

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.584 of 2014

Arising Out of PS. Case No.-50 Year-2012 Thana- TARARI District- Bhojpur

1. Lallan Ram Son of Ganga Deyal Ram Resident of village - Amruhan, P.S.- Tarari, District - Bhojpur.
2. Chandeshwar Ram Son of Asmat Ram Resident of village - Amruhan, P.S.- Tarari, District - Bhojpur.
3. Rajesh Ram Son of Ganga Deyal Ram Resident of village - Amruhan, P.S.- Tarari, District - Bhojpur.
4. Dhan Jeet Ram Son of Ganga Deyal Ram Resident of village - Amruhan, P.S.- Tarari, District - Bhojpur.
5. Ganga Deyal Ram Son of Late Jatai Ram Resident of village - Amruhan, P.S.- Tarari, District - Bhojpur.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants	:	Mr. Ravindra Kumar, Advocate Mr. Sandeep Kumar Pandey, Advocate
For the Respondent	:	Ms. Shashi Bala Verma, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 06-12-2023

This appeal has been preferred under Section 374(2) of the CrPC against the judgment of conviction dated 10.06.2014 and the order of sentence dated 18.06.2014 passed by the learned Adhoc Additional District & Sessions Judge-IIInd, Bhojpur at Ara, in Sessions Trial No. 136 of 2013, arising out of Tarari P.S. Case No. 50 of 2012, whereby the appellants have been convicted and sentenced as under: -



Cr. Appeal (D.B.) No. 1155 of 2021		
	Penal Provisions	Sentence
Appellant No. 1 (Lallan Ram)	Under Section 302/34 of the IPC	Rigorous Imprisonment for Life.
Appellant No. 2 (Chandeshwar Ram)	Under Section 302/34 of the IPC	Rigorous Imprisonment for Life.
Appellant No. 3 (Rajesh Ram)	Under Section 302/34 of the IPC	Rigorous Imprisonment for Life.
Appellant No. 4 (Dhanjeet Ram)	Under Section 302/34 of the IPC	Rigorous Imprisonment for Life.
Appellant No. 5 (Ganga Deyal Ram)	Under Section 302/34 of the IPC	Rigorous Imprisonment for Life.

2. We have heard Mr. Ravindra Kumar, learned counsel appearing on behalf of the appellants and Ms. Shashi Bala Verma, learned Additional Public Prosecutor appearing on behalf of the State.

3. *Fard-beyan* of Ramjee Sah (PW 6) recorded by the Assistant Sub Inspector of Police of Ara Town Police Station at Sadar Hospital, Ara, on 12.10.2012 at 1 PM is the basis for registration of the concerned Tarari P.S. Case No. 50 of 2012 disclosing commission of offence punishable under Section 302 read with 34 of the IPC. From the formal FIR, it is evident that for the occurrence, which had taken place on 11.10.2012, the FIR came to be registered on 13.10.2012 at 2.45 PM.

4. It is the prosecution's case, as narrated in the *fard-beyan*, that at about 7 PM on 11.10.2013, the appellant Lallan Ram had come to the informant's house and had started using abusive and filthy language, which was objected to by his son Sunil Sah (the deceased). Thereafter, the appellant Lallan Ram went back to



his house and came again with others, namely, Rajesh Ram (appellant), Dhanjeet Ram (appellant) and Ganga Deyal Ram (an appellant, who died during the pendency of the appeal). Allegedly, they were armed with *lathi* and rods and started assaulting the deceased indiscriminately. The appellant Chandeshwar Ram assaulted the deceased with a piece of bamboo multiple times because of which he was badly injured. Many co-villagers thereafter arrived, whereupon the appellants fled away. With the aid of others, the deceased was firstly brought to Tarari Hospital for his treatment, but for better treatment, he was referred to Ara Sadar Hospital, where he died during the course of his treatment at 12.10 PM on 12.10.2012. The informant alleged that the occurrence was seen by his other son Narad Sah (PW 5) and other family members.

5. The police, upon completion of investigation, submitted charge-sheet against all the five accused persons on 29.11.2012 for the offences punishable under Section 302 read with 34 of the IPC. Cognizance was subsequently taken and the case was committed to the court of Sessions for trial.

6. The appellants were charged for commission of offence punishable under Section 302 read with 34 of the IPC. The



appellants denied the charge and claimed to be tried. Accordingly, they were put to trial.

7. At the trial, the prosecution examined altogether eight witnesses including the informant’s uncle Mophij Sah (PW 1), Informant’s nephew, Lal Jee Sah (PW 2), informant’s wife Rajo Devi (PW 3), the wife of the deceased Lalita Devi (PW 4), informant’s son Narad Sah (PW 5) and the informant himself (PW 6). The Doctor, who has conducted the postmortem examination, was examined as PW 7 and the IO as PW 8. In addition to the oral evidence of the aforesaid witnesses, the prosecution brought on record following documentary evidence: -

1.	<i>Fard-beyan</i> of Tarari P.S. Case No.50/12	Exhibit-1
2.	Signature of PW 6 (the informant) on the postmortem report	Exhibit-2
3.	Postmortem Report	Exhibit-3
4.	Formal FIR	Exhibit-4
5.	Signature of the Officer-in-Charge of the Police Station on the charge-sheet	Exhibit-5

8. After closure of the prosecution’s evidence, the appellants were questioned under Section 313 of the CrPC so as to give them an opportunity to explain the incriminating circumstances emerging against them based on the prosecution’s evidence. Answering the questions in negative, which, according to the trial court, contained incriminating circumstances, the



appellants reasserted their innocence. The trial court, after having analyzed and appreciated the evidence adduced at the trial, has recorded conviction of the appellants for the offences punishable under Section 302 read with 34 of the IPC by the impugned judgment and has sentenced them to imprisonment, as has been noted above.

9. It is noteworthy that it has been informed by learned counsel representing the appellants that during the pendency of this appeal, the appellant No.5, namely, Ganga Deyal Ram, died. This appeal, thus, abates to the extent the same relates to the respondent No.5.

10. Learned counsel appearing on behalf of the appellants has submitted that for an occurrence, said to have taken place on 11.10.2012, the FIR was registered belatedly on 13.10.2012 without any cogent explanation for delay. He has further submitted that though it is the prosecution's case that the deceased was treated at Tarari Hospital first and thereafter brought to Sadar Hospital, Ara, for better treatment, during course of treatment, the deceased is said to have died. He submits that there is no evidence adduced at the trial to support the prosecution's case that the deceased was treated either at Tarari Hospital or at Ara Sadar Hospital before his death. He has further submitted that



it is evident from the postmortem report that the postmortem examination was conducted at 4:00 pm on 12.10.2012, wherein, the time elapsed since the death of the deceased has been mentioned as between 24 hours to 72 hours. He contends that this fact indicates that the deceased had already died before he was brought to the Sadar Hospital and the prosecution's case that he was undergoing treatment at Ara Sadar Hospital when he died is not acceptable and, therefore, the entire prosecution's case becomes doubtful. He has further submitted that the blood stained clothes of the deceased were not seized and there was, thus, no question of the same being sent for scientific examination. He also submits that the prosecution has failed to prove the place of occurrence inasmuch as no blood mark was found at the place of occurrence as would be evident from the deposition of PW 8, the IO. He has also argued that there are contradictions in the evidence of prosecution's witnesses and the manner of occurrence cannot be said to have been proved. He has made an alternative submission and has contended that it is not the prosecution's case that the appellants were armed with deadly weapon and, according to him, the occurrence had taken place over a petty dispute said to have arisen out of the alleged refusal by the deceased to give '*Singhara*' on credit. The deceased used to sale *Singhara* on a *Thela* (a push



cart). He submits that even if the evidence of the prosecution's witnesses are treated to be correct, an offence punishable under Part-II of Section 304 IPC can be said to be proved and the not one punishable under Section 302 of the IPC.

11. Mrs. Shashi Bala Verma, learned Additional Public Prosecutor appearing on behalf of the State, has, *per-contra*, submitted that the witnesses to the occurrence are eye witnesses. Though, they are related to the deceased, there is no reason why they would be deposing falsely at the trial in relation to the killing of one of their family members. The manner of occurrence, as alleged in the FIR and explained by the witnesses in their depositions at the trial, are duly corroborated by the postmortem report. She submits that the prosecution has been able to establish that the appellants had come to the house of the deceased well prepared with premeditation to kill the deceased and he was assaulted mercilessly by the appellants leading to his death. She accordingly submits that neither the finding of conviction for the offence punishable under Section 302 read with Section 34 of IPC nor the order of sentence suffers from any legal infirmity requiring this Court's interference.

12. We have carefully perused the impugned judgment and order of the trial court as well as the trial court's records and



have given our thoughtful consideration to the rival submissions made on behalf of the parties.

13. Before referring to the depositions of the prosecution's witnesses, we considered it apt to take into account the postmortem report, which suggests the following *ante mortem* injuries, which the deceased had sustained: -

“External- Rigor mortis present – skull- lacerated wound with fresh blood and clot, multiple abrasion back side. Rt. Side eye black with swollen with hematoma.”

14. It is not difficult to infer from the postmortem report that the deceased died of multiple injuries inflicted on various parts of his body. It is true that in the opinion of the Doctor, who had conducted postmortem examination, the time elapsed since the death of the deceased from the time of postmortem examination has been mentioned as 24 to 72 hours. The postmortem examination was conducted at 4:00 pm on 12.10.2012. The time elapsed since death, as mentioned in the postmortem report, cannot be treated to be so accurate as to discard the oral evidence of the witnesses in whose presence the occurrence, according to them, had taken place.

15. The witnesses constantly deposed at the trial the reason behind the occurrence and the manner in which the same was caused by the appellants jointly including Ganga Deyal Ram



(since deceased). We are of the considered view that the prosecution was able to establish at the trial that the death of the deceased was a case of homicide. The two seminal questions, which arise now for determination of the present appeal, are; firstly, whether the prosecution proved the role of these appellants in commission of homicide and, secondly, whether the acts of these appellants were meant for killing the deceased, i.e., they had a definite intention to kill the deceased by causing injuries as have been found in the postmortem report.

16. On carefully reading the deposition of the PW 6 (the informant), who, while fully supporting the prosecution's case, deposed at the trial that these appellants were armed with *lathi*, rod and *danda* and they were abusing the deceased. Subsequently, they started assaulting him and despite attempts having been made by the family members, he was inflicted with such injuries that the deceased had to be taken to a nearby Hospital at Tarari. Considering the seriousness of the injuries, he was referred to Sadar Hospital, Ara, for better treatment. PW 1 and PW 2 have also supported the prosecution's case. We see no reason to doubt their depositions. Though, it cannot be deciphered from their depositions definitely as to which was the specific role of these appellants while causing the occurrence, it can be easily discerned,



based on the evidence of the prosecution's witnesses, that all the persons named in the FIR were jointly involved in assaulting the deceased, who subsequently died.

17. We are, however, of the view, keeping in mind the background in which the occurrence had taken place and the fact that the appellants were not armed with any deadly weapon, that it cannot be said that they had any definite intention to cause death or cause such bodily injury upon the deceased as was likely to cause death. The occurrence appears to have taken place in the background of a petty dispute and in the heat of the moment, the deceased sustained such injuries, that he subsequently died.

18. We are of the considered view, thus, that the acts of these appellants, namely, Lallan Ram, Chandeshwar Ram, Rajesh Ram and Dhanjeet Ram, fall under Chapter-II of Section 304 of the IPC and not under Section 302 thereof. Accordingly, the judgment of conviction dated 10.06.2014 and the order of sentence dated 18.06.2014 passed by the learned Adhoc Additional District & Sessions Judge-IIInd, Bhojpur at Ara, in Sessions Trial No. 136 of 2013, arising out of Tarari P.S. Case No. 50 of 2012 of the aforesaid appellants stands modified accordingly. Accordingly, the appellants No. 1 to 4 are held guilty of the offences punishable under Chapter-II of Section 304 of the IPC and not Section 302



thereof. In the facts and circumstances of the case, we are of the view that it would be sufficient to impose a sentence of rigorous imprisonment for eight (08) years on all the appellants.

19. From the records, we find that all the appellants have already spent more than eight years in custody. They are directed to be released forthwith.

20. This appeal is partly allowed.

21. The appellant No.1, namely, Lallan Ram, appellant No.2, namely, Chandeshwar Ram and appellant No.3, namely, Rajesh Ram, are in custody. Let them be released forthwith, if not required in any other matter. The appellant No.4, namely, Dhanjeet Ram, is on bail. He stands discharged from the liabilities of the bail bonds and the sureties, if any.

(Chakradhari Sharan Singh, J)

(Bibek Chaudhuri, J)

Pawan-Rashid

AFR/NAFR	NAFR
CAV DATE	N/A
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