

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1423 of 2019**

Arising Out of PS. Case No.-175 Year-2014 Thana- PIPRA District- Supaul

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Pawan Sah, Son of Bokai Sah, Resident of Village- Dulari Lalpur, P.S.- Pipra,
Distt.- Supaul.

... .. Appellant

Versus

1. The State of Bihar
2. Santosh Sah, Son of Bhutai Sah Resident of Village - Dulari Lalpur, P.S.-
Pipra, Distt.- Supaul.
3. Ravindra Sah, Son of Sambhu Narayan Sah Resident of Village - Dulari
Lalpur, P.S.- Pipra, Distt.- Supaul.
4. Prakash Sah, Son of Ganga Prasad Sah Resident of Village - Dulari Lalpur,
P.S.- Pipra, Distt.- Supaul.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. N.K. Agrawal, Sr. Advocate
	:	Mr. S.K. Thakur, Advocate
	:	Mr. R.K. Singh, Advocate
For the Respondents	:	Mr. Dilip Kumar Sinha, Addl.PP

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL ORDER**

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

15 04-03-2024 Heard Mr. N.K. Agrawal, learned Senior counsel

assisted by Mr. S.K. Thakur, learned counsel for the appellant and

Mr. Dilip Kumar Sinha, leaned Additional PP for the State.

2. This appeal against the acquittal of respondent nos. 2
to 4 has been preferred by the informant. The grievance of the
informant is that the learned trial court has acquitted respondent
nos. 2 to 4 from the charge under Section 302 of the Indian Penal
Code (in short 'IPC') without appreciating the prosecution
evidences, which were available on the record.

3. Learned counsel for the appellant submits that the
respondent nos. 2 to 4 have been found guilty for the offences



under Section 323, 147 and 504 of the Indian Penal Code (in short 'IPC'), accused Prakash Sah (respondent no. 4) has also been found guilty for the offence under Section 324 IPC. Respondent nos. 2 to 4 have been sentenced to undergo one year imprisonment for the offences punishable under Sections 147, 323 and 504 IPC each, whereas Prakash Sah (respondent no. 4) has been further sentenced to undergo three years rigorous imprisonment for the offence punishable under Section 324 IPC.

Prosecution Case

4. As per the prosecution story, on 28.10.2014, the informant was pitching stake in his land, meanwhile, all the accused persons, namely, (1) Hari Narayan Sah, (2) Prakash Sah, (3) Ganga Prasad Sah, (4) Shambhu Narayan Sah, (5) Santosh Sah and (6) Ravindra Sah armed with battle axe, country-made pistol, dabiya and spade, suddenly began attacking on the informant. It is alleged that accused Hari Narayan Sah put country-made pistol on the chest of the informant, brandishing it and brother of accused Hari Narayan Sah gave battle axe blow on the head of informant and he fell down having become unconscious. Thereafter, one of the accused persons snatched his golden chain and when the informant regained his consciousness in hospital, then he found his deceased son Vikas Kumar lying in unconscious state in hospital as a result of which the informant lost his consciousness out of fear



and accused persons snatched away silver chain from neck of his son. It is further alleged that when the informant reached at his home after getting his treatment done in the hospital, he noticed that accused persons had tied the hands of Subhash Kumar Gupta and looted all the articles from his home and they also took away gold chain from the neck of the wife of the informant, earring from her ear and her saree.

5. On the basis of the written report of Pawan Sah (PW-1), Pipra Police Station Case No. 175 of 2014 dated 28.10.2014 for the offences punishable under Sections 147, 341, 323, 324, 307, 379 and 504 IPC was registered, Section 302 IPC was subsequently added.

6. After completion of investigation, Police submitted a charge-sheet under Sections 147, 323, 341, 324, 325, 302 and 504 IPC. Since, the offences were triable by the court of Sessions, the records were committed to the court of Sessions, charges were framed against the accused and they were explained the charges. The accused denied the charges and claimed to be tried whereafter the trial was conducted.

7. At this stage, it is worth mentioning that so far as respondent nos. 2 to 4 are concerned, a perusal of the charges available on the record would show that they were charged for committing the offences punishable under Sections 325, 302, 147,



323 and 341 IPC.

Prosecution Evidence-Analysis

8. The prosecution examined altogether eight witnesses.

PW-1, Pawan Sah is the informant and the father of the deceased Vikas Kumar. The other witnesses are Sanjay Kumar Sah (PW-2), Lal Bhadur Sah (PW-3), Subhash Kumar Sah (PW-4), Rukmani Devi (PW-5), Dr. Sunil Kumar Chandra (PW-6), Chandan Kumar, Investigating Officer (PW-7) and Dr. Anil Sandilya (PW-8).

9. The Prosecution exhibited some documents marked as Exhibit-1, Exhibit-2, Exhibit-2/1, Exhibit-2/2, Exhibit-3 and Exhibit-4.

10. The learned trial court has upon analysis of the evidences of the prosecution witnesses found that PW-1, Pawan Sah has stated in his evidence that the present occurrence took place at 4:30 PM on 28.10.2014. His deceased son Vikas Kumar had suffered injuries in the said offence and he was brought to Pipra hospital from where his son was referred to Supaul Hospital and finding the critical condition of his son, he was referred to Darbhanga Medical College Hospital (DMCH) and ultimately, he was taken to Patna Medical College Hospital (PMCH), Patna. He has stated that in that condition someone got his signature on a petition. He had given his statement to the Police at Patna, his deceased son succumbed to injuries in Patna. PW-1 has stated that



the name of accused Surendra Sah (not party in this case) was left out in the written petition, but the name of the said accused Surendra Sah was taken in the *fardebyan* recorded at Patna. This witness has stated that Hari Narayan Sah, Prakash Sah, Ravindra Sah and Santosh Kumar Sah along with co-accused persons Ganga Prakash Sah, Sambhu Narayan Sah and Surendra Sah formed an assembly and came at the place of occurrence armed with weapons and forbade him to pitch the stake while hurling abuses. PW-1 has stated that co-accused Surendra Sah ordered other accused persons to kill. Accused Hari Narayan Sah was having three knot and Cricket Bat in his hand. Accused Prakash Sah gave axe blow on his head which he averted with left hand and battle axe hit on the little finger of the left hand which resulted in a cut wound. According to him, accused Prakash Sah gave second blow with fatal axe which hit him on the shoulder and when both the sons Subhash and Vikas came to rescue then accused persons Ravindra Sah, Santosh Sah and co-accused persons Ganga Narayan Sah and Sambhu Narayan Sah indiscriminately assaulted his both sons with *lathi*. PW-1 has stated that accused Hari Narayan Sah assaulted his deceased son Vikas with Cricket bat and his deceased son fell down on the ground and became unconscious. He brought his deceased son to Pipra Hospital with the help of villagers. In his cross-examination, he has stated that he had recorded his



fardbeyan at Patna and his statement was recorded at his home by the Police and he went to Patna after one day of the occurrence. Learned trial court has taken note of the fact that the defence has drawn the attention of PW-1 to his previous statement given to Police that he had not stated to the Police what he had deposed in the court.

11. PW-2, Sajay Kumar Sah has also stated that when Subhash and deceased Vikas came to rescue their father, accused persons Ravindra Sah, Santosh Sah, Prakash Sah, Ganga Prakash Sah and Sambhu Narayan Sah assaulted them indiscriminately with *lathi*, meanwhile, accused Hari Narayan Sah gave blow on the head of deceased, Vikas Kumar with Cricket bat and he fell down having become unconscious and then the villagers brought the injured persons, informant, Subhash and Vikas to Pipra Hospital. Vikas died at Patna on 31.10.2014.

12. PW-3, Lal Bahadur Sah has supported the prosecution case saying that accused Ravindra Sah, Prakash Sah, Ganga Prasad Sah and Sambhu assaulted the informant and his sons indiscriminately with *lathi* and accused Hari Narayan Sah gave blow with cricket bat on his head as a result whereof he fell down and became unconscious. Subhash Kumar Sah (PW-4) is one of the injured persons in this case who has stated that when his father was pitching new '*khooda*' on fencing of tethering house and



he and his deceased brother were bringing the new *Khoota* to his father, in the meantime, accused persons and co-accused Sambhu Sah, Ganga Sah and Surendra Sah came there and out of them Hari Narayan Sah was having three knot and cricket bat in his hand and accused Prakash Sah was having battle axe in his hand and others were holding *lathi* and *danda*. According to this witness, the accused persons and co-accused began hurling abuses upon his father and on order of accused Surendra Sah, Prakash Sah gave battle axe blow on the head of his father and his father warded off the blow with his hands. On the point of assault to the deceased Vikas, he has stated that when he and his deceased brother went to rescue his father, the accused persons began assaulting him and his brother, meanwhile, accused Hari Narayan Sah gave cricket bat blow on the head of the deceased Vikas and the deceased fell down on the ground. The deceased was thirteen years old.

13. Rukmani Devi, who is the mother of the deceased has deposed as PW-5 and she has also supported the prosecution case. She has stated that the assault took place after she reached the place of occurrence and all the accused persons assaulted her husband and her sons with *lathi*.

14. Chandan Kumar, Investigating Officer (PW-7) had stated that his predecessors have made endorsement of the informant on written report, he had visited the place of occurrence



and recorded statement of the wife of the informant and injured Vikas Kumar died in course of treatment.

15. Dr. Anil Sandilya (PW-8) was posted as Assistant Professor in PMCH, Patna. On 01.11.2014, he conducted autopsy on the dead body of Vikas Kumar, a thirteen years old male. He has stated that scalp injury was found and it is possible without external injury. He had not mentioned any external injury in his report (Exhibit-4). In his cross-examination, PW-8 has stated that it is not always necessary that external injury will be present when head is struck by hard blunt instrument.

16. The learned trial court has recorded a finding that the testimonies of PWs- 1, 4 and 5 are consistent that accused persons along with other co-accused formed unlawful assembly being armed with battle axe, *lathi* and spade, came when the informant, Pawan Sah was staking pole and they forbade the informant from piling the pole, accused Prakash Sah assaulted the informant with battle axe which informant averted and battle axe blow hit on the little finger of left arm of the informant resulting in cut injury thereon and accused Prakash Sah again assaulted the informant with battle axe, which hit the informant on shoulder resulting in cut injury thereon as well, accused persons Ravindra Sah, Santosh and other co-accused persons assaulted both sons of informant indiscriminately with *lathi*, when they came to rescue



the informant. The learned trial court held that accused Hari Narayan Sah gave cricket bat blow on the head of the deceased Vikas, as a result of which, deceased Vikas fell down on the ground and became unconscious and the deceased along with other two injured persons were brought to Pipra Hospital from where deceased Vikas was referred to Supaul and from there, he was further referred to Darbhanga and Patna where ultimately the deceased died. The learned trial court has found that the defence has drawn the attention of the informant to his previous statement given to the Police that he had not stated to Police what he had deposed in the court.

17. PW-7, who is the second Investigating Officer of the case and had recorded the statement of the informant (PW-1) in paragraph '84' of the case diary has stated in paragraph '7' that PW-1 had not stated that accused Hari Narayan Sah had three knot in his hand but PW-1 had stated that accused Hari Narayan Sah held cricket bat in his other hand.

18. Learned trial court has found that so far as PW-2 is concerned, he has stated in his cross-examination that when he reached at the place of occurrence, the informant and his both sons were lying on the ground having sustained injuries, therefore, it has been held that he appears to be a post-occurrence witness.

19. As regards testimony of PW-3, the learned trial court has once again found that PW-3 though supported the prosecution



case in examination-in-chief but his testimony stands in contradiction with his previous statement where he has stated that when he reached at the place of occurrence, three injured persons were lying on the ground, so this witness has also been held to be a post-occurrence witness.

20. On going through the testimonies of PWs-1 to 4, who are the injured witnesses, the learned trial court has held that their testimonies would prove beyond reasonable doubt that accused persons along with other co-accused being armed with *lathi*, danda, battle axe and cricket bat came at the place of occurrence where informant was pitching *khoota* and they forbade the informant to pitch the *khoota* and abused him. The learned trial court found that the accused Prakash Sah gave battle axe blow twice, one on the little finger of the left hand and another on the shoulder of the informant. It has been further found that when both the sons of informant (PW-1), Subhash and Vikas came to rescue the informant, the accused persons and other co-accused assaulted both of them indiscriminately with *lathi* and accused Hari Narayan Sah gave Cricket Bat blow on head of the deceased Vikas around temple and deceased fell down. The testimonies of PWs-1, 4 and 5 have been found corroborated with the injury reports (Exhibits '2', '2/1' and '2/2') and the testimony of PW-6, saying that the informant sustained sharp cut wound on the little finger of his left hand and PW-4 sustained simple injuries and deceased Vikas sustained grievous hurt on his vital body part which



resulted in his death were corroborated.

21. The learned trial court has relied upon the testimony of PW-6 and the injury report Exhibit- '2/2' and held that the deceased Vikas sustained injuries on his temple which was dangerous to his life and *post mortem* report as well as testimony of PW-7 would prove that the deceased died due to head injury that he sustained. At this point of time, learned trial court has held that only accused Hari Narayan Sah caused head injury to the deceased by cricket bat as a result whereof deceased died. The trial court found that the accused persons and other co-accused came at the place of occurrence to drive out the informant who was staking pole thereon, therefore, the assembly was not formed with common object to kill the informant or any other person, therefore, for the act committed by accused Hari Narayan Sah, the other accused cannot be held liable.

22. On the basis of the evidences which were brought before the learned trial court, learned trial court has recorded its finding.

Consideration

23. We have carefully perused the materials available on the record and have noticed that in this case so far as respondent nos. 2 to 4 are concerned, they were not charged for an offence under Section 302 IPC with the aid of Section 34 IPC or Section 149 IPC. It is not the prosecution case that the accused persons including respondent nos. 2 to 4 had formed an unlawful assembly with a



common object to kill the son of the informant. Charge under Section 147 IPC was framed saying that “you, on or about the 28th day of October 2014 at Village- Dulari, P.S.- Pipra, District- Supaul alongwith others were a member of an unlawful assembly and in prosecution of the common object of such assembly namely hurt, committed the offence or rioting and thereby committed an offence punishable under Section 147 of the Indian Penal Code”. The substantive charge under Section 302 IPC could not be proved against Respondent Nos. 2 to 4 beyond all reasonable doubts.

24. From the evidences on record, it would appear that when the accused persons went to stop the informant from staking the *khoota*, the deceased son was not present, he came when his father was being assaulted and in order to rescue his father the deceased intervened when he was assaulted by Hari Narayan on his head as claimed by the prosecution. Thus, the accused persons did not know that in prosecution of the common object the offence was likely to be committed. No premeditation of mind on the part of the accused persons have been proved in this case. The learned trial court has also found that the accused persons were not charged for the offence under Section 326 IPC. Accused Prakash Sah had caused grievous hurt and simple hurt to the informant with sharp cutting weapon and for that reason, he has been held guilty for causing simple hurt with sharp cut weapon and so far as accused Hari Narayan Sah is concerned, he has been held guilty for causing



grievous hurt with hard and blunt substance and committing murder of the deceased son of the informant.

25. In this case, we are not considering the findings recorded by the learned trial court against accused Hari Narayan Sah as his appeal is already pending consideration before this Court.

26. We have also noticed that PW-1 has admitted in his evidence that the accused persons had filed a counter-case in Case No. 176 of 2014 at Pipra Police Station regarding the occurrence on that day and it has been corroborated by PW-4 in his evidence.

27. We do not find any perversity in the finding of the learned trial court so as to warrant any interference with the judgment of acquittal of respondent nos. 2 to 4 from the charge under Section 302 IPC.

28. This appeal has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(G. Anupama Chakravarthy, J)

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