

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.147 of 2018**

Arising Out of PS.Case No. -301 Year- 2015 Thana -ARARIA District- ARRARIA

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1. Qamrul @ Md. Qamrul,
 2. Jakir, both sons of Sajjauddin,
 3. Sajjauddin,
 4. Tajuddin,
 5. Salauddin, all S/o Late Sheikh Fajilat,
 6. Sakir Alam @ Sakir, S/o Tajuddin,
 7. Md. Taeef, S/o Salauddin, All R/o Village- Rampur Mohanpur, P.S.- Arariya,
 District- Arariya.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Chittranjan Sinha-Sr. Advocate
 Mrs. Soni Shrivastava-Advocate
 Mr. Ravi Bhardwaj-Advocate
 For the Informant : Mr. Akhileshwar Prasad Singh-Sr. Advocate
 Mr. Ambarish Kumar-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: 09-02-2018

While a prayer has been made on behalf of learned counsel for the appellants to release them on bail after suspending the sentence as provided under Section 389(1) of the Cr.P.C., at that very moment, some sort of deficiency was perceived at the end of the learned lower Court and on account thereof, it has been found expedient in the interest of justice to have proper adjudication at an earliest to avoid undue delay, which ultimately would cost the appellants and so, directed to be listed for hearing instead of indulging



over stage of Section 389(1) of the Cr.P.C. and that happens to be reason behind listing of instant appeal on priority basis.

2. Appellants, Qamrul @ Md. Qamrul, Jakir, Sajjauddin, Tajuddin, Salauddin, Sakir Alam @ Sakir and Md. Taeef have been found guilty for an offence punishable under Section 304(i)/ 34 of the I.P.C. and each one has been sentenced to undergo R.I. for 10 years as well as to pay fine appertaining to Rs.20,000/- and in default thereof, to undergo S.I. for six months, additionally, by the 2nd Additional Sessions Judge, Araria in Sessions Trial No.495 of 2016/ 81 of 2017.

3. Bibi Daulati filed written report on 24.06.2015 at about 8.45 p.m. disclosing therein that on the same day i.e. 24.06.2015 at about 11.30 p.m., her neighbours Md. Tajuddin, Sajjauddin, Salauddin, Jakir, Qamrul Hussain, Sabir Alam, Sakir Alam, Md. Taeef under common intention as well as hatching a conspiracy armed with lathi, danda came inside her courtyard and began to abuse her husband Md. Seraz. They have also directed to allow fall of water over her roof, which was protested by her husband. On account thereof, on an order of Tajuddin, all of them began to assault her husband with leg, fist, danda and then, with an intention to kill, Sajjauddin pounced upon his chest and assaulted. When she rushed in rescue of her husband, they outraged her modesty. They



have also looted away her belongings. After departure of the accused persons, she with the assistance of others, lifted her husband to hospital, during midst thereof, her husband succumbed to his injuries.

4. After registration of Araria P. S. Case No.301 of 2015, investigation commenced and after concluding the same, police had submitted chargesheet, supplementary chargesheet at three different occasions. The first chargesheet happens to be dated 31.12.2015 against Qamrul Hussain keeping the investigation pending against remaining seven accused, first supplementary chargesheet is of dated 30.04.2016 relating to Jakir and Sajjauddin keeping the investigation pending against remaining, who were charge sheeted on 31.05.2016. On account thereof, the supplementary records were opened. The commitment followed with registration of three separate Sessions Trial No.495 of 2016 relates with sole appellant/ accused Qamrul Hussain against whom, charge was framed on 20.01.2017, while Sessions Trial No.513 of 2016 relating to appellants/ accused Sajjauddin and Jakir, charge was framed on 20.01.2017 and charge against remaining appellants/ accused Tajuddin, Sakir Alam Salauddin, Md. Taeef under Sessions Trial No.520 of 2016, was framed on 14.12.2016. Accordingly, trial commenced independently. In Sessions Trial No.495 of 2016, Bibi Samina Khatoon has been examined as PW-1 on 20.03.2017, Samsul Islam has been examined



on 06.04.2017 as PW-2, Md. Salamat was examined on 20.04.2017 as PW-3, Rajda Praveen was examined on 02.05.2017 as PW-4, Rupesh Sah was examined on 22.05.2017 as PW-5, Bibi Daulati was examined on 01.07.2017 as PW-6, Minhajul Islam was examined on 22.05.2017 as PW-7, Akhilesh Kumar was examined on 10.10.2017 as PW-8 and Dr. Jitendra Paswan was examined on 03.11.2017 as PW-9. Defence had also exhibited certain documents from Exhibit-A to Exhibit-D.

5. In Sessions Trial No.513 of 2016, PW-1 is Samsul Islam examined on 03.03.2017, PW-2 Rajda Praveen has been examined on 09.03.2017. PW-3 Bibi Samina Khatoon was examined on 20.03.2017, PW-4 Md. Salamat was examined on 20.04.2017, PW-5 Rupesh Sah was examined on 22.05.2017, PW-6 Bibi Daulati was examined on 01.07.2017, PW-7 Minhajul Islam was examined on 22.07.2017, PW-8 Akhilesh Kumar was examined on 10.10.2017 and PW-9 Dr. Jitendra Paswan was examined on 03.11.2017.

6. With regard to Sessions Trial No.520 of 2016, PW-1 Samsul Islam was examined on 03.03.2017, PW-2 Rajda Praveen was examined on 09.08.2017, PW-3 Bibi Samina Khatoon was examined on 20.03.2017, PW-4 Md. Salamat was examined on 20.04.2017, PW-5 Rupesh Sah was examined on 22.05.2017, PW-6 Bibi Daulati was examined on 01.07.2017, PW-7 Minhajul Islam was examined on



22.07.2017, PW-8 Akhilesh Kumar was examined on 10.10.2017 and PW-9 Dr. Jitendra Paswan was examined on 03.11.2017.

7. Though, Sessions Trial No.513 of 2016 as well as Sessions Trial No.520 of 2016 sailed independently, but from the record, it transpires that all the PWs were examined on the same day in both the Sessions Trial and after going through the deposition, it is apparent that deposition has been copied. In the aforesaid background, at least before examination of PW-1 or at least at the time of examination of PW-1, these two records could have been amalgamated as at that very point of time, stage of both the Sessions Trial were same. Even after examination of all the witnesses, it is apparent that the deposition have been copied and that being so, would have amalgamated and in other words, the exercise having at the end of the learned lower Court to the extent of amalgamation of record of these two Sessions Trial namely Sessions Trial No.513 of 2016 as well as Sessions Trial No.520 of 2016 is found justifiable. But when the acknowledgement of aforesaid exercise is taken in consonance with Sessions Trial No.495 of 2016, it suggests a futile effort in the background of the fact that in the aforesaid two Sessions Trial, PW-1 is Samsul Islam while in Sessions Trial No.495 of 2016, PW-1 is Bibi Samina Khatoon. PW-2 in aforesaid two Sessions Trials happens to be Rajda Praveen while PW-2 in Sessions Trial No.495 of



2016 happens to be Samsul Islam, PW-3 in aforesaid two Sessions Trial happens to be Bibi Samina Khatoon while PW-3 in Sessions Trial No.495 of 2016 happens to be Md. Salamat. PW-4 in aforesaid two Sessions Trial happens to be Md.Salamat, while PW-4 in Sessions Trial No.495 of 2016 happens to be Rajda Praveen. It is from the stage of PW-5 Rupesh Sah in above referred three Sessions Trial, the witnesses are the same and further, after going through the deposition, it is evident that same happens to be copied of each other.

8. Be that as it may, as stated above, the examination-in-chief, cross-examination of witnesses relating to Sessions Trial No.513 of 2016 as well as Sessions Trial No.520 of 2016 happens to be same, as appears to be copied to, so far Sessions Trial No.495 of 2016 is concerned, the same happens to be different relating to PW-1 to PW-4.

9. It is settled principle of law that witnesses are to be examined in presence of the accused as provided under Section 273 of the Cr.P.C. having some sort of exception as provided under Section 299 of the Cr.P.C. and so, the evidence of PW-1 to PW-4 relating to Sessions Trial No.495 of 2016 could not be read, used, taken into consideration against the accused of Sessions Trial No.513 of 2016 as well as Sessions Trial No.520 of 2016 and the same status happens to be accused of Sessions Trial No.495 of 2016 (vice-versa). The learned



lower Court, as is evident from the order dated 20.11.2017 amalgamated all the Sessions Trial without adjudging whether same happens to be permissible in the eye of law. Because of the fact that on account of some sort of deficiency persisting on the record as pointed out hereinabove, there happens to be legal impediment in acknowledging the activity of the learned lower Court as the evidence of witnesses of Sessions Trial No.495 of 2016, PW-1 to PW-4 could not be used against the accused of Sessions Trial No.513 of 2016 as well as Sessions Trial No.520 of 2016 and in vice versa. When there happens to be barrier, then in that circumstance, finding would not be legally permissible on the basis of the aforesaid consideration and consequent thereupon, could not be recognized in the eye of law. Moreover, from the judgment impugned, it is evident that the learned lower Court used the evidence of witnesses examined in connection with Sessions Trial No.495 of 2016, without taking note of the evidence at least PW-1 to PW-4 relating to Sessions Trial No.513 of 2016 as well as Sessions Trial No.520 of 2016. Consequent thereupon, the judgment impugned is set aside along with order dated 20.11.2017 passed by the learned lower Court amalgamating all the Sessions Trials invoking inherent power as prescribed under Section 482 of the Cr.P.C. as has been recognized by the Hon'ble Apex Court in *Rishipal Singh vs. State of U.P. reported in 2014 (4) P.L.J.R. 118*



(S.C.). Appeal is allowed. Matter is remitted back to the learned lower Court with a direction to proceed independently relating to each of the Sessions Trial from the stage of argument and will pass the judgment after hearing both the parties in accordance with law. Appellants, who are under custody, are directed to be produced before the learned lower Court and in case, prayer is made on their behalf, they may be allowed to enjoy their privilege, which they were availing before pronouncement of the judgment. Furthermore, the learned lower Court is directed to expedite the trial and will endeavour to dispose it of within three months from receipt of the L. C. Record.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	12.02.2018
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