

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (DB) No.420 of 1993**

Sessions trial no. 442/1989 arising out of Barh P.S. case no. 395/1988
District- PATNA

=====

1. Satish Roy

2. Rabindra Roy both sons of Late Sheo Roy resident of village Jalgovind P.S. Barh
Dist. Patna

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s

Mr. Mahendra Pd. Bhartee

Miss. Manisha Prakash

For the State

: Mr. Dilip Kumar Sinha

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 02-01-2018

1. This criminal appeal has been preferred against the judgment of conviction and sentence order dated 20.8.1993 passed by the Addl. Sessions Judge I, Barh in Sessions trial no. 442/1989 arising out of Barh P.S. case no. 395/1988 by which and whereunder he convicted appellant no.2, Rabindra Roy under sections 302, 323 of the Indian Penal Code and accordingly, sentenced him to undergo rigorous imprisonment for life for the offence punishable under section 302 of the Indian Penal Code and also undergo rigorous imprisonment for one year for the offence



punishable under section 323 of the Indian Penal Code. Both sentences were ordered to run concurrently. Apart from this, learned court below by the impugned judgment of conviction and sentence order convicted appellant no.1, Satish Roy for the offences punishable under sections 323 and 379 of the Indian Penal Code and accordingly, sentenced him to undergo RI for two years for the offence punishable under section 379 IPC and also undergo rigorous imprisonment for one year for the offence punishable under section 323 of the Indian Penal Code.

2. It is pertinent to note here that during the pendency of this appeal, appellant no.1 died and this appeal in respect of appellant no.1 stands abated.

3. Heard learned counsel for parties only in respect of conviction and sentence order of appellant no.2, Rabindra Roy.

4. On 25.10.1988 at about 9.30 P.M. fardbeyan of PW 7, Kapeshwar Gope, was recorded. In the said fardbeyan, PW 7 stated that he had taken three kathas land from Vishnu Das Mahant in 1971 and got constructed house on the aforesaid land but on the request of his neighbours Satish Gope and Rabindra Gope, he had permitted them to reside in



the aforesaid house. At the time of handing over the aforesaid house, he was in service. He, further, submitted that after superannuation when he returned to his village, he asked the aforesaid appellants to vacate the house and on the alleged date of the occurrence, he was fixing Khunta and Naad on his land but both the appellants being armed with farsa came out from the house and started abusing him. He forbade them to do so upon which deceased appellant Satish Roy gave farsa blow causing head injury to him as a result whereof he fell down on the ground. However, in the meantime, appellant no.2, Rabindra Roy gave farsa blow causing head injury to deceased Rajendra Roy who, too, fell down on the ground. Deceased appellant Satish Roy assaulted injured Umakant Roy (PW 5) and appellant no.2, Rabindra Roy assaulted injured Binod Roy (PW6). PW1, PW2 and PW3 as well as others witnessed the aforesaid occurrence and also intervened into the aforesaid occurrence. He, further, stated that deceased appellant Satish Roy snatched wrist watch worth of Rs 300/-. All the injured were brought to nursing home where they got treatment.

5. On the basis of the aforesaid fardbeyan, Barh P.S. case no. 395/1988 under sections 323, 324, 379/34 of the



Indian Penal Code was registered but during the pendency of investigation, injured Rajendra Roy died and after completion of investigation, police submitted charge sheet against deceased appellant as well as appellant no.2, Rabindra Roy for the offences under sections 323, 324, 307, 302, 379/34 of the Indian Penal Code. The cognizance was taken in usual course and subsequently, case was committed to the court of sessions. The charges were framed against deceased appellant no. 1 under sections 323, 324, 379 of the Indian Penal Code whereas against appellant no.2 under sections 302, 323 of the Indian Penal Code. Charges were read over and explained to them to which they pleaded not guilty and claimed to be tried.

6. To substantiate charges, prosecution got examined, altogether, 11 witnesses including injured, doctor and investigating officer. The statements of the accused were recorded under section 313 of the Code of Criminal Procedure in which they denied the prosecution story and claimed their false implication. The defence also got examined three witnesses. Learned court below, having marshaled the evidences available on record, convicted and sentenced the appellants in the manner as stated above.

7. Learned counsel appearing for the appellant no.2



assailed the impugned judgment of conviction and sentence order arguing that learned court below completely failed to take note of this fact that deceased had received only single injury and, therefore, no case under section 302 IPC was made out but even then the learned court below convicted the appellant no.2, Rabindra Roy for the offence punishable under section 302 of the Indian Penal Code. He, further, submitted that although there are several contradictions in the depositions of the prosecution witnesses but even if prosecution case is believed, then also, appellant no.2 could have only be convicted under section 304 of the Indian Penal Code. He, further, submitted that appellant no.2, Rabindra Roy has already remained in custody for near about six years four months and, therefore, he has sufficiently been punished. He, further, submitted that appellant no.2 is more than 50 years old and he has been facing mental agony since long. Therefore, this court should take a lenient view.

8. Learned Additional Public Prosecutor appearing for the State submitted that prosecution witnesses have supported the prosecution story and learned court below rightly convicted appellant no.2 for the offence punishable under section 302 of the Indian Penal Code and there is



nothing before this court, on the basis of which this court could interfere into the impugned judgment and sentence order.

9. Having heard the contentions of both parties, we went through the record along with lower court record. It would appear from perusal of the depositions of prosecution witnesses as well as post mortem report of the deceased that deceased sustained only single blow on his head said to be caused by sharp cutting weapon. PW 9, Dr. Lalan Choudhary did post mortem on the corpus of the deceased, Rajendra Roy and found stitched wound 2 ½” x ¼” on the left parietal region 3½” above the left ear. On dissection of the skull, he found massive haematoma under the skin of skull. Depressed fracture of size 1½” x 1” on the front part of left parietal bone. He also found linear fracture of size 4 ½” on the fontal bone and of both the parietal bones. Perusal of deposition of PW9 and post mortem report (exhibit 4) goes to show that deceased sustained only one injury in course of occurrence and subsequently, he died in course of his treatment. The reason behind the alleged occurrence as narrated by the informant in his fardbeyan as well as other witnesses is said to be land dispute and it seems that occurrence took place due



to certain provocations when the informant (PW 7) started fixing Naad and Khunta on the land. Therefore, we do agree with the submissions of learned counsel for appellant that, at best, appellant no.2 could be convicted for the offence punishable under section 304 Part I of the Indian Penal Code.

10. On the basis of the aforesaid discussions, this criminal appeal stands partly allowed and the impugned judgment of conviction is modified to this extent that conviction of appellant no.2, Rabindra Roy under section 302 of the Indian Penal Code is converted into under section 304 Part I of the Indian Penal Code and accordingly, sentence order of appellant no.2 is modified to this extent that he is sentenced to the period already undergone by him during pendency of trial and appeal.

11. In the aforesaid manner, this criminal appeal stands disposed of.

(Hemant Kumar Srivastava, J)

Shahid/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	5.1.2018
Transmission Date	NA

(Rajendra Kumar Mishra, J)

