

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.504 of 2003

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1. Rajo Yadav, Son of Matuki Yadav.
2. Kamleshwari, Yadav Son of Matuki Yadav.
3. Dipan Yadav, Son of Matuki Yadav.
4. Shambhu Yadav, Son of Kamleshwari Yadav.
5. Bijendra Yadav, Son of Dhaneshwar Yadav.
All residents of Village – Rajajan, Police Station – Mansi, District –
Khagaria.

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Abdul Mannan Khan, Adv.
Mr. Najmul Hoda, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 31-08-2018

All the appellants stood convicted under Sections 147 and 323 of the Indian Penal Code (hereinafter referred to as the “IPC”) and were sentenced to undergo rigorous imprisonment of six months under each section and both the sentenced were directed to run concurrently by the judgment of conviction and order of sentence dated 08.08.2003 passed by Shri Govind Chandrayan, 3rd Additional Sessions Judge, Khagaria, in Sessions Case No. 568/89.

2. Case of the prosecution as per fardbeyan of informant and deceased Gorakh Yadav in short is that on 07.12.1987 at about 6 P.M., he had gone to see his land and found that four she buffalos were grazing the crops of his land and while he was bringing the cattle



to the police station, he was surrounded by the accused persons to release the cattle but when he protested, accused persons assaulted him by means of *lathi*. On hulla, his cousin brother Krishna Mohan Yadav and other persons came there to save him but the accused persons also assaulted them and they got their cattle freed and went away. Thereafter, the informant was admitted into hospital, who died and Section 302 of the IPC was added.

3. On the basis of the aforesaid, Chautham (Mansi) P.S. Case No. 119/87 was registered against the appellants.

4. Police after investigation submitted chargesheet. Cognizance of the offence was taken and the case was committed to the court of Sessions, which ultimately came to the file of Shri Govind Chandrayan, 3rd Additional Sessions Judge, Khagaria, for trial and disposal.

5. Charges were framed under Sections 302, 147 and 323 of the IPC against the appellant and to prove the charges, prosecution has examined altogether five witnesses. They are; P.W. 1 – Krishna Mohan Yadav, P.W. 2 – Yogendra Yadav, P.W. 3 – Bhushan Prasad Yadav, P.W. 4 – Surendra Yadav and P.W. 5 – Rajendra Tiwari, out of which PW3 is a formal witness, who has proved the seizure list and signature of the witnesses, which have been marked as Ext. 1, 1/1 and Ext. 1/2 and P.W.5 is the Investigating Officer of this case.

6. From perusal of the evidence of witnesses, it appears that they



have consistently supported the case of prosecution with regard to assault on the deceased Gorakh Yadav and Krishna Mohan Yadav by the appellants at the retire *Bandh* of railway. P.W. 5 is the Investigating Officer in this case, who has recorded the statement of the deceased Gorakh Yadav and P.W. 3 is the formal witness.

7. From the side of defence also, two witnesses were examined, they are D.W.1 – Amir Yadav and D.W. 2 - Gyani Chaudhary, who stated that the deceased received injuries due to fall from the Pipal tree, while he was plucking leaf and the defence of the appellants is of false implication and of innocence.

8. Learned trial court on conclusion of trial has not found the charge under Section 302 of IPC, proved in this case on the ground of non production of medical examination report, injury report, inquest report, post mortem report and non examination of the doctor and further non production of the seized articles, however, the trial court convicted the appellants under Sections 147 and 323 of the IPC and sentenced them in the manner aforesaid, on the ground that there were sufficient materials to show that the appellants surrounded the deceased and assaulted him near railway retire *Bandh* and when his cousin Krishna Mohan Yadav came to save him, he was also assaulted.

9. Learned counsel for the appellants assailed the judgment of trial court on the ground that in this case the doctor has not been



examined in this case and no injury report has been brought on record and in such a situation, conviction of appellants under Section 323 of the IPC is not sustainable. Further submission is that in this case, the appellants have remained in judicial custody for almost five months and the occurrence is of the year 1987 and conviction is under Section 147 and 323 of the IPC and, therefore, a lenient view may be taken and the sentence of the appellants may be reduced to the period already undergone by them in judicial custody.

10. On the other hand, learned counsel for the State has supported the finding of guilt recorded by learned Trial Court and submitted that the evidence is consistent so far assault to the deceased and PW1 Krishna Mohan Yadav by the appellant is concerned and further due to assault the informant of this case had succumbed to his injuries and for the conviction under Section 147 and 323 of the IPC, examination of doctor is not essential and, therefore, there is no infirmity in the judgment of trial court and conviction of the appellant is just and proper.

11. In the background of the rival contentions of the parties and on perusal of the evidence, it appears that there are consistent evidence with regard to assault to the informant, who later on died and as such I find no infirmity in the judgment of Trial Court and the same is hereby upheld.

12. So far sentence of the appellants is concerned, it appears that



the occurrence is of the year 1987 and thirty long years have passed since then and appellants have suffered the pain and agony of trial and appeal and there is nothing on record to show that they have previously been convicted in connection with any other case and have ever misused the privilege of bail and it also appears that they have already remained about 5 months in judicial custody. In such view of the matter no fruitful purpose will be served to send them behind the bars to serve the remaining sentence and, accordingly, the period of sentenced of the appellants is modified to the sentence already undergone by them in judicial custody.

13. With the above modification in the sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

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