

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4809 of 2021

Arising Out of PS. Case No.-137 Year-2021 Thana- PALANWA District- East Champaran

1. Birendra Sah Son of Late Jai Govind Sah Resident of Village - Pakhnahiya, P.S.- Palanwa, District - East Champaran.
2. Binod Sah Son of Hridaya Sah Resident of Village - Pakhnahiya, P.S.- Palanwa, District - East Champaran.

... .. Appellant/s

Versus

1. The State of Bihar
2. Banarasi Thakur Son of Late Jagarnath Thakur Resident of Village - Pakhanahiya, P.S.- Palanwa, District - East Champaran.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Abhijeet Gautam, Advocate.
For the Respondent/s	:	Mr. Binay Krishna, Spl.P.P.
For the Respondent No.2:	:	Mr. Abhishek Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

3 21-07-2022 Learned counsel for the Appellants is permitted to remove defect(s), as pointed out by the office, if any, within a period of four weeks from today.

Heard Mr. Abhijeet Gautam, learned counsel for the Appellants, Mr. Abhishek Kumar, learned counsel for the respondent no. 2, as well as learned Special Public Prosecutor for the State.

At the outset, learned counsel for the appellants seeks permission to necessary correction in paragraph no. 9.

Permission is accorded.

This is an appeal under Section 14 A (2) of the



Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “SC/ST Act”) against the refusal of prayer for bail vide order dated 20.10.2021 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, SC/ST Act, East Champaran, Motihari in connection with Palanwa P. S. Case No. 137 of 2021 registered for the offences punishable under Sections 341, 323, 324, 307, 354, 504 read with 34 of the Indian Penal Code and subsequently Section 302 of the Indian Penal Code was added and Sections 3 (1) (a) (r) (s) of the SC/ST (Prevention of Atrocities) Act.

As per the prosecution case, it is alleged that on 08.09.2021, while the informant was sitting at her door along with Rita Davi and Sarita Devi, the co-accused Parbhawati Devi, Renu Devi, Lalita Devi and Sunnaina Devi came there armed with weapons and brutally assaulted wife of the informant and also spit on them by taking their cast name. It is further submitted that thereafter, other accused persons along with the appellants came there and also assaulted one Hari Shankar Thakur and when Mahindar Thakur came to save him, they also assaulted them due to which Hari Shankar Thakur succumbed to injury.



Learned counsel appearing on behalf of the Appellants submitted that there is general and vague allegation against the appellants, however, specific allegation has been levelled against other co-accused persons. It is next submitted that admittedly the informant/respondent no. 2 is not the eye-witness to the alleged occurrence and moreover, there is counter version of the present case lodged by the wife of the co-accused Prem Chand Sah bearing Palanwa P. S. Case No. 139 of 2021. It is next submitted that the entire allegation of assault falls to the ground for the simple reason that the post mortem report does not suggests any external injuries over the body of the deceased and cause of death is shown to be cardiopulmonary arrest due to underlying lung disease. It is next submitted that so far the injuries inflicted over the body of the ladies members are concerned, all the injuries are found to be simple in nature. In support of the aforesaid submissions, the post mortem report as well as injury report has been brought on record by way of supplementary affidavit

On the other hand, learned counsel for the respondent no. 2 vehemently opposes the bail application and submits that there are specific allegation against these two appellants and they have been in furtherance of common



intention assaulted the informant and his family members.

Having regard to the submissions made by the parties and considering the post mortem report as well as injury report, which belies the prosecution case, apart from general and omnibus nature of allegation and moreover, the appellants are in custody since 14.09.2021, let the appellants, above named, be released on bail on furnishing bail bonds of Rs. 10,000/- (Rupees ten thousand) each with two sureties of the like amount each to the satisfaction of learned 1st Additional Sessions Judge-cum-Special Judge, SC/ST Act, East Champaran at Motihari in connection with Palanwa P. S. Case No. 137 of 2021.

In view of the aforesaid fact, the impugned order dated 20.10.2021 is hereby set aside and the present appeal is allowed.

(Harish Kumar, J)

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