

IN THE HIGH COURT OF JUDICATURE AT PATNA

Achhelal Das

vs.

The State of Bihar

CRIMINAL APPEAL (DB) No. 680 of 2016

[With CRIMINAL APPEAL (DB) No. 783 of 2016]

9 May 2023

(Hon'ble Mr. Justice Ashutosh kumar & Hon'ble Mr. Justice Harish Kumar)

Issue for Consideration
- Whether prosecution proved the charge of murder and assault beyond reasonable doubt despite contradictions and defective investigation? - Whether the Trial Court was justified in awarding sentence of imprisonment for remainder of life?

Headnotes
Indian Penal Code, 1860—Sections 148, 149, 302, 307, 323, 324—Double Murder—PW9 had given his land for cultivation to the deceased—son of one of the deceased lodged an FIR in the emergency ward that his father was attacked by accused persons including the two appellants, variously armed with farsa, bhala, knife, country made pistol and other sharp instruments then attacked him and kept on assaulting him continuously for about ten minutes, he was seriously injured—father of the informant died on the spot, informant and two brothers were also assaulted by co-accused and they were also injured. Held: doctor who conducted post mortem found only one ante-mortem injury on the person of deceased—evidence against the appellants is highly inconsistent and untrustworthy—none of the witnesses stated before the police that after hearing the hulla, they proceeded to the place of occurrence and saw the deceased or the injured persons being assaulted—no blood stained earth or apparel was seized by I.O. nor sent to the F.S.L. for chemical examination—I.O. not found any evidence of assault at the place of occurrence when at the same place two persons were severely injured, who ultimately died and three others had received simple injuries—prosecution has not been able to prove the case to the hilt i.e. beyond all reasonable doubts—both appeals allowed—judgment and order of conviction against both the appellants set aside—appellants were acquitted from all the charges levelled against them. (Paras 24, 41, 46, 60)

Case Law Cited
Union of India vs. Sriharan @ Murugan and Others, (2016) 7 SCC 1; Vikash Choudhary vs. the State of Delhi, 2023 SCC Online SC 472; Bachan Singh vs. Union of India; (1980) 2 SCC 684; Machhi Singh vs. State of Punjab; (1983) 3 SCC 470; Santosh Kumar Satishbhushan Bariyar vs. State of Maharashtra, (2009) 6 SCC 498; Shankar Kishanrao Khade vs. State of Maharashtra; (2013) 5 SCC 546; Swamy Shraddananda alias Murali Manohar Mishra vs. State of Karnataka, (2008) 13 SCC 767; Gopal Vinayak Godse vs. State of Maharashtra, (1961) 3 SCR 440; Dalbir Singh vs. State of Punjab, (1979) 3 SCC 745; Subash Chander vs. Krishan Lal, (2001) 4 SCC 458; Shri Bhagwan vs. State of Rajasthan, (2001) 6 SCC 29; State of Madhya Pradesh vs. Ratan Singh, (1976) 3 SCC 470; Sangeet & Anr vs. State of Haryana, (2013) 2 SCC 452; Vikash Chaudhary vs. The State of Delhi, (2023) SCC Online SC 472—Relied Upon.

List of Acts

Indian Penal Code, 1860.

List of Keywords

Double murder; post mortem; FIR, deceased; land dispute; aggravating and mitigating circumstances; rarest of the rare category; alternative of life imprisonment to be held to be inappropriate against the gravity of the offence; FSL; chemical examination.

Case Arising From

From PS. Case No.-811 Year-2013 Thana- SITAMARHI District- Sitamarhi.

Appearances for Parties

(In CRIMINAL APPEAL (DB) No. 680 of 2016)

For the Appellant/s: Mr. Umashankar Prasad, Sr. Adv.

For the Respondent/s: Mr.Sri Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 783 of 2016)

For the Appellant/s: Mr. Pratik Mishra, (Amicus)

For the Respondent/s: Mr.Shashi Bala Verma, APP

Headnotes Prepared by Reporter: Abhas Chandra, Adv.

Judgment/Order of the Hon’ble Patna High Court

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.680 of 2016**

Arising Out of PS. Case No.-811 Year-2013 Thana- SITAMARHI District- Sitamarhi

Achhelal Das Son of Bikau Das resident of village - Pamra, P.S. Sitamarhi,
District - Sitamarhi

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 783 of 2016

Arising Out of PS. Case No.-811 Year-2013 Thana- SITAMARHI District- Sitamarhi

Ram Dayal Das S/o Late Jagdish Das R/o village- Parma, P.S. Sitamarhi,
District- Sitamarhi

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 680 of 2016)

For the Appellant/s : Mr. Umashankar Prasad, Sr. Adv.

For the Respondent/s : Mr.Sri Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 783 of 2016)

For the Appellant/s : Mr. Pratik Mishra, (Amicus)

For the Respondent/s : Mr.Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 09-05-2023

- Both the appeals have been taken up together and
are being disposed of by this common judgment.
- Mr. Umashankar Prasad, the learned senior
advocate, has appeared for the appellant/ Achhelal Das



Das in Criminal Appeal (DB) No. 680 of 2016.

3. No lawyer has appeared for the appellant/Ram Dayal Das in Criminal Appeal (DB) No. 783 of 2016. Hence, we deemed it necessary to appoint one *amicus*. We had requested Mr. Pratik Mishra, learned advocate to assist us to which he readily agreed and has rendered good assistance to us.
4. The State has been represented by Mr. Binod Bihari Singh, learned APP .
5. Both the appellants have been convicted under Sections 148, 302, 307, 323 and 324 with the aid of Section 149 of the Indian Penal Code and have been sentenced to undergo imprisonment till the remainder of their lives, to pay a fine of Rs. 50,000/- each and in default of payment of fine to further undergo S.I. for six months for the offence under Section 302/149 of the IPC; R.I. for seven years, fine of Rs. 10,000/- and in default of payment of fine, S.I. for three months for the offence under Section 307/149 of the IPC; S.I. for three years for the offence under Section 324/149 of the IPC, S.I. for



one year for the offence under Section 323/149 of the IPC and; S.I. for two years for the offence under Section 148 of the Indian Penal Code. All the Sentences have been directed to run concurrently.

6. Two persons are said to have died in the occurrence, namely, Dasrath Das and his son Dinesh Das. The FIR has been lodged by Mahesh Das (PW11), one of the sons of the deceased /Dasrath Das. Apart from him, twelve other witnesses have been examined on behalf of the prosecution. Two persons on behalf of the defence have also been examined. Though, many persons were made accused in the FIR, but charge-sheet was submitted only against the appellants and with respect to other accused persons, the investigation was kept pending.

7. Mahesh Das (PW11) has alleged in the F.I.R. lodged on 01.09.2013 in the emergency ward of Sadar Hospital at Sitamarhi that his father /Dasrath Das was being abused by one Bikau Das at about 07:00 PM. His father went up to him and forbade him from abusing. All the accused persons including the two appellants, variously



armed with *farsa*, *bhala*, knife, country made pistol and other sharp instruments then attacked him and kept on assaulting him continuously for about ten minutes, as a result of which, he was seriously injured. On hulla, Mahesh Das (PW11) along with his elder brother Naresh Das (PW8) and his younger brother Dinesh Das (since deceased) along with Umesh Das (PW3) came for his rescue. All of such persons including PW11 were also assaulted. Appellant/Achhelal Das hit Dinesh Das (deceased) in his scrotum by means of *bhala*. Another accused person is said to have assaulted him with a knife on his chest. He and Umesh Das (PW3) were assaulted by Guddu Das, as a result of which both of them got injured. Naresh Das (PW8) was also assaulted by co-accused Rameshwar Das by means of lathi, as a result of which he also became seriously injured. The informant (PW11) is also said to have been injured by a *bhala* on his chest which attack has been attributed to co-accused Bhajan Das.

8. Dasrath Das died at the spot and three of his sons



including PW11 were injured. No sooner the people of village arrived, the accused persons ran away. With the help of villagers, the deceased, Dinesh Das (till that time was alive) and PWs 3 and 11 were taken to Sadar Hospital, Sitamarhi for treatment. Finding the condition of Dinesh Das to be very serious, he was referred to S.K.M.C.H., Muzaffarpur. PW11 and his younger brother Umesh Das (PW3) were treated at the Sadar Hospital, Sitamarhi.

9. The deceased was declared dead and efforts were afoot at the time of lodging of the F.I.R for sending his dead body for postmortem. The cause of the occurrence as narrated in the FIR is that Rajdeo Das (brother of accused Bhajan Das), who stays in Delhi, had given his land to be tilled by PW11 and his family members, which had infuriated Bhajan Das and his associates. An Occurrence also is said to have taken place earlier, for which a case was lodged between the parties.

10. Aggrieved by such developments, deliberately Dasrath Das (deceased) was abused for plodding him to



come to the house of Bikau Das to forbid him from abusing when out of a premeditated plan, all the accused persons including the appellants assaulted and killed Dasrath Das and severely injured Dinesh Das, who ultimately died and also injured two other members of the family viz. PW3 and 11.

11. On the basis of the aforementioned *farbeyan* statement, which was recorded by one Lal Bahadur Yadav, A.S.I., Sitamarhi P.S. Case No. 811 of 2013 was instituted for the investigation for offences under Sections 147, 148, 149, 323, 324, 307, 302 and 504 of the Indian Penal Code.

12. As noted above, the police after investigation submitted charge-sheet only against two appellants herein and whereas investigation with respect to others were kept pending.

13. At the trial, PW11 (informant) supported the prosecution version but his deposition is not free of infirmities. He has specifically stated that about 07:00 O'clock in the evening of 1st of September, 2013, when



his father (deceased) was standing on the road in front of the house of Rajdeo Das, he and his brothers heard somebody abusing his father. He saw that Bhajan Das was present at the place of occurrence with *bhala* in his hand along with Sajjan Das, who too was armed with a *bhala*. Pappu Das, Asmani @ Ashwani, Inglesh Das and Bikau Das were wielding knife, lathi and iron rod respectively. Appellant/Achhelal Das was holding a *bhala* in his hand whereas appellant/Ram Dayal Das was armed with a lathi. Specific weapons have been attributed in the statement of PW11 to all the accused persons including the appellants. At that point, co-accused Bhajan Das is said to have spoken that since Dasrath Das had filed a case against them, he should be killed. On such exhortation, all the accused persons assaulted the deceased/Dasrath Das, as a result of which he was seriously injured. When PW11 along with his other family members went to the rescue of his father, PW11 was assaulted by Bhajan Das by means of a *bhala*. One Krishnandan Das, Rameshwar Das and appellant/ Ram



Dayal, also are alleged to have assaulted PW11. Co-accused Bikau Das assaulted Dinesh (the other deceased) by means of a dagger whereas appellant/Achhelal Das assaulted Dinesh by means of a *bhala*. Umesh Das and Naresh Das, PW3 and 8 respectively, were also assaulted.

14. Thus, it is found that the manner in which the occurrence was narrated to have taken place in the F.I.R. has not been fully ratified by PW11 in his deposition before the Trial Court.

15. In cross-examination, PW11 has categorically stated that Dinesh, who ultimately died, was assaulted by Bikau Das, appellant/Achhelal Das, co-accused Kari Das and Guddu Das. Appellant/Achhelal Das is said to have assaulted Dinesh by means of a *bhala*. With respect to assault on deceased /Dasrath, no specific role has been attributed to anyone of the appellants or for that matter against anyone of the accused persons. During his cross-examination, he has categorically stated that no occurrence took place in front of the house of Bikau Das and that appellant /Ram Dayal Das is an old and deaf



person. With respect to appellant /Acchelal Das, PW11, has conceded before the Trial Court that he had no concern with the cultivation of the land of Rajdeo Das, which was the reason behind the occurrence as Bikau Das (brother of Rajdeo Das) was not happy that the land of Rajdeo Das was being tilled by the family of PW11 and the deceased persons. In fact, PW11 has clearly admitted that he had no complaints in the past against appellant/Achhelal Das.

16. Malti Devi (PW2), wife of Naresh Das (PW8) claims to have been present at the time of occurrence and has supported the prosecution version with respect to the assault on the deceased and the injured persons. But her attention was drawn to the fact that she had not made such statement before the police when she was first examined. She is said to have made a statement before the police after 2 to 3 days of the occurrence when the police had come to her house. She does not claim to have been assaulted by anyone of the accused persons.

17. Umesh Das and Naresh Das, the two injured



persons, who have been examined as PWs. 3 and 8 respectively, who have though supported the prosecution version but on particulars of the accusation against the appellants, they have not been consistent.

18. Umesh Das (PW3) has not specifically stated as to who assaulted Dasrath. With respect to Dinesh, he has come out with definite allegation against appellant/Achhelal Das. He has also stated that because of assault, Dasrath Das died at the spot. He, Dasrath Das and PW11 were brought to Sadar Hospital, Sitamarhi for treatment from where Dinesh was referred to S.K.M.C.H., Muzaffarpur and thereafter to P.M.C.H., but on way, Dinesh died.

19. In his cross-examination, he has also conceded that in the earlier case lodged by him, appellants/Ram Dayal Das and Achhelal Das were not made accused persons. The family did not have any dispute with the aforementioned appellants. He had not gone armed to the place where Dasrath Das was being abused and assaulted.

20. During cross-examination also, he has made general



statement about accused persons having assaulted Dasrath Das. He has further clarified that only Guddu was armed with a *farsa*, who had attacked and injured him as he could not ward off the aforesaid attack. The occurrence, according to him, took place for about ten minutes and all the victims were assaulted simultaneously. He was first examined by the police after nine days of the occurrence.

21. Similarly, PW8 claims to have reached at the place of occurrence on hearing abuses and shouts of help. However, he has given more specific statement with regard to assault on Dasrath Das. His statement was recorded by the police only after he had come back with the dead body of Dinesh. He further deposed that because of the attack on him, he had become unconscious and only after preliminary treatment, he could regain his consciousness, but only after 3 to 4 hours.

22. Independent persons, namely, Sheo Shankar Das, Prithvi Das, Rambaran Das and Rajdeo Das, have been examined as P.Ws. 4, 5, 6 and 9. Out of them, PW4 and



5 have been declared hostile whereas PW6 has claimed to be an eyewitness to the occurrence. He is cousin of Mahesh Das (PW11). His attention was drawn to his earlier statement made before the police and the Investigating Officer (PW13) has clearly stated that PW6 never claimed himself to be an eyewitness to the occurrence before him. In fact, PW6 stated before the police that when he had reached at the place of occurrence, Dasrath Das had already fallen on the ground and his sons who were also injured, were crying for help. He never claimed before the police that he too was assaulted by the accused persons.

23. Rajdeo Das (PW9) does not claim to be an eyewitness to the occurrence but has only stated that as far as he remembered, deceased/Dasrath Das was also threatened for his life by the accused persons and Dasrath Das had initiated a proceeding under Section 107 of the Cr.PC. There was an earlier dispute between the parties in which Umesh Das (PW3) was attacked with a *farsa* on his head. He has but confirmed the reason for enmity viz. his



having given his land for cultivation to the family of the deceased and PW11, which was not to the liking of his own brother/Bhajan Das.

24. The postmortem of deceased/Dasrath Das was performed by doctor C.B. Prasad (PW7), who had deposed that he conducted the postmortem on Dasrath Das on 01.09.2013 at 11:30 PM under appropriate lighting arrangements. The postmortem was performed under appropriate lighting arrangements. He had found one incised wound in the abdominal area which was cavity deep. However, such injury was found only after removal of a stitch. Intestinal portion was found to be punctured. He has approximated the time of death to be within 24 hours of the postmortem examination. The death, according to him, was caused due to hemorrhage and shock leading to cardiac failure. The injuries were found to have been caused by sharp and pointed weapons such as *bhala* and knife. He is specific in his statement that there was only one ante-mortem injury on the person of deceased/Dasrath Das.



25. The postmortem on the other deceased/Dinesh Das was performed by doctor Rajesh Kumar (PW1), who found two external injuries on his person. One was a stitched wound on the left side of his forehead and other was also stitched wound on left side of abdomen but below the umbilical margin. Here again, the time gap was fixed at 24 hours and the cause of death also was reported to be because of hemorrhage and shock leading to cardiac failure. However, P.W. 1, has stated that the ante-mortem injuries on the person of Dinesh Das could have been caused by hard and blunt substance as also by sharp cutting instruments.

26. Dr. Anil Kumar Srivastava (PW10) has examined Umesh Das (PW3) and Mahesh Das (PW11), both of whom were found to have received one injury each which was in the nature of incised wound. There is no injury report of Naresh Das on record, who is also stated to be one of the injured witnesses.

27. Santosh Kumar, the I.O. of this case has been examined as PW13 who at the relevant time was posted



as In-charge of Punaura O.P. in the district of Sitamarhi. He was given the charge of investigation of this case late in the night of 1st of September 2013. He was also informed on telephone that an occurrence had taken place between two sides in village Pamra. On such information, he claims to have arrived at Sadar Hospital, Sitamarhi along with Prabhu Dayal Singh (not examined). At the hospital, he found A.S.I. Lal Bahadur Yadav (not examined), who had recorded the fardbeyan of PW11. In his presence, the fardbeyan was read over to PW11 whereafter he had put his signature on the same along with Umesh Das (PW3). He had identified the fardbeyan (Ext. 4). Inquest is stated to have been prepared by A.S.I. Lal Bahadur Yadav only. The fardbeyan of PW11 was sent by special messenger to Sitamarhi Police Station, where the formal F.I.R. (Ext. 6) was registered and PW13 was handed over the investigation. The formal F.I.R. was written in the handwriting of A.S.I. Rajkishore Prasad and the same was countersigned by the Officer –in-Charge of the Sitamarhi Police Station, namely, Bimal Kumar Singh.



28. The place of occurrence, according to PW13, is a brick road in front of the house of Rajdeo Das. The house of accused Bikau Das is also situated nearby. PW13 could learn in the night that an occurrence had taken place when Dasrath Das (deceased) was abused by accused Bikau Das and aforesaid Dasrath Das had tried to prevent Bikau Das from abusing him. On 03.09.2013, PW13 learnt on telephone that one of the deceased persons of this case, namely, Dinesh Das had died on his way to P.M.C.H. where he was referred from S.K.M.C.H. for better treatment. On such information, he along with Prabhu Dayal Singh again reached Sitamarhi Hospital where he met A.S.I./Mithilesh Kumar Singh, who had been making arrangements for postmortem of the deceased (Dinesh Das). Aforesaid A.S.I./Mithilesh Kumar Singh only informed him that the statement of Naresh Das/ one of the brothers of the deceased (Dinesh Das) was recorded by him. Incidentally, A.S.I. Mithilesh Kumar Singh has not been examined. However, PW. 13 had identified the statement of Naresh Das, which was



recorded by A.S.I. Mithilesh Kumar Singh (Ext. 4/1). He took the statement of Naresh Das, Nagina Devi (not examined) and Malti Devi (PW2), Rajdeo Das (PW9) and Umesh Das (PW3) after 3rd of September 2013. He had only submitted the chargesheet against the appellants, keeping the investigation pending against other accused persons. He does not claim to have found anything incriminating at the place of occurrence. He did not take any finger prints from the place of occurrence and did not even make any effort to seize the weapon of assault or blood stained earth or blood stained clothes of the injured persons of the deceased. During the entire course of investigation, he did not find any accusation against appellant/Achelal Das apart from this case. Even though, PW11 had told him that there was some dispute with respect to cultivation of a portion of land but he never made any investigation in that regard.

29. Two of the defense witnesses have only testified to the fact that appellant / Achelal Das worked as a casual labourer in Kashmir but none of these two



persons have spoken about any definite date of appellant /Achelal Das having come from Kashmir to his village Pamra where the occurrence is said to have taken place.

30. Mr. Uma Shankar Prasad, the learned Senior Advocate for the appellant /Achelal Das and Sri Pratik Mishra, the learned Amicus for the appellant / Ramdayal Das have argued that the prosecution has not been able to prove the case beyond all reasonable doubts. In fact, it was firstly pointed out that the learned Trial Court exceeded his brief in sentencing the appellants for remainder of their lives which was not within his powers. A Sessions Court cannot pass a sentence under Section 302 I.P.C. beyond the two alternatives available before him, namely, death or R.I. for life (433 Cr.P.C.). It has further been argued that in **Union of India vs. Sriharan @ Murugan and Others 2016 (7) SCC 1**, and **Vikash Choudhary vs the State of Delhi; 2023 SCC Online SC 472**, it has categorically been held that the powers of giving the third kind of punishment i.e. jail



for a fixed term of more than 14 years without remission is available only with the superior Constitutional Courts and not with the Trial Courts.

31. With the afore-noted refrain, both the learned Advocates have taken us to the deposition of the witnesses and have urged that with respect to material particulars, the prosecution witnesses including the informant (PW11) have not at all been consistent. There appears to be a yawning gap in between the occurrence and the lodging of the F.I.R. In order to bolster up such submission, both the learned Advocates have pointed out that the F.I.R. was recorded by an A.S.I., who has not been examined at the trial. It has further been pointed out that autopsy was performed on the dead body of one of the deceased, namely, Dasrath Das on the day of the occurrence at 11.30 in the night when the Doctor found only one ante-mortem injury on his person, which was found to have been stitched. This finding pre-supposes that the deceased was offered medical assistance before the postmortem was performed on him. Where and when



did this happen ?. This completely belies the correctness of the deposition of the witnesses including the eye witnesses that deceased /Dasrath Das died instantaneously because of the assault on him i.e. on the brick road in front of the house of Rajdeo Das. When was he rendered medical aid assumes relevance as the postmortem was conducted on the very day of the occurrence at about 11.30 in the night. Unless it was shown by the prosecution that the deceased was subjected to initial treatment, it cannot be believed that all the events narrated in the deposition of the witnesses happened back to back. This definitely shifts back the time of occurrence.

32. PW2, it has been argued, has not seen the occurrence which would become evident from the fact that she had never made any such statement before the police when her statement was recorded after three days of the occurrence. She was neither injured nor has she stated before the Trial Court as to how she could escape the attention of the marauders, all of whom were armed and



who did not spare anyone of the family members of the deceased (Dasrath Das), who had gone to his rescue when he was being assaulted.

33. Similarly, all the independent persons have not claimed to have seen the occurrence as they reached the place of occurrence only after the assault was over.

34. When did the occurrence take place has also not been proved by the prosecution.

35. The appellants say so for the reason that no blood stained clothes or earth was seized by the police and PW13, the I.O. did not consider it necessary to ask for the same as he never found any incriminating substance at the place of occurrence, which he visited in the night of the occurrence and thereafter in the day. The weapon of assault also was not found or seized during the entire course of investigation. The confusion over the issue became worst confounded when Doctor/C.B. Prasad/PW7 found only one injury on the person of the deceased /Dasrath Das which also could be detected only after removal of a stitched wound. In the background of the



specific accusation in the F.I.R. and the deposition of PW 11 and other witnesses that the assault continued for about 10 minutes and all the accused persons assaulted deceased/Dasrath Das, this yawning gap in the existing materials and the accusation makes the case highly doubtful.

36. The learned Advocates contend that there have been two deaths and injuries on three persons but the participation of the appellants in the occurrence becomes doubtful. There is no acrimony against anyone of the injured persons and the deceased and the two appellants. Both the appellants are not at all concerned with the land of Rajdeo Das or Bikau Das and it never mattered to them that Rajdeo Das had given his land to the family of the deceased persons for cultivation.

37. If there was anybody who was aggrieved by all this, it was accused Bikau and Bhajan and not the appellants. In the same breadth, it has been argued that appellant / Achelal Das does not have any criminal proclivity or inclination and Achelal Das is a deaf person aged about 70



years. Additionally, with such kind of assault having been alleged at the hands of so many accused persons, none of whom have faced trial uptil now, except the two appellants, the ante-mortem injuries are not explicable.

38. The kind of ante-mortem injuries suffered by the deceased and the other injured persons clearly reflect that the reporting about the occurrence is not correct especially so far as the appellants are concerned.

39. There could have been some occurrence somewhere between the parties, unfortunately leading to death of two and injuries to three but in the absence of any categorical evidence with respect to the appellants, it was highly unsafe for the Trial Court to have convicted and sentenced the appellants under Section 302 and other sections of the I.P.C. and directing for their imprisonment till the remainder of their lives.

40. On these grounds, it has been urged that the Trial Court has taken a perverse view of the matter and has only gone on the so called "consistency" in the evidence of witnesses that all the accused persons including the



appellants participated in the assault leading to death of two persons and injuries on three. Specific illustrations has been made by Mr. Pratik Mishra, the learned Amicus about the cause of death of Dinesh Das who is specifically alleged to have been assaulted by appellant / Ramdayal Das by means of a bhala in his scrotum. The consistent case of the prosecution is that apart from appellant / Ramdayal Das, Dinesh Das was assaulted by others. Doctor Rajesh Kumar (PW1) did not find any injury of any kind in the groin of the deceased; rather only one injury was found (stitched wound) below the navel which punctured the innards. Who caused this injury, therefore, remains obscure.

41. As opposed to the aforementioned contentions on behalf of the appellants, the learned counsel for the State has submitted that the Trial Court took into account the consistent evidence of the witnesses, the evidence of three doctors; two of whom had performed autopsy on two dead persons whereas third one had examined three injured persons and convicted and sentenced the



appellants. The inconsistencies pointed out by the appellants in the deposition of the witnesses are very minor which cannot render the prosecution case doubtful on any score. It has further been submitted that immediately after the occurrence, the matter was reported and investigation ensued. There was no time for confabulation or consultation. Apart from this, it has been urged on behalf of the State that killing of two persons, who are father and son respectively, in one transaction clearly reflects the motive of the appellants who had come armed at the place of occurrence to perpetrate the assault. There was a planning behind the occurrence in as much as deceased /Dasrath was provoked by abusing him, which made him come to the house of one of the accused persons to forbid him from abusing. It was at that time only when all the accused persons including the appellants pounced upon him. What could be a better evidence, the State puts a poser for convicting and sentencing the appellants in this case.

42. After having heard the learned counsel for the



parties, we find that the evidence against the appellants is highly inconsistent and untrustworthy. We say so for the reasons noted hereinbelow:-

(I) The assault took place on 01.09.2013 at about 7. P.M; the F.I.R. was lodged on the same day at 10.30 P.M. at emergency ward of Sitamarhi Hospital. The postmortem on one of the deceased, namely, Dasrath was done at 11.30 P.M. The prosecution case is that the deceased/Dasrath, his son (Dinesh) who later died after two days and three others were brought to the hospital for treatment. Dasrath had been brought dead. The Doctor (PW7) who conducted the postmortem on Dasrath has found only one injury on the person of the deceased (Dasrath), which injury was found to be stitched.

(II) None of the witnesses stated before the police that after hearing the hulla, they proceeded to the place of occurrence and saw the deceased or the injured persons being assaulted.

(III) Malti Devi (PW2), wife of PW8 was not hurt even when she remained present at the place of



occurrence. Except for Mahesh/informant/PW1, all other witnesses were examined after two to three days of the occurrence. Malti Devi (PW2) was examined by the police after nine days.

(IV) Umesh (PW3) claims that he had earlier filed a case against some of the accused persons but not the appellants, for the settlement of which case, the occurrence had taken place.

(V) The prosecution case, however, is that because Rajdeo Das (PW9) had given his land for cultivation to the deceased, accused Bhajan Das, who is the brother of PW9, was angry and this was the reason for the fight.

(VI) Admittedly, the appellants did not have any concern with the land in question .

(VII) Santosh Kumar/ I.O./PW8 never investigated about the land for which the occurrence had taken place. No blood stained earth or apparel was seized by him and sent to the F.S.L. for chemical examination.

(VIII) I.O. (PW13) did not find any evidence of



assault at the place of occurrence when at the same place two persons were severely injured, who ultimately died and three others had received simple injuries.

(IX) Deceased (Dasrath) had received only one ante-mortem injury whereas deceased (Dinesh) had received two ante-mortem injuries as against the consistent case of the prosecution that many accused persons had assaulted them with various weapons.

43. These aspects of the matter, if seen together, leave a doubt whether the correct version was given by PW11 in his fardbeyan and the witnesses during trial. It does not appear to be probable that when so many persons would assault, both the deceased persons would receive only one and two injuries respectively and three other injured persons would receive simple injuries. Apart from this, what is very striking is that the postmortem was done on Dasrath's body without any delay. It is not the case of the prosecution that for saving Dasrath's life, he was subjected to any medical aid. How was it that in the postmortem conducted at 11.30 in the same night of the



occurrence, the Doctor found a stitched wound. This definitely points towards the occurrence having taken place before the time which has been reported in the F.I.R and at some other place than what has been indicated by PW11. Or else how would the I.O. not find any trace of blood or incriminating circumstance suggesting a fight at the place of occurrence. There would have been no blood at the place of occurrence for the Investigating Officer not to seize that; more so when two persons have died in the occurrence. Apart from this, the evidence of Umesh (PW3) renders the prosecution case doubtful as according to him, the occurrence took place for the refusal of the victims to settle the case lodged by him earlier against some of the accused persons but not the appellants. The motive assigned in the F.I.R. and during the Trial by the other witnesses including PW11 is that the dispute arose because of permission granted by Rajdeo Das (PW9) to the deceased and injured persons to cultivate his land, which had angered his brother Bhajan Das, who might perhaps be wanting to be a raiyat for his brother.



44. We do reckon that the motive in a criminal case recedes in background but once motive is introduced and there are conflicting stand of the witnesses, it does create a doubt about the genesis of the occurrence. The fight was at whose behest and when was the conspiracy hatched for provoking deceased (Dasrath) by abusing him to come over the house of the accused persons and where were the other accused persons hiding, is not known. Most of the witnesses reached the place of occurrence unarmed.

45. There are, therefore, many fault-lines in the story propounded by the prosecution. And with such assault, the injuries found on the person of the deceased and the injured remains inexplicable. There was no injury on the other deceased (Dinesh) in the groin about which the consistent version is that he was hit in his scrotum. Were the witnesses towing this line after seeing the inquest report is the question which confronts us. The I.O., as noted above, did not find any earlier independent accusation against the appellants; one of whom is an old



person and the other is somehow related to the victims.

46. For the afore-noted reasons, we find that the prosecution has not been able to prove the case to the hilt i.e. beyond all reasonable doubts.

47. We are again a bit surprised as to on such faltering evidence, how could the Trial Court award sentence for the remainder of the lives of the appellants.

48. From the discussions made by the Trial Court on the point of sentence, we find that he has gone plainly on this case being of double murder. While awarding sentence, the Trial Court has said that no evidence has been offered by the appellants to indicate any mitigating circumstance. If that were so, the Trial Court ought to have asked from the State for the materials for him to assess and strike a balance between the "aggravating and mitigating" circumstances, specially when it had proceeded to award a sentence for the remainder of the lives of the appellants.

49. The law in this regard is required to be spelt out.

50. In ***Bachan Singh v. Union of India; 1980 (2)***



SCC 684, while upholding the capital sentence to the appellant, the Supreme Court had specified that the death sentence ought to be given in “rarest of the rare” cases.

51. Three years later, the Supreme Court in **Machhi Singh v. State of Punjab; 1983 (3) SCC 470** talked about the requirement of making a balancesheet of “aggravating and mitigating circumstances” and that the mitigating circumstances also be accorded full weightage. A balance is required to be struck between the “aggravating and mitigating” circumstances before imposing the punishment. The Supreme Court drew out a two-pronged approach for the Trial Courts to follow viz. the Trial Court ought to consider whether there is anything uncommon about the crime in question which has rendered the sentence of imprisonment of life inadequate and that death sentence ought to be awarded and whether according to the circumstances of the crime and the case and giving maximum weightage to the mitigating circumstances in favour of the accused, nothing less than death sentence would be appropriate.



52. There have been but many departures in the past from the said principle in sentencing the offenders.

53. However, in ***Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra ; (2009) 6 SCC 498***, the Supreme Court again clarified and propounded the two-step process to decide whether a convict deserved the death sentence. For death sentence to be given, the case had to fall in the "rarest of the rare category" and secondly, the alternative of life imprisonment to be held to be inappropriate against the gravity of the offence. While deciding the case to be of "rarest of the rare" category, the court would be required to identify the aggravating and mitigating circumstances, giving both the conditions equal weightage and would also have to take a call that life imprisonment is not the appropriate sentence but this could be done only when it is found that the reformation of the offender was not possible / feasible. The State, therefore, in such circumstances, would be under an obligation to provide materials in order to support the suggestion that death sentence only would be appropriate



in that case.

54. About five years later, the Supreme Court in ***Shankar Kishanrao Khade v. State of Maharashtra; 2013 (5) SCC 546*** further cautioned the Trial Courts that both, the crime and the criminal have to be taken into account before taking decision with respect to sentencing. What was emphasized by the Supreme court in this instance was that without considering the mitigating circumstances and referring to materials on the possibility of reformation of the convict, sentence should not be awarded off the hat.

55. It would be relevant here to state that in **Swamy Shraddananda @ Murali Manohar Mishra v. State of Karnataka; (2008) 13 SCC 767**, the Supreme Court after consideration of earlier judgments in ***Gopal Vinayak Godse v. State of Maharashtra; (1961) 3 SCR 440, Dalbir Singh v. State of Punjab; (1979) 3 SCC 745, Subash Chander v. Krishan Lal; (2001) 4 SCC 458, Shri Bhagwan v. State of Rajasthan; (2001) 6 SCC 29, State of Madhya Pradesh v. Ratan Singh;***



(1976) 3 SCC 470 and host of other cases, held that depending upon the gravity of the offence and the manner in which the crime was executed, it would be appropriate and within the parameters of law to sentence the offender for the remainder of his life or for any fixed term without remissions. In a case reflecting depravity of mind, a sentence for life which for all intents and purposes would not be more than 14 years, would be highly unjust to the victim. This recourse, namely, directing for imprisonment for remainder of life or for a fixed term beyond 14 years and without remissions, but could be taken only if the other alternative punishment of a sentence of 14 years of imprisonment would mean no punishment at all.

56. This proposition was questioned in the ***Union Of India vs V. Sriharan @ Murugan & Ors; (2016) 7 SCC 1***, in which the Constitution Bench upheld the ratio in ***Swamy Shraddananda*** (supra) that a special category of sentence, instead of death, for a term exceeding 14 years and putting of such category of sentence to be beyond the application of remission. While



doing so, the view expressed by the Supreme Court in ***Sangeet & Anr v. State of Haryana; 2013 (2) SCC 452*** that the deprivation of remission power of the appropriate Government by awarding sentences of 20 or 25 years or without any remission is not permissible and in consonance with law, was specifically overruled.

57. However, the Supreme Court retained to itself and the High Courts the power to exercise the option of imposing special or fixed term sentences and not the Trial Courts.

58. In ***Vikash Chaudhary vs. The State of Delhi; (2023) SCC Online SC 472***, the Supreme Court again analyzed all the judgments in seriatim and found that the concept of special or fixed term sentences which could be awarded by the Supreme Court and the High Courts as Constitutional Courts served many purposes, which are as follows:-

"(a) As a feasible alternative in capital cases where the Court was of the opinion that death sentence is inappropriate, and:

(b) That the Court was of the opinion that



there were elements in the crime and or the conduct of the criminal which warranted imposition of a mandatory sentence beyond a minimum of 14 years prescribed by the Code of Criminal Procedure.

Where the court felt, independently, that the serious nature of the crime and the manner of its commission warranted a special sentence, whereby the state's discretion in releasing the offender, should be curtailed so that the convict is not let out before undergoing a specified number of years, of incarceration."

59. The manner in which the evidence has been analyzed and sentence awarded, it appears to us that the Trial Court has taken a perverse view of the matter and, therefore, the judgment and order of conviction and sentence are not fit to be sustained in the eyes of law.

60. For the afore-noted reasons, we allow both the appeals; set aside the judgment and order of conviction against both the appellants and acquit them of all the charges.

61. Both the appellants, we are told, are in Custody. They are directed to be released from jail forthwith, if not required / detained in any other case.



62. The records of this case be returned to the Trial Court and the Superintendent of the concerned Jail be intimated about the judgment of this Court for record and compliance.
63. Before parting with this case, we record our appreciation for the able assistance rendered by Mr. Pratik Mishra, the learned amicus curiae.
64. The Patna High Court, Legal Services Committee is hereby directed to pay Rs. 5,000/- to Mr. Pratik Mishra, Advocate curiae in the present appeal as a consolidated fee for the services rendered by him.

(Ashutosh Kumar, J)

(Harish Kumar, J)

SunilKr./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	23.05.2023
Transmission Date	23.05.2023

