

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.470 of 1994

1. Radhey Sahani, son of Sheo Dyal Sahani
2. Jain Sahani, son of Jai Sahani
3. Kailash Sahani, son of Mohan Sahani, all residents of Basetha (Bishunpur
Basant) P.S.-Saraiya, District-Muzaffarpur. ... Appellant/s
Versus
State of Bihar ... Respondent/s

with
Criminal Appeal (DB) No. 543 of 1994

Raghu Sahani, son of Ramashish Sahni, resident of Basaitha (Bishunpur),
P.S.-Saraiya, District-Muzaffarpur. ... Appellant/s
Versus
State of Bihar ... Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 470 of 1994)

For the Appellant/s : Mr. Amish Kumar, Amicus Curiae

For the Respondent/s : Mr. D.K. Sinha, APP

(In Criminal Appeal (DB) No. 543 of 1994)

For the Appellant/s : Mr. Amish Kumar, Amicus Curiae

For the Respondent/s : Ms. S.B. Verma, APP

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

Date: 03.02.2018

Both appeals arises out of the judgment of conviction dated
25.08.1994 passed by 1st Additional Sessions Judge,
Muzaffarpur in Sessions Trial No. 20 of 1989/25/93 whereby
the appellant Radhey Sahni has been convicted for the offence
under section 302 of the Indian Penal Code and has been
sentenced to undergo R.I. for life.

1. The appellant in Cr. Appeal No. 470 of 1994 has been
convicted under section 323 of the Indian Penal Code and
sentenced to undergo R.I. for one month. The appellant Kailash
Sahni has been convicted under section 324 of the Indian Penal



Code and sentenced to undergo R.I. for six months whereas the appellant Raghu Sah in Cr. Appeal No. 543 of 1994 has been convicted under section 302 of the Indian Penal Code and sentenced to undergo R.I. for life.

2. Pursuant to the order dated 6.1.1989, Mr. Amish Kumar was appointed as Amicus Curiae to assist the court.

3. Mr. Amish Kumar appeared before us and at the very outset submitted that as Amicus Curiae his role is not to act as appellant counsel but to assist the court as an impartial counsel in dispensation of justice. He submitted that he has gone through the paper book and on scrutiny of the material available on record he is assisting the court for disposal of the two appeals.

4. The case of the prosecution as disclosed in the far-beyan of Jail Govind Sahani, P.W.3 recorded by the officer-in-charge of Saraiya police station at Saraiya state Dispensary on 14.11.86 at about 9.45 A.M. is that the informant had taken settlement of Jalkar in village Akhai Chapra from the District Board, Muzaffarpur for growing and developing the fisheries. The Mallahs of village Basaitha namely, Radhey Sahani and Kailash Sahani along with others had also taken settlement. The aforesaid accused persons also used to fish from the pond, which the informant had also taken settlement. Because of such proceeding under sections 107 and 144 of the Code of Criminal



Procedure were going on between the parties. Both the parties in the aforesaid proceedings had filed their respective show causes and 18.11.86 was the next date fixed in those proceedings.

5. The further case of the informant is that on 14.11.86 at about 7.30 A.M. accused persons were catching fish from the Jalkar of the informant. When he got knowledge, he alongwith his son Bilash Sahani (Since deceased) and Sita Ram Sahni (P.W.1) went there and protested. They further asked the accused persons as to why they were catching the fish when proceedings under sections 144 and 107 were going on between the parties. On such protest, an altercation took place and ultimately the accused persons surrounded the informant and his sons. The further version is that accused Raghu Sahni (appellant herein) and Radhey Sahani who were armed with dagger assaulted the deceased, Bilash Sahani. The accused Raghu Sahni gave a dagger blow on the chest of the deceased as a result of which, the deceased sustained injuries on his chest and fell down. Thereafter, accused Kailash Sahni gave dagger blow on the buttock of the informant (P.W.3). Accused Kailash Sahni also assaulted P.W.1 by dagger. Accused Jain Sahni assaulted the informant and his son, Bilash Sahni (P.W.5) with lathi, as a result of aforesaid assault, the informant and his sons received server injuries. Bilash Sahni, the injured son of the informant was brought to Saraiya hospital in a jeep where the doctor



declared him dead. According to the informant the aforesaid occurrence was witnessed by Deo Narayan Prasad Sah (not examined), Ram Chandra Choudhary (not examined, Baijnath Choudhary (not examined) Banarsi Choudhary (not examined). The police on the basis of fard-beyan registered Saraiya P.S. Case No. 185 of 1986 under sections 147, 148, 149, 307,302, 324 and 323 of the Indian Penal Code against all the persons.

6. The police after investigation submitted charge-sheet against the all the accused persons and after taking cognizance the case was committed to the court of sessions on 6.7.1987 and the accused persons were charged under section 302/149 for committing murder of Bilash Sahni and appellant Jain Sahni was further charged under section 323 for causing hurt to Sita Ram Sahni and Accused Kailash Sahni was also charged for voluntarily causing hurt to Sita Ram Sahni under section 323 and accused Babu Lal Sahni was also charged under section 323 of the Indian Penal Code.

7. On framing of charge the accused persons pleaded not guilty and claimed they have been falsely implicated due to previous enmity and litigation on account of fishing right.

8. On behalf of the prosecution altogether 10 witnesses were examined. P.W.7 was a tendered, P.W.2 has been declared hostile, P.W.1 Sitaram Sahni deposed in this case as eye-witnesses. P.W.10 is formal witness, P.W.8 Dr. Nawal and P.W.9



Dr. N.K. Srivastava had held post mortem examination.

9. Mr. Amish Kumar appearing as Amicus Curiae has submitted that the present case arises out of Jalkar dispute and from the tenor of the fard-beyan itself, it is seen that both sides were claiming their Jalkar right. In the aforesaid circumstances the occurrence took place in which Bilas Sahni succumbed to the assault by Chhura alleged to have been given by appellant Raghu Sahni and appellant Radhey Sahni. Out of 11 accused persons the trial court has convicted three appellants of criminal no. 407 of 1994 and sole appellant in Cr. Appeal No. 543 of 1994. Out of the four convicted in the instant case appellant Radhey Sahni, Raghu Sahni have been convicted under section 302 of the Indian Penal Code whereas appellant Jain Sahni was convicted for the offence under section 323 and has been sentenced to undergo one month rigorous imprisonment whereas the appellant Kailash Sahni was convicted under section 324 of the Indian Penal Code and sentenced to undergo three months RI.

10. Referring to the post-mortem report Mr. Amish Kumar submitted that P.W.9 in his deposition at para-5 has stated that the injury can be caused by knife also. Both injuries cannot be caused simultaneously at a time. Direction of injuries is straight, in case of both injuries.

11. Referring to the deposition of Doctor and prosecution



case that Raghu has given one Chhura blow on the chest whereas Radhey has given one chhura blow on the back non-vital part of the body, he submitted that the present case in the background of the Jalkar dispute does not fall in the category of Section 302 IPC. He has also submitted with reference to the deposition of the witnesses that there was 144 proceeding going on in relation to the Jalkar and as per allegation of the prosecution, the appellants were in inimical terms and as such incident took place in which three persons sustained injuries. Bilash Sahni succumbed to the Chhura injury. However, Amish Kumar submitted that in the totality of facts situation when the appellants Radhey and Raghu Sahni were alleged to have been given only one Chhura blow and in the back drop of the Jalkar dispute the offence against the appellants deserve to be converted under section 304-II instead of section 302 of the Indian Penal Code. So far as appellant Jain Sahni and Kailash Sahni are concerned they were convicted under sections 323 and 324 of the IPC in view of the fact that the incident is of 14.11.1986, the court should consider the long pendency of the case while deciding their appeals.

12. Mr. Amish Kumar submitted that in the present case the P.W.2 has been named in the Fardbeyan as a witness but he was declared hostile and P.W7 was tendered in this case.

13. Learned APP appearing on behalf of the State does



not dispute the fact that there was 144 proceeding going on in relation to the dispute of Jalkar and the fight took place on account of fishing right and the appellants Radhey Sahni and Raghu Sahni gave Chhura blow on the deceased but they have not repeated the Chhura blow. He has also accepted the deposition that Jain Sahni and Kailash Sahni were convicted only under section 233 and 324 and other 7 accused have been acquitted in this case.

14. We have heard learned Amicus Curiae for the appellants and learned APP appearing on behalf of the State. We have also scrutinized the material available on record and on deeper scrutiny, we find that the informant has named 11 persons who have participated in the commission of crime. Out of 11, seven have been acquitted by the trial court on the basis of same material. The trial court has convicted the appellant Radhey Sahni and Raghu Sahni for the offence under section 302 since the trial court has not found any material to convict the appellants for the offence under section 302/149 to establish common object and disbelieving the prosecution case of commission of crime in furtherance of common object the conviction of Jain Sahni and Kailash Sahni under sections 323 and 324 and the sentence of one month and three months has respectively imposed and as such after the 31 years of the occurrence the available material does not warrant that the



appellants Jain Sahni and Kailash Sahni be sent jail to serve the remaining part of the sentence.

15. On scrutiny of the material we find that there was no repeat of blow and the injuries caused in dispute of Jalkar and in the back drop of the Jalkar dispute in connection with fishing right, the conviction of the appellant Raghu Sahni and Radhey Sahni is not sustainable rather the attending facts and circumstances indicates that offence falls in the category of 304-II.

16. Considering the fact that appellant Radhey Sahni has remained in jail for more than 6 years 8 months and appellant Raghu Sahni has remained in jail for two years and eight months in a case arising out of fishing right of the rival groups and the occurrence took place in November, 1986, at this stage when the appellants have also suffered ordeal of trial for 31 years and at the time of judgment of the trial court the appellant Radhey Sahni was 50 years and Raghu Sahni was 55 years and as such they have now 73 and 78 years old, we are of the view that the conviction of the appellants deserve to be converted from section 302 of the Indian Penal Code to Section 304-II of the Indian Penal Code and sentence of R.I. for life deserves to be reduced as period undergone.

17. Accordingly, we partly allow both the appeals and their sentence is reduced to the period already undergone. So far



the appellants Jain Sahni and Kailash Sahni are concerned, their conviction is upheld and the sentence is reduced to the period already undergone.

18. With the aforesaid modification, both the appeals stand partly allowed and disposed of in the manner indicated hereinabove.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	N/A
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