

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.332 of 2015**

Arising Out of PS.Case No. -16 Year- 1990 Thana -SARAI District- VAISHALI(HAJIPUR)

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Umesh Rai, son of Shri Bindeshwar Rai, resident of village- Teliya Sarai, P.S.- Sarai, District- Vaishali.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Satyabir Bharti-Advocate

Mr. Alok Chandra-Advocate

For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 20-08-2018

Appellant Umesh Ram has been found guilty for an offence punishable under Section 326 of the I.P.C. and sentenced to undergo S.I. for two years as well as to pay fine appertaining to Rs.five thousand and in default thereof, to undergo S.I. for six months, additionally, vide judgment of conviction and order of sentence dated 01.06.2015 passed by the 1st Additional Sessions Judge, Vaishali at Hajipur in Sessions Trial No.87 of 1992.

2. Ravindra Rai (PW-6), while was admitted at Sadar Hospital Hajipur in an injured condition, gave his fard on 14.02.1990 at 10.45 A.M. disclosing therein that on the same day at about 7.00 A.M. while he was at his Bathan, at that very time, Balkeshi Devi wife of Bindeshwar Rai began to flow water towards his Bathan, whereupon he resisted resulting an altercation amongst both of them. Hearing the same, Bindeshwar Rai, Nageshwar Rai, Umesh Rai, Lalit



Rai, Badri Rai came and on an order of Bindeshwar Rai, Umesh Rai brought sword and gave repeated sword blow and during course thereof, other co-accused had caught hold him. Due to sword blow, he has sustained injury over his left thumb (hand), palm, ear, shoulder as well as head right side, wherefrom there was profuse bleeding. On Hue and cry, his co-villagers Ram Sewak Rai, Sukendra Rai, Upendra Rai, Ram Nandan Rai and others came and rescued him. Then thereafter, he has been lifted to the hospital where he is under going treatment. The motive for the occurrence has been shown as Bindeshwar Rai has shown his inclination to purchase a land belonging to him, which he refused.

3. After registration of Sarai P. S. Case No.16 of 1990, investigation commenced and after concluding the same, chargesheet was submitted facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it has specifically been pleaded that on the alleged date and time of occurrence, prosecution party, after forming an unlawful assembly, brutally assaulted Balkeshi Devi as well as Umesh Rai, whereupon on the fard-bayan of Balkeshi Devi, Sarai P. S. Case No.15 of 1990 was registered. After investigation of the case, chargesheet was submitted



on the basis of which, after concluding the trial, prosecution party were convicted and sentenced against which, they have preferred Cr. Appeal No.42 of 1996, which was dismissed having modification in sentence. Exhibit-A and B have been brought up on record in defence.

5. In order to substantiate its case, prosecution had examined altogether seven PWs, who are PW-1, Uprendra Rai, PW-2, Ram Sewak Rai, PW-3, Raj Nandan Rai, PW-4, Chameli Devi, PW-5, Sukendra Rai, PW-6, Ravindra Rai and PW-7, Dr. Sushil Kumar Sinha. Side by side, had also exhibited, Exhibit-1 series, signature of informant, F.I.R. attesting witness, Exhibit-2 series, injury report, supplementary injury report, X-ray Plate, X-ray report. Likewise, defence had also exhibited, judgment of G. R. Case No.256 of 1990, as Exhibit-A and judgment of Cr. Appeal No.42 of 1996 as Exhibit-B.

6. The learned counsel for the appellant while challenging the finding recorded by the learned lower Court has submitted that once the evidence of the witnesses have been disbelieved relating to the other co-accused, on account thereof, there was no occasion left for the learned lower Court to use the same against the appellant, when they all have been intermingled at the end of the prosecution during course of commission of the occurrence. Furthermore, elaborating the issue, it has been submitted that if the prosecution case is admitted as deposed by all the witnesses, then in that circumstance, accused Bindeshwar Rai happens to be an order



giver, whereupon rest accused, so named (since acquitted), caught hold Ravindra Rai (PW-6) and then only appellant had an opportunity to assault after taking sword from his house. If the story regarding order giver, if the story regarding apprehension of the informant is found completely belied upon, then in that circumstance, the manner of occurrence would change and the same happens to be one of the severe setback to the prosecution.

7. It has also been submitted that from the evidence of the witnesses, it is crystal clear that apart from being an accused in counter-case, they all are own family members that means to say, none happens to be an independent witness, that means to say, they all are interested, partisan and hostile to the appellant, then in that event, their evidences should have been properly scrutinized in the background of the fact that there happens to be presence of counter-case coupled with the fact that I.O. has not been examined, causing serious prejudice to the appellant. To justify the same, it has been submitted that on account of non-examination of the I.O., defence could not be able to bring the material contradictions visualizing from the evidence of each one of the witnesses in accordance with law and if so, would have spoken a situation adverse to the prosecution. Not only this, the P.O. would have also been exposed whether it happens to be in accordance with the prosecution version or in accordance with the defence version. Apart from the fact that there happens to be



inconsistencies among the witnesses on that very score.

8. Furthermore, it has been submitted that in spite of suggestion given to the each one P.W. with regard to identity of the appellant Umesh Rai, being a Juvenile in conflict with law at the time of commission of the occurrence though denied by the respective witnesses and which, on account of ignorance on the part of the conducting counsel, could not be raised at an earlier occasion. Furthermore, it has been submitted during course of statement recorded under Section 313 of the Cr.P.C. on 23.06.2008, appellant has been found aged about 32 years, which the judgment impugned dated 01.06.2015 also divulges, reducing the period in proportionate way, on the alleged date of occurrence age of the appellant reduced to 14 years. As per Section 21 of the Juvenile Justice (Care & Protection of Children) Act, no sentence could be inflicted against Juvenile. Hence, the sentence so inflicted by the learned lower Court against the appellant is not at all found maintainable, even in worst case identifying the appellant guilty for an offence punishable under Section 326 of the I.P.C. It has also been submitted at the end of the learned counsel for the appellant that as per Section 9 of the Act, appellant is quite competent to raise the issue at the present moment also for the first time.

9. While opposing the submission made on behalf of learned counsel for the appellant, the learned Additional Public



Prosecutor submitted that mere acquittal of co-accused could not justify acquittal of remaining as *falsus in uno falsus in omnibus* is not at applicable. Even part of the evidence of witness is found unreliable the part, which suggests reliability would facilitate the Court to record a finding, which in the eye of law happens to be duly maintainable. Over the factum of juvenility, the learned Additional Public Prosecutor fairly concedes so far, legal provisions are concerned.

10. Without adverting to the merit of the case as it may not be a fruitful effort, from the evidences of the witnesses, it is apparent that they were suggested during course of cross-examination over status of the appellant Umesh Rai to be a Juvenile, though no such plea was raised in proper way. However, when the statement of the accused was recorded, appellant had disclosed his age which was also found a nod of the Court, then in that circumstance, it was incumbent upon the learned lower Court to see at least even at the time of judgment regarding authenticity of the suggestion having at the end of the appellant in consonance with his age as disclosed whether he was juvenile or not. Now, as the age of the appellant has been duly acknowledged as 32 years, not only on the date of taking statement under Section 313 of the Cr.P.C. rather at the stage of delivering the judgment impugned and so, coming to the date of occurrence that means to say, 14.02.1990, if it is calculated from the date of statement, appellant was approximately aged about 14 years of



age and if it is counted from the date of judgment, below the 12 years of age. If the appellant happens to be less than 12 years of age, then in that circumstance, his status is to be acknowledged in terms of Section 83 of the I.P.C. and if he happens to be more than 14 years, then in that circumstance, he is to be governed under the Juvenile Justice (Care and Protection of Children) Act. The date on which, statement of appellant was recorded suggest like so and is accepted accordingly.

11. Consequent thereupon, appellant happens to be a juvenile in conflict with law and that being so, the sentence having inflicted against him by the learned lower Court would not survive. Accordingly, retaining the finding recorded by the learned lower Court, the matter is remitted back to the Juvenile Justice Board to proceed in accordance with Section 18 of the Juvenile Justice (Care and Protection of Children) Act. As such, appeal is partly allowed. Appellant being juvenile on account thereof, his bail bond is not at all cancelled at the present moment rather is directed to surrender before the Juvenile Justice Board, Vaishali at Hajipur within fortnight, failing which the learned Board below would proceed against the appellant in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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