

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.94 of 2009

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1. Ranjan Rai Son of late Mathura Rai
 2. Bhuwar Rai Son of Tapesar Rai @ Tapeswar Rai
 3. Shukhdeo Rai @ Sukdeo Rai Son of late Mathura Rai
 4. Akhilesh Kumar @ Akhilesh Rai Son of Lal Babu Rai null
 5. Lal Babu Rai Son of late Saldeo Rai. all are resident of Village-Kushar, P.S.- Kesariya, District- East Champaran.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vishwa Mohan Kumar Sinha, Adv.
		Mr. Vijay Shankar Shrivastava, Adv.
For the Respondent/s	:	Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 20-11-2018

1. At an initial stage, trial proceeded against eight accused persons out of whom, Munilal Rai died and on account thereof, the proceeding dropped against him vide dated 24.07.2013. After conclusion of the trial, seven accused persons have been found guilty against which all of them filed instant memo of appeal. When the hearing was taken up, it has been reported at the end of the appellants that appellant no.1, Bacha Rai and appellant no.5, Tapesar Rai @ Tapeswar Rai are dead whereupon a report was called for from the Superintendent of Police, East Champaran at Motihari who confirmed the same vide letter no.262/Legal dated 28.10.2018 whereupon, vide order dated 06.11.2018, this appeal has been allowed to abate concerning



Bacha Rai as well as Tapesar Rai @ Tapeswar Rai. That being so, instant appeal survives against remaining, namely, Rajnan Rai, Bhuwar Rai, Shukhdeo Rai @ Sukdeo Rai, Akhilesh Kumar @ Akhilesh Rai, Lal Babu Rai.

2. All the appellants have been found guilty for an offence punishable under Section 307/149 IPC and each one has been sentenced to undergo R.I. for five years, under Section 147 IPC and sentenced to undergo R.I. for one year while, appellant Bhuwar Rai has been independently found guilty for an offence punishable under Section 379 IPC and sentenced to undergo R.I. for two years while appellant Lal Babu Rai has been found guilty for an offence punishable under Section 109 of the IPC and sentenced to undergo R.I. for five years with a further direction to run the sentences concurrently, with a further direction that the period having undergone during course of trial be set off in accordance with Section 428 of the Cr.P.C. by the Additional Sessions Judge, FTC, East Champaran at Motihari vide judgment of conviction dated 05.02.2009, order of sentence dated 06.02.2009 in Sessions Trial No.192 of 1997/11 of 2007.

3. It has been submitted on behalf of appellants that from the record, it is evident that case has been compromised and on that very score, all the injured namely, Bijencra Singh (PW.2),



Surendra Singh (PW.3), Kasturi Singh, informant, (PW.4) and Lal Pari Devi (PW.6) on recall have substantiated the same. From their evidences, it is also crystal clear that case and counter case having at the end of rival parties been compromised and the aforesaid witnesses who stood as an accused in counter case, have already been acquitted on the basis thereof. Further, it has been submitted that appellant Bacha Rai, since deceased was identified to be the assailant of PW.6, Lal Pari Devi by means of Farsa. It has been submitted that witnesses have categorically stated that it was free fight having no intention or knowledge at the end of the appellants during course of assault, to kill.

4. Though, some sort of deficiency happens to be at the end of the appellants whereunder they failed to smash the ingredients of Section 147 IPC and in likewise manner, applicability of Section 149 of the IPC but, considering the totality of the event, harmonious relationship having been restored amongst the parties, the appellants have faced rigor of trial right from 1994, it is fit case wherein the wish and desire of the parties should be duly acknowledged in the background of compromise and that being so, the court should have considered non-application of Section 307 of the IPC and further, the remaining offences to be saturated by way of period of custody having



undergone in lieu of sentence so inflicted by the learned lower court.

5. The learned Additional Public Prosecutor though, on merit has opposed the submission but, in the background of the evidences having at the end of all the injured that means to say PW.2, PW.3, PW.4 and PW.6 the same could be taken into consideration while retaining the conviction recorded by the learned lower court by way of modifying the sentence so inflicted by the learend lower court.

6. PW.4, Kasturi Singh recorded first information report on 19-11-1994 alleging inter alia that during course of carrying bundle of harvested paddy crop through the village road passing through *Darwaja* of the accused, Muni Rai, protested on the pretext that they are bent upon to depose against them in a case and that being so, would not allow. On call, Bacha Rai armed with Farsa, Muni Rai, Sukhdeo Rai, Rajnan Rai, Bhuwar Rai, Tapeswar Rai, Lal Babu Rai and Akhilesh Rai armed with lathi came and began to hurl their respective weapons. During course thereof, Rajnan Rai gave lathi blow over head of Bijendra on account thereof, sustained injuries and fell down. Bhuwar Rai assaulted Surendra over his head by lathi. He along with his wife Lal Pari rushed in rescue and during course thereof, Muni Rai



assaulted him with lathi. Bacha Rai assaulted his wife with Farsa. On alarm, villagers came seeing whom accused persons began to flee during course thereof, Bacha Rai snatched away wrist watch while Bhuwar Rai snatched away Rs.450/- from Bijendra Rai. The motive for the occurrence has been shown as their family members stood as witness against the accused in murder case. Keseriya P.S. Case No.94 of 1994 has been registered on the basis of the aforesaid first information report followed with an investigation as well as submission of charge sheet after concluding the same, which happens to be the basis of trial, meeting with the ultimate result, subject matter of instant appeal.

7. 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. It has further been pleaded that the prosecution party armed variously raided at the house of the appellants and brutally assaulted for that, a case has been instituted and, only to counter meet the allegation instant case has been registered bearing false and frivolous allegation. Furthermore, oral as well as documentary evidence has also been adduced in support thereof.

8. In order to substantiate its case, prosecution has examined altogether nine PWs who are PW.1-Sachida Nand



Singh, PW.2-Bijendra Singh, PW.3-Surendra Singh, PW.4-Kasturi Singh, PW.5-Madhurendra Singh, PW.6-Lal Pari Devi, PW.7-Basudeo Rai, PW.8-Dr. Patel Singh and PW.9-Kuldeep Prasad Yadav. Side by side has also exhibited Ext.1- to 1/B Signatures of Kasturi Singh, Pitambar Singh and Ramchandra Singh, Ext.2 to 2/C-Four injuries report, Ext.3 to 3/B-Para 1 to 75, 76 to 129 and 130 to 153 of the case diary. In likewise manner, defence has also examined three Dws who are DW.1-Badari Rai, DW.2-Dr. Arvind Pandey, DW.3-Sanjay Kumar Pandey and has also exhibited Ext.A-C.C. of order dated 12.9.1995 passed by Shri B.D. Upadhyay J.M. in inquiry case no.206/2000, Ext.B-C.C. of complaint petition of case no.1263C of 1994, Ext.C-C.C. of Deposition of Badri Ray, Ext.C/1-C.C. of Deposition of Parbhu Ray, Ext.C/2-C.C. of deposition of Batchha Ray, Ext.C/B- C.C. of deposition of Bharat Ray, Ext.C/4-C.C. of deposition of Arun Kumar, Ext.D-Injury report of Sukhdeo Rai, Ext.E-Out door register dt. 19.11.94 of PHC Kesaria, Ext.F-Formal FIR.

9. From perusal of the record, it is evident that after examination of all the witnesses at the end of rival parties, the case has been compromised and in token thereof, compromise petition as well as permission petition have been filed. The learned lower court allowed recall of witnesses. PW.2, PW.3, PW.4 and



PW.6 (all the injured) in order to substantiate the event of compromise which they did but, during course of cross-examination, it is evident that the appellants swept away only on the basis of compromise and failed to cross-examine the witnesses in order to discredit their testimony with regard to applicability of at least 307, and 147 IPC. It is evident from their deposition that to some extent they having deposed relating to Section 307 by stating that the attack was not murderous one nor, the same was an intention or knowledge to commit murder. However, there happens to be no cross-examination in order to demolish the grievous injuries having over the person of Lal Pari Devi, PW.6, caused by Bacha Rai, since deceased and further, the defence also failed to dismantle the prosecution version with regard to presence of unlawful assembly having common object attracting Section 147 as well as 149 of the IPC and that being so, as per evidence of PW.8, PW.6 had sustained grievous injury caused by sharp cut weapon, that being so, even, considering there happens to be presence of ingredient of section 326 of the IPC and in the aforesaid background, the others would be liable to be under Section 326/149 of the IPC. Furthermore, the others being armed with *lathi* being member of an unlawful assembly would attract Section 147 of the IPC. However, 379 relating to Bhuwar is found



compoundable. Furthermore, it is evident that no separate charge has been relating to assault of Kasturi Singh, Bijendra & Surendra as, for that, single charge under Section 307/149 has been framed, which is found to be in terms of Section 325 IPC as well as 323 of the IPC which are compoundable. Furthermore, appellant Lal babu has been found guilty for an offence punishable under Section 109 of the IPC is not at all found properly substantiated considering the evidence of the witnesses who are inconsistent on that very score.

10. Thus, after analyzing the evidence available on the record, appellants are found guilty for an offence punishable under Section 326/149 IPC as well as Section 147 of the IPC. However, considering the subsequent event visualizing from the record, the event of compromise duly substantiated by respective witnesses, sentence is modified as already undergone and in terms thereof, instant appeal is disposed of. Appellants are on bail hence are discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	AFR
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