

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.280 of 2014

Arising Out of PS. Case No.-293 Year-1999 Thana- BANKA District- Banka

Sakal Bhandari, S/o Anandi Bhandari, resident of Village - Mahua, P.S. - Panjwara, District - Banka.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 246 of 2014

Arising Out of PS. Case No.-293 Year-1999 Thana- BANKA District- Banka

1. Pramod Bhandari, Son of Anandi Bhandari;
 2. Anandi Bhandari ,Son of Late Toji Bhandari;
 3. Sikandar Bhandari, Son of Late Jhaksu Bhandari;
 4. Bhalli Bhandari, Son of Late Pairu Bhandari;
- All residents of Village - Mahua, P.S. - Panjwara, District - Banka.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 280 of 2014)

For the Appellant/s : Mr. Praveen Kumar, Adv.

For the State : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 246 of 2014)

For the Appellant/s : Mr. Praveen Kumar, Adv.

For the State : Mr. Abhimanyu Sharma, APP



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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 10-01-2024

Both the appeals have been taken up together and are being disposed off by this common judgment.

2. We have heard Mr. Praveen Kumar for all the five appellants in the two appeals and Mr. Abhimanyu Sharma for the State.

3. The appellants, five in number, *viz.*, Sakal Bhandari [*Cr. Appeal (DB) No. 280 of 2014*], Pramod Bhandari, Anandi Bhandari, Shikandar Bhandari and Bhalli Bhandari [*Cr. Appeal (DB) No. 246 of 2014*] have been convicted under Sections 147, 302/149 and 323/149 of the Indian Penal Code (*in short, the I.P.C.*) *vide* judgment dated 03.03.2014 passed by the learned Additional Sessions Judge-I, Banka in Sessions Trial No. 131 of 2003/Trial No. 5 of 2014 arising out of Banka



(Barahat) P.S. Case No. 293 of 1999 (G.R. Case No. 1382 of 1999). The appellants, by order dated 10.03.2014, have been sentenced to undergo R.I. for life, to pay a fine of Rs. 10,000/- each and in default of payment of fine, to further suffer R.I. for one year for the offence under Sections 302/149 of the I.P.C.; to undergo R.I. for one year for the offence under Sections 323/149 of the I.P.C. and to suffer R.I. for one year for the offence under Section 147 of the I.P.C.

4. The sentences have been directed to run concurrently.

5. In this case, the grandfather was killed and the grandson was injured in his wrist.

6. The F.I.R. has been lodged by the son of the deceased, who has been examined as P.W. 5. According to his version in the written report dated 05.12.1999, the appellants and two others (since acquitted) fought with his father/deceased because an ox belonging to him had strayed in the field of



appellant/Anandi Bhandari. The dispute did not settle despite P.W. 5 having made entreaties to the accused persons. When the passions ran high, the appellants brought their respective weapons from their houses. Appellant/Sakal Bhandari is said to have given a *lathi* blow on the deceased on his nose, as a result of which he became seriously injured. The grandson of the deceased, who had come for the rescue of his grandfather, was assaulted by a sickle by appellant/Pramod Bhandari. As a result of such assault, he received severe injuries on his wrist. Guneshwar Mahto, one of the co-villagers, (P.W. 1) and Kapil Raut (not examined) came for the rescue of these persons, but they were also assaulted.

7. Hence, the F.I.R. *vide* Banka (Barahat) P.S. Case No. 293 of 1999, dated 06.12.1999 for the offences under Sections 147, 148, 149, 324, 323 and 307 of the I.P.C. Section 302 I.P.C. was added *vide* order dated 16.12.1999.



8. The deceased appears to have died after five days at Bhagalpur hospital.

9. The Doctor who conducted the *post-mortem* examination and the Doctor who had examined and treated Viveka Nand Yadav (P.W. 2), the injured, have not been examined at the Trial.

10. The *post-mortem* report of the deceased and the injury report of Viveka Nand Yadav (injured) are sought to be proved by the Compounders respectively, which documents have been admitted in evidence under Section 32(2) of the Indian Evidence Act, 1872.

11. The Doctors, referred to above, did not respond to the summons and other processes by the Court. However, the *post-mortem* report and the injury report, referred to above, were exhibited as Exhibit-2 and Exhibits-4 to 4/2 respectively.

12. The I.O. of this case has also not been examined.

13. All the witnesses, it has been pointed out,



have categorically stated that there was no dispute between the appellants and the deceased as well as the injured. The brawl took place when an ox belonging to the deceased had strayed in the field of appellant/Anandi Bhandari. For some reason or the other, a small incident had given rise to a full fledged fight. The appellants are not alleged to have been armed because all of them were working in the field. When the dispute could not be settled, the appellants are said to have brought their respective weapons of the kind of *lathi*, sickle etc.

14. Based on this allegation, the Trial Court has come to the conclusion that the action of the appellants was not out of any sudden provocation and on the spur of the movement; rather it was a conscious decision of the appellants to form an unlawful assembly and assault the deceased as well as P.W. 2, who but has received only simple injuries on his wrist. The only reason, perhaps, for the Trial Court to conclude like that was that they had brought their respective weapons



when a heated discussion was going on between the parties.

15. Mr. Praveen Kumar, the learned Advocate for the appellants has taken us through the depositions of Guneshwar Mahto (P.W. 1), Viveka Nand Yadav (P.W. 2), Jyotish Mahrana (P.W. 3), Hari Narayan Mahrana (P.W. 4) and Bishambhar Raut (informant/P.W. 5) in detail.

16. One of the submissions of Mr. Kumar is that but for Viveka Nand Yadav and Bishambhar Raut, P.Ws. 2 and 5 respectively, the three other witnesses did not actually see the actual part of the assault.

17. Apart from this, it has been suggested that none of the witnesses ever talked of any enmity or the appellants having taken undue advantage of the deceased being found alone in the field. Many persons of the neighbourhood had arrived, but they could not intercede with either the appellants or the deceased, his son and the grandson. The deceased had protested



against the precatory words used by appellant/Anandi Bhandari.

18. This, in our estimation, is a sudden provocation.

19. In the absence of any enmity and any special preparedness for committing the offence, any act committed by appellant/Sakal Bhandari would qualify to be called a culpable homicide, not amounting to murder.

20. One of the exceptions when the culpable homicide would not amount to murder is that if it is committed without pre-mediation, in a sudden fight, in the heat of passion, upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. It is immaterial in such cases as to which party offers the provocation or commits the first assault.

21. The case of appellant/Sakal Bhandari would squarely fall in *Exception No. - 4* to Section 300 I.P.C.



22. There is nothing on record to indicate that there was any pre-meditation. A sudden fight had broken out because of the deceased having recriminated against the abusive behaviour of appellant/Anandi Bhandari. The abusive behaviour was because of the ox straying in the field of appellant/Anandi Bhandari.

23. All this was sudden.

24. There is nothing on record to indicate that there was any pre-meditation before the assault. When the dispute could not be settled there on the field, assault was made by appellant/Sakal Bhandari by means of *lathi*, which by no stretch of imagination could be called a lethal weapon.

25. There was no repetition of assault. One *lathi* blow was given to the deceased, which, unfortunately, hit him on his nose. The impact was monumental. The entire brain got lacerated.

26. Normally, such act would have fallen squarely under Section 300 thirdly as an act done with



the intention of causing bodily injury to any person and the bodily injury intended to be inflicted will sufficient in the ordinary course of nature to cause death.

27. However, there is nothing on record which could be gathered from the surrounding circumstances that the appellant/Sakal Bhandari ever intended to cause such bodily injury like the internal injuries, damaging the meninges of the deceased, which, in ordinary course of nature, would have been sufficient to cause death. Rather non-repetition of the assault and not taking advantage of the deceased being alone in the field when he was surrounded by more than five persons, the *Exception No. - 4* to Section 300 I.P.C. would definitely get triggered.

28. Though appellant/Pramod Bhandari is said to have assaulted Viveka Nand Yadav (P.W. 2) by means of a sickle, but the injuries on the wrist of P.W. 2 have been found to be simple in nature, which has been opined to have been caused by hard and blunt substance



and not by any sharp cutting weapon, which would only attract the mischief of Section 323 I.P.C.

29. There was no unlawful assembly and, therefore, the application of Section 149 I.P.C. by the Trial Court does not appear to be warranted.

30. However, since the impact of the injury caused by one *lathi* blow on the nose of the deceased, attributed to appellant/Sakal Bhandari, was strong enough to damage the entire brain of the deceased, appellant/Sakal Bhandari would definitely be guilty for the offence under Section 304 Part-I of the I.P.C.

31. All the witnesses, other than the son and the grandson of the deceased, have testified to the fact that only one blow was given to the deceased by appellant/Sakal Bhandari.

32. Thus, finding the conviction of the appellant/Sakal Bhandari [*Cr. Appeal (DB) No. 280 of 2014*] under Section 302 and other sections of the I.P.C. to be unjustified, we deem it appropriate to and



convert his conviction into one under Section 304 Part I of the I.P.C.

33. The conviction of appellant/Pramod Bhandari [*Cr. Appeal (DB) No. 246 of 2014*] is also converted into one under Section 323 I.P.C.

34. Rest of the accused persons/appellants, namely, Anandi Bhandari, Shikandar Bhandari and Bhalli Bhandari [*Cr. Appeal (DB) No. 246 of 2014*], who have not been specifically attributed with any role except for their remaining on the field, are acquitted of the charges levelled against them and the conviction as against them, referred to above, is set aside.

35. After having said that, we have given our anxious consideration with respect to the sentences to be awarded to appellants/Sakal Bhandari and Pramod Bhandari, who now stand convicted under Section 304 Part I and 323 of the I.P.C. respectively, and finding that the occurrence is of the year 2014, between a group of villagers, over a sudden fight on a trifle, we



conclude that the period of custody which appellant/Sakal Bhandari has undergone up-till now, would be sufficient to meet the ends of justice. He has, by now, remained in jail for about ten years, which would include pre and post conviction jail term.

36. The period of custody that appellant/Pramod Bhandari has served, would be the sentence on him for the offence under Section 323 I.P.C.

37. Only appellant/Sakal Bhandari [*Cr. Appeal (DB) No. 280 of 2014*] is said to be in jail. He is directed to be set at liberty forthwith unless his custody is required in any other case.

38. Rest of the appellants are on bail. Their liabilities under the bail-bonds are discharged.

39. Both the appeals stand partially allowed accordingly.

40. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for



compliance and record.

41. The records of these cases be returned to
the Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Nani Tagia, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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