

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 449/2011

RAJDEO SAO

Appellant(s)

VERSUS

THE STATE OF BIHAR

Respondent(s)

O R D E R

This appeal is presented by the convicted accused No.5 questioning the correctness of the Judgment of the Trial Court as well as the High Court convicting him for the offences punishable under Section 302 read with Sections 34 and 120B of Indian Penal Code.

2. Total eight accused were tried for the offences punishable under Section 302/149 and 120-B of I.P.C. The Sessions Court convicted all the accused for the aforementioned offences. However, the High Court, on re-appreciation of the entire material on record, acquitted six accused and convicted accused Nos. 1 and 5. The

appellant herein is convicted accused No.5.

3. There are three eye-witnesses to the incident in question viz. P.Ws. 1, 2 and 3, out of them, PWs 2 and 3 are disbelieved by the Courts. P.W. 1 is the only eye-witness relied upon by the High Court.

4. Shri V.V.S. Rao, learned Senior counsel appearing on behalf of the appellant, taking us through the material on record, submits that there was no pre-meditation for committing the offences inasmuch as the material available on record does not disclose that there was a meeting of minds of the accused. The connection or the relationship between accused No.1 and accused No.5 or the other accused has not been established by the prosecution. The evidence relating to motive is found against accused No.1 only. The act attributable to accused No.5 is not supported by the medical evidence. So also the weapon allegedly used by the appellant is a stick and there are no corresponding injuries on the legs though P.W. 1 has deposed that accused No.5 assaulted on the legs of the deceased with the stick. On these, among other things, he submits that at the most, the appellant

herein be convicted under Section 304 Part II of the I.P.C. Accused No.1 was armed with `Dao', a heavy weapon, which is a sharp cutting weapon, whereas accused No.5 had held `lathi' and other accused who were acquitted were also having `lathis' or knives.

5. It is the case of the prosecution as well as it is the ocular testimony that the appellant assaulted with lathi on the legs of the deceased and other accused assaulted the deceased with sharp cutting weapon.

6. The Postmortem Report submitted by P.W. 6 – Doctor, disclosed that the deceased had suffered 13 stab wounds, 6 incised wounds and 1 lacerated wound and such injury was not found on the legs. Since the appellant had used the stick, he would not have caused either the stab wound or the incised wound. These injuries can be attributable to other accused (other than the appellant) but all other accused except accused No.1 are acquitted. Even the accused who were holding lathis have been acquitted. No valid reasons are assigned for differentiating the acts of the acquitted accused with the convicted appellant.

7. The conspiracy, as alleged by the prosecution, is not

proved. The evidence does not disclose that there was meeting of minds or common intention or object to commit murder pursuant to such agreement. Not a single witness has deposed that there was pre-meditation or that the appellant was seen with other accused prior to the incident. Even the connection or the relationship between the appellant and other accused is not deposed by the witnesses. The prosecution has failed to recover the alleged weapon or lathi allegedly used by the appellant for committing the offence.

8. Having regard to the totality of the facts and circumstances on record, as the appellant was also present and has taken part in the incident as mentioned supra and as the incident has taken place without any pre-meditation so far as the appellant is concerned, he may at the most, be convicted for the offence punishable under Section 304 Part II of I.P.C. It is brought to our notice at the Bar that the appellant has already undergone more than 10 years of imprisonment.

9. In our considered opinion, the period already spent by the appellant in jail would be sufficient to meet the

ends of justice.

10. Accordingly, the appeal is allowed in part. The Judgment of conviction passed against the appellant – accused No.5 by the High Court is modified and accused No.5 – Rajdeo Sao is convicted under Section 304 Part-II of I.P.C. instead of Section 302/34, IPC. He is sentenced to undergo period of sentence which is already undergone by him. Hence, the appellant shall be released forthwith, if he is not required in any other case.

.....J.
(N.V. RAMANA)

.....J.
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI;
31ST OCTOBER, 2018.

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ITEM NO.109

COURT NO.6

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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THE STATE OF BIHAR

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Date : 31-10-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s)

Mr. V.V.S. Rao, Sr. Adv.

Mr. Gopal Prasad, AOR

For Respondent(s)

Mr. Jayesh Gaurav, Adv.

Mr. Anil K. Jha, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in part in terms of the signed order.

The Judgment of conviction passed against the appellant – accused No.5 by the High Court is modified and accused No.5 – Rajdeo Sao is convicted under Section 304 Part-II of I.P.C. instead of Section 302/34, IPC. He is sentenced to undergo period of sentence which is already undergone by him. Hence, the appellant shall be released forthwith, if he is not required in any other case.

(VISHAL ANAND)
COURT MASTER (SH)

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed Order is placed on the file)