

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.263 of 1995

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1. Anup Sahu @ Anup Lal Sah, son of Late Jitan Sah.
 2. Lachman Sah alias Lakshman Sahu, son of Sri Anup Sahu.
 3. Uttim Sah alias Uttim Sahu, son of Sri Anup Sahu.
- All residents of village-Korihar Laukahi, P.S. Andhramath (Laukahi),
District-Madhubani.

... .. Appellants.

Versus

The State of Bihar

... .. Respondent.

Appearance :

For the Appellants	:	Mr. Manish Kumar No.13, Advocate. Mr. Rohit Kumar, Advocate.
For the State	:	Ms. Shashi Bala Verma, A.P.P.

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
and
HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 16 -12-2021

The appellants/accused by this appeal are challenging the Judgment and Order dated 22nd of August, 1995, passed by the learned Sessions Judge, Madhubani, in Sessions Trial No.17 of 1992 between the parties thereby convicting them and sentencing them accordingly.

By the impugned Judgment and Order, the appellant/accused no.1 Anup Sah came to be convicted of the offences punishable under Sections 447 and 307 of the Indian Penal Code and he is sentenced to suffer rigorous imprisonment for 10 years for the offence punishable under Section 307 of the



Indian Penal Code. Appellant/accused no.2 Lachman Sah came to be convicted for the offences punishable under Sections 447 and 302 of the Indian Penal Code and he is sentenced to suffer imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code. Appellant/accused no.3 Uttim Sah came to be convicted of the offences punishable under Sections 447, 307 and 323 of the Indian Penal Code. For the offence punishable under Section 307 of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for 10 years. No separate sentences came to be imposed on the appellants for other offences proved against them. For the sake of convenience, the appellants shall be referred to as the accused.

2. The facts in brief leading to the prosecution of the appellants/accused can be summarized thus:

(a). The incident in question took place at about 07.30 A.M. of 26.01.1991 in a field at village-Korihar Laukahi within jurisdiction of Police Station-Andhramath in Madhubani District of Bihar. On the day of the incident, at about 07.30 A.M., two brothers, namely, P.W.6 Surya Narayan Sah (the first informant) and Ramdeo Sah (since deceased) were ploughing their field. At about 07.30 A.M. of that day, accused persons entered in the said field. Accused no.1 Anup Sah was armed



with Farsa, accused no.2 Lachman Sah was holding a lathi and spear whereas accused no.3 Uttim Sah was holding a lathi. They all unyoked the plough. P.W.6 Surya Narayan Sah and his brother Ramdeo Sah (since deceased) opposed this act of the accused persons. Then they all started beating Ramdeo Sah (since deceased) by means of sticks and Farsa. Accused no.1 Anup Sah started assaulting P.W.6 Surya Narayan Sah by means of Farsa. Frightened Ramdeo Sah ran to the adjoining field and hide himself. Accused no.2 Lachman Sah holding a spear and accused no.3 holding a lathi followed Ramdeo Sah and started assaulting him by means of the weapons carried by them. When P.W.7 Kaili Devi and P.W.8 Gopal Sah (parents of Ramdeo Sah) went to save their son, accused Lachman Sah and Uttim Sah assaulted them by means of lathies. Villagers such as P.W.2 Raj Kumar Sah, P.W.3 Sita Ram Kamat, P.W.5 Parmeshwar Mandal, Ramashish Kamat etc. were present on the spot of the incident and were witnessing the incident. After hearing shouts lot of villagers gathered there. Accused persons ran away. Injured P.W.6 Surya Narayan Sah and his brother Ramdeo Sah were then taken to the Mahadeomath Hospital where they were treated by P.W.9 Dr. Jugal Kishore Singh. P.W.8 Gopal Sah was also treated by this Medical Officer.



Ultimately, Ramdeo Sah succumbed to the injuries suffered by him in the incident.

(b). Injured Surya Narayan Sah lodged First Information Report (Ext.2) of the incident of 26.01.1991, while taking treatment at the Mahadeomath Hospital and P.W.11 Bansidhar Jha, Police Sub Inspector recorded the same.

(c). Routine investigation followed. The dead body of Ramdeo Sah was sent for autopsy. P.W.4 Dr. Jagdeo Mandal of the Sadar Hospital, Madhubani, conducted the post-mortem examination. Statements of the witnesses came to be recorded. The spot was inspected by P.W.11 Bansidhar Jha PSI. On completion of investigation, the accused persons were charge-sheeted.

(d). The learned trial court framed various charges against the accused persons. They all were charged for the offence punishable under Section 447 of the Indian Penal Code for having committed criminal trespass by entering in the agricultural field of P.W.8 Gopal Sah situated at village -Korihar Laukahi. Accused no.2 Lachman Sah came to be charged for the offence punishable under Section 302 of the Indian Penal Code for having committed murder of Ramdeo Sah. Accused no.1 Anup Sah and accused no.3 Uttim Sah were charged for the



offence punishable under Section 307 of the Indian Penal Code for attempting to commit murder of P.W.6 Surya Narayan Sah (the first informant). Accused no.1 Anup Sah was charged for the offence punishable under Section 326 of the Indian Penal Code for causing grievous hurt to P.W.6 Surya Narayan Sah whereas accused no.3 Uttim Sah came to be charged for the offence punishable under Section 323 of the Indian Penal Code for voluntarily causing hurt to Gopal Sah and Kaili Devi.

(e). In support of the charge, the prosecution has examined in all 13 witnesses. Defence of the accused persons was that of total denial. They claimed to be owner and possessor of the field wherein the incident in question took place. They examined in all 7 witnesses.

(f). After hearing the parties, the learned trial court by the impugned Judgment and Order was pleased to convict the accused persons and to sentence them as indicated in the opening paragraph of the Judgment.

3. We heard Mr. Manish Kumar No.13 and Mr. Rohit Kumar, the learned Advocates appearing for the appellants/accused. They argued that the entire prosecution case is concocted and witnesses are got up witnesses. P.W.6 Surya Narayan Sah cannot be an eye witness to the incident of murder



of his brother Ramdeo Sah who according to the prosecution case was hidden in the neighbouring field. It is further argued that other prosecution witnesses are also chances witnesses and even P.W.1 Nathuni Sah has candidly stated the fact that he reached at the spot after the incident. Learned Advocates appearing for the appellants further argued that evidence on record is not justifying the conviction for the offence punishable under Section 307 of the Indian Penal Code. There is no evidence to hold that accused no.2 Lachman Sah has committed murder of deceased Ramdeo Sah.

4. As against this, the learned Additional Public Prosecutor supported the impugned Judgment and Order and argued that accused persons were holding dangerous weapons such as Farsa and the spear apart from lathies. They assaulted the victims and caused death of Ramdeo sah. Therefore, the appeal is liable to be dismissed.

5. We have considered the submissions so advanced and we have also perused the record and proceeding minutely. We have gone through all documentary evidence. We have minutely scrutinized evidence of all defence witnesses.

6. At the outset one will have to examine whether it is proved by the prosecution that Ramdeo Sah died homicidal



death in the incident which took place on 26.01.1991. Prosecution witnesses such as P.W.1 Nathuni Sah, P.W.2 Raj Kumar Sah, P.W.3 Sita Ram Kamat, P.W.5 Parmeshwawr Mandal, P.W.6 Surya Narayan Sah, P.W.7 Kaili Devi, P.W.8 Gopal Sah and P.W.11 Bansidhar Jha are unanimously stating that Ramdeo Sah died on 26.01.1991. Their evidence on this aspect has gone unchallenged. P.W.11 Bansidhar Jha, the Investigating Officer, has deposed that he had conducted inquest panchnama (Ext.7) after inspecting the dead body of Ramdeo Sah in presence of P.W.10 Mungai Mukhia. The inquest panchnama at Ext.7 duly corroborates the version of witnesses who had spoken about the death of Ramdeo Sah. Dead body of Ramdeo Sah was sent for autopsy to the Sadar Hospital, Madhubani, where P.W.4 Dr. Jagdeo Mandal had conducted post-mortem examination. It is in evidence of this Medical Officer that on 27.01.1991, he performed the post-mortem examination on dead body of Ramdeo Sah, son of Gopal Sah, which was identified by Havaladar Gajadhar Singh. Relevant portion of his evidence needs reproduction and it read thus:

“I found the following ante-mortem injuries on the dead body.

- (i). One penetrating wound over right thigh 2” x 1” x 3” deep.



- (ii). One penetrating wound over right thigh over posterior aspect 2" x 1" x 3" deep.
- (iii). One penetrating wound over right leg 2" x 1" x 1".
- (iv). Blakish bruise over left elbow and both the legs region.

On dissection, both the lungs were pale. Right heart chamber was full and left empty. Liver was pale. Spleen & kidney were also pale. Stomach was empty. Bladder was also empty. Femoral artery was cut with bruising of muscles. Large and small intestine contained fecal matter and gases. Brain and meninges pale."

There is nothing in cross-examination of this Medical Officer to doubt his version which is duly corroborated by the report of the post-mortem examination duly proved by him. With this evidence the prosecution has certainly proved that Ramdeo Sah son of Gopal Sah died homicidal death on 26.01.1991.

7. Now, let us examine whether the prosecution has proved that all accused persons had committed the offence of criminal trespass by entering upon the agricultural field of Gopal Sah and whether it is established from the evidence on record that accused no.2 Lachman Sah has committed murder of Ramdeo Sah. It will also have to be seen whether by assaulting P.W.6 Surya Narayan Sah, accused no.1 Anup Sah and accused no.3 Uttim Sah had committed the offence of



attempting to commit his death and whether accused no.3 Uttim Sah had committed the offence of voluntarily causing hurt to Gopal Sah and Kaili Devi.

8. One may argue that witnesses examined by the prosecution in the instant case are related to the prosecuting party and therefore their evidence needs to be discarded being untrustworthy. However, it is well settled that a witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted. Unless the witness has cause such as enmity against the accused with a desire to implicate him falsely, evidence of a witness cannot be discarded. It is a truism that ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. However, at the same time it will have to be kept in mind that in case of more than one assailant, there is a tendency to drag in an innocent person against whom a witness has a grudge, along with the real assailants. Each case is required to be judged on its own facts but merely because witnesses are relatives, they cannot be branded as liars. One has to be cautious in dealing with the evidence of such witnesses. Keeping it in mind these aspects, let us examine the evidence of the first informant who himself is an injured witness in the



instant case. He has lodged the F.I.R. (Ext.2) with promptitude while taking medical treatment at the hands of P.W.9 Dr. Jugal Kishore Singh at the Mahadeomath Hospital.

9. It is evidence of P.W.6 Surya Narayan Sah, who happens to be brother of the deceased Ramdeo Sah that at about 07.30 A.M. of 26.01.1991, they were ploughing their field and at that time, accused Anup Sah, Lachman Sah and Uttim Sah entered in their field. Anup Sah was armed with Farsa, Lachman Sah was holding a spear as well as a lathi whereas Uttim Sah was holding a lathi. P.W.6 Surya Narayan Sah testified that then accused persons unyoked the plough and upon objection to this act, accused Anup Sah gave a blow of Farsa on his head. Injury mark on the head of P.W.6 Surya Narayan Sah was even noted by the learned trial court and this fact is recorded in the deposition. P.W.6 Surya Narayan Sah further deposed that accused Uttim Sah assaulted him by means of lathi. He stated that his brother Ramdeo Sah got frightened and hide himself in the adjoining field but accused Lakshman holding a spear and accused Uttim holding a lathi followed him and assaulted him. As per version of this witness P.W.6 Surya Narayan Sah, his father P.W.8 Gopal Sah and his mother P.W.7 Kaili Devi tried to save Ramdeo Sah but Lachman Sah and



Uttim Sah have assaulted them also by means of lathies. This is an eye witness account given by injured P.W.6 Surya Narayan Sah wherein he had stated that by giving blows of spear, accused no.2 Lachman Sah and by giving blows of stick accused no.3 Uttim Sah had assaulted his brother Ramdeo Sah. As per version of this witness, villagers took them both to Mahadeomath Hospital where his brother Ramdeo Sah died. He proved his F.I.R. (Ext.2) lodged by him at the Sadar Hospital, Madhubani, itself while taking treatment. During the course of cross-examination, lot of insignificant stuff came to be introduced by the defence in respect of ownership and possession of the field which has no bearing for deciding the criminal liability of the accused persons. Some injury caused to accused no.1 Anup Sah has also got explanation from the cross examination of this witness. He stated that when the villages gathered at the spot, Niranjana Mirtha snatched the Farsa from the hands of accused Anup Sah and assaulted Anup Sah by that Farsa. Surprisingly, the defence has not challenged the version of this witness P.W.6 Surya Narayan Sah regarding the incident of murderous assault by accused persons on Ramdeo Sah so also that of assault on this witness itself. The entire evidence of this witness P.W.6 Surya Narayan Sah is virtually unchallenged



and therefore there is no reason to disbelieve his version regarding the incident.

10. P.W.6 Surya Narayan Sah is an injured witness. P.W.9 Dr. Jugal Kishore Singh, Medical Officer of the Mahadeomath Hospital has duly corroborated the version of this injured witness. Evidence of this Medical Officer shows that on 26.01.1991 itself he had examined P.W.6 Surya Narayan Sah at the said Hospital and found the following injuries on his person.

- “(i). Cut injury 1¼” x 1/4” x scalp deep on parietal region of right side of head.
- (ii). Cut injury 2½” x 1/4” x scalp deep on vertex of the head.
- (iii). Cut injury 2½ “ x 1/4” x scalp deep on parietal region of left side of head.
- (iv). Cut injury 2½” x 1/4” x scalp deep on occipito parietal region of left side of head.
- (v). Bruise 1/4” x 1/8” x superficial on posterial side of right wrist.
- (vi). Bruise 1/4” x 1/8” x superficial on middle part of posterio lateral side of left upper arm.
- (vii). Swelling with tenderness on postero lateral side of middel part of the left forearm.

This evidence makes it clear that injured P.W.6 Surya Narayan Sah had received the injuries in the incident which is under examination in this case and therefore his evidence



carries great weight. Unchallenged version of this injured witness P.W.6 Surya Narayan Sah as such is required to be accepted in toto because he has received the injuries in the very same incident as seen from the evidence of P.W.9 Dr. Jugal Kishore Singh. Version of P.W.6 Surya Narayan Sah is fully corroborated by this evidence.

11. It was sought to be argued that P.W.6 Surya Narayan Sah cannot be an eye witness to the incident because as per his version his brother Ramdeo Sah was hidden in the adjoining field. However, there is no cross examination on this point by the defence. There are no suggestion to P.W.6 Surya Narayan Sah on this aspect. It is not elicited from him as to whether there was standing crop in that field of sufficient height to obstruct the vision of an onlooker. Hence, this argument carries no weight to dislodge the eye witness account of the incident given by P.W.6 Surya Narayan Sah-an injured first informant. Even otherwise, as seen from evidence of P.W.6 Surya Narayan Sah, accused no.2 Lachman, carrying the spear went behind Ramdeo Sah and soon thereafter, Ramdeo Sah got fatal wounds by the spear.

12. Though evidence of P.W.6 Surya Narayan Sah, an injured witness is sufficient to prove the incident of



murderous assault, there are several other eye witnesses who were present on the scene of the occurrence in a very natural way. It was a time of 07.30 A.M. It is a matter of common knowledge that villagers go for easing themselves outside the village in the morning hours. Similarly, it is but natural that agricultural operations also start in the morning hours. That is how, one will have to look at the evidence of eye witnesses to the incident. P.W.2 Raj Kumar Sah, at the time of the incident was present on the spot as he was passing from there after relieving himself. He had been to answer the call of the nature. Similar is the case of P.W.3 Sitaram Kamat. P.W.5 Parmeshwar Mandal was harvesting the crop of potato at the time of the incident in the nearby field of Durganand Jha. P.W.7 Kaili Devi and P.W.8 Gopal Sah are parents of the deceased and the injured witnesses of the incident. They were present in the field. All these witnesses have unanimously deposed about the mode and manner of the incident of murderous assault by the accused persons. Their version about the incident is perfectly in tune with the evidence of P.W.6 Surya Narayan Sah. All these witnesses have spoken that accused Anup Sah was holding Farsa, accused Lachman Sah was holding a spear and accused Uttim Sah was holding a lathi. These eye witnesses



have stated that P.W.6 Surya Narayan Sah was assaulted by means of Farsa by accused Anup Sah whereas accused Lachman Sah and accused Uttim Sah assaulted Ramdeo Sah in the neighbouring field by means of a spear and lathi respectively. They have also vouched that P.W.7 Kaili Devi and P.W.8 Gopal Sah were assaulted by means of sticks by accused Uttim.

13. We have carefully perused the cross examination of all these witnesses. P.W.2 Raj Kumar Sah has candidly stated that though he attempted to save the victims, accused persons rushed at him to assault him. He stated that accused Anup was also injured by Farsa. However, from cross examination of injured P.W.6 Surya Narayan Sah, the defence has brought on record that it was at the instance of one Niranjan Mirtha. From cross examination of P.W.3 Sita Ram Kamat also it is brought on record that accused Anup Sah was injured at the instance of Niranjan Mirtha and spear from the hand of accused Lachman came to be snatched by Ram Prasad. P.W.3 Sita Ram Kamat in his cross examination has stated that Anup Sah and his sons were saying that they will not allow anyone to plough the field owned by them. Thus, in fact, the benefit of this cross-examination goes to the prosecution and it is seen even from the



cross examination also that in fact accused no.2 Lachman Sah was holding a spear at the time of the incident. Even from cross examination of P.W.5 Parmeshwar Mandal, it is brought on record that he had witnessed the full incident. Thus cross examination of all these witnesses is cementing the prosecution case.

14. It has been brought on record from evidence of P.W.8 Gopal Sah that they are also facing the trial for assaulting accused Anup Sah but the defence has brought on record from cross-examination of prosecution witnesses that said Anup Sah was injured by one Niranjana Mirtha. Therefore, merely because the incident has given rise to the counter case, version of these eye witnesses cannot be doubted or disputed.

15. The foregoing discussion makes it clear that deceased Ramdeo Sah was murderously assaulted by accused no.2 Lachman Sah by giving blows of spear. Evidence of P.W.9 Dr. Jugal Kishore Singh who had medically treated Ramdeo Sah at the Mahadeomath Hospital so also that of autopsy surgeon P.W.4 Dr. Jagdeo Mandal shows that deceased Ramdeo Sah was having three penetrating wounds on his right thigh and leg. Two of the penetrating wounds were 3” deep whereas the one wound on the leg was 1” deep. As opined by P.W.4 Dr.



Jagdeo Mandal, the injuries on Ramdeo Sah were sufficient to cause his death in ordinary course of nature. Extensive damage was caused by these penetrating injuries which are attributable to the spear used by accused no.2 Lachman Sah. Femoral artery of Ramdeo Sah was cut because of these fatal blows given by accused no.2 Lachman Sah. Femoral artery is a large artery in the thigh which supplies blood to the lower part of the body. Any cut to this large artery can drive the victim to instantaneous unconsciousness. Cut of this femoral artery can cause death in few minutes only.

16. In the case in hand, with full force successive blows of spear were given by accused no.2 Lachman Sah on Ramdeo Sah causing cutting of the femoral artery. Section 300 of the Indian Penal Code defines the term “Murder” and relevant portion thereof is thus:

“**300. Murder.**—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or



4thly. —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

Thus if any act is done by the assailants with the intention of causing bodily injury to any person and if the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, the offence becomes an offence of murder.

17. In the case in hand, we are having expert opinion of Dr. Jagdeo Mandal that the injuries on the deceased were sufficient in the ordinary course of nature to cause his death. Thus, the case in hand comes in clause 4thly of Section 300 of the Indian Penal Code and therefore we uphold the finding of the learned trial court that accused no.2 Lachman Sah had committed the murder of the deceased Ramdeo Sah.

18. Evidence of P.W.8 Gopal Sah which is duly corroborated by the evidence other eye witnesses unerringly points out that accused no.3 Uttim Sah had caused hurt to him as well as his wife P.W.7 Kaili Devi by giving blows of sticks on them. We have also noted that he had given blows of sticks to the deceased. Hence, we do not find any fault in conviction



of the accused no.3 Uttim Sah for the offence punishable under Section 323 of the Indian Penal Code. Unfortunately however, no charge for the offence punishable under Section 302 by invoking provisions of Section 34 of the Indian Penal Code was framed against accused no.3 Uttim. All accused persons, as seen from the evidence of prosecution witnesses, had committed criminal trespass by entering upon the land in possession of P.W.8 Gopal Sah on which ploughing operations were being done by injured P.W.6 Surya Narayan Sah and his deceased brother Ramdeo Sah. Therefore, the offence punishable under Section 447 of the Indian Penal Code is also made out. Similarly the offence punishable under Section 323 of the Indian Penal Code is also proved against accused no.3 Uttim Sah.

19. Now, let us examine whether there was an attempt to commit murder of the injured P.W.6. Surya Narayan Sah and who is liable for that act. It is well settled that for making out of offence punishable under Section 307 of the Indian Penal Code it is not necessary that the victim should be wounded. Presence of an intention coupled with some overt act in execution of such intention is the only requirement of proof of commission of an offence punishable under Section 307 of



the Indian Penal Code. There is no necessity of causing a bodily injury capable of causing the death. P.W.6 Surya Narayan Sah has testified that it was accused no.1 Anup Sah who assaulted him by means of Farsa and the blows thereof were given on the head. Though causing of injuries is not necessary for making out of an offence punishable under Section 307 of the Indian Penal Code, weapon used, seat of injury, force and number of blows given indicates the intention of the assailant which is a sine qua non for making out of the offence punishable under Section 307 of the Indian Penal Code. In this background and for this reason it is necessary to look into the wounds caused by blows given by accused Anup Sah on the head of P.W.6 Surya Narayan Sah. In foregoing paragraphs we have already noted the injuries found on the person of P.W.6 Surya Narayan Sah by attending Medical Officer P.W.9 Dr. Jugal Kishore Singh. To put it briefly, P.W.6 Surya Narayan Sah was having several cut injuries on his head which were also noticed by the learned trial court. These injuries are certainly attributable to the Farsa and P.W.9 Dr. Jugal Kishore Singh has candidly deposed that such injuries can be caused by a Farsa. Considering the nature of the injuries, vital part of the body chosen for inflicting the wounds so also



the weapons used for causing such wounds by accused no.1 Anup Sah, his intention to commit murder of P.W.6 Surya Narayan Sah becomes writ large. He had definitely committed the offence of attempting to murder of P.W.6 Surya Narayan Sah. However, what is deposed against the accused no.3 Uttim Sah, is to the effect that he is giving blows of lathi. It is seen that accused no.3 Uttim had given blow of lathi on left forearm of Surya Narayan Sah. There is no evidence reflecting the intention of accused no.3 Uttim Sah to commit murder of injured P.W.6 Surya Narayan Sah. He has at the most committed an offence punishable under Section 323 of the Indian Penal Code by voluntarily causing hurt to injured P.W.6 Surya Narayan Sah.

20. The defence has examined seven witnesses but their evidence is of no assistance to doubt the case of the prosecution which is in respect of commission of murder and grievous hurt so also simple hurt. D.W.1 Ramgovind Sah is a witness to the execution of the sale deed. D.W.2 Subhash Chandra Misra is a formal witness examined for proving a rent receipt. D.W.3 Sunil Kumar Singh is a clerk of an advocate, who proved the F.I.R. in the counter case. D.W.4 Saryug Sah is husband of lady named Gudri Devi and this witness has proved



some sale deeds. D.W.5 Dhankilal Mandal and D.W.6 Mani Mandal have produced some sale deeds. D.W.7 Yogendra Sah has proved a rent receipt. However, their evidence does not show that agricultural field was in possession of accused no.1 Anup Sah. Therefore, it cannot be said that the offence punishable under Section 447 of the Indian Penal Code is not proved. These witnesses are not speaking anything about the incident.

21. After holding him guilty of the offence punishable under Section 307 of the Indian Penal Code, appellant/accused no.1 Anup Lal Sah is sentenced to suffer rigorous imprisonment for 10 years by the learned trial court. It is well settled that it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was committed. The sentencing court is expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The sentence is required to be adequate, just and proportionate with the gravity and nature of the crime. At the same time, circumstances of the accused are also required to be kept in mind while imposing the sentence, as one of the objects of the



criminal justice system is to rehabilitate the transgressors and the criminals. In the case in hand, accused persons were staking their claim over the agricultural land where the incident took place. At the time of prosecuting him, appellant/accused no.1 Anup Lal Sah was stated to be 74 years old as seen from the impugned Judgment and Order. The incident took place because of quarrel over possession of the agricultural field. Therefore, in our considered opinion, taking into consideration all relevant aspects, we deem it proper to award sentence of rigorous imprisonment for five years on appellant/accused no.1 Anup Lal Sah for the offence punishable under Section 307 of the Indian Penal Code. Appellant/accused no.3 Uttim Sah is held to be guilty for the offence punishable under Section 323 of the Indian Penal Code for voluntarily causing hurt to the members of the prosecuting party. Interest of justice would be served if he is sentenced to suffer imprisonment which he has already undergone. As conviction of appellant/accused no.2 Lachman Sah for the offence punishable under Section 302 of the Indian Penal Code is upheld, there is no question of interference in the sentence imposed upon him.

22. In the result, we proceed to pass the following orders:



(I). The appeal is partly allowed.

(II). The conviction of the appellant/accused no.2 Lachman Sah alias Lakshman Sahu for the offence punishable under Section 302 is maintained. His conviction for the offence punishable under Section 447 of the Indian Penal Code is also maintained. Conviction of appellant/accused no.1 Anup Sahu alias Anup Lal Sah for the offences punishable under Sections 307 and 447 of the Indian Penal Code is maintained. Similarly, conviction of appellant/accused no.3 Uttim Sah alias Uttim Sahu for the offence punishable under Sections 447 and 323 of the Indian Penal Code is maintained. However, we quash and set aside the conviction of appellant/accused no.3 Uttim Sah alias Uttim Sahu for the offence punishable under Section 307 of the Indian Penal Code.

(III). The impugned Order of the learned trial court is modified by awarding sentence of rigorous imprisonment for five years for the offence punishable under Section 307 of the Indian Penal Code to appellant/ accused no.1 Anup Sahu alias Anup Lal Sah. For the offence punishable under Section 323 of the Indian Penal Code, appellant/accused no.3 Uttim Sah alias Uttim Sahu is sentenced to suffer the imprisonment which he has already undergone in the present case. Conviction as well as



sentence imposed upon appellant/accused no.2 Lachman Sah
alias Lakshman Sahu by the learned trial court is upheld.

(A. M. Badar, J)

(Sunil Kumar Panwar, J)

P.S./-

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