. for one year under Section 147 of the IPC and from the record it is evident that appellant no. 1 has remained



in custody for 12 months, appellant nos. 2 and 3 have remained in judicial custody for 15 and 14 months respectively and appellant no. 4 has remained in custody for nine months and the case appears to be of the year 1990 and 27 long years have passed since then and appellants have also suffered the ignominy and trauma of trial and appeal for 27 long years, and, therefore, no fruitful purpose will be served to send them behind the bars to serve remaining, as such, their sentence under Section 325/149 as well as 147 of the IPC, is reduced to the period already undergone by them in judicial custody.

21. With the aforesaid modification in conviction and sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

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