

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No. 143 of 2020

Arising Out of PS Case No.-2 Year-2014 Thana- BHAGWANPUR District- Vaishali

1. Suraj Mahto, aged about 26 years, Male Son of Ashok Mahto.
2. Bishwa Karma Mahto, aged about 24 years, Male Son of Late Ram Prasad Mahto.
3. Nunuwati Devi, aged about 42 years, Female Wife of Ashok Mahto.
All resident of Village- Pratap Tarnd (Kahar Toli), PS- Bhaganpur, District- Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mukesh Kumar Singh, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP
For the Informant	:	Mr. Manish Chandra Gandhi, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 02-03-2021

Heard Mr. Mukesh Kumar Singh, learned counsel for the appellants; Mr. Sujit Kumar Singh, learned APP for the State and Mr. Manish Chandra Gandhi, learned counsel for the informant.

2. The appeal has been filed against the judgment of conviction dated 12.12.2019 and order of sentence dated 19.12.2019 passed by learned Additional District and Sessions Judge, IXth, Vaishali at Hajipur, in Sessions Trial No. 413+ 414 of 2014 arising out of Bhagwanpur PS Case No. 02 of 2014, by which the appellants have been convicted under Sections 304/34



of the Indian Penal Code and sentenced to undergo RI for 10 years and to pay fine of Rs. 50,000/-each, out of which ordered to pay Rs. 1,20,000/- to the informant and the rest of total amount of fine Rs. 30,000/- deposited with the State Government and in default of payment of fine of Rs. 30,000/-, the appellants were directed to undergo imprisonment for a further period of six months simple imprisonment and for recovery of Rs. 1,20,000/- movable/immovable property of appellants shall be confiscated.

3. Presently, the prayer is for suspension of sentence and grant of bail to the appellants.

4. The allegation against appellants no. 1 and 2 is general and omnibus of being party to the assault on the deceased whereas against appellant no. 3 is that she was the order giver.

5. Learned counsel for the appellants submitted that against co-accused Rudal Mahto the specific allegation is of assault on the head and in the postmortem, there is swelling of 6"x4" on the left forehead, but against the appellants, there is no direct allegation of any assault and though one more injury of fracture of rib has been found but it is on the right side which clearly indicates that after being hit on the head, the deceased fell down on the other side leading to fracture of his ribs. It was further submitted that none of the witnesses have specifically



stated that any of the appellants had assaulted on the chest so as to corroborate the injury of fracture of ribs on the right side of the deceased. Learned counsel submitted that the doctor in his deposition has stated that such injury was not sufficient to cause death and that is why conviction has not been under Section 302 of the Indian Penal Code. Learned counsel submitted that the appellants no. 1 and 2 are in custody for 18 months whereas the appellant no. 3 was granted anticipatory bail during trial and after the date of the judgment is in custody for about 15 months.

6. Learned APP submitted that the Court below has considered the matter and has passed the order of conviction.

7. Learned counsel for the informant also supported the judgment of the Court below. It was submitted that witnesses have supported the role of the appellants. However, he could not point out any deposition of any witness wherein specific overt act of assault on the chest of the deceased has been pointed out and further that the injuries do not reflect any repeated or multiple blows on any other part of the body. Further, he could not controvert or show that there was any injury on the body and only the fracture of the ribs has been noted in the postmortem report.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, during the



pendency of the appeal, the sentence of the appellants named above, is suspended and they shall be released on bail, on their furnishing bonds of Rs. 25,000/- (twenty five thousand) each with two sureties of the like amount each to the satisfaction of the learned Additional District and Sessions Judge, IXth, Vaishali at Hajipur in Sessions Trial No. 413+ 414 of 2014 arising out of Bhagwanpur PS Case No. 02 of 2014, subject to the condition that one of the bailors shall be the close relative of the appellants.

(Ahsanuddin Amanullah, J.)

P. Kumar

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