

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.815 of 2017

Arising Out of PS. Case No.-86 Year-2013 Thana- THAKRAHA District- West Champaran

Feku Gupta, S/o- Late Ghurbhari Gupta, Resident of Village- Ultahawa, P.S.- Bhitha, District- West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 608 of 2017

Arising Out of PS. Case No.-86 Year-2013 Thana- THAKRAHA District- West Champaran

1. Mahatam Gupta, S/o Late Ghurbhari Gupta.
2. Chandrika Gupta, S/o Late Ghurbhari Gupta.
3. Sikandar Gupta, S/o Late Ghurbhari Gupta.
4. Raju Gupta, S/o Feku Gupta,
All R/o Village- Ultahawa, P.S.- Bhitha, District- West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 815 of 2017)
For the Appellant/s : Mr. Ravi Shankar Sahay, Advocate
Mr. Sanjay Kumar Pandey, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP
(In CRIMINAL APPEAL (DB) No. 608 of 2017)
For the Appellant/s : Mr. Ravi Shankar Sahay, Advocate
Mr. Ashutosh Tripathy, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 20-04-2024

Both the appeals have been taken up together and



are being disposed off by this common judgment.

2. We have heard Mr. Ravi Shankar Sahay, the learned Advocate for the appellants in both the appeals (five appellants in all) and Mr. Dilip Kumar Sinha, the learned Additional Public Prosecutor for the State.

3. The appellants have been convicted under Sections 302/149 and 307/149 of the Indian Penal Code *vide* judgment dated 03.04.2017 passed by the learned 1st Additional Sessions Judge, Bagaha in Sessions Trial No. 524 of 2014, arising out of Thakraha (Bhitha) P.S. Case No. 86 of 2013. By order dated 04.04.2017, they have been sentenced to undergo imprisonment for life, to pay a fine of Rs. 25,000/- each and in default of payment of fine to further suffer RI for two years for the offence under Section 302/149 of the IPC; RI for ten years, to pay a fine of Rs. 10,000/- each for the offence under Section 307/149 of the IPC.

4. The sentences have been ordered to run concurrently.



5. Apart from the five appellants, eight others were also put on trial who have been acquitted of all charges. Only the five appellants had faced trial.

6. The FIR has been lodged by Meena Devi (PW-7) who is the wife of the deceased/ Yogendra Yadav on 25.05.2013 at Bithaha O.P. at about 1:30 PM in the day, alleging that the accused persons including the appellants had constructed a house over 5 kathas of land belonging to PW-7 and her family. Several rounds of *panchayati* were held for settling the dispute but to no avail. Resigning to the fate, the deceased (husband of PW-7) constructed a hut by the side of the road near the land in question, which perhaps was not to the liking of the accused persons. On 25.05.2013, it has been alleged, that at 10:00 AM in the day, all the appellants and several others came, variously armed, at the hut of PW-7 and started uprooting the pegs in front of the newly constructed hut. When PW-7 protested, she was abused and was threatened also. In the meantime, her husband/



Yogendra Yadav (deceased) also came. No sooner had he come, appellant/ Feku Gupta assaulted him by means of a *farsa* which hit the deceased on his head and he fell down on the ground. While all this was happening, the cousin brother-in-law of PW-7, viz., Lal Babu Yadav (PW-1) also came for rescuing the deceased but then, he too was assaulted by all the accused persons with their respective weapons. Later, the members of the mob including the female members of the family of the appellants started assaulting the deceased and Lal Babu Yadav (PW-1), Rameshwar Yadav (PW-2) and Khedan Yadav (PW-5), all of whom suffered serious injuries. The mother-in-law of PW-7/ Ramawati Devi (PW-3) was also injured in the occurrence. Many people had assembled at the place where the fight had taken place. Seeing so many persons arrive at the PO, the accused persons including the appellants made their exit. The villagers and agnates of PW-7, finding the injuries on the injured persons to be serious, hired a vehicle and took all the injured persons to



local primary health centre. The doctor available at the primary health centre referred all the injured persons including the deceased, who, at that time, was still surviving, to a higher hospital at Padrona in the State of Uttar Pradesh. On way, the deceased/ Yogendra Yadav succumbed to the injuries. Rameshwar Yadav and Khedan Yadav (PW-2 and PW-5) were serious and, therefore, they were admitted in the hospital. The dead body of the deceased was brought to Bhitha O.P., where the FIR was registered.

7. On the basis of the afore-noted *fardbeyan* statement of PW-7, a case *vide* Thakraha (Bhitha) P.S. Case No. 86 of 2013 dated 25.05.2013 was instituted for investigation under Sections 147, 148, 149, 341, 323, 324, 504, 307 and 302 of the IPC.

8. The police after investigation submitted charge-sheet against 14 of the accused persons including the appellants, who were put on trial.

9. The Trial Court, after having examined 11



witnesses on behalf of the prosecution including the two doctors who had conducted the postmortem examination and had treated the injured persons respectively and one on behalf of the defence, convicted and sentenced the appellants as aforesaid.

10. Eight persons, however, were acquitted of the charges as they were not alleged to have done anything except for their having been named in the FIR lodged by PW-7.

11. Assailing the judgment and order of conviction of the appellants, Mr. Sahay, the learned Advocate has submitted that the evidence of the witnesses was not appreciated in correct perspective. The land actually belonged to the appellants which was conveyed to them by a sale-deed for valid consideration. The documents with respect to the title of the land (Exhibit-8) was never given any consideration by the Trial Court.

12. It has been urged on behalf of the appellants that for the very fact that the land over which



the house of the accused persons was constructed belonged to them, it becomes very clear that the hut constructed by the deceased and PW-7 was an unauthorised occupation of the land in question.

13. The further argument, on this score, is that the witnesses have admitted that earlier, for the act of constructing a hut on the land by the side of the road, a case was lodged against the deceased by appellant/ Mahatam Gupta, in which the deceased had gone to jail. There was no litigation from the side of the deceased or his family members including PW-7. Under such situation, it could be reasonably expected that the deceased and his family would be the aggressors, or to say the least, the unauthorised occupants of the land in question.

14. In this fact scenario, if the evidence would have been analysed, the Trial Court would not have convicted the appellants for the offence of murder. There is every possibility of there being a clash over the issue of unauthorized occupation of the deceased and his family



and in such clash, unfortunately, the deceased died and four others were injured.

15. The injuries on four other persons have been opined to be simple in nature. This further proves that there was no unlawful assembly for the purposes of killing or injuring the persons of the prosecution side. The occurrence, if at all took place because of this, it was at the spur of moment; as from the evidence on record no flash point was brought to the fore for starting the clash. The witnesses have consistently stated that the house of the accused persons had been constructed long time back and the hut of the deceased was put up only 15-16 days before and that also after the *panchayati* had yielded no results. Seen in this background, the individual act complained against the accused persons ought to have been analysed by the Trial Court.

16. The other ground urged on behalf of the appellants is that in the absence of the examination of the IO, the case of the appellants has been seriously



prejudiced. It remains unknown as to what statement was made by the witnesses before the Investigator earlier.

17. Lastly, it has been submitted that the appellant/ Feku Gupta is said to have given a *farsa* blow, which assault was never repeated by him. The other person, who is said to have assaulted the deceased, is appellant/ Mahatam Gupta, who gave a *tangi* blow resulting in injuries on the fore-arm of the deceased. Rest four injured persons, viz., PWs. 1, 2, 3 and 5 have received only simple injuries. Thus, it cannot be said with certainty, it has been argued, that the death was caused intentionally or that the crowd had the common object of uprooting the hut and also injuring and killing anyone who protested.

18. Under such circumstances, the Trial Court adopted a procrustean approach in painting all the appellants with one tack.

19. As opposed to the afore-noted contentions, Mr. Dilip Kumar Sinha, the learned APP has



submitted that the facts of this case speak for itself.

20. Taking the evidence as it is, the hut of the deceased was erected only few days ago which was not to the liking of the accused persons because they had constructed a house over five *kathas* of the land on which there were rival claims. Showing intemperate behaviour, the accused persons, accompanied by several others, came variously armed to the hut of the deceased. This reflects clear common intention of committing an offence against people who had not offered any protest for the construction of the house. It was only when the hut was about to be uprooted that a protest was registered and in order to silence that protest also, assault was perpetrated on the members of the prosecution party.

21. The first one to arrive in support of P.W. 7 was her husband, who was attacked on his head by *farsa*, a sharp cutting weapon, by appellant/Feku. The impact of such attack was such that it led to his instantaneous death.



22. The others, who had come to pacify or to rescue, were all assaulted. They received simple injuries is no ground for doubting the prosecution version and reflecting that the accused persons had no common object of killing as also injuring anybody who came in the way of the accused persons in uprooting the hut.

23. Apart from this, it has been harped upon by the learned APP that in face of the eye-witness account of so many persons, it would not be in the mouth of the appellants to claim that they have wrongly been convicted.

24. The case was lodged with promptitude and without any embellishment in the narration of events in the FIR.

25. The Trial Court judgment, Mr. Sinha has argued, therefore, does not require any interference.

26. Once the Trial Court came to a finding that there was a common object of uprooting the hut and injuring anybody who came in the way of the accused persons, which gets proved by the fact that all the accused



persons were variously armed with sharp cutting weapons, iron rods, *lathi*, etc., there was no way in which the appellants could have not known and, therefore, not be liable for the act committed by the mob.

27. We have examined the deposition of the witnesses in some detail. Most of the witnesses have been consistent before the Trial Court regarding the accusation made against the appellants. There is hardly any discrepant statement in the deposition of anyone of the witnesses which would render their version questionable on any count.

28. Meena Devi (P.W. 7) has stated before the Trial Court, in no uncertain terms, that two years ago, the accused persons came to her hut at 10:00 AM. All of them were variously armed. They started assaulting P.W. 7 when she raised cries for help.

29. At that time, the first one to arrive was the deceased who was assaulted by appellants/Feku and Mahatam by *farsa* and *tangi*. All of them assaulted the



deceased brutally. All those persons, viz., Lalbabu, Rameshwar and Khedan, who had come to the rescue of the deceased, were also assaulted.

30. However, some of the assertions of P.W. 7 was not supported by the other witnesses, especially, with respect to the old enmity between the parties with respect to possession of the land in question over which the accused persons are alleged to have constructed their house. She had expressed ignorance about any case having been filed against the deceased by appellant/Mahatam.

31. This is quite understandable as it is not very unnatural for a female member of the house not to know about the cases and the litigation between the parties.

32. What is noticeable in her statement is that at the time of the fight, the hut stood pulled down. She had cried for help from inside the hut.

33. If this be correct, then perhaps she was



not the first person to meet the accused persons at 10:00 O'clock on the day of the occurrence. However, such twist in the tale does not make the prosecution case worth discarding.

34. The injured persons were treated in the hospital and her statement was recorded in the hospital. On the other aspects, the credibility of P.W. 7 would not be impeached on any count.

35. Dr. Sharishi Prasad (P.W. 8) had examined and treated the injuries of Lalbabu Yadav (P.W. 1), Rameshwar Yadav (P.W. 2), Ramawati Devi (P.W. 3), Khedan Yadav (P.W. 5) and Meena Devi (P.W. 7) at 10:00 A.M. on 25.05.2013. The injuries found on the person of all the afore-noted injured persons were simple in nature. It took him only five minutes to treat each of the patients. It appears that perhaps he was cross-examined on this aspect because a question was raised as to how could five persons be treated at one particular time in a Primary Health Centre.



36. The nature of injuries only reflect that **those was** mere bruises and minor cuts which did not require any medical attention for a long time. It only adds truthfulness to the story that all the injured persons including the deceased were first taken to Primary Health Centre, where first-aid was given to most of the injured persons and finding the injuries of two of the injured persons and on the deceased to be serious, a referral was made to a higher hospital. However, while proceeding towards Uttar Pradesh for higher treatment, the deceased died and his dead body was then taken back to Bhitaha O.P. where the FIR was registered.

37. There does not appear to be any asynchronous assertion of the witnesses with respect to the background facts; the manner of assault and post-assault efforts to save the deceased who was hit on his head by appellant/Feku.

38. This takes us to the evidence of Dr. Surendra Prasad Agrawal (P.W. 11), who had conducted



the post-mortem examination on the deceased at about 10:30 PM on the same day, i.e., on 25.05.2013. He had found grievous injuries in the parietal region. The parietal bone was found to be fractured.

39. There was a sharp cut wound on the left arm, which perhaps is attributable to appellant/Mahatam as appellant/Feku is only said to have made one assault on the deceased. Rest other injuries were bruises on the left and the right arm of the deceased.

40. Because of the injuries on head, attributable specifically to appellant/Feku, the deceased suffered neuro-hemorrhagic shock which led to his death.

41. There were, however, some objections about the post-mortem examination being conducted in the night.

42. The case of the prosecution is that only after permission by the S.D.M., post-mortem examination was conducted in the night. Though the Sub-Divisional Magistrate may not be the authority to permit post-



mortem examination in the night, but there is nothing on record to indicate that there was no sufficient light for not conducting the post-mortem in the night.

43. One cannot lose sight of the fact that it was the month of May and the assault had taken place somewhere around 10:00 AM in the day. Any delay in the post-mortem examination would have resulted in skewed results, which may not have been effective for assessing the time and the cause of death.

44. The general rule of conducting post-mortem is that it should be done during day time but then any departure from such general rule would not render the medical evidence unacceptable, especially in the absence of any assertion by the accused persons that there was no sufficient light for conducting such post-mortem examination.

45. No questions have been raised with respect to the nature of the injuries found on the person of the deceased which actually was stated in detail, but



much prior to the assessment of the injuries at around 01:30 P.M. in the day of 25.05.2013.

46. P.Ws. 1, 2, 3 and 5 have also supported the prosecution case in its entirety, except for one difference that few of the witnesses have talked about appellant/Mahatam also assaulting the deceased by means of *tangi*.

47. Though there is nothing specific in the deposition about appellant/Mahatam's assault on the deceased but since there is a clear allegation on appellant/Feku having given one *farsa* blow on the head of the deceased, the other cut injury on the arm of the deceased is clearly referable to appellant/Mahatam. The injury was grievous and it could have resulted in death, may be because of fat embolism as a large bone had been cut by the attack made by appellant/Mahatam.

48. However, we have found from the post-mortem report that the cause of death was injury on the head which had led to the fracture of the parietal bone



leading to neuro-hemorrhagic shock.

49. P.W. 9 is not an eye-witness of the occurrence, whereas P.W. 10 has been declared hostile.

50. Sitaram Yadav (P.W. 4) has also supported the prosecution case but not as an eye-witness to the occurrence.

51. From the assessment of the evidence on record, few facts emerge very clearly. (i) There was a dispute with respect to five *kathas* of land over which there were rival claims of the parties. (ii) The house of the accused persons stood over that land for a long time. (iii) The title documents of the land in question is in favour of the accused persons. (iv) The construction made by the deceased and P.W. 7 was only temporary and by the side of the road but all the land, perhaps, was the purchased property of the accused persons. (v) The accused persons had come to the hut of the deceased at 10:00 AM. (vi) There was no skirmish between the parties before the arrival of the appellants. (vii) There is complete



consistency in the deposition of the witnesses that all of them had come armed with respective weapons. The hut was attempted to be uprooted. This had led to verbal protest. The protest by P.W. 7 was not voluble enough to stop the appellants. (viii) The actual assault began when the deceased arrived. (ix) Thereafter, all rescuers were assaulted.

52. This sequence of events demonstrates that there was an intention to uproot the hut. That no person was armed with any lethal weapon like gun or rifle discredits the claim of the prosecution that there was the common object to cause hurt or death of any person in the process. But for two of the appellants, viz., Feku and Mahatam, nobody was armed with any lethal or sharp cutting weapon. Only appellants/Feku and Mahatam were armed with *farsa* and *tangi*, which are sharp cutting weapons.

53. In the absence of any evidence with respect to common object for killing or hurting anyone of



the members of the prosecution side, the case is required to be analyzed on the basis of the accusation and evidence to that effect against each of the individual attackers.

54. Seen in this background, we find that appellant/Feku gave the fatal attack on the deceased. That he chose to attack on head of the deceased is clear indication that he either intended to cause his death or had the knowledge that his act would cause such an injury which in ordinary course of nature would cause death. Thus, his act clearly falls under Section 300 of the IPC, making him liable for the murder of the deceased.

55. We thus find that he ought to have been convicted under Section 302 of the IPC and not necessarily under Section 302/149 of the IPC.

56. Appellant/Mahatam is said to have assaulted the deceased by means of a *tangi* on his shoulder. This could have independently resulted in the death of the deceased. He, therefore, is liable to be convicted under Section 307 of the IPC.



57. Rest of the accused persons chose their targets whoever came in their way but the assault was minimal. There is no allegation of any repeat assault. The simple injuries on the person of five of the injured persons is a testimony to the lack of intention to cause any serious hurt to anyone of the persons who were assaulted by the other accused persons.

58. They are, thus, liable for the offence under Section 323 of the IPC.

59. We thus alter the conviction of the appellants in the following manner :-

(i) Appellant/Feku stands convicted under Section 302 of the IPC;

(ii) Appellant/Mahatam is convicted under Section 307 of the IPC and;

(iii) Rest of the appellants are convicted under Section 323 of the IPC.

60. Appellant/Feku Gupta has been sentenced to undergo imprisonment for life. Sentence



imposed upon him does not require any interference.

61. His appeal, therefore, is dismissed with the modification in the conviction.

62. Appellant/Mahatam Gupta has remained in jail for more than seven years, pre and post conviction. He is still in custody.

63. We are of the view that the period of custody which he has undergone uptill now for the offence under Section 307 of the IPC is sufficient to meet the ends of justice. He is, thus, sentenced to the period of custody which he has already undergone.

64. Since he is in jail, he is directed to be released from jail forthwith, if not required or detained in any other case.

65. Rest of the appellants, whose conviction has been altered to one under Section 323 of the IPC, have remained in jail for more than 8 to 9 months. The sentences against them are thus reduced to the period of custody which they have already undergone.



66. Since rest of the appellants, viz., Chandrika Gupta, Sikandar Gupta and Raju Gupta in Cr. Appeal (DB) No. 608 of 2017 are on bail, they are discharged from the liabilities of their respective bail bonds.

67. The appeals stand disposed off accordingly.

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

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

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

(Ashutosh Kumar, J)

(A. Abhishek Reddy , J)

Rajesh/Saurabh

AFR/NAFR	NAFR
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