

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.393 of 2013

Arising Out of PS. Case No.-217 Year-1997 Thana- MANJHAGARH District- Gopalganj

1. Sanjay Kumar, Son of Raghav Sah.
 2. Om Prakash Sah, Son of Kishnath Sah.
- All are resident of Village- Ekderwa, Police Station- Thawey, District- Gopalganj.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate
	:	Mr. Lokesh Kumar Singh, Advocate
For the Respondent/s	:	Mr. Zeyaul Hoda, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT

Date: 02-12-2024

Heard Mr. Baxi S.R.P Sinha, learned Senior Counsel assisted by Mr. Lokesh Kumar Singh learned counsel for the appellants, and Mr. Zeyual Hoda, learned APP for the State.

2. The present appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') challenging the judgment of conviction dated 15.05.2013 and order of sentence dated 18.05.2013 passed by learned Adhoc Additional District and Sessions Judge-IV, Gopalganj in Sessions Trial No. 260 of 1998 / 75 of 2013, by which the appellants have been found guilty of the offence punishable under Sections 307/34 of the



Indian Penal Code and have been sentenced to undergo rigorous imprisonment for 7 years and a fine of Rs. 2,000/- each and in default of payment of fine, they have been imposed simple imprisonment for two months each. All the appellants have further been found guilty for the offence punishable under section 341 of the Indian Penal Code and have been sentenced to undergo simple imprisonment for one month. The sentences have been made to run concurrently and shall be set off towards the period of imprisonment already undergone by the appellants in jail custody.

3. The brief facts leading to the filing of the present appeal is that the informant of this case was getting his land ploughed for sowing wheat seeds. A dispute was going on between Sipahi Lal Sah and appellant Kishnath Sah (deceased) regarding ridge of land. Informant's son Nirbhay Sah intervened in the dispute and advised the parties not to quarrel and resolve the matter by getting the land measured from *Amin*. At this, appellant Kishnath Sah (deceased) became angry and told that "you have come to do *panchayati* and ordered to kill him. Thereafter, appellants Kishnath Sah, Om Prakash Sah and Sanjay Sah caught Nirbhay Sah and accused Anjit Kumar gave two blows to knife on the right side of abdomen of Nirbhay Sah.



The injured sustained serious injury and fell down. On raising hue and cry, the villagers assembled and saved the life of the injured otherwise the accused would have killed his son. Thereafter the informant carried his son to Gopalganj Sadar Hospital where his treatment was done.

4. On the basis of the fardbeyan of the informant, the case was instituted and on completion of investigation, chargesheet was submitted and cognizance was taken against the appellants under the aforesaid Sections and the case was committed to the Court of Sessions. After commitment, the charges were framed for trial for the offences punishable under Sections 341, 323 and 307/34 of the Indian Penal Code. The trial Court recorded acquittal of the appellant Kishnath Sah with respect to the Section 323 of the Indian Penal Code.

5. Before the trial Court the prosecution has examined 9 witnesses namely, PW-1 Gajendra Sah, PW-2 Saheb Lal Sah, PW-3 Ram Lakhan Prasad (informant), PW-4 Nirbhay Prasad (injured), PW-5 Rajendra Choudhary (witness of the occurrence), PW-6 Ram Barai Prasad, PW-7 Shambhu Nath Sah, (both PWs. 6 and 7 are hostile witnesses) PW-8 and PW-9 are the Doctors (who has been examined twice).



6. PW-1 Gajendra Sah in his examination-in-chief stated that he was present at the place of occurrence at the time of the incident. He further stated that he was sowing wheat seeds in his field. During this time, a dispute broke out between Kishnath Sah and Sipahi Lal Sah. When Nirbhay Sah, the informant's son, attempted to intervene in their dispute, Kishnath Sah allegedly said, "*Have you come to arbitrate the matter?*" and then ordered others to kill him. Thereafter, Kishnath Sah, Sanjay, and Omprakash restrained Nirbhay Sah, while Anjit stabbed him twice in the abdomen. As a result of the injuries, Nirbhay collapsed and was subsequently carried to the hospital. PW-1 confirmed in Court that he identified the accused present in the Court. He also reiterated during cross-examination that there had been no prior dispute between the appellants and the injured. He further stated that when he arrived at the place of occurrence, Nirbhay had not yet fallen to the ground, and about five other individuals had already gathered at the place of occurrence. He further stated that, according to him, the stabbing was executed from a distance of six inches and he was among those who carried injured to the hospital. He further submits that no first-aid treatment was administered to the injured on the way to the hospital and they



reached the Sadar Hospital at approximately 10:30 AM., the police arrived there around 12 noon.

7. PW-2 Saheb Lal Sah in his examination-in-chief stated that when Nirbhay Sah went to his field carrying wheat seeds, he intervened in the dispute of Sipahi Lal and Kishnath Sah and Kishnath Sah ordered to kill him. On receiving the order, all the three appellants caught Nirbhay Kumar and the juvenile accused Anjit Kumar stabbed a knife in the stomach of Nirbhay. Thereafter injured was taken to Gopalganj Sadar Hospital where his statement was recorded.

8. PW-3 Ram Lakhan Prasad (informant) in his examination-in-chief stated that the occurrence took place about 7½ years ago at about 10 AM when he had gone to sow wheat seeds in his field. He further stated that in the adjacent boundary of the field a dispute was going on between the accused Kishnath Sah and Sipahi Lal relating to ridge. He further stated that in the said dispute his son Nirbhay, who had carried the wheat seeds to the field, intervened and suggested them to get dispute of ridge resolved by getting the land measured by *Amin* to which the accused Kishnath Sah became angry and abused his son Nirbhay and ordered his nephew to kill him. He further stated that Kishnath Sah and other co-accused Omprakash Sah



and Sanjay caught hold of Nirbhay and Juvenile accused Anjit stabbed in the stomach of Nirbhay. When he went to rescue his son then appellant Kishnath Sah (deceased) assaulted him with *Lathi* and Anjit assaulted him with Knife. He has then stated that due to sustaining injury on abdomen, his son became unconscious and fell down on the earth then the appellants fled away. Thereafter he carried his son to the Gopalganj Sadar Hospital where his treatment was done.

8.(i) PW-3 Ram Lakhan Prasad (informant) in his cross- examination stated that he had no previous dispute with the family of the appellants. He further stated that he was getting the field ploughed by Tractor. The area of that field is about one *bigha*. He further stated that he was not having any weapon in his hand at the time of occurrence. He has then stated that his son had carried wheat seeds on head in a basket. He further stated that at the time of occurrence, the seeds had not been sown. The occurrence took place and continued up to 20 to 25 minutes and on raising hue and cry the neighboring people rushed there. He has stated that all the three appellants had caught the body of his son from both the hands. He has then stated that the appellants had caught his son in the field of Sipahi Lal. He further stated that the Knife was 6" long and 1"



wide. He has then stated that both the stabbing was made by the accused in standing position and after sustaining injury his son fell down and thereafter all the appellants fled away. He has then stated that Sipahi Lal, Saheb Lal and Gajendra lifted his son and carried them to hospital on a Cot.

9. PW-4 Nirbhay (injured) in his examination-in-chief stated that the occurrence took place on 07.12.1997 at about 10 AM, when he had gone to his field with wheat seeds for sowing. He saw Sipahi Lal and Kishnath Sah (deceased) quarelling for the dispute of ridges. At this he intervened in the quarrel and advised them not to do so rather to resolve the dispute by getting the land measured by *Amin*, but the accused persons became angry and the appellant Kishnath Sah ordered to kill him. At this all the appellants Omprakash, Sanjay, and Kishnath Sah caught him and accused Anjit twice stabbed him on his abdomen. He further state that one Knife blow was given in the right side and the next blow was given in the left side. On sustaining knife injury, he fell down. He stated that when his father came in rescue then appellant Kishnath Sah assaulted him with *Lathi* due to which his finger was fractured. He has then stated that he was carried to Sadar Hospital, Gopalganj on a cot where treatment was done. He has identified the appellants in



the Court.

9.(i) PW-4 Nirbhay (injured) in his cross-examination stated that the accused persons are his *Pattidar*. He has then stated that there was no dispute with the appellants before this incident. He has then stated that his father had gone to the field at about 8 AM, and no dispute had taken place from the appellants for cultivation and for sowing sheeds in his field. He has then stated that there were altogether ten persons assembled at the place of occurrence and none of them quarrelled with the appellants. He further denied any first aid treatment in the way in Village Paithan Patti. He further stated that two of the appellants were grabbing his both hands whereas apapellants Kishnath Sah grabbed his neck from behind.

10. PW-5 Rajendra Chaudhary in his examination-in-chief stated that when Nirbhay Sah intervened in the dispute of accused and Sipahi, then appellants Kishnath Sah ordered to kill him. He has then stated that all the appellants grabbed Nirbhay and accused Ajit stabbed him twice on the abdomen. Thereafter he was carried to hospital. PW-5 in his cross-examination stated that although there are Doctors in Paithanpatti Bazar but they did not prefer to get Nirbhay examined there.



11. PW-6 Ram Barai Prasad, PW-7 Shambhu Nath Sah have not supported the prosecution case and they have been declared hostile by the prosecution.

12. PW-8 Dr. Alok Kumar Suman who had twice been examined in his examination-in-chief stated that he has examined PW-4 Nirbhay (injured) and found the following injuries-

1. Sharp cutting wound 2"x1"x muscle deep on right side of lower chest.

2. Sharp cutting penetrating wound 3 1/2"x 1"x abdominal cavity deep in right iliac fossa with protruding gut outside. On laparotomy 3 perforation in small gut, 1 in large gut and in mesocolon with profuse bleeding was found with clots.

He has opined injury no. 1 is simple whereas injury no. 2 grievous and dangerous to life and both the injuries to be caused by sharp cutting penetrating weapon. He further stated the age of injury is to be within two hours i.e., to say he was examined at 10.50 AM, on the date of the occurrence whereas the occurrence is said to have taken place at 10 AM.

12.(i) PW-8 in his cross-examination stated that



there is difference between danger of life and dangerous to life. He further stated that a penetrating wound may be possible from the Knife like Weapon. He has stated that the small and long intestine and mesocolon was cut in the occurrence on which he did operation and did not refer the patient to some other higher Centre. Further, the Doctor has denied that such injuries are possible by fall on sharp pointed substance.

13. PW-9 has found the following one injury on Ram Lakhan Prasad (informant):-

1. Sharp cutting wound 1/3"x 1/3"X Muscle deep over tip of left ring finger.

The injury is simple caused by sharp cut weapon.

The age of injury has been opined within six hours of the examination which is also being corroborated from the time of examination which is 3:45 PM on 07.12.1997. The Doctor has found one simple injury on the tip of left ring finger of the informant which is also caused by sharp cut Weapon.

14. Before the trial Court the defence has examined one witness who stated that it was the informant who had called some criminals and was forcibly getting the land ploughed for which there had been a scuffle between the parties and it were the informant's men who blew the Knife which



injured Nirbhay. The trial Court found that the prosecution has been able to prove the charges under Sections 341 and 307/34 of Indian Penal Code beyond all reasonable doubts and thus convicted the appellants in the alleged offence.

15. The learned Senior Counsel for the appellants has confined his arguments and challenging the sentence imposed by the trial Court in its judgment dated 15.05.2013 and order of sentence dated 18.05.2013. He next submits that the prosecution's case is false and fabricated and the case is filed due to enmity between the appellants and the informant as they had land dispute attributed between the parties. He further submitted that the Investigating Officer of the case has not been examined by the prosecution and any cogent explanation for the same has also not been furnished. Sipahi Sah in whose field the occurrence took place has not been examined during the trial. He further submits that the allegation of assault i.e., the knife blow was on co-accused namely Anjit and no overt act has been alleged against the appellants and there is no allegation of assault against the appellants. It has been contended that the occurrence is of the year 1997 and prosecution has failed to prove its case beyond all reasonable doubts and the appellants are liable to be acquitted from the case.



16. On the other hand, learned Additional Public Prosecutor has vehemently opposed the appeal and submits that there is direct allegation against the appellants, for assaulting PW-3 Ram Lakhan Prasad (informant). He further stated that in view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained.

17. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and defence before the Trial Court.

18. On deeply studied and scrutinized the material available on record, it is evident to note that there is no material inconsistency in the prosecution's case and the ocular testimony of the witnesses is supported by the corroborative evidence which is medical evidence which is an independent source of evidence. Hence, I have not found any ground to interfere with the trial Court's order of conviction dated 15.05.2013. Accordingly, the conviction is upheld under Sections 307/34 and 341 of Indian Penal Code.

19. However, the alleged occurrence took place on 07.12.1997 and the trial began in the year 1998. The appellants were taken into custody on 15.05.2013 after being



convicted by the trial court, however, they were released on bail on 23.05.2013. The appellants in the instant case have faced trial for fifteen years and thereafter for twelve more years in appeal. Thus, undoubtedly the appellants have faced a protracted trial for almost 27 years despite the fact that they were in custody for eight days. From the material on record, it is admitted position that appellant no. 1, i.e. Kishnath Sah has died during the pendency of this appeal and hence the case has been abated against him. Moreover, the accused persons/appellants had only caught hold of the informant and no injury has been proved to be caused by them. There is no disclosure of any injury to the informant in the FIR too.

20. In the case of ***Kamla Prasad v. State of Rajasthan***, the Hon'ble Apex Court observed that:

“in the case of a protracted trial which lasted for more than 29 years and where the petitioner had undergone custody for 18 days, the petitioner had suffered sufficient trauma and undergone persistent agony on account of the same and hence reduced the sentence as already undergone to meet the ends of justice.”



21. Hence, keeping in view all the material on record and the observation of the Hon’ble Apex Court, it is observed that in the instant case, the appellants have been subjected to a protracted trial which has been going on for almost 27 years. The appellants have struggled for a long time during the trial procedure and the conviction of the appellants is upheld but given the long pendency of the trial and the order suffered by the appellants, it is hereby directed that sentence of the appellants is reduced to the period already undergone and the appellants stand discharged of their liabilities of their bail bonds, if any.

22. Accordingly, the appeal is partly allowed.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.12.2024
Transmission Date	04.12.2024

