

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1031 of 2017**

Arising Out of PS. Case No.-67 Year-2012 Thana- DURAULI District- Siwan

Ram Awadh Kishore Prasad, Son of Late Shreeram Sahni, R/o Village-
Narayanpur, P.S.- Darauli, District- Siwan.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 858 of 2017

Arising Out of PS. Case No.-67 Year-2012 Thana- DURAULI District- Siwan

1. Dashrath Sahni, Son of Sita Sahni,
2. Bechu Sahni, Son of Daroga Sahni,
3. Kanhaiya Sahni, Son of Chandeshwar Sahni,
All resident of Village- Narayanpur, P.S.- Darauli, District- Siwan.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1031 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Vaishnavi Singh, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

(In CRIMINAL APPEAL (DB) No. 858 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Vaishnavi Singh, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 24-04-2024

1. Both the appeals have been heard together

and are being disposed off by this common judgment.



2. We have heard Mr. Ajay Thakur, the learned Advocate for the appellants (four in number in the two appeals) and Mr. Ajay Mishra, the learned APP for the State.

3. The appellants have been convicted under Sections 341, 323, 504 and 302/34 of the Indian Penal Code *vide* judgment dated 13.06.2017 passed by the learned Additional District & Sessions Judge-IV, Siwan in Sessions Trial No. 393 of 2014 (G.R. No. 2700 of 2012), arising out of Darauli P.S. Case No. 67 of 2012. By order dated 16.06.2017, they have been sentenced to undergo R.I. for one month under Section 341 of the IPC; R.I. for one year, to pay a fine of Rs. 1,000/- each and in default of payment of fine, to further suffer R.I. for three months under Section 323 of the IPC; R.I. for one year, to pay a fine of Rs. 1,000/- each and in default of payment of fine, to further suffer R.I. for three months under Section 504 of the IPC and R.I. for life, to pay a fine of Rs. 5,000/- each and in default of



payment of fine, to further suffer R.I. for six months under Section 302 of the IPC.

4. The sentences have been ordered to run concurrently.

5. One Bigan Bind has been killed and his son and nephew, viz., Kush Kumar Bin and Dhanu Bin (P.Ws. 9 and 6 respectively) have been injured in the occurrence. The accusation against appellant/Ram Awadh Kishore Prasad (Cr. Appeal (DB) No. 1031 of 2017) is of assaulting the deceased on his head by means of a rami (iron rod). Kush Kumar Bin and Dhanu Bin are said to have been assaulted by appellants/Dashrath Sahni, Bechu Sahni and Kanhaiya Sahni. The deceased died after five days of the occurrence. The two injured persons, viz., P.Ws. 9 and 6 have received only superficial injuries.

6. The FIR has been lodged by Kush Kumar Bind (P.W. 9) who is the son of the deceased. He has alleged in his written report dated 25.07.2012 that a



dispute had erupted between appellant/Ram Awadh Kishore Prasad and the deceased with respect to fixing of pegs in the water body for fishing. After a brief squabble, appellant/Ram Awadh Kishore Prasad gave a rami blow on the head of the deceased. He (P.W. 9) and Dhanu Bin (P.W. 6) were held back by appellants/ Dashrath Sahni, Bechu Sahni and Kanhaiya Sahni and were also assaulted by them. As a result of assault on the deceased, he received injuries on his head and fell down. The deceased was thereafter assaulted by all the appellants. In the meantime, many persons of the village arrived and seeing them, the appellants fled towards Darauli.

7. On the basis of the afore-noted written report by P.W. 9, a case *vide* Darauli P.S. Case No. 67 of 2012 dated 25.07.2012 was instituted for investigation against the appellants under Sections 341, 323, 324, 307, 504/34 of the IPC initially. Section 302 of the IPC was added *vide* order dated 06.08.2012.



8. At the Trial, the informant (P.W. 9) made a somersault and stated in his cross-examination that somebody else had drafted the written report and he was not aware of the contents of it. So far as the assault is concerned, he has supported the prosecution case to the extent of there being a dispute between the deceased and appellant/Ram Awadh Kishore Prasad with respect to fishing rights. The assault made on the deceased made him unconscious. He was taken to Darauli Hospital for treatment and from there, he was referred to Siwan and later to Patna, where he died. The death took place on 31.07.2012.

9. With respect to the enmity between the parties, P.W. 9 has admitted that appellant/Ram Awadh Kishore Prasad was the Mukhiya, whereas the deceased was a candidate for the post of secretary of the Fishing Cooperative Society. His candidature was being opposed by appellant/Ram Awadh Kishore Prasad. He has denied the suggestion that one Nandu Sahni had opposed



appellant/Ram Awadh Kishore Prasad in the election for Mukhiya, in which election, the deceased was from the side of Nandu Sahni and that only on the asking of Nandu Sahni, the appellants have been made accused in this case.

10. The other injured person, viz., Dhanu Bind, who is the nephew of the deceased, has been examined as P.W. 6. He has only generally referred to the assault on the deceased, him and his brother by the appellants. But the sequence of events as narrated by him is different from the prosecution version. He has stated before the Trial Court that he is an expert at fishing. For the dispute over fixing of pegs in the pond for the purposes of demarcating the area in which fishing could be done, a dispute had taken place when the appellants had started assaulting him. The deceased and P.W. 9 had come to his rescue, when the deceased fell down. Nobody had spoken about the occurrence to anyone.



11. At the time of occurrence, only three persons, viz., the deceased, P.W. 7 and him were present. This is in stark contrast to the deposition of the informant (P.W. 9) who has claimed that many persons of the village had arrived immediately after the assault. He has also spoken about the association of the deceased with Nandu Sahni who had contested the election of Mukhiya and had lost to appellant/Ram Awadh Kishore Prasad.

12. It is very surprising that even though the deceased died in hospital and the post-mortem examination was conducted on his dead body, but neither the post-mortem report has been brought on record nor the doctor who had conducted the post-mortem examination has been brought to the witness-stand.

13. The reasons for it remain completely unknown.

14. The Trial Court has completely



overlooked this fact and has discussed about the injury on head and one of the legs of the deceased.

15. The informant (P.W. 9) and Dhanu Bin (P.W. 6) were examined by Dr. Harendra Prasad Singh (P.W. 11) on 25.07.2012. There was only tenderness on the back of the left shoulder of Dhanu Bin (P.W. 6), which was opined to be simple in nature and caused by hard and blunt substance. The informant (P.W. 9) was treated for one abrasion on his left scapular region, which also was opined to be simple in nature, caused by hard and blunt substance.

16. Satendra Manjhi, Bipin Bin, Bidyarthi Chaudhari, Babloo Sahni and Vijay Sahni, who have been examined as P.Ws. 1 to 5 respectively do not claim to have seen any part of the occurrence and had come to know about it only from others.

17. However, what is interesting to note is that Satendra Manjhi (P.W. 1) in his cross-examination has stated that only after he arrived at the scene, P.Ws.



9 and 6 came. If he, an independent person is to be believed, then perhaps P.Ws. 6 and 9 also had not seen the occurrence. In fact, he has gone to the extent of stating that P.W. 9 was asking from others as to how the deceased had received injuries. He was told that the deceased had fallen down and had hit a stone, as a result of which he was injured. None of the appellants were present at the P.O. He has specifically stated that the case has been lodged at the instance of Nandu Sahni, who had lost in the election to appellant/Ram Awadh Kishore Prasad. He has concluded his deposition by stating that for political reasons, the appellants have been framed.

18. Similarly, Bipin Bind (P.W. 2), Bidyarthi Chaudhari (P.W. 3), Babloo Sahni (P.W. 4) and Vijay Sahni (P.W. 5) had not seen any part of the assault. Only one of the witnesses, viz., Ram Janam Bind (P.W. 7) in his examination-in-chief has claimed to have seen appellant/Ram Awadh Kishore Prasad assaulting the



deceased by an iron rod on his head, as a result of which he had received injuries.

19. However, interestingly, in his cross-examination, he has stated that on the date and time of the occurrence, he was at Darauli Bazar and when he came back to his home in the night, he learnt about the occurrence.

20. One Nandi (P.W. 8) had nothing else to offer to the Trial Court. He is the cousin of the deceased.

21. Rajgirihi Ram (P.W. 10) is the first I.O. of the case, who recorded the FIR. In his cross-examination, he has denied that he had recorded the statement of Ram Janam Bind (P.W. 7), who had, in his examination-in-chief, claimed to have seen the occurrence. In fact, he has stated that his statement was recorded by some other Officer-in-Charge and sent to the P.M.C.H. P.W. 10 had also not recorded the statements of P.Ws. 7 and 9.

22. The last of the witnesses, viz., Dinanath



Singh (P.W. 12) is the second I.O. of the case who had found blood at the place of occurrence but no effort was made by him to seize the same or to know about the reason for the assault or the manner of assault.

23. Thus from the prosecution case, we do not get any idea as to how the deceased had received injuries. The absence of post-mortem report and the evidence of the Doctor who conducted the post-mortem examination, give a death blow to the prosecution case. We have also found that independent witnesses were unanimous in stating that the deceased died because of fall on a boulder. That apart, there is quite consistency in the deposition of the witnesses regarding the case having been filed at the instance of Nandu Sahni, who had his own axe to grind against appellant/Ram Awadh Kishore Prasad. Nandu Sahni had lost in the elections to the post of Mukhia to appellant/Ram Awadh Kishore Prasad. This postulate appears to be correct for the reason that even the informant had not written the FIR



which formed the basis of prosecution. Someone else had done it and he had signed it. We are amazed as to how the Trial Court found evidence good enough to convict all the appellants for the offence under Section 302 of the IPC. In the absence of any evidence worth its name, the prosecution has miserably failed to prove the case against all the appellants.

24. The conviction of the appellants are thus set aside.

25. The appellants are acquitted of the charges.

26. Appellant/Ram Awadh Kishore Prasad [in Cr. Appeal (DB) No. 1031 of 2017] is in jail. He is directed to be released from jail forthwith, if not required or detained in any other case.

27. Appellants/Dashrath Sahni, Bechu Sahni and Kanhaiya Sahni [in Cr. Appeal (DB) No. 858 of 2017] are on bail. Their liabilities under the bail bonds are discharged.



28. Both the appeals stand allowed.

29. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

30. The records of this case be returned to the Trial Court forthwith.

31. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Khatim Reza, J)

Sauravkrsinha/
Krishna-

AFR/NAFR	NAFR
CAV DATE	NA
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