

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.395 of 2019

Arising Out of PS. Case No.-110 Year-2012 Thana- PANDARAK District- Patna

Kunti Devi, aged about 68 years, Female, Wife of Late Ramjee Saw, Resident of Village - Gowasa Sheikhpura, P.S.- Pandarak, Distt - Patna.

... .. Appellant

Versus

1. The State of Bihar
2. Seema Kumari @ Priyanka Devi, aged about 22 years, Female, D/o Late Lachhu Saw, Resident of Village - Gowasa Sheikhpura, P.S.- Pandarak, District - Patna.
3. Beauti Devi, aged about 25 years, Female, D/o Late Lachhu Saw, Resident of Village - Gowasa Sheikhpura, P.S.- Pandarak, District - Patna.
4. Giranjan Saw, aged about 25 years, Male, Son of Late Lachhu Saw, Resident of Village - Gowasa Sheikhpura, P.S.- Pandarak, District - Patna.
5. Niranjan Saw, aged about 28 years, Male, Son of Late Lachhu Saw, Resident of Village - Gowasa Sheikhpura, P.S.- Pandarak, District - Patna.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Ashok Kumar Kashyap, Adv.
For the State	:	Mr. Shiwesh Chandra Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

5 06-09-2019 Heard learned counsel appearing for the appellant, learned counsel appearing for respondent nos. 2 to 5 as well as learned Additional Public Prosecutor for the State on the point of admission and, in our view, this criminal appeal can be disposed of on admission stage itself.

2. The appellant, namely, Kunti Devi, is aggrieved by



the impugned judgment, dated 23.01.2019, passed by learned Additional Sessions Judge-1st, Barh, Patna in Sessions Trial No. 1331/2013/243/2014 arising out of Pandarak P. S. Case No. 110 of 2012, by which and whereunder, learned Additional Sessions Judge-1st, Barh, Patna acquitted the respondent nos. 2 to 5 from the charges framed against them under Sections 302/34, 341/34, 324/34 and 325/34 of the Indian Penal Code but convicted respondent no. 5, Niranjana Saw, for the offence punishable under Section 323 of the Indian Penal Code and released him under the provision of First Offenders Act after condemning him.

3. The appellant, namely, Kunti Devi, claims herself to be injured as well as wife of deceased Ramji Saw. The P. S. Case No. 110 of 2012 under Sections 341, 323, 324 and 325/34 of the Indian Penal Code was registered on the basis of written report of deceased Ramji Saw, who claimed in his written report that on the alleged date of occurrence, at about 5.30 a.m., he had gone to give fodder to his cattle and while he was feeding fodder to his cattle, F.I.R. named accused Lachhu Saw along with his family members came there and started abusing him upon which he made protest but aforesaid Lachhu Saw along with his entire family started assaulting him as well as his wife



Kunti Devi (appellant) by means of *Lathi* and *Khanti* as a result whereof, he sustained injury on his forehead as well as hand and furthermore, his wife Kunti Devi (appellant) also sustained injury on her hand. In the meantime, his son Sohan Kumar came there to save him but he was also assaulted by means of *Khanti* as a result whereof, his hand was broken. The deceased Ramji Saw has disclosed the name of miscreants in the written report as Lachhu Saw, Niranjana Saw, Giriranjana Saw, Beauty Devi and Seema Kumari.

4. It is an admitted case that after 16 days of the alleged occurrence, the aforesaid Ramji Saw died in course of his treatment and, accordingly, Section 302 of the Indian Penal Code was also added in the aforesaid P. S. Case No. 110 of 2012.

5. The respondent nos. 2 to 5 along with FIR named accused Lachhu Saw were put on trial and, accordingly, they stood charged for the offences punishable under Sections 302/34, 341/34, 324/34 and 325/34 of the Indian Penal Code. The respondent nos. 2 to 5 and FIR named accused Lachhu Saw denied the charged. However, during pendency of the trial, FIR named accused Lachhu Saw died and proceeding against him was dropped vide order dated 26.03.2015.



6. In course of trial, prosecution examined, altogether, nine prosecution witnesses and also got exhibited certain documents. The statements of respondent nos. 2 to 5 were recorded under Section 313 of the Cr. P. C in which they reiterated their innocence. However, the defence also examined four defence witnesses and got exhibited some documents.

7. Learned trial court having considered the submissions of the parties as well as materials available on the record passed the impugned judgment especially taking note of this fact that in course of trial, injured Kunti Devi (PW-6) and injured Sohan Saw (PW-7) claimed that Lachhu Saw and Niranjana Saw (respondent no. 5) assaulted the deceased and Sohan Saw (PW-7) was assaulted by Niranjana Kumar.

8. Learned counsel appearing for the appellant submits that the learned trial court failed to appreciate the materials available on the record in right perspective as the postmortem report as well as injury report of deceased, Ramji Saw, goes to show that deceased sustained several injuries on his person and in course of trial, prosecution, specifically, stated that respondent nos. 4 and 5 participated in assault of the deceased and in that course, respondent no. 5 assaulted the deceased by means of *Lathi* but the learned trial court acquitted



respondent nos. 2 to 5 from the charges whereas there was sufficient material to prove the participation of respondent nos. 2 to 5 in the alleged crime and, therefore, the learned trial court ought to be convicted the respondent nos. 2 to 5 for the offence punishable under Section 302/34 of the Indian Penal Code.

9. Learned counsel of the appellant further submitted that even if it assumed that free fight took place between the parties and in the aforesaid free fight, the respondent no. 5 along with deceased-accused Lachhu Saw caused injury to deceased, then also, respondent no. 5 ought to have been convicted under Section 304 Part I of the Indian Penal Code but the learned trial court did not take care of the aforesaid fact and passed the impugned judgment which is not in accordance with law.

10. On the other hand, learned counsel appearing for respondent nos. 2 to 5 supports the impugned judgment arguing that admittedly, in course of trial, except PW-6 and PW-7, almost all the prosecution witnesses made general allegation of assault against respondent nos. 2 to 5 whereas PW-6 and PW-7, specifically, stated that deceased-accused Lachhu Saw and respondent no. 5 assaulted the deceased Ramji Saw by means of *Khanti* and furthermore, it came to light in course of trial that deceased Ramji Saw as well as deceased-accused Lachhu Saw



were cousin brothers and the occurrence took place on account of partition dispute and, therefore, in the aforesaid circumstance, learned trial court rightly passed the impugned judgment and there is no need to interfere into the impugned judgment.

11. Having heard the contentions of both the parties, we went through the record as well as materials available on the lower court records. We find that except PW-6 and PW-7, who happens to be injureds of this case, none of the prosecution witnesses made any specific allegation against the respondent nos. 2 to 5 rather they stated that respondent nos. 2 to 5 participated in the alleged crime by assaulting the deceased as well as injured. PW-6 claimed that deceased-accused Lachhu Saw and respondent no. 5 assaulted the deceased by means of *Khanti* and *Lathi* and she, specifically, stated that at the time of alleged occurrence, deceased-accused Lachhu Saw was carrying *Khanti* whereas respondent no. 5 was carrying *Lathi*.

12. PW-4, Dr. Arun Kumar, claimed before the learned trial court that after the alleged occurrence, he examined the injuries of deceased Ramji Saw, Kunti Devi (PW-6) and Sohan Saw (PW-7). This witness claimed that he found scalp injury 2" length on occipital bone of deceased Ramji Saw and at the time of his examination, he was not able to hold right hand



side arm as there was fracture and furthermore, there was cut injury 2½ cm X 2” on left arm of deceased. He further claimed that he examined PW-6 Kunti Devi but he did not find any visible injury on the person of PW-6 though she made complain of body pain. He further claimed that PW-7 was also examined by him and he found lacerated wound on scalp on 1½” X ½” on frontal bone on head and lacerated injury on shoulder of PW-7. It is also pertinent to note here that PW-5, Dr. Anand Kumar Jha, claimed before the learned trial court that he held postmortem examination on the dead body of deceased Ramji Saw on 03.09.2012 and found stitched wound having around 11 stitches surrounded by bruise about 6” X 3” over right arm with fracture of right humerus bone. This witness claimed that he found the head of deceased intact meaning thereby, he did not find any injury on the head of deceased Ramji Saw at the time of postmortem examination.

13. PW-6 and PW-7 claimed in their respective statements that respondent no. 5 had given *lathi* blow on the head of deceased Ramji Saw but there is discrepancy between the statements of prosecution witnesses and the injury report as well as postmortem report of the deceased because in the injury report and postmortem report of deceased, no injury on the head



was found and therefore, in our view, the learned trial court rightly held that there was doubt regarding the claim of PW-6 and PW-7 that respondent no. 5 had assaulted the deceased causing head injury to him.

14. PW-7 claimed that he sustained injury in the alleged occurrence and his injury report was brought in evidence by the prosecution and the injury report of PW-7 goes to show that he sustained simple injury. Admittedly, respondent no. 5 was convicted by the learned trial court for the offence punishable under Section 323 of the Indian Penal Code and therefore, in our view, the learned trial court did not commit any error in convicting the respondent no. 5 only for the offence punishable under Section 323 of the Indian Penal Code.

15. Admittedly the deceased-accused Lachhu Saw died in course of trial and PW-6 and PW-7 claimed that it was deceased-accused Lachhu Saw, who assaulted the deceased. Furthermore, it is an admitted position that deceased-accused Lachhu Saw as well as deceased-informant Ramji Saw were cousin brothers and the occurrence took place on account of petty dispute. In course of trial, the respondent no. 2 to 5 brought several documents in evidence to show that for the occurrence of the same day, one case was lodged against



deceased-informant Ramji Saw and others and in that case, they were convicted by the learned trial court. Therefore, the above stated fact clearly goes to show that free fight had taken place between the parties and therefore, in our view, the learned trial court rightly rejected the claim of prosecution that the respondent nos. 2 to 5 shared common intention or had common object to commit the murder of deceased Ramji Saw.

16. On the basis of above discussions, we are of the view that there is no need to interfere into the impugned judgment and, accordingly, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Rajeev Kumar/-

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