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JALESHWAR SINGH

v.

STATE OF BIHAR

(Criminal Appeal No. 126 of 1999)

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MAY 6, 2009

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Penal Code, 1860 – ss. 307 r/w 110 – Dispute between parties – Exhortation by accused and thereafter infliction of fatal blow by other accused – Conviction of accused u/ss. 302 r/w 109 and sentenced to imprisonment for life, by High Court – On appeal, held: Deceased's wife and his father stated that there were physical fights abuses – Accused persons were armed – There was no direct exhortation to kill but was to the effect that deceased and others should not be permitted to run away and should be attacked – Thereafter, other accused inflicted blow on deceased – However, evidence of the said witnesses different as to manner of exhortation – Hence, accused to be convicted u/ss.307 r/w 110 with 7 years of custodial sentence.

In this appeal, the order of courts below, convicting the appellant no. 1-accused under ss.302 read with s.109 IPC, is under challenge.

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Partly allowing the appeal, the Court

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HELD: PW-4 is the informant i.e. wife of the deceased and PW-3 is the father of the deceased. From the evidence of PWs 3 and 4 it is clear that there were physical fights abuses. At the time of abuses except PWs 3 and 4 nobody else was there. The other persons came there just to stop the fight hearing noise on the road. On a close reading of the evidence, it is seen that the accused persons were armed. There was really no direct

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exhortation to kill but the same was to the effect that the deceased and others should not be permitted to run away and should be attacked. On hearing the exhortation accused no. 2 pierced the spear to the chest of the deceased. The evidence of PWs 3 and 4 are different as to the manner of exhortation. One says 'maro sale Chintamani ko' while the other said 'maro sale ko jaan se'. The words 'jaan se' appears to be entered later in the records. Thus, the appropriate conviction would be under section 307 read with section 110 IPC. Custodial sentence of 7 years would meet the ends of justice. [Paras 3 and 4] [134-H; 135-A-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 126 of 1999.

From the Judgment & Order dated 26.09.1997 of the High Court of Judicature at Patna in CrI. Appeal No. 201 of 1991.

Ambhoj Kumar Singh and Ratan Kumar Choudhuri for the Appellant.

Anukul Raj and Gopal Singh for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is by Accused No.1 who alongwith two others faced trial before learned Sessions Judge. Present appellant was convicted under Section 302 read with Section 109 of the Indian Penal Code, 1860 (in short the 'IPC'). Accused No.3-Bir Bahadur Singh was convicted under Section 302 IPC. Both A-1 and A-3 were sentenced to imprisonment for life. A-3 was additionally convicted under Section 324 IPC. The two appellants before the High Court were acquitted of the charge under Section 307 read with Section 149 IPC and Section 307 IPC respectively. The trial Court however held the third accused Hari Shankar

A Singh @ Timal Singh guilty in terms of Section 324 IPC. But taking into consideration the your age instead of sentencing him directed him to be released on bail on executing interim bail bonds of Rs.2,000/- or two sureties of like amount. Only A-1 and A-3 preferred an appeal before the high Court.

B 2. Prosecution version in a nutshell is as follows:

C A case was registered in Taraiya Police Station in the district of Chapra on 22nd July, 1987 on the basis of fard beyan (Ext-3) recorded by S. I. Dashrath Singh of Marhawrah P.S on 21st July, 1987 at 10.30 p.m. in the State Dispensary on the statement of one Sharda Devi (P.W.4) wife of late Chintamani Singh of village Sarai, P.S. Taraya in the district of Saran. The informant had gone to Marhaura State Dispensary along with body of her husband who was seriously injured in an incident and there her husband was declared dead by the doctor and on information, Police arrived and recorded her statement. She stated before the Police that on the same day at about 5.30 p.m. when she was in her house, she heard hulla. Thereafter, she came out and saw Bir Bahadur Singh Jaleshwar Singh and D Timal Singh of the same village (Sarala) present holding Bhala in their hands and her husband Chitamani Singh was also there. According to her, Jaleshwar Singh told the accused "Maro" (assault) on which Bir Bahadur Singh inflicted a bhala blow in the abdomen of her husband. Then the informant rushed to the rescue of her husband and Bir Bahadur Singh also inflicted a bhala blow which hit her in the finger of her right hand. However, her father-in-law Ram Nigahi Singh and her son Sanjay Singh also came to her rescue but all the three accused persons attacked them with bhala. The bhala which had peared the abdomen of her husband was pulled out at that time and her E husband died instantaneously. According to her apart from her husband, she herself, her son Sanjay and her father-in-law Ram Nigahi Singh had also received injuries in this occurrence and some persons had collected at the place of occurrence. They included, Abhay Kumar Singh (P.W.1), Raghunath Singh and H

one Yogendra Singh. She however, stated that the other two injured persons who were taken to Hospital at Chapra, would give further details about the assailants in this case. According to her, the cause of occurrence was some dispute between the two parties regarding a piece of land. On the information received by the local Police from the Chapra Hospital, a Police Officer who happened to be the ASI. of Bhagwan Bazar P.S. had reached the Sadar Hospital, Chapra at 10.00 a.m. on 22nd July, 1987 and he had also recorded the statement of Ram Nigahi Singh (PW-3) in the form of a fard beyan (Ext-3/1). However, since the case was registered on the basis of the earlier statement of Sharda Devi, this fardbeyan when received by the I.O. of Taraya Police Station was kept on the record. While P.W.3 was admitted in injured condition in the Surgical ward of Chapra Hospital, he stated before the Police Officer of Bhagwan Bazer P.S. that on the previous day, i.e., on 21st July, 1987 at about 5.30 p.m. while he was sitting at his Bathan he saw that Jaleshwar Singh, Bir Bahadur Singh and Hari Shankar Singh, were trying to transplant paddy in a chunk of field of this witness by encroaching upon his land. He intervened and prohibited them from doing so and there was some altercation between the two parties. However, he returned to his Darwaja after asking them not to do so and they also went away making some utterances but, subsequently, they came to the Darwaja of the informant. There, Jaleshwar Singh is said to have instigated his two sons, the other two accused, to assault and kill and the other two accused., i.e., Bir Bahadur Singh and Hari Shankar Singh brought Bhala from the house and Jaleshwar also brought Bhala. His further case is that Bir Bahadur inflicted a Bhala blow on his grandon Sanjay Singh who fell down and at that moment the son of this witness namely, Chintamani Singh came and Bir Bahadur Singh also inflicted a bhala blow in his abdomen and Chintamani Singh fell down. When this witnesses proceeded to save his son, he was also attacked and assaulted with bhala. He also sustained some injuries. Thereafter, Sanjay was again assaulted by accused persons with bhala. However, the female members of his family

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A also came on hulla and when the daughter in-law of this witness, namely, Sharda Devi, intervened, she was also assaulted and she sustained injuries. According to him, on hearing his cries for help several persons of his village, including Raghunath Singh, Jay Narayan Singh, Jogindra Singh and Parmeshwar Singh also came and they intervened and the assailants then left the place. However, the son of this witness died on the spot as a result of sustaining injuries by bhala on his abdomen and this witness was taken to the hospital where he was undergoing treatment. The Police officer who was entrusted with investigation Shyam Deo Singh (PW-9) recorded the statements of witnesses and inspected the place of occurrence and after procuring the post mortem report and on completing the investigation submitted charge sheet in the case against the three accused persons under various sections of IPC including Sections 302, 307, 324, 302/34 and also under Section 109 IPC. Accordingly, cognizance of the case was taken and the case was committed to the Court of Session. Charges were framed separately against three accused persons of this case by the learned Sessions Judge, Chapra.

E The accused persons were held to be guilty as noted above. Since the accused persons pleaded innocence, trial was held. The High Court on appeal held that so far as conviction of appellant No.1 is concerned, he was the person who gave the order and after that a fatal blow was inflicted by appellant No.2 on the deceased. He has been rightly convicted under Section 302 read with Section 109 IPC and so far as appellant No.2 is concerned he was convicted under Section 302 IPC.

G SLP by accused no.2 has been dismissed by order dated 2.3.1998. the present appeal is by A-1.

3. In support of the appeal, learned counsel for the appellant submitted that the evidence of PW-1, the eye witness clearly shows that case of Section 302 read with Section 109 H IPC is not made out. PW-4 is the informant i.e. wife of the

deceased and PW-3 is the father of the deceased. From the evidence of PWs 3 and 4 it is clear that there were physical fights abuses. At the time of abuses except PWs 3 and 4 nobody else was there. The other persons came there just to stop the fight hearing noise on the road. On a close reading of the evidence is seen that the accused persons were armed. There was really no direct exhortation to kill but the same was to the effect that the deceased and others should not be permitted to run away and should be attacked. On hearing the exhortation accused No.2 pierced the spear to the chest of the deceased. The evidence of PWs 3 and 4 are different as to the manner of exhortation. One says "Maro Sale Chintamani Ko" while the other said "Maro Sale Ko Jaan Se". The words "Jaan Se" appears to be entered later in the records.

4. That being so, the appropriate conviction would be under Section 307 read with Section 110 IPC. Custodial sentence of 7 years would meet the ends of justice. The appeal is allowed to the aforesaid extent. The appellant shall surrender to custody to serve the remainder of sentence.

N.J.

Appeal partly allowed.