

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.462 of 2017

Arising Out of PS. Case No.-163 Year-2012 Thana- LALGANJ District- Vaishali

Ashok Rai Son of Rambilash Rai, Resident of Village- Etwarpur, P.S. Lalganj,
District- Vaishali.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 838 of 2017
In
CRIMINAL APPEAL (SJ) No.1336 of 2017

Arising Out of PS. Case No.-163 Year-2012 Thana- LALGANJ District- Vaishali

Upendra Rai and Anr

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 462 of 2017)

For the Appellant/s : Mr.Jitendra Narain Sinha, Adv

For the Respondent/s : Mr. Dilip Kumar Sinha, APP,

For the informant : Mr. Ashok Kumar, Adv.

(In CRIMINAL APPEAL (DB) No. 838 of 2017)

For the Appellant/s : Mr.Natraj Verma. Adv.

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

For the informant : Mr. Ashok Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 05-09-2023

1. The two appeals have been heard together and
are being disposed of by this common judgment.



2. We have heard Sri Jitendra Narain Sinha, the learned Advocate in Cr. APP (DB) No. 462 of 2017 (Ashok Rai Vs. The State of Bihar) and Mr. Natraj Verma, the learned Advocate for appellants/ Upendra Rai and Sunil Rai in Cr. APP (DB) No. 838 of 2017 and Mr. Ashok Kumar, the learned advocate for the informant. Mr. Dilip Kumar Sinha, the learned counsel for the State has assisted us in both the appeals,
3. The appellant/ Ashok Rai has been convicted under Section 302 and 325/34 of the I.P.C. vide judgment dated 20.03.2017 passed by the learned 8th Additional Sessions Judge, Hajipur, Vaishali in Sessions Trial No. 287 of 2014 arising out of Lalganj P.S. Case No. 163 of 2017 and by order dated 24.03.2017, he has been sentenced to under go R.I. for life, to pay of fine of Rs. 10,000/- and in default of payment of fine to further suffer imprisonment for four months. The entire amount of fine was directed to be given to the wife of the deceased, namely, Baby Devi



(P.W. 7). Appellant / Ashok Rai has further been convicted under Section 325/34 of the I.P.C. and for that offence he has been directed to undergo R.I. for five years, to pay a fine of Rs. 5,000/- and in default of payment of fine to further suffer imprisonment for two months.

4. Appellants / Upendra Rai and Sunil Rai (Cr. APP (DB) No. 838 of 2017) have only been convicted and sentenced under Section 325/34 of the I.P.C. whereby they have been directed to undergo R.I. for five years, to pay a fine of Rs. 5,000/- and in default of payment of fine to further suffer imprisonment for two months vide the same judgment and order of conviction. The sentences against all the three appellants have been directed to run concurrently.

5. Baby Devi (P.W. 7) who is the wife of the deceased had lodged the first information report vide Lalganj P.S. Case No. 163 of 2017 dated 06.10.2012 against the appellants and others for the offences



under Sections 147, 148, 149, 341, 323, 324, 325, 307 and 504 of the I.P.C. Later, with the death of her husband (late Awdhesh Rai) Section 302 of I.P.C. was added vide order dated 30.10.2012. It was alleged by her that the accused persons including the appellants were trying to put up pegs for erecting a hut on a land which had fallen in the share of her family and on her protest, the accused persons started abusing her. Later, many people came to the rescue of P.W. 7. It was at that time that P.W. 7, Indu Devi (P.W. 3) and Sumitra Devi (not examined) were injured. Appellant/Ashok Rai is said to have given a Sawal (Khanti) blow as a result of which he became seriously injured. Later, he was taken to hospital.

6. As the prosecution story unfolds, after some days of treatment in P.M.C.H., the husband of P.W. 7 died.
7. It further appears from the records that initially chargesheet was submitted against the appellants whereas Rajdeo Rai, Mina Devi and Banarsi Devi were



not sent up for trial as they were found to be innocent. However, cognizance was taken against all six namely the appellants and the aforementioned persons who were not initially sent up for trial.

8. The Trial Court after examining nine witnesses on behalf of the prosecution and five on behalf of the defence, convicted the appellants as aforementioned and acquitted co-accused Mina Devi, Banarsi Devi and Rajdeo Rai of all the charges.
9. The learned counsel for the appellants has submitted that the case lodged against them is absolutely false. The land over which the occurrence is said to have taken place had fallen in their share over which a hut had already been erected. It was a blatant attempt on the part of the prosecution to remove that hut, only for the purposes of divesting the appellants and others from their possession of the land in question. It has further been urged that a Title Suit and a Partition Suit were pending before the



competent court and even if it be assumed that the shares interse parties had not been fully demarcated, for all practical purposes, the land over which the occurrence is said to have taken place was in the possession of accused persons which was attempted to encroached upon by the members of the prosecution party.

10. Mr. Jitendra Narain Sinha, learned advocate for appellant/Ashok Rai has further argued that none of the witnesses actually saw the occurrence but only because in a fight between the agnates, unfortunately one Awdhesh Rai died, the opportunity was grabbed by the prosecution to lay the blame of killing him on appellant/Ashok Rai who is the husband of P.W.7.

11. The postmortem report of the deceased has not been proved and the explanation offered is that the doctor who had conducted the postmortem examination had been transferred to Delhi. Only one Dr. Shashi Bhushan Prasad (P.W. 8) has been



examined to prove the injuries suffered by the deceased and three of the injured witnesses, two out of whom have been examined at the trial.

12. So far as, appellants / Upendra Rai and Sunil Rai are concerned, Mr. Natraj Verma, learned advocate representing them has submitted that it is very difficult for anyone of the witnesses to have specifically pointed about the specific role and act played by the aforementioned two appellants in a melee where both sides had clashed amongst each other. Be that as it may, he has submitted that the injuries suffered by the three victims namely Baby Devi, Indu Devi and Sumitra Devi (not examined) were found to be simple in nature. He has further submitted that since the sentence of the aforementioned appellants were not suspended at the appellate stage, they remained in jail for five years thereby completing their term and have now come out of jail.

13. Mr. Dilip Kumar Sinha, the learned Additional



Public Prosecutor has submitted that there is complete consistency in the deposition of the witnesses about the deceased having been assaulted by "Sawal" by appellant / Ashok Rai. The deceased remained unconscious all-through otherwise his statement would have been recorded in the meanwhile. There is a definite reason for not proving the postmortem report and that is the non-availability of the doctor who had conducted the same. Nonetheless, the postmortem report has been brought on record and exhibited. There could be no doubt, Mr. Sinha urges, that appellant / Ashok Rai was the author of the fatal injury leading to the death of the deceased. Since the other victims have also deposed about the specific roles played by appellants / Upendra Rai and Sunil Rai, there is no reason to interfere with the judgment and order of conviction and sentence of the aforementioned two appellants, who so far as their sentences are concerned, have been dealt with rather leniently.



14. Similar arguments have been advanced by Mr. Ashok Kumar, the learned counsel for the informant, who has submitted that a partition suit was pending between the parties but the land in question fell in the share of the prosecution side. It was only when an attempt was made by the accused person including the appellants to erect a hut at the place of occurrence that a protest was registered by P.W. 7, which led to a full-fledged unilateral attack by the accused persons on the members of the prosecution party. The witnesses have consistently deposed before the Trial Court that all the accused persons who were wielding *lathi* and iron rod and assaulting the members of the prosecution party indiscriminately. If the victims could be saved, it was only by a whisker and not because of the prosecution party being in a position to ward off the attack on them.

15. We have examined the evidence of all the witnesses including those of the defence witnesses.



What is very striking to note is that though most of the witnesses have spoken before the Trial Court in the same sequence in which P.W. 7 has narrated about the occurrence in the F.I.R. as also before the Trial Court but during their cross examination, each one of those witnesses has admitted to have reach the place of occurrence after the assault was over.

16. All the aforementioned witnesses have spoken about their having seen the injured persons and the deceased bleeding because of the assault.

17. In this context, it would be necessary to refer to the deposition of the witnesses in seriatim.

18. Baijnath Rai (P.W. 1) is related to P.W. 7. He has specifically stated in the cross examination that he reached the place of occurrence alongwith other agnates and found that Baby Devi, Indu Devi, Sumitra Devi and Awdhesh Rai had fallen on the ground and were bleeding. He has gone to the extent of saying that all the four injured persons had become



unconscious when he had reached the place of occurrence. He has also admitted that there was a Title Suit pending between the parties in which the prosecution side were the defendants. That he was not making a correct statement, the learned advocate for the appellant/Ashok Rai has submitted, is evident from the fact he did not know about the family arrangement specially with respect to the land given to the accused persons in lieu of the land over which the occurrence had taken place.

19. Similarly, Dinesh Rai (P.W. 2) who stands in special relation of elder brother-in-law of P.W. 7 has stated that there was a dispute with respect to the possession of land in question. When he had reached the place of occurrence on *hulla*, he had found that all the four persons were injured. This, therefore, makes it very obvious that he had not seen the actual part of the assault and had only narrated what was told to him.



20. Indu Devi (P.W. 3), one of the injured witnesses has very curiously stated before the Trial Court that after the occurrence, the entire family sat down and decided as to who should be named in the F.I.R. Another statement of P.W. 3 which makes her wholly unreliable is that all the accused persons assaulted Awdhesh Rai (deceased) with "Sawal" which is not the prosecution case at all.

21. Yogendra Rai, who is the father of the deceased (P.W. 4) has but denied the suggestion that after about one month and twelve days of the occurrence, he told the police about the persons whom he wanted to be made accused in this case. He has also admitted of the pendency of the Title Suit no. 532 of 2005 between the parties. He had also reached the place of occurrence along with his agnates after the actual part of the assault was over. He has specifically stated in his cross-examination in paragraph 37 that when he had reached the place of occurrence, he found all the



injured persons lying on the ground.

22. Similar statements have been made by other witnesses.

23. Arun Kumar Rai @ Munna Rai (P.W. 5) is the person who claims to have taken the deceased to the hospital for treatment. Nowhere, has he stated about the condition of the deceased for all the while that he received treatment in P.M.C.H.

24. We get no idea from his deposition whether the deceased ever regained consciousness. The doctor who treated the other injured persons and the deceased has also not stated anything about the health condition of the deceased. All that he had to offer to the Trial Court was that he had found lacerated wound of 4 X $\frac{1}{2}$ inch dimension which was muscle deep. There is no reference of the place where the wound was caused. The patient, at the time of treatment, in deep coma, and had been bleeding. The wound was found to have been caused by hard and blunt substance.



25. The investigation also does not appear to have been made in a proper manner.

26. The I.O. of this case, namely, Surendra Sharma (P.W. 9) made no enquiry with respect to the allocation of land in favour of the parties in the family arrangement. Though, he had seen the blood stained clothes of the victims but he never made any attempt to seize them. Only one of the injured persons was examined by him namely Indu Devi. Rest of the injured persons according to him were not in a position to speak.

27. Mr. Sinha, the learned advocate for the appellants submits that the veracity of this statement is not borne out if the deposition of the other witnesses are to be believed. What however is relevant to note is that P.W. 9 had visited the place of occurrence and he did not find any remnant of any hut having been erected or that the earth at any place was found dug up. There was no wall, either new or old, at the place



of occurrence. He has further stated that before him, Arun Kumar, the person who had taken the deceased to the hospital did not state anything about anybody having assaulted anyone of the victims including the deceased by a "Sawal".

28. In this context, if the deposition of the defence witnesses is analyzed, it would appear that their statements before the Trial Court is not worth accepting. The I.O. did not find any sign of any hut at the place. The defence version to that extent does not appear to be correct that they were attempted to be ousted by the prosecution side.

29. From a conspectus of all these facts, it appears that because of no final determination having been made by Courts of law with respect to the respective shares of the parties and the issue regarding the claim of the parties with respect to the land in question remaining sub-judice, a fight might have taken place in which unfortunately three persons stood injured and



one ultimately succumbed to the injuries.

30. Seen in this context, we find that Baby Devi (P.W. 7) has really been consistent that the deceased was assaulted by appellant/ Ashok Rai on his head by *khanti*. She has but not stated about any repetition of blows by the appellant/ Ashok Rai.

31. Thus, we find that even though appellant/Ashok Rai would be imputed with the motive of causing such bodily injury which would have, in all likelihood, caused the death but the intention to cause death was missing. If appellant/Ashok Rai was armed with *lathi*, he could have first assaulted P.W. 7 who had actually started protesting against the so called action of the accused persons. The intention to kill would have been reflected if there had been any repetition of blow. In the fight, perhaps the attack by appellant/Ashok Rai proved fatal but without any intention to cause death.

32. The appellant/Ashok Rai, therefore, can only be held to be guilty under Section 304 (Part I) of the



I.P.C. which provides for punishment for culpable homicide not amounting to murder.

33. So far as the appellants/ Upendra Rai and Sunil Rai are concerned, the simple nature of injuries suffered by their targets, the conviction under Section 325 of I.P.C. is justified.

34. Thus, we convert the conviction of appellant/Ashok Rai (Cr. APP (DB) No. 462) from Section 302 to one under Section 304 (Part I) of the I.P.C.

35. He has been sentenced to undergo imprisonment for life. We find that in the attending circumstances, a ten years rigorous imprisonment would be sufficient to meet the ends of the justice.

36. The sentence imposed upon appellant/Ashok Rai is also thus altered to ten years rigorous imprisonment.

37. We however do not find any justification for reducing the amount of fine which the appellant/Ashok Rai shall be required to pay to P.W. 7.



38. Appellant/Ashok Rai is in jail and has served the sentence for more than ten years. Since, we have altered the sentence of appellant/Ashok Rai to ten years, he is directed to be released forthwith from jail if not detained or required in any other case, provided the amount of fine is paid.
39. The fine shall be deposited at the instance of the appellant/Ashok Rai in Court and the learned Trial Court shall have it disbursed to P.W. 7.
40. The sentence of the appellants/Upendra Rai and Sunil Rai is not being altered for the reason that they have already served out their sentences and are now out of jail.
41. No order is required to be passed with respect to appellants/ Upendra Rai and Sunil Rai who have already served their sentences. However, their liabilities under the bail bonds are cancelled.
42. Criminal Appeal (DB) No. 462 of 2017, therefore, stands partially allowed whereas, Criminal



Appeal (DB) No. 838 of 2017 stands dismissed.

43. Let a copy of this judgment be dispatched to the Superintendent of concerned jail for record and compliance.

44. The records of this case be also returned to the concerned court below forthwith.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

sunilkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.09.2023
Transmission Date	11.09.2023

