

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.1174 of 2017

Arising Out of PS. Case No.-545 Year-2014 Thana- HAJIPUR SADAR District-
Vaishali

- =====
1. Chandeshwar Rai, Son of Late Sonelal Rai,
 2. Bharat Rai, Son of Chandeshwar Rai,
 3. Ramnath Rai, Son of Sonelal Rai,

All are resident of Village- Chukunda @ Milki, P.S.- Sadar Hajipur,
District-
Vaishali.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 1124 of 2017

Arising Out of PS. Case No.-545 Year-2014 Thana- HAJIPUR SADAR District-
Vaishali

- =====
1. Amardeep Rai @ Amardip Rai, Son of Gulab Rai,
 2. Gulab Rai, Son of Late Sonelal Rai,

Both are resident of Village-Chukunda @ Milki, P.S.- Sadar Hajipur,
District-
Vaishali.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 1173 of 2017

Arising Out of PS. Case No.-545 Year-2014 Thana- HAJIPUR SADAR District-
Vaishali

- =====
- 1. Ram Bhag Rai, Son of Late Bhola Rai,
 - 2. Vijay Rai, Son of Late Bindeshwar Rai,
 - 3. Dilip Rai, Son of Late Bindeshwar Rai,
 - 4. Ashok Rai, Son of Late Bindeshwar Rai,
 - 5. Ranjeet Rai, Son of Vijay Rai,
- All are resident of Village- Chukunda @ Milki, P.S.- Sadar Hajipur,
District-
Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 1207 of 2017

Arising Out of PS. Case No.-545 Year-2014 Thana- HAJIPUR SADAR District-
Vaishali

=====

Pradip Rai, Son of Gulab Rai, resident of Village- Chukunda Milki, P.S.-
Hajipur Sadar, District- Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :
(In CRIMINAL APPEAL (DB) No. 1174 of 2017)
For the Appellant/s : Mr. N.K. Agrawal, Sr. Adv.
Mr. Arvind Kumar, Adv.
Mr. Kumar Rajdeep, Adv.
Ms. Diksha Kumari, Adv.
Mr. Anil Kumar Sinha, Adv.
For the Respondent/s : Mr. Dilip Kumar Sinha, APP
(In CRIMINAL APPEAL (DB) Nos. 1124, 1173 and 1207 all of 2017)

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Adv.
 Mr. Prem Ranjan Kumar, Adv.
 For the Respondent/s : Mr. Abhimanyu Sharma, APP

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Acts/Sections/Rules:

- Section 141, 147, 148, 149, 341, 323, 324, 326, 307, 302 and 506 of the Indian Penal Code

Appeal preferred against judgement of conviction passed by learned Sessions Judge whereby the appellants have been convicted variously under Section 302, 307 and 149 of IPC.

Held - To convict a person under Section 149 IPC, the prerequisites therefore are : (i) firstly, that the accused should share a common object which the entire assembly had in mind and (ii) secondly, that the prosecution needs to prove that those accused persons were aware of the offences likely to be committed to achieve the said common object. (Para 53) - Both the ingredients of the offence is missing. (Para 54) - Hence, Conviction of all the appellants under Section 149 of IPC is unjustified. (Para 59)

No intention of murdering the deceased be gathered from ante-mortem injuries. (Para 65)

There was no pre-meditation. It was a sudden fight. (Para 70)

Case of appellant would fall in Exception 4 to Section 300 IPC, rendering the offence committed by him to be a culpable homicide not amounting to murder, punishable under Section 304 of the I.P.C. (Para 71)

For having caused an injury in and around a vital portion of the body of the deceased with a pointed weapon, but without any intention to blind him, the offence, in our estimation, would fall under Section 326 of the IPC. (Para 72)

Punishment of appellants converted to period already undergone. (Para 79, 80)

The period of custody of rest of the appellants, would be the sentence imposed upon them for the offence under Section 323 IPC. (Para 82)

IN THE HIGH COURT OF JUDICATURE AT PATNA

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- 2. Bharat Rai, Son of Chandeshwar Rai,
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CRIMINAL APPEAL (DB) No. 1124 of 2017

Arising Out of PS. Case No.-545 Year-2014 Thana- HAJIPUR SADAR District- Vaishali

- 1. Amardeep Rai @ Amardip Rai, Son of Gulab Rai,
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... .. Appellant/s

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CRIMINAL APPEAL (DB) No. 1173 of 2017

Arising Out of PS. Case No.-545 Year-2014 Thana- HAJIPUR SADAR District- Vaishali



- 1. Ram Bhag Rai, Son of Late Bhola Rai,
- 2. Vijay Rai, Son of Late Bindeshwar Rai,
- 3. Dilip Rai, Son of Late Bindeshwar Rai,
- 4. Ashok Rai, Son of Late Bindeshwar Rai,
- 5. Ranjeet Rai, Son of Vijay Rai,

All are resident of Village- Chukunda @ Milki, P.S.- Sadar Hajipur, District- Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1207 of 2017

Arising Out of PS. Case No.-545 Year-2014 Thana- HAJIPUR SADAR District- Vaishali

Pradip Rai, Son of Gulab Rai, resident of Village- Chukunda Milki, P.S.- Hajipur Sadar, District- Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1174 of 2017)

For the Appellant/s : Mr. N.K. Agrawal, Sr. Adv.
Mr. Arvind Kumar, Adv.
Mr. Kumar Rajdeep, Adv.
Ms. Diksha Kumari, Adv.
Mr. Anil Kumar Sinha, Adv.

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) Nos. 1124, 1173 and 1207 all of 2017)



For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Adv.
Mr. Prem Ranjan Kumar, Adv.
For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 11-01-2024

All the four appeals have been heard together and are being disposed of by this common judgment.

2. Mr. N.K. Agrawal, the learned Senior Advocate has appeared for the appellants in Criminal Appeal (DB) No. 1174 of 2017, whereas Mr. Baxi S.R.P. Sinha, the learned Senior Advocate has appeared for the appellants in Criminal Appeal (DB) Nos. 1124, 1173 and 1207, all of 2017.

3. The State has been represented by Mr. Dilip Kumar Sinha and Mr. Abhimanyu Sharma, the learned Additional Public Prosecutors for the State respectively.



4. All together eleven appellants in the afore-noted four appeals have challenged the judgment of conviction and order of sentence dated 11.08.2017 and 19.08.2017 respectively passed by the learned Additional District & Sessions Judge-IV, Vaishali at Hajipur in Sessions Trial No. 245 of 2016 arising out of Hajipur Sadar P.S. Case No. 545 of 2014, whereby appellant/Pradip Rai in Criminal Appeal (DB) No. 1207 of 2017 has been convicted under Section 302 of the Indian Penal Code (*in short, the I.P.C.*) and has been sentenced to undergo R.I. for life, to pay a fine of Rs. 15,000/- and in default of payment of fine, to further suffer S.I. for one year. Rest of the appellants have been convicted under Sections 302/149 of the I.P.C. and have been sentenced to undergo R.I. for life, to pay a fine of Rs. 15,000/- each and in default of payment of fine, to further suffer S.I. for one year. All the appellants have also been convicted under Sections 307/149 of the I.P.C. and for the afore-noted offence,



they have been sentenced to undergo R.I. for ten years, to pay a fine of Rs. 5,000/- each and in default of payment of fine, to further suffer imprisonment for six months.

5. The sentences have been ordered to run concurrently.

6. Be it noted that but for appellant/Pradip Rai [Criminal Appeal (DB) No. 1207 of 2017], rest of the other appellants have been convicted with the aid of Section 149 of the I.P.C.

7. One Indar Rai (spelt as Inner Rai) is alleged to have been killed at the hands of the appellants. His cousin/Yogendra Rai (P.W. 9), who is the informant of this case, had alleged that on the protest of the deceased against appellant/Bharat Rai, who was cutting a *sheesham* tree, appellant/Chandeshwar Rai and Vijay Rai got infuriated and ordered the other appellants to kill the deceased. On such orders, appellant/Pradip Rai assaulted the



deceased on his head by means of a sword, as a result of which, he became unconscious. Appellant/Bharat Rai is then said to have pierced an iron rod in one of the eyes of the deceased. The wife of one Rameshwar Rai was also specifically alleged to have assaulted the deceased by means of an iron rod (she was never put on Trial). Yogendra Rai (P.W. 9) had reached the place of occurrence when the assault was taking place. Family members of the informant and the deceased, viz., Chandan Kumar (P.W. 2), Ranjeet Rai (P.W. 5) and Raju Rai (not examined) came for the rescue of the deceased, but they too were assaulted. Indar Rai (deceased) was brought to Sadar Hospital Hajipur for first medical-aid, whereafter a referral was made to P.M.C.H, Patna. Two other persons who were injured, viz., Raghunath Rai (P.W. 8) and Ranjeet Rai (P.W. 5) were also referred to higher centre at Patna. While on way to Patna, the deceased died.

8. On the basis of the afore-noted



fardbeyan statement of Yogendra Rai (P.W. 9), which was recorded on 16.11.2014 at 10:30 P.M. by Vijay Kumar Chaudhary, the Sub-Inspector of Police and In-charge of Hajipur Town Police Station, a case *vide* Hajipur Sadar P.S. Case No. 545 of 2014 was instituted for investigation for the offences under Sections 147, 148, 149, 341, 323, 324, 307, 302 and 506 of the I.P.C.

9. However, the registration of the F.I.R. was done only on 18.11.2014. There does not appear to be any explanation for the same except for the fact that the dead-body was subjected to *post-mortem* examination on 17.11.2014 at 07:45 A.M. Even if the formal registration of the F.I.R. was delayed because of the *post-mortem* examination not having been done, it should have been registered by 17.11.2014.

10. Mr. Baxi S.R.P. Sinha, the learned Senior Advocate appearing for some of the appellants has argued that in the event of such late registration of



the F.I.R., he would be entitled to argue that the original statement given by Yogendra Rai (P.W. 9) was substantially changed when the formal F.I.R. was registered. In support of his contention, he has referred to the deposition of Awdhesh Kumar (P.W. 1), who is none else but the son-in-law of the deceased, who has said that he had received the news about death of his father-in-law on 16.11.2014 at 02:30 P.M. in the day. This is not consistent with the prosecution story as the deceased, according to P.W. 9, had died only in the night of 16.11.2014. In fact the occurrence had taken place at 03:00 P.M. on 16.11.2014. He (P.W. 1) has further stated that P.W. 9 had got his statement recorded, which was treated as *fardebayan*, in the hospital (Exhibit -1), but initially no treatment was given to the deceased at Hajipur hospital and the deceased, while still surviving, was referred to P.M.C.H., Patna. On way, the deceased had died and his dead-body was brought back, but the *fardebayan*,



according to P.W. 1, was given on the next day of the death of the deceased, *i.e.*, on 17.11.2014.

11. Strengthened by the afore-noted statement of the son-in-law of the deceased, Mr. Baxi, the learned Senior Advocate has suggested that at least this discrepant statement of P.W. 1 renders the accusation in the F.I.R. to be highly doubtful and suspicious and one on which no implicit reliance could be placed.

12. The afore-noted objection has been referred by us in the beginning of the judgment only for the reason that it is unfounded.

13. We have no option, but to disbelieve P.W. 1 with respect to such statements having been made by him for the reason that the *fardbeyan* apparently has been recorded in the night of 16.11.2014, which has been counter-signed by P.W. 1. Thus, to say that the original statement given by P.W. 9 in the night of 16.11.2014 was substantially changed



and the basis for saying so being the late registration of the F.I.R. and the statement of P.W. 1 that P.W. 9 had given his statement only on the next day of the death of the deceased, is absolutely incorrect. P.W. 1, perhaps, was not clear in his mind with respect to the timeline of the prosecution.

14. Coming back to the narrative, the police, after investigation of the case, submitted *charge-sheet* against the appellants, who were put on Trial.

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

16. We have noticed that the inquest report, which appears to have been prepared (refer to the deposition of Vijay Kumar Chaudhary/P.W. 12) in the night of 16.11.2014 has not been brought on record.

17. That the F.I.R. was registered in the night of 16.11.2014, at the Emergency Ward of the



Hajipur hospital, is established even when there is no other evidence of the referral of the deceased to P.M.C.H., Patna and the deceased having died while on way to Patna, which would have fallen in the territory of a different Police Station, as the dead-body was supposedly brought back to Hajipur hospital.

18. Some doubts could have been expressed with respect to correctness of the afore-noted statement for the reason that if the patient had died, there was no reason for him to be taken to the hospital again at Hajipur and there would have been every possibility of expecting the deceased to be taken back home, but then, we guess that perhaps the death had to be declared by any Doctor.

19. In any view of the matter, there remains no dispute with respect to the fact that the deceased had died in the night of 16.11.2014 as the other evidences are absolutely confirmatory of the afore-noted fact.



20. An examination of the deposition of P.W. 9 (informant) would reveal that he had heard some noise coming from the P.O., on which he reached the P.O. The distance was traversed in five minutes. He claims to have seen appellant/Pradip Rai giving a sword blow on the deceased. He also saw appellant/Bharat Rai piercing an iron rod in one of the eyes of the deceased. In fact, he claims to be present at the P.O. through and through, but, somehow or the other, he has not attacked. Four of the persons who had come for the rescue of the deceased have but received simple injuries.

21. However, what is significant to note is that P.W. 9 has, in the F.I.R. and in his deposition before the Trial Court, been very consistent that all the accused persons/appellants had mercilessly beaten up the deceased. It would also be relevant here in this context to state that P.W. 9 being the cousin of the deceased, did not know about any dispute between the



appellants and the deceased. In fact, the P.O., a patch of land over which some *sheesham* trees were standing, was not in dispute so far as its ownership was concerned. At least, there has been no evidence tendered before the Trial Court with respect to the ownership of the land in question as also the trees standing on such land.

22. Therefore, it is difficult to presume that because of the dispute over the ownership of the tree and the deceased stopping appellant/Bharat Rai from felling the same, the occurrence had taken place.

23. The other question which hounds us is whether such objection by the deceased would have enraged all the appellants to the extent of their assaulting the deceased to a pulp.

24. We have noted that none of the appellants were armed with any lethal weapon except appellant/Pradip Rai, who is said to have been armed with a sword. The injury which has proved to be fatal



and which is clearly attributable to appellant/Pradip Rai could have been caused by a hard and blunt substance. There was only one injury on the head in the middle portion, which resulted in complete damage to the brains. The skull was fractured.

25. P.W. 9 had categorically asserted before the Trial Court that the assault perpetrated by appellant/Bharat Rai led to one of the eyes of the deceased having come out of the socket.

26. This was also found to be completely incorrect.

27. There were bruises near the eyes and Dr. Shailendra Kumar Verma (P.W. 7), who had conducted the *post-mortem* examination, has specifically answered the query that he did not find that the deceased had been blinded in one eye. Apart from the injury on the head which in itself was good enough to cause death of any person, there was a bruise near the eye and one more bruise on the body which was



simple in nature.

28. We have referred to the deposition of P.W. 9 for the reason of his shrill insistence on his having seen the assault from close quarters and that the deceased was badly assaulted by fifteen persons. This appears to be untrue, if seen in the context of the injuries (*ante-mortem*) suffered by the deceased.

29. We have referred the ownership of the land over which the *sheesham* trees stood for the reason of testing the correctness of the prosecution version with respect to the common object, if shared by the appellants. It was not in the knowledge of P.W. 9 that there was any dispute with respect to the patch of land over which the tree in question stood.

30. In the absence of any evidence about the ownership of land belonging to the deceased, it is difficult for anybody, much less the Trial Court, to have presumed that there was a serious objection with respect to felling of that tree and the recrimination of



the deceased which had led to his murder.

31. That apart, appellant/Bharat Rai was felling a tree. If for that purpose, he was carrying a sword, the story would appear to be improbable. A thick tree would not be cut by a sword. In any view of the matter, if he is alleged to have used a sword to hit the deceased, the injuries are not in consonance with the ocular testimony.

32. Was he felling the tree under stealth?

We do not know.

33. If it were not for the felling of pollarding of the tree under stealth, there was no reason for any preparedness for any onslaught or any person stopping him from felling the tree.

34. We say so for the reason that we have not been able to gather any shared common object. The only object, perhaps, which can be gathered from the surrounding circumstances, is that appellant/Bharat



Rai was about to fell a tree. That the tree was not felled is again an evidence of the fact that despite the appellants having protested so violently against the deceased stopping appellant/Bharat Rai from felling it, the tree ultimately was not felled. The Investigating Officer of this case found the tree standing with small marks suggesting an attempt at felling it. This presupposes that within no time of appellant/Bharat Rai trying to fell a tree, there was a protest and, thereafter, the fight.

35. These backgrounds facts have been stated only for the reason of testing whether all the appellants had shared any common object of killing the deceased.

36. In this context, we deem it apposite to refer to Section 141 of the I.P.C., which defines "unlawful assembly", which reads as follows :

"141. Unlawful assembly.-An assembly of five or more persons is designated an "unlawful assembly", if the common object of the



persons composing that assembly is-

First.-To overawe by criminal force, or show of criminal force, [the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

Second.-To resist the execution of any law, or of any legal process; or

Third.-To commit any mischief or criminal trespass, or other offence; or

Fourth.-By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.-By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do."

37. The Code further explains that an assembly which was not unlawful, when it assembled, may subsequently become an unlawful assembly.

38. Thus, for an assembly to be declared



unlawful, there has to be a show of criminal force for illegal purposes, say take or obtain the possession of any property or to deprive any person of that property.

39. In the absence of any evidence with respect to any dispute over the ownership of the land or the tree, the prosecution alleging that appellant/Bharat Rai, in the beginning, had an object to murder the deceased would be a bit too much. There had not been any earlier dispute with respect to the standing trees on the land in question. There was no expectation of any protest by any person much less the deceased.

40. Did the deceased go there specifically to stop appellant/Bharat Rai from felling the tree?

41. Since the deceased got seriously injured the moment he was hit by appellant/Pradip Rai, there remains no source to know as to why and how deceased had reached there at the P.O.

42. On the hortatory call of appellants/Chandeshwar Rai and Vijay Rai, many



persons are said to have arrived, who have been named in the F.I.R.

43. Were they together when appellant/Bharat Rai had started felling the tree or all of them came on the call of appellants/Chandeshwar Rai and Vijay Rai?

44. Were they standing in ambush?

45. The evidence is absolutely deficient.

46. Assuming that all of them had come on the call of the aforesaid two of the appellants, did they share the object of killing the deceased?

47. There is no evidence to that effect.

48. The evidence does not suggest any preparedness for any fight.

49. Why would then the crowd share a common object and that also of killing a lone person, who, perhaps, had objected to the felling of the tree.

50. Seen in this background, it would only be for the sake of completeness that we extract Section



149 of the I.P.C., the second part of which is rather stringent. It provides for punishment of all members of an unlawful assembly, if an offence is committed in prosecution of the common object.

51. Section 149 of the Indian Penal Code reads as follows :

"149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.-If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

52. There are two parts to this section. The first deals with cases in which the offence is committed by any member of the assembly in prosecution of the common object of that assembly. The second part deals with cases where the commission of a given offence is



not by itself the common object of the unlawful assembly but members of such assembly knew that the same is likely to be committed in prosecution of the common object of the assembly.

53. To convict a person under Section 149 I.P.C., the prerequisites therefore are : (i) firstly, that the accused should share a common object which the entire assembly had in mind and (ii) secondly, that the prosecution needs to prove that those accused persons were aware of the offences likely to be committed to achieve the said common object.

[Refer to :- (1.) Queen Vs. Sabed Ali & Ors.:1873 SCC On-line Cal. 64; (2.) Shambhu Nath Singh & Ors. Vs. State of Bihar:AIR 1960 SC 725; (3.) Masalti Vs. State of U.P.:AIR 1965 SC 202; (4.) Bhudeo Mandal & Ors. Vs. State of Bihar:(1981) 2 SCC 755; (5.) State of Maharashtra Vs. Kashirao & Ors.:(2003) 10 SCC 934; (6.) Vinubhai Ranchhodbhai Patel Vs. Rajivbhai Dudabhai Patel & Ors.:(2018) 7 SCC 743 and (7.) Naresh @ Nehru Vs. The State of Haryana:(2023) 10 SCC 134.]

54. As analyzed above, both the ingredients



of the offence is missing.

55. Only appellant/Bharat Rai was felling the tree. The object must have been to take possession of the wood after felling the tree. When the other appellants arrived on the call of two of the appellants, they had not come with any lethal weapons in their hands. They had not known that there would be a protest by the deceased on the felling of the tree.

56. There, thus, is neither a shared object of killing the deceased nor any one of the accused persons in know of the fact that the deceased would be killed because of the protest led by him.

57. We are aware that an object is only entertained in the human mind and about which there could be no direct evidence and, therefore, as is the case with intention, such object has generally to be gathered from the act which the person commits and the result emanating therefrom.

58. We are also aware that no hard and fast



rule could be laid down under the circumstances from which the common object could be culled out. It could only be deciphered from the facts of each case.

59. Having said that and finding that there was no common object of the unlawful assembly, we find the conviction of all the appellants under Section 149 I.P.C. to be unjustified.

60. Getting back to the accusation against the respective appellants, we have found that the accusation against appellant/Pradip Rai could not be proved to the hilt as far as his intention to commit the murder of the deceased is concerned.

61. Referring to the deposition of Dr. Shailendra Kumar Verma (P.W. 7), who conducted the *post-mortem*, and had found only one incised wound on the mid-scalp, but which had damaged the meninges below the bone and swelling and bruise over and around the left eye and bruise on the left thigh, we do not find that P.W. 9 or for that matter, other injured witnesses,



namely, P.Ws. 3, 5 and 8 and 14 made any correct statement about the actual description about the intensity of the assault. The cause of death was opined to be severe hemorrhage and shock due to the head injury which was further opined to have been caused by a sharp weapon and also by hard and blunt substance.

62. The report, in our estimation, is very misleading.

63. The Doctor should have specifically stated whether the injury on the mid-scalp was by a sharp cutting weapon or hard and blunt substance. It was only then that we could have examined it by way of the evidence whether the sharp or the blunt portion of the weapon was used.

64. P.W. 7 has admitted of taking the help of a local sweeper in conducting the *post-mortem* examination. Again, on a specific query, he has replied before the Trial Court that he had not found the deceased to have been blinded in his left eye.



65. No intention of murdering the deceased be gathered from such *ante-mortem* injuries.

66. Getting back to the definition of murder, one solid attack on the vital portion of the body like head is good enough to attract the mischief of Section 300 of the I.P.C. as the person giving such assault would be expected to harbour the intention of killing or of causing such bodily injury as would be surely cause death in normal circumstances. But then, this has to be tested from the circumstances in which the assault was made.

67. The deceased is said to have objected to the felling of the tree by appellant/Bharat Rai. This had enraged him and he called for help. There were some exhortations from the crowd for killing. In that circumstance, one blow was given on the deceased by appellant/Bharat Rai, which proved to be fatal.

68. Did he have the intention to kill?

69. If he had, he would have used the sharper end of the weapon. He would have repeated the



blow.

70. We have found and have noted also in the earlier paragraph that there was no pre-meditation. It was a sudden fight. Appellant/Bharat Rai was at his wick's end. One assault, therefore, on the head of the deceased was given in a heat of passion. No special advantage was taken by appellant/Bharat Rai of the lone dissenter (deceased) standing in the field. There could be a possibility of the appellant never having intended to kill the deceased.

71. We are, therefore, of the considered opinion that the case of appellant/Pradip Rai would fall in *Exception-4* to Section 300 I.P.C., rendering the offence committed by him to be a culpable homicide not amounting to murder, punishable under Section 304 of the I.P.C.

72. The accusation against appellant/Bharat Rai is not at all in concord with the injuries suffered by the deceased in his eyes. However, for having caused



an injury in and around a vital portion of the body of the deceased with a pointed weapon, but without any intention to blind him, the offence, in our estimation, would fall under Section 326 of the I.P.C.

73. Against the rest of the appellants, there is no specific accusation by even the injured witnesses about their respective roles. However, believing such statements that they were there and had also participated in the fight, we have referred to the injury reports of injured persons and have found that they all have received only simple injuries.

74. A reference to the deposition of Dr. Brajesh Sharan (P.W. 10) would further confirm that the injuries on the persons of such witnesses were only flimsy which could not have been with any intention to cause any serious injury to any one of them.

75. We have noted that they did not share any common object of killing or injuring the deceased or anybody else. Thus, at best, the other appellants would



be guilty of the offence under Section 323 of the I.P.C.

76. We, therefore, convert the conviction of appellant/Pradip Rai [Cr. Appeal (DB) No. 1207 of 2017] to one under Section 304 Part I of the I.P.C. and appellant/Bharat Rai [Cr. Appeal (DB) No. 1174 of 2017] to one under Section 326 of the I.P.C.

77. The conviction of rest of the appellants, viz., Chandeshwar Rai and Ramnath Rai [Cr. Appeal (DB) No. 1174 of 2017]; Amardeep Rai @ Amardip Rai and Gulab Rai [Cr. Appeal (DB) No. 1124 of 2017] and Ram Bhag Rai, Vijay Rai, Dilip Rai, Ashok Rai and Ranjeet Rai [Cr. Appeal (DB) No. 1173 of 2017] is converted to one under Section 323 I.P.C. only.

78. Appellant/Pradip Rai was released on bail after remaining in jail for seven years and two months.

79. Taking into account that the occurrence is of the year 2014 and that the action of appellant/Pradip Rai did not display any exceptional depravity, we hold that the period of custody which he



has already undergone, would be sufficient to meet the ends of justice.

80. We, therefore, convert the punishment of appellant/Pradip Rai to one for the period that he has already undergone in custody.

81. Appellant/Bharat Rai is in jail for a very long time. The period of custody that appellant/Bharat Rai has already undergone, would be the sentence imposed upon him for the offence under Section 326 of the I.P.C.

82. The period of custody of rest of the appellants, pre and post Trial, would be the sentence imposed upon them for the offence under Section 323 I.P.C.

83. All the appeals, thus, stand partially allowed to the extent indicated above.

84. The appellant/Bharat Rai [Cr. Appeal (DB) No. 1174 of 2017], who is in jail, is directed to be set at liberty forthwith unless his custody is required in



any other case.

85. Rest of the appellants are on bail. They are discharged of their liabilities under their bail-bonds.

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

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

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

(Ashutosh Kumar, J)

(Nani Tagia, J)

Praveen-II/Manoj

AFR/NAFR	AFR
CAV DATE	N/A
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