

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.656 of 2002

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1. Devendra Rai, son of Yogendra Rai
 2. Yogendra Rai, son of late Jattu Rai, both resident of village- Fatahpur Chak Suleman, P.S. Goraul, District- Vaishali
 3. Sibbal Rai, son of Late Baram Rai, resident of village- Salempur, P.O. Lalbanpur, Narayan, P.S. Mahnar, District- Vaishali

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Parmeshwar Mehta, Amicus Curiae
For the State	:	Mr. Binod Bihari Singh, APP
For the Informant	:	Mr. Anirudh Kr. Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 13-01-2018

Heard Mr. Parmeshwar Mehta, Amicus Curiae for the appellants, Mr. Binod Bihari Singh, APP, for the State and Mr. Anirudh Kumar Sinha, for the informant.

2. This appeal has been filed against the judgment and order of conviction and sentence passed by the Additional Sessions Judge, Fast Track Court, Vaishali at Hajipur in Sessions Trial No. 18/1992 arising out of Sadar P.S. Case No. 264 of 1990, whereby the appellant No. 1 Devendra Rai has been convicted under Section 307 IPC and sentenced to undergo R.I. for ten years and the appellant Nos. 2 and 3, Yogendra Rai and Sibbal Rai have been convicted and sentenced under Section 307/34 IPC and sentenced to under go RI for five years and appellant No. 3 Sibbal Rai has further been convicted and sentenced to undergo RI for one year



under Section 379 IPC and all the three appellants have further been sentenced for one month rI under Section 341 IPC and all the sentences were directed to run concurrently and period already undergone as under trial prisoner was ordered to be set off.

3. The prosecution case in short is that on 5.9.1990 the informant had come to court in connection with his case and at 4 PM started returning home. At Ram Ashish Chowk, the informant met Sita ram Rai and got lost in taking with him and it became late in the evening. The informant then decided to stay at the house of Arbind Sahi situated in Dighi. He then proceeded towards Dighi along with Sita Ram Rai at 5 PM from Ram Ashish Chowk and when he had reached north of block office near Sisam orchard, his pattidar Yogendra and Devendra along with relative Sibbal surrounded him and started assaulting him with slaps and fists and dragged him towards east in sisam orchard and threw him on ground after lifting a bit. Yogendra caught hold of his both hands and Sibbal caught hold of his both legs and Devendra with intention to kill inflicted knife blow upon his neck which has resulted in cut and bleeding injury. Devendra again given knife blow towards his neck but the informant tried to save himself and in such attempt by informant, the knife caused cut and bleeding injury near his left elbow. Upon raising hulla by the informant and



Sita Ram Rai, people rushed towards the place of occurrence and the accused persons ran away deep inside the Sisam orchard. Sibbal while fleeing away snatched the wrist watch of the informant. Besides Sita Ram Rai, Udit Rai, Ram Singhasan Rana, had also seen this occurrence. The reason for the occurrence is that the informant had litigation pending with accused persons from before. The informant, thus came to hospital upon rickshaw.

4. On the basis of the aforesaid statement Hazaipur Sadar P.S. Case No. 264 of 1990 was registered by the police. After investigation police submitted chargesheet, cognizance was taken and the case was committed to the court of Sessions for trial and on the appellants pleaded not guilty, they were put on trial.

5. Learned counsel for the appellants submits that in the totality of the fact situation, the judgment of conviction and order of sentence is erroneous. He submits that the appellant nos. 2 and 3 were 55 years and 56 years old on the date of judgment on 3.12.2002 and as such they have now become more than 70 years old. Learned counsel submits that in the present case the trial court has violated the mandatory requirements of Section 364 of the Cr.P.C. The incident is of 5.9.1990 and nearly 28 years have gone by now. Appellant nos. 1 and 3 are brothers of the informant and appellant and appellant no. 2 is nephew of the informant. Referring



to the aforesaid facts and circumstances, learned counsel submits that in view of the advance age of the appellant nos. 2 and 3, the court should consider the desirability of reducing the sentence as period undergone.

6. learned counsel for the informant, submits that it is true that the appellant nos. 2 and 3 became by now more than 70 years old, they are brothers of the informant but in view of the fact that they have committed the crime, may be 27 years back, they deserve at least some punishment.

7. learned counsel for the State in the totality of the fact situation agrees to the proposal that in family altercation between the brothers and the appellant nos. 2 and 3 have become more than 70 years old, rigorous imprisonment may not be proper as they are not professional criminals but he suggests that a fine may be appropriate considering the fact that the case is of 1990 and the present appeal remained pending for more than 15 years.

8. In the totality of the fact situation and on considering the entire facts and circumstances, the court is of the considered view that in a family dispute between the brothers which continued for nearly 27 years and the appellants have faced the ordeal of pendency of trial and appeal, the ends of justice require that sentence may be modified and accordingly, the appeal is partly



allowed to the extent that while upholding the conviction the sentence is modified. The appellants are required to pay Rs. 1000/- each to the informant within a period of three months and only after payment of fine of Rs. 1000/- each, they shall be discharged from the liability of the bail bonds.

9. With the aforesaid modification in the conviction and sentence the appeal stands partly allowed and disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
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