

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.707 of 2010

(Against the Judgment of conviction dated 26.03.2010 and order of sentence dated 30.03.2010 passed by the learned Additional Sessions Judge, Fast Track Court-III, Buxar in S.T No. 10 of 2007)

Jhabbu Ram, son of Lal Bahadur Ram, Resident of Village - Rajapur, P.S. Rajpur, District- Buxar.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 415 of 2010

1. Deena Ram, Son of Late Dev Muni Ram Village-Rajapur, P.S.- Rajpur, District-Buxar.
2. Lal Bahadur Ram, son of Late Dev Muni Ram Village-Rajapur, P.S. Rajpur, District- Buxar.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

(In Criminal Appeal (DB) No. 707 of 2010)

For the Appellant/s : Mr. B.K. Sinha, Sr. Advocate,
Mr. Bachan Jee Ojha, Advocate,
Mr. Anand Kumar Ojha, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, A.P.P

(In Criminal Appeal (DB) No. 415 of 2010)

For the Appellant/s : Mr. B.K. Sinha, Sr. Advocate,
Mr. Bachan Jee Ojha, Advocate,
Mr. Anand Kumar Ojha, Advocate

For the Respondent/s : Mr. Shivesh Chandra Mishra, A.P.P

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

And

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 23-03-2018

Both the above stated Criminal Appeals (DB) have



arisen out of Judgment of conviction dated 26.03.2010 and sentence order dated 30.03.2010 passed by the learned Additional Sessions Judge, Fast Track Court-III, Buxar in Sessions Trial No. 10 of 2007 by which and whereunder, the Appellants were convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and, accordingly, were sentenced for life imprisonment and fine of Rs. 10,000/- and, in default of payment of fine amount, they were ordered to undergo simple imprisonment for two months. Since, the above stated Criminal Appeals have arisen out of common Judgment, accordingly, both the above stated Criminal Appeals are being disposed off by this common Judgment.

2. P.W.11 Manti Devi gave her fardbeyan to S.I. Sri J. Rai, Buxar Town Police Station in mid night of 07.09.2006 at Sub-Divisional Hospital, Buxar to this effect that on the same day at about 7.00 P.M. her daughters, namely, Anju Kumari (P.W.10) and Manju Kumari (P.W.9) had gone towards east of the village to ease themselves, but they were teased by the appellant Jhabbu Ram. Both the above stated girls returned to their home and narrated the entire incidence to deceased as well as their other family members and after that deceased went to the door of the Appellants to make complaint, but appellant



Jhabbu Ram gave lathi blow causing head injury to deceased and having sustained the injury, he fell down on the ground and became unconscious. The informant further claimed that she also sustained lathi injury as a result thereof she got a fracture on her right hand. The Appellants Deena Ram and Lal Bahadur Ram rained lathi on the deceased. The female of the house of the appellants assaulted P.W.9 Manju Kumari and P.W.10 Anju Kumari. The villagers came there on hue and cry and after that the appellants ran towards their homes. The deceased was brought to the hospital in unconscious state.

3. On the basis of the aforesaid fardbeyan, Rajpur P.S. Case No. 125 of 2006, under Section 307 and other minor sections of the Indian Penal Code was registered and formal F.I.R. was drawn up for the above stated offences. However, in course of treatment, deceased died and, accordingly, Section 302 of the I.P.C. was added in the formal F.I.R. on 09.09.2006.

4. P.W.12 Sudhir Rajak took the charge of investigation and after completion of the investigation, he submitted Chargesheet. The cognizance of the offence was taken and the case was committed to the Court of Session in usual manner.

5. All the Appellants stood trial and, accordingly,



charged for the offences punishable under Sections 302/34 and 323 of the Indian Penal Code. They denied the charges and claimed to be tried.

6. In course of trial, altogether, 12 prosecution witnesses were examined and prosecution also got exhibited some documents. The Statement of Appellants were recorded under Section 313 of the Cr.P.C. in which they reiterated their innocence. No evidence was adduced by the Appellants in support of their defence.

7. The learned trial Court having relied upon the testimonies of P.W.4 Sanjay Kumar Rai and P.W.6 Dr. Anil Kumar passed the Judgment of conviction and sentence order.

8. The learned counsel appearing for Appellants assailed the impugned Judgment and sentence order arguing that the learned Court below failed to appreciate the deposition of P.W.4 Sanjay Kumar Rai in right perspective and also failed to take note of this fact that P.W.11 Manti Devi, who is informant of the present case and mother of P.W.4 Sanjay Kumar Rai, specifically, stated in her cross-examination that on the alleged date of occurrence, P.W.4 Sanjay Kumar Rai was not present in the village. Learned counsel further submits that P.W.9 Manju Kumari and P.W.10 Anju Kumari were declared hostile by the



prosecution and their attention towards their statement said to be recorded under Section 161 of the Cr.P.C. was drawn, but prosecution failed to draw the attention of the Investigating Officer towards the statements of aforesaid prosecution witnesses and, therefore, the prosecution cannot take any help of the deposition of P.W.9 & P.W.10. Learned counsel for the appellants further submits that except P.W.4 Sanjay Kumar Rai, not a single prosecution witness supports the prosecution case, but even then the learned trial Court convicted the Appellants.

9. On the other hand, learned Addl. Public Prosecutor refuted the above stated statements arguing that P.W.4 Sanjay Kumar Rai very clearly stated that it were Appellants, who assaulted the deceased and the testimony of P.W.6 Dr. Anil Kumar clearly corroborates the statement of P.W.4 because P.W.6 Dr. Anil Kumar found several injuries on the person of the deceased and, therefore, the learned trial Court rightly convicted and sentenced the Appellants.

10. Having heard the rival contentions of both the parties, we went through the record. We find that P.W.1 Narbadeshwar Kharwar, P.W.2 Srikant Das, P.W.3 Dharamdeo Rajbhar, P.W.7 Jai Mangal Rajbhar, P.W.9 Manju Kumari, P.W.10 Anju Kumari and P.W.11 Manti Devi have been declared



hostile and all the above stated witnesses have not supported the prosecution case. Furthermore, we find that P.W.5 Haridwar Singh and P.W.8 Janardan Singh are formal witnesses and they have stated nothing in respect of the alleged occurrence. P.W.6 Dr. Anil Kumar had conducted Postmortem examination on the corpus of the deceased and P.W.12 Sudhir Rajak is Investigating Officer of the present case.

11. P.W.4 Sanjay Kumar Rai stated in his Examination-in-Chief that when his sisters narrated the incidence of teasing, his father went to the house of appellants to make complain and after that he returned to his home and, thereafter, Appellants having armed with lathi came there and assaulted his father in front of his house, but P.W.11 Manti Devi, who happens to be the informant of the present case has stated in her fardbeyan that when her husband went at the door of appellants to make complain, the alleged occurrence took place at the door of Appellants. However, the learned trial Court failed to take note of aforesaid vital contradictions in respect of the place of occurrence. It is also noteworthy here that P.W.4 Sanjay Kumar Rai was aged about 13 years at the time of recording his evidence and it is obvious from perusal of the record that the learned trial Court did not take pain to test the competency of



the aforesaid witness before recording his evidence and it is well settled principle of law that before relying upon the deposition of a child witness, cautious and care is required. However, we find that the sisters as well as the mother of P.W.4 have not supported the prosecution case and mother of P.W.4 stated that he was not present in village on the alleged date of occurrence.

12. Furthermore, we find that the learned trial Court has not properly recorded the statement under Section 313 of the Cr.P.C., because the circumstances, which emerged in course of trial, were not put before the appellants and the Appellant Jhabbu Ram was not, specifically, asked by the trial Court regarding giving lathi blow causing injury on the head of the deceased and, therefore, the aforesaid fault of the learned trial Court has caused serious prejudice to the Appellants, particularly, Appellant Jhabbu Ram and in our view, the impugned Judgment of conviction and sentence order cannot sustain in the eye of law.

13. Accordingly, on the basis of the aforesaid discussions, both the aforesaid Criminal Appeals are allowed and the impugned Judgment of conviction and sentence order dated 26.03.2010 & 30.03.2010, respectively, passed by the Addl. Sessions Judge, Fast Track Court-III, Buxar in Sessions



Trial No. 10 of 2007 are, hereby, set aside. The appellants are on bail, therefore, they are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A.
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