

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.254 of 2016**

Arising Out of PS. Case No.-56 Year-2014 Thana- PAROO District- Muzaffarpur

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1. Shambhu Nath Singh @ Shambhu Singh son of Raj Keshi Singh
 2. Ravindra Kumar @ Ravindra Singh son of Shambhu Singh
 3. Dharendra Kumar @ Dharendra Singh son of Sri Shambhu Singh
All residents of village-Fatehabad, Police Station-Paroo in the district of Muzaffarpur.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
For the Respondent/s : Ms. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)**

Date : 20-01-2022

and a fine of Rs. 1 lac for the conviction under Section 302/34 of the Indian Penal Code and rigorous imprisonment for ten years and a fine of Rs. 50,000/- for the conviction under Section 307 of the India Penal Code and in default of payment of fine to further undergo rigorous imprisonment for three years. However, no separate sentence has been awarded for the conviction under Sections 326, 325, 324 and 323 of the Indian Penal Code.

2. The prosecution case, in short, as disclosed in the *fardbeyan* of Abhinav Kumari @ Gunja Kumari (P.W.11), daughter of Late Baliram Singh, resident of village-Fatehabad, Police Station-Paroo in the district of Muzaffarpur recorded by P.N. Singh (not examined), Sub-Inspector of Police of Ahiyapur Police Station on 14.03.2014 at 10:30 AM at SKMCH, Muzaffarpur is that her deceased father had gone to the field to harvest mustard plant situated at a distance of half kilometer towards South. She herself and her elder sister Amrita Kumari (deceased) along with her younger sister Pushpanjali Kumari had gone to the field carrying breakfast for their deceased father. At about 10.30 AM, her co-sharers, namely, Shambhu Singh, Ravindra Kumar, Dharendra Kumar and Sudha Devi reached to the field being armed with weapons in their hands. They stopped



her father from harvesting mustard plant upon which an altercation took place, whereafter the appellant no. 2 Ravindra Kumar assaulted her father with *farsa* with an intention to kill him and appellant no. 1 Shambhu Singh assaulted him with iron rod. Thereafter, appellant no. 3 Dhirendra Kumar, who was armed with pistol assaulted her father with the butt of the pistol, as a result of which, he became seriously injured. When she and her two sisters tried to save their father, the appellants brutally assaulted her elder sister Amrita Kumari causing fracture of her hand. They also assaulted her younger sister Micky Kumari, as a result of which, she died in the field itself. Thereafter, the appellants proceeded towards her house saying that her mother (P.W.8) should also be finished. They came to her house and mercilessly assaulted her mother with an intention to kill her. On hulla, several persons arrived there and her father was taken to hospital at Paroo. After initial treatment, the doctor referred him to SKMCH. While being taken to SKMCH, her father Baliram Singh died on the way. She herself, her younger sister and her mother are being treated at SKMCH in injured condition.

3. On the basis of the aforesaid oral statement of the informant (P.W.11), the First Information Report (for short the



‘FIR’) was drawn up and Paroo P.S. Case No. 56 of 2014 was registered on 14.03.2014 at 01:00 PM.

4. On completion of investigation, the police submitted a report under Section 173(2) of the Code of Criminal Procedure (for short the ‘Cr.P.C.’) vide charge-sheet no. 37 of 2014 dated 28.05.2014.

5. The FIR named accused Shambhu Singh (appellant no. 1), Ravindra Kumar (appellant no. 2) and Dhirendra Kumar (appellant no. 3) were sent up for trial for the offences punishable under Sections 341, 323, 324, 307, 325, 326, 302 and 504/34 of the Indian Penal Code.

6. On receipt of the charge-sheet, cognizance was taken by the learned Jurisdictional Magistrate vide order dated 18.09.2014 and the case was committed to the Court of Sessions on 25.09.2014.

7. The learned Sessions Judge, Muzaffarpur transferred the case to the Court of Additional Sessions Judge-IX, Muzaffarpur, who explained the charges to the appellants on 20.11.2014 under Sections 323, 324, 341, 325, 326, 307, 302 and 504/34 of the Indian Penal Code.

8. Since the appellants did not plead guilty and claimed to be tried, the trial commenced.



9. In order to establish the charges, the prosecution examined altogether fifteen witnesses between 11.12.2014 and 28.08.2015.

10. After the closure of the prosecution case, the appellants were examined under Section 313 of the Cr.P.C. on 02.09.2015 and the case was fixed for evidence on behalf of the defence. Subsequently, on the same day, an application was filed on behalf of the appellants for granting time to file an application under Section 311 Cr.P.C. for recall of the prosecution witnesses in order to cross-examine them. In the order dated 02.09.2015, however, it is written as application under Section 311 Cr.P.C. Again on 08.09.2015 application under Section 311 Cr.P.C. was filed on behalf of the defence. The said petition was taken up by the Trial Court on 08.09.2015. On that day, an adjournment was sought for on behalf of the prosecution to file a reply to the application preferred on behalf of the appellants under Section 311 Cr.P.C, which was allowed by the court and the hearing of the application was adjourned to 16.09.2015.

11. After hearing the parties on the application dated 08.09.2015 under Section 311 Cr.P.C., the case was adjourned to 17.09.2015 for orders. On 17.09.2015, the said application was rejected and the case was fixed for arguments on 22.09.2015.



12. Subsequently, the impugned judgment of conviction dated 30.01.2016 and order of sentence dated 02.02.2016 was passed.

13. Assailing the impugned judgment of conviction and order of sentence, Mr. Ajay Kumar Thakur, learned counsel for the appellants submitted that the primary object of a criminal justice system is to ensure a fair trial of the accused. According to him, every trial begins with the presumption of innocence in favour of the accused and the provisions of the Cr.P.C. are so framed that a criminal trial should be governed by this essential presumption. He contended that the manner in which the trial was conducted, it is clear that there was no fairness at any stage and the interest of the appellants was put to prejudice on several counts. The order-sheet of the Trial Court would make it evident that at the time of framing of charge, the accused persons were brought from the jail and in presence of the Prosecutor, the appellants were heard and the charges were framed. At that stage, the appellants were not being represented by any counsel. He contended that the order-sheet would further reveal that during the entire trial, the appellants were not being represented by any counsel and the Trial Court did not assign any legal aid for their defence. He urged that though the order-sheet would reveal that P.Ws. 4, 5, 6 and 8 were cross-examined by the



appellants, neither from the testimonies of the witnesses nor from the order-sheet, it would be evident that out of the three appellants, who actually cross-examined those witnesses.

14. Mr. Thakur, learned counsel for the appellants submitted that it was the duty of the Trial Court to inform the accused persons that if they were unable to engage the services of lawyer, they are entitled to obtain legal aid through the District Legal Services Authority. According to him, the conviction of the appellants without informing them that they are entitled to free legal assistance is clearly in violation of the fundamental right guaranteed under Article 21 of the Constitution of India. He urged that since the appellants were not represented by any lawyer and they were not informed that they are entitled to obtain free legal service, their conviction is vitiated and is liable to be set aside.

15. In support of his submissions, Mr. Thakur, learned counsel for the appellants relied upon the judgments of the Hon'ble Supreme Court in **Madhav Hayawadanrao Hoskot v. State of Maharashtra** since reported in [AIR 1978 SC 1548], ***Suk Das and Another v. Union Territory of Arunachal Pradesh*** since reported in [AIR 1986 SC 991], **Mohd. Hussain Alias Zulfikar Ali v. State (Government of NCT of Delhi)**



since reported in [(2012) 2 SCC 584] (for the sake of convenience hereinafter referred to as “Mohd. Hussain I”), **Mohd. Hussain Alias Zulfikar Ali v. State (Government of NCT of Delhi)** since reported in [(2012) 9 SCC 408] (for the sake of convenience hereinafter referred to as “Mohd. Hussain II”) and **Anokhilal v. State of Madhya Pradesh** since reported in [AIR 2020 SC 232].

16. On the other hand, Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State submitted that the right of the accused to appear in person before the court has not been infringed in the present case. They were present before the court through out the trial. At all stages, the Trial Court provided them adequate opportunity to cross-examine the witnesses. They themselves cross-examined PWs. 4, 5, 6 and 8 and expressed their unwillingness to cross-examine the other witnesses. She contended that from the record itself, it would also appear that an advocate was appointed by the appellants before the Court of learned Magistrate, but he did not turn up in the court on the dates on which the witnesses were examined. She, however, fairly conceded that in view of the judgments of the Hon’ble Supreme Court on which reliance has been placed by the appellants, the Trial Court ought to have provided legal



assistance of a counsel to the accused-appellants.

17. Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State contended that at this belated stage remanding the matter back to the Trial Court for *de novo* trial would not be in the interest of justice, as it is not known as to whether all the witnesses examined during trial are alive or dead. She submitted that even if they are alive, it would be extremely difficult to procure their attendance after eight years of the incident.

18. We have heard learned counsel for the parties primarily on the issue pertaining to the legality of the present trial. Thus, for the present, we are confined with the issue as to whether the approach adopted by the learned Trial Court in the present matter could be accepted or whether the trial stood vitiated because the appellants were not provided with the legal aid counsel even as they were unable to cross-examine the witnesses themselves.

19. In order to appreciate the rival submissions and the issues involved in the instant case, it would be appropriate to reproduce the translated English version of the relevant orders of the Trial Court, which were mostly recorded in Hindi as under:-



Date	Order
11.12.2014	The three accused persons are produced from the jail custody. On behalf of the prosecution, P.W. 1 Shatrughan Singh has filed his attendance. On call, his examination-in-chief has been conducted. No advocate has entered into appearance on behalf of the accused persons and the accused persons do not want to cross-examine him themselves. Hence, the witness is discharged. Put up on 18.12.2014 for evidence.
18.12.2014	The accused persons are produced from the jail custody. P.W. 2 Ajit Kumar Singh has filed his attendance. His examination-in-chief was conducted. No advocate appeared on behalf of the accused persons to cross-examine the witness. The accused persons informed that he was not available and they refused to cross-examine themselves. The witness is discharged. Put up on 05.01.2015 for evidence.
05.01.2015	The accused persons are produced from the jail custody. On behalf of the prosecution, P.W. 3 Jitendra Kumar has filed his attendance. His examination-in-chief has been conducted. No advocate appeared on behalf of the defence to cross-examine the witness. The accused persons stated that they have nothing to ask and that their lawyer would cross-examine him. Hence, the witness is discharged. Put up on 16.01.2015 for evidence.
16.01.2015	The accused persons are produced from the jail custody. On behalf of the prosecution, P.W. 4 Awani Kumar has filed his attendance. His examination-in-chief has been conducted. The accused himself cross-examined the witness. The witness is discharged. Put up on 23.01.2015 for evidence.



50. Since we are remanding the matter for fresh disposal, we clarify that we have not expressed any opinion regarding the merits of the case.

(Ashwani Kumar Singh, J)

(Rajeev Ranjan Prasad, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	NA
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