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Cr1.A.No. 294-295 OF 1998  
ITEM No.101

Court No.11

SECTION IIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Cr1.A.No.294-295/1998

PRAKASH THAKUR & ORS.

Appellant (s)

VERSUS

STATE OF BIHAR

Respondent (s)

(With Appl.(s) for exemption from appointment of official translator and with office report)

Date : 25/02/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL  
HON'BLE Dr. JUSTICE AR.LAKSHMANAN

For Appellant (s)

Mr.U.R. Lalit, Sr. Adv.

Mr.Gopal Singh, Adv.

Mr.Navin Prakash, Adv.

Mr.Anurag Sharma, Adv.

Mr.Gopal Singh, Adv.

For Respondent (s)

Mr.Kumar Krajesh Singh,Adv.

Mr.B.B. Singh,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeals are allowed in terms of the signed order.

(Sheetal Dhingra)(Kanwal Singh)

Court Master Court Master

[The signed order is placed on the file]

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.294-295 OF 1998

PRAKASH THAKUR & ORS.

Appellant (s)

VERSUS

STATE OF BIHAR

Respondent (s)

O R D E R

Heard the parties.

The four appellants along with accused Suraj Deo Thakur were tried and by judgment rendered by the trial court accused Suraj Deo Thakur was acquitted whereas the appellants were convicted under Section 302 read with Section 34 of the Indian Penal Code (for short 'the IPC') and sentenced to undergo imprisonment for life. They were further convicted under Section 307 read with Section 34 of the IPC but no separate sentence was awarded on this count. Appellant Prakash Thakur was further convicted under Section 323 of the IPC but no separate sentence was awarded. Against their conviction the appellants preferred an appeal before the High Court whereas no appeal was preferred on behalf of the State against the order of acquittal. The High Court converted the conviction under Section 302 read with Section 34 of the IPC to one under Section 304 Part II read with Section 34 of the IPC and sentenced each of the appellants to undergo rigorous imprisonment for a period of seven years. Hence, these appeals by special leave. The case of the prosecution, as per the statement of Amarnath Thakur (PW.11), before the A.S.I. at Sadar Hospital, Muzaffarpur, on 26.5.1981, was that on the same day, his elder brother Birendra Thakur (deceased) was washing mouth and hand at a tubewell near his darwaza. The informant and his father Ragho Thakur were also sitting there. In the meantime, the accused persons armed with bhala, lathi and farsa and basula, attacked Birendra Thakur. It is alleged that appellant Prabhat Kumar Thakur attacked on the neck on account of which Birendra Thakur fell down. Thereafter, appellant Madho Thakur assaulted him with basula on the neck. When Ragho Thakur (P.W.9) tried to save, on the order of accused Suresh Thakur, appellant Madho Thakur gave basuli blow on his back and appellant Prabhat Kumar Thakur gave a farse blow on his shoulder and Suresh Thakur also assaulted with farsa. The informant, thereafter, raised alarm. When the informant started crying, appellant Prakash Thakur also assaulted with lathi. It was claimed that Mahendra Thakur, Banshidhar Thakur and Umesh Thakur and many others had seen the occurrence. Thereafter, all the persons assembled there, carried the deceased Birendra Thakur and injured Ragho Thakur to hospital. In the farbeyan it is also stated that about 1-1/2 months ago, the accused persons had assaulted the deceased Birendra and Ragho Thakur on account of which a criminal case was pending investigation. Therefore, on account of that enmity, such offence was committed by the accused persons.

The police after registering the case took up investigation and on completion thereof filed chargesheet against all the accused persons including the appellants who were ultimately committed to the Court of Sessions to face trial. The defence of the accused, persons, as would appear from the statement of the appellants under Section 313 of the Code of Criminal Procedure and the trend of cross examination, is denial about the manner of occurrence. According to them, in fact accused Madho Thakur was taking bath on the well, which was just near the tubewell. In the meantime, Ragho Thakur and his son Birendra Thakur (deceased) armed with farsa, Amar Nath Thakur with bhala and Sunil with lathi came there and started assaulting Madho Thakur, who on receiving several injuries, cried for help on which Suresh Thakur and Prakash Thakur arrived there. But they were also assaulted with bhala and farsa. All the three injured appellants were also admitted in the Sadar Hospital, Muzaffarpur and their statement was recorded by the Police on 27.5.1981.

During the trial the prosecution examined 16 witnesses in all out of whom PWS 2, 3, 5, 6, 8, 9 and 11 claimed to be eye witnesses to the alleged occurrence and others are formal witnesses. Upon the conclusion of trial accused persons were convicted as stated above and their appeal having been disposed of by the High Court, present appeal by special leave.

We have been taken through the judgment rendered by the High Court, which came to the conclusion that the statements of prosecution witnesses regarding the manner of occurrence, place of occurrence and weapons used by the accused persons are contradictory. The High Court further

came to the conclusion that there was no pre-meditation. So far the motive is concerned with regard to that also it appears from the High Court judgment that the same was trivial one. That apart, the prosecution in the present case has failed to prove genesis of the occurrence. In the light of these findings of the High Court, the injuries received by the three accused persons have to be considered. The accused persons have received injuries on vital parts of the body as well. The prosecution has attempted to explain injuries on the evidence by the evidence of PWS 3, 6, 8 & 11. We have been taken through the evidence. In our view, evidence of these witnesses on this score cannot be said to be credible.

It is well settled that mere non-explanation of injuries of accused cannot be a ground to throw out the prosecution case but if there are other grounds to create doubt regarding veracity of the prosecution case then the same may become one of the grounds to disbelieve the prosecution case. In view of these facts, we are of the opinion, that the prosecution has failed to prove its case beyond reasonable doubt and the accused persons are entitled to acquittal.

The appeals are allowed, the impugned judgments are set aside and the accused persons are acquitted of all the charges.

The appellants who are on bail are discharged from the liability of bail bonds.

.....J.  
(B.N. AGRAWAL)

.....J.  
(Dr. AR. LAKSHMANAN)  
New Delhi  
February 25, 2004.