

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2484 of 2019

Arising Out of PS. Case No.-61 Year-2009 Thana- RAJPUR District- Buxar

1. Salik Singh Son Of Sri Niwas Singh Resident Of Village - Ismailpur, P.S.- Rajpur, Distt - Buxar.
2. Dalsingar Singh Son Of Sri Niwas Singh Resident Of Village - Ismailpur, P.S.- Rajpur, Distt - Buxar.
3. Dhanjee Singh Son Of Sri Niwas Singh Resident Of Village - Ismailpur, P.S.- Rajpur, Distt - Buxar.
4. Charan Singh Son Of Sri Niwas Singh Resident Of Village - Ismailpur, P.S.- Rajpur, Distt - Buxar.
5. Abhishek @ Tana Singh @ Tanna Singh Son Of Mahendra Singh Resident Of Village - Ismailpur, P.S.- Rajpur, Distt - Buxar.
6. Sona Singh Son Of Mahendra Singh Resident Of Village - Ismailpur, P.S.- Rajpur, Distt - Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 2480 of 2019

Arising Out of PS. Case No.-61 Year-2009 Thana- RAJPUR District- Buxar

1. Mahendra Singh Son Of Late Nagina Singh Resident Of Village - Ismailpur, P.S.- Rajpur, District - Buxar.
2. Sri Niwash Singh Son Of Late Nagina Singh Resident Of Village - Ismailpur, P.S.- Rajpur, District - Buxar.
3. Jwala Singh @ Jawala Singh @ B.P. Singh Son Of Mahendra Singh Resident Of Village - Ismailpur, P.S.- Rajpur, District - Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 2484 of 2019)

For the Appellant/s : Mr. Krishna Pd. Singh, Sr. Advocate
Mrs. Sakshi Deep, Advocate

For the State : Mr. Syed Ashfaq Ahmad, APP

For the informant : Ms. Dimpal Kumari, Advocate

(In CRIMINAL APPEAL (SJ) No. 2480 of 2019)

For the Appellant/s : Mr. Krishna Pd. Singh, Sr. Advocate



		Mrs. Sakshi Deep, Advocate
For the State	:	Mr. Syed Ashfaque Ahmad, APP
For the Informant	:	Mr. Sanjay Kumar Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 06-02-2025 Heard the learned Senior Counsel for the Appellants;

Shri Krishna Pd. Singh, learned APP for the State and the

learned Counsel for the Informant.

2. Both these appeals are directed on behalf of the appellants against the order of judgment and sentence dated 18.04.2019 and 24.04.2019 respectively passed by the learned Additional Sessions Judge-III, Buxar in S.Tr. No. 258 of 2011 arising out of Rajpur P.S. Case No. 61 of 2009 by which the appellants are sentenced under Section 304/34 of the Indian Penal Code to undergo R.I. for seven years and Rs. 5,000/- fine each, in default of the same, further to undergo S.I. for 6 months.

3. As per the prosecution case, wife of the informant namely *Rajeshwari Devi* was going to ease herself behind her house on 16.07.2009 at 5 PM. In the meantime, all 11 accused persons came there and asked her to leave government land for which there was old dispute between both parties. On refusal, all the accused persons assaulted *Rajeshwari Devi* with fists, slaps and bricks. On *hulla*, several people including *Wakil Singh* son of the informant reached there and after seeing him, accused



persons fled away. The informant was grazing his buffalo and was informed by *Wakil Singh*. Thereafter, the informant went there and was taking *Rajeshwari Devi* to the hospital for treatment but on the way, his wife *Rajeshwari Devi* died.

4. On the basis of the written application of the informant dated 16.04.2019, Rajapur P.S. Case No. 61/2009 was registered u/s 302/34 of the I.P.C. and investigation was taken up. After completion of the investigation, police submitted final form on 30.09.2009 finding the case to be false and the C.J.M., Buxar accepted the same on 16.01.2019 and directed to initiate proceeding u/s 201 and 182 Cr.P.C. but the informant had filed protest Complaint No. 97C/2010 due to which the Court below proceeded to enquire the case on the basis of said complaint. After inquiry, cognizance was taken on 29.6.2010 u/s 302/34 of the I.P.C., against the appellants and thereafter, the case was committed to the Sessions Court on 04.11.2011 for trial. Charge was framed on 15.04.2013 U/s 302/34 I.P.C.

5. During trial, prosecution has examined 7 witnesses which are as follows:-

(i). *P.W.-1 is Dashrath Kumar (nephew of the informant);*

(ii). *P.W.-2 Wakil Singh (FIR witness and son of the Informant;*



(iii). P.W.-3 Dr. Anil Kumar Singh who did Post Mortem of the deceased;

(iv). P.W.-4 is Sabita Devi (Daughter in law of the Informant;

(v). P.W.-5 is Munnu Singh (Informant;

(vi). P.W.-6 Rameshwar Ojha (Advocate Clerk, Formal Exhibited FIR);

(vii). P.W.-7 is Dasai Singh @ Shashi Kumar Singh (Inquest Report Witness).

6. The defence has also examined *Raghunath Singh* (O/c Rajapur P.S.) as DW-1 who exhibited final form as Exbt.-A.

7. It has been submitted by the learned Senior Counsel for the Appellants that the Trial Court did not consider the fact that the informant is not an eyewitness to the occurrence and the Trial Court has also ignored the documentary evidence of final form submitted by DW-1/Officer Incharge of Rajpur P.S. Case No. 61/2009 (Exbt.-A) which shows innocence of the appellants. The Court below also did not consider the admitted fact of prosecution that there was old enmity and land dispute prevailing between both parties and for that the evidence of all PWs are contradictory to each other falsifying their own version at every stage of trial. The I.O. of this case has not been



examined which has highly prejudiced the case of the appellants. The Doctor who has examined the deceased has found undigested bread and rice in the dead body of the deceased. It shows that deceased died just after taking meal at noon though the time of occurrence is 5 P.M. The case proceeded on the basis of protest petition in which 5 PWs namely *Dashrath Singh*, *Urmila Devi*, *Deo Ratani Devi*, *Sabita Devi* and *Wakil Singh* were examined. None had seen the occurrence but during trial *Dashrath Singh* (PW 1), *Sarita Devi* (PW 4) and *Wakil Singh* (PW 2) all developed their version claiming to be eyewitness.

8. It is further submitted by the learned senior counsel for the appellants that PW-1 and PW-4 are not FIR witnesses which is clear from the FIR. The Doctor who did *post-mortem* has stated the both injuries found on the head of the deceased are superficial in nature. There is no specific allegation or evidence of causing hurt to deceased against any appellant.

9. Learned APP for the State and the learned counsel for the informant have opposed the appeal of the appellants and have supported the prosecution case and have submitted that the conviction of the appellants is based on the evidence and the same cannot be interfered with.



10. I have considered the submissions of the parties and have gone through the records of the case.

11. The admitted position is that the police has investigated the case and found the case false as the deceased was taken to a doctor namely Manto in the afternoon at around 1 PM but he has not been examined in the complaint case. From the post-mortem report and from the evidence of the doctor, it appears that there are two superficial injuries found on the dead body of the deceased whereas prosecution case is that altogether 9 persons assaulted the deceased and they have been convicted for the murder of the deceased.

12. The accused persons are said to have assaulted the deceased with fists, slaps and bricks. If such a large number of people were assaulting the deceased, two superficial injuries are not possible. The doctor has also found undigested food in the dead body of the deceased which is not possible as it is the case of the prosecution that the deceased had gone to ease herself in the evening at around 5 PM and the occurrence taken place. Moreover, most of the witnesses namely *Dashrath Singh*, *Urmila Devi*, *Deorathi Devi*, *Sabita Devi* and *Wakil Singh* have not seen the occurrence but in the trial, they have developed their story and have claimed to be eyewitness. P.W-1 and P.W-4



are not eyewitness and not mentioned in the FIR.

13. In view of the discussions made above, I am of the view that the prosecution has not been able to prove the case beyond reasonable doubt and therefore the judgment and order of sentence dated 18.04.2019 and 24.04.2019 respectively passed by the learned Additional Sessions Judge-III, Buxar in S.Tr. No. 258 of 2011 arising out of Rajpur P.S. Case No. 61 of 2009 is hereby set aside.

14. Accordingly, both the appeals stand allowed. The appellants are acquitted of all charges levelled against them.

15. Since the appellants are on bail, they are discharged of the liabilities under their respective bail bonds.

16. Let the LCR of both the cases be returned to the concerned Court below forthwith.

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

(Sandeep Kumar, J)

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