

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1153 of 2017

Arising Out of PS. Case No.-90 Year-2001 Thana- NASRIGANJ District- Rohtas

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1. Krishna Mali;
 2. Ganesh Mali;
- Both S/o Ram Narayan Mali, R/o Village- Rajpur, P.S.- Rajpur, District- Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ravindra Kumar, Adv.
For the State : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 06-05-2024

Heard Mr. Ravindra Kumar, the learned Advocate for the appellants and Mr. Dilip Kumar Sinha, the learned APP for the State.

2. The appellants have been convicted under Section 302/34 of the Indian Penal Code vide judgment dated 10.07.2017 passed by the learned Sessions Judge, Rohtas, Sasaram in Sessions Trial No. 370 of 2001 (CIS No. 5469 of 2013 arising out of



Nasriganj P.S. Case No. 90 of 2001. By order dated 13.07.2017, he has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 10,000/- each and in default of payment of fine, to further suffer R.I. for two months.

3. One Ramakant, who is the nephew of the informant/Ramchandra Mali (P.W. 7), was killed by the appellants.

4. The occurrence had arisen for a very small dispute.

5. The *fardebayan* was lodged by P.W. 7 on 23.05.2001 alleging that on 22.05.2001, his son, namely, Vikash Kumar, aged about 12 years, had fought with one Shiv Kumar, aged about 8 years, as Shiv Kumar had plucked watermelon from his field. One Putun Mali intervened in the matter and assaulted Vikash Kumar for having picked up a fight with Shiv Kumar. Vikash Kumar came back home crying and reported the matter to his father/informant. The



informant, thereafter, went to accost Putun Mali, when he met him on the way. Regardless of his age, Putun Mali, who was about 15 years younger to the informant, started fighting with him. In the meantime, the nephew of the informant, namely, Ramakant (deceased) arrived there and Putun Mali engaged himself with him. The warring children were pacified. While the informant and Ramakant were coming back home, Putun Mali and the appellants came from behind. Appellant/Ganesh Mali is said to have caught Ramakant and Putun Mali attacked him by means of a wooden agricultural instrument on his head. As a result of such assault, Ramakant (deceased) was hurt in his head and eye. Ramakant was then taken to Muneshwar Singh (P.W. 9), a local doctor, where he was given first-aid treatment. Later, Ramakant was brought back home thinking that he had recovered. But then, by 23.05.2001, his condition became serious. He had to be taken to Bose Clinic at Dehri, where



during the course of treatment, he died.

6. On the basis of the afore-noted *fardbeyan* statement, a case *vide* Nasriganj P.S. Case No. 90 of 2001, dated 23.05.2001, was registered under Sections 302, 323 and 34 of the I.P.C. against the two appellants and three others.

7. Putun Mali, who had assaulted the deceased on his head by a wooden instrument, was found to be a juvenile and as such he was sent to the Juvenile Court for determination of his guilt.

8. The two other accused persons were acquitted by the Trial Court. Only the appellants were convicted.

9. The Trial Court, after having examined nine witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

10. The deceased had suffered three injuries on his person. There was a cut on the forehead just above the right eyebrow, but it was of a minor



dimension. There was an abrasion over lower lip and chin which was $\frac{1}{2}' \times \frac{1}{2}'$ in dimension. There were multiple abrasions on the left abdomen on the upper portion with some depression. The spleen was found to be ruptured.

11. The *post-mortem* was performed on 24.05.2001 by Dr. Braj Bhusan Sharma (P.W. 8), who had opined that the injuries were *ante-mortem* and the first two injuries, namely, on the eyebrows and lips were caused by hard and blunt substance. Those injuries were found to be simple in nature. However, because of the rupture of the spleen and the Doctor having seen abrasions on the left abdomen on the upper portion, such injury was opined to be grievous in nature. The death, in the opinion of P.W. 8, was because of hemorrhage and shock resulting in cardio-respiratory failure out of the afore-noted injuries. The time fixed for death was placed at 12 to 24 hours from the *post-mortem* examination.



12. The afore-noted wounds, especially on right eyebrow and lips were treated by a local clinician, viz., Muneshwar Singh (P.W. 9). He has testified to the fact that on 22.05.2001, the deceased was brought to his clinic, where he administered the first-aid. Since, the condition of the injured/deceased was not very serious, he was allowed to be taken to his home. It appears that because his spleen had been ruptured, which could not be detected by Muneshwar Singh (P.W. 9), his condition grew serious. It was only thereafter that he was taken to Dr. Bose Clinic, Dehri, belonging to one Sunil Bose, where the deceased succumbed to the injuries.

13. The Doctor at Dehri has not been examined at the Trial.

14. Neelam Kumari (sister of the deceased), Chandravati Devi (wife of the informant), Mani Devi (mother of the deceased), Hemchandra Mali (uncle of the deceased), Vikash Kumar (son of the informant)



and Lalan Mali (father of the deceased) (P.Ws. 1, 2, 3, 4, 5 and 6 respectively) though have supported the prosecution case, but they did not see any part of the occurrence.

15. The informant (P.W. 7) has completely supported this case with minor deviation from what he had stated in the F.I.R. He has narrated the same story before the Trial Court, clearly suggesting that there was no pre-determination or enmity between the parties. In fact, the son of the informant and one Shiv Kumar had fought. Putun Mali had intervened and had also picked up a quarrel with the informant. When the nephew of the informant came, Putun Mali engaged in a fight with him as well. However, the dispute was resolved and the frayed tempers were pacified. It further appears from the deposition of P.W. 7/informant that Putun Mali did not stop there. He called his associates including the appellants, who attacked Ramakant.



16. At the Trial, P.W. 7 has attributed appellant/Ganesh Mali with the role of catching the waist of the deceased and Putun Mali assaulting him on his head, hitting his eyebrow with a wooden instrument. Digressing from what he had said in the *fardbeyan*, he had also alleged before the Trial Court that appellant/Krishna Mali had also assaulted the deceased by means of *lathi*. Thereafter, for first-aid treatment, the victim/deceased was taken to P.W. 9 and on the next day to Dr. Sunil Bose at Dehri for treatment, where he died.

17. The narration by P.W. 7 clearly indicates that a dispute had arisen because of the son of the informant having fought with a person of his age only, who had stolen a watermelon from his field.

18. There does not appear to be any embellishment except for a minor one which has been noted above in the version of P.W. 7. The deceased died because of the rupture of spleen.



19. We have noticed from the deposition of all the witnesses, P.W. 7 in particular, that the assault was not made on the stomach of the deceased. The deceased may have fallen down and would have injured his spleen, but that was not evident from outside except for an abrasion and a depression over the left side of the upper abdomen. This could not be noticed by Muneshwar Singh (P.W. 9), who was only a village clinician but capable of administering first-aid treatment. The injuries by the wooden instrument received by the deceased were found to be simple in nature. There was no internal injury in the head or in the eye. It was limited to only superficial abrasion.

20. There is nothing on record to indicate that the victim was intended to be killed. Had it been so, the attack on his head would have been repeated.

21. There were many other persons who had assembled at that place, who could have averted any full-fledged fight. The matter would have, otherwise,



ended there. However, unfortunately, the deceased had already ruptured his spleen. For this reason, his condition grew serious in the night, when he had to be taken to a Doctor at Dehri.

22. The entire sequence of events only discloses that two children had fought in which the elders were also participated later. We cannot gather any intention of the two appellants of killing the deceased. The informant was closely following the deceased on his way back home. There was no attack on any other person except Ramakant. Perhaps, the anger in the mind of Putun Mali had lingered.

23. It is quite unfortunate that the deceased died because of spleen rupture.

24. We have not been able to find any evidence on record to justify the conviction of the appellants under Section 302 I.P.C. At best, the appellants would have been guilty for the offence under Section 324 I.P.C. The intention of the appellants is



absolutely missing from the evidence of record.

25. For the afore-noted reason, we do not find the Trial Court judgment to be fit enough to be sustained in the eyes of law.

26. The conviction of both the appellants is converted into one under Section 324 I.P.C.

27. We have been informed that the appellants have remained in jail since 10.07.2017 and thus have spent more than six years in jail. This period of custody would meet the ends of justice.

28. The sentence of the appellants, therefore, is reduced to the period of custody which they have already undergone.

29. To make it clear, the conviction of the appellants have been modified from Section 302 I.P.C. to one under Section 324 I.P.C., entailing a punishment of the period of custody which both of them have already undergone.

30. The appeal is dismissed with the



modification in the conviction and sentence of the appellants.

31. Since, the appellants are in jail, they are directed to be released from jail forthwith, if their detention is not required in any other case.

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

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

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

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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