

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.900 of 2017**

Arising Out of PS. Case No.-91 Year-2010 Thana- TARAIIYA District- Saran

Md. Inayatullah @ Sonu @ Md. Enayatullaha S/o Sher Mohammad R/o
Village- Rajwara, P.S. Taraiya, District- Saran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 761 of 2017

Arising Out of PS. Case No.-91 Year-2010 Thana- TARAIIYA District- Saran

1. Master Md. Shafiullah and Ors son of Late Hadish
2. Md. Alauddin son of Md. Israil @ Israil
3. Nasim Akhtar son of Sahadat Hussain
4. Md. Mojiullah son of Abdul Hafiz All are resident of Village- Rajwara, P.S. Taraiya, District- Saran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 827 of 2017

Arising Out of PS. Case No.-91 Year-2010 Thana- TARAIIYA District- Saran

Wasim Akhtar @ Tunna son of Abdul Majid resident of Village Rajwara, P.S. Taraiya, District Chapra.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 901 of 2017

Arising Out of PS. Case No.-91 Year-2010 Thana- TARAIIYA District- Saran

Md. Ashif Ali @ Munna Son of Late Md. Hasid, Resident of Village- Rajwara, P.S.- Taraiya, District- Saran.



... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 900 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Kiran Kumari, Advocate
Mr. Md. Imteyaz Ahmad, Advocate
Mr. Ritwik Thakur, Advocate
Ms. Vaishnavi Singh, Advocate
Mr. Anuj Kumar, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

For the Informant : Mr. Vishwanath Prasad Singh, Sr. Advocate
Mr. Sanjay Kumar Singh, Advocate
Mr. Rajesh Kumar, Advocate

(In CRIMINAL APPEAL (DB) No. 761 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Kiran Kumari, Advocate
Mr. Md. Imteyaz Ahmad, Advocate
Mr. Ritwik Thakur, Advocate
Ms. Vaishnavi Singh, Advocate
Mr. Anuj Kumar, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

For the Informant : Mr. Vishwanath Prasad Singh, Sr. Advocate
Mr. Sanjay Kumar Singh, Advocate
Mr. Rajesh Kumar, Advocate

(In CRIMINAL APPEAL (DB) No. 827 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Kiran Kumari, Advocate
Mr. Md. Imteyaz Ahmad, Advocate
Mr. Ritwik Thakur, Advocate
Ms. Vaishnavi Singh, Advocate
Mr. Anuj Kumar, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

For the Informant : Mr. Vishwanath Prasad Singh, Sr. Advocate
Mr. Sanjay Kumar Singh, Advocate
Mr. Rajesh Kumar, Advocate

(In CRIMINAL APPEAL (DB) No. 901 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Kiran Kumari, Advocate
Mr. Md. Imteyaz Ahmad, Advocate
Mr. Ritwik Thakur, Advocate
Ms. Vaishnavi Singh, Advocate
Mr. Anuj Kumar, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

For the Informant : Mr. Vishwanath Prasad Singh, Sr. Advocate
Mr. Sanjay Kumar Singh, Advocate
Mr. Rajesh Kumar, Advocate



**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 07 -10-2023

Heard Mr. Ajay Kumar Thakur, learned Advocate for the appellants and Mr. Vishwanath Prasad Singh, learned Senior Advocate for the informant. The State is represented by Mr. Ajay Mishra, learned APP.

2. All the four appeals viz. Cr. App (DB) No. 900 of 2017 (Md. Inayatullah @ Sonu @ Md. Enayatullaha); Cr. App (DB) No. 761 of 2017 (Master Md. Shafiullah, Md. Alauddin, Nasim Akhtar and Md. Mojibullah); Cr. App (DB) No. 827 of 2017 (Wasim Akhtar @ Tunna) and Cr. App (DB) No. 901 of 2017 (Md. Ashif Ali @ Munna) have been heard together and are being disposed of by this common judgment.

3. In all, seven appellants, who have been convicted under Sections 148, 307, 302/149 of the Indian Penal Code have assailed the judgment and order of conviction and sentence passed by the learned VIth



Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 716/738/2011, arising out of Taraiya P.S. Case No. 91 of 2010. All of them have been sentenced to undergo imprisonment of life, to pay a fine of Rs. 10,000/- each and in default of payment of fine to suffer R.I. for six months for the offence under Section 302/149 IPC; R.I. for seven years for the offence under Section 307/149 IPC and R.I. for two years for the offence under Section 148 of the IPC. 5. The sentences have been ordered to run concurrently.

4. Before proceeding to analyze the evidence and the respective contentions of the appellants, this Court was informed that Master Md. Shafiullah, son of Late Hadish had died during the pendency of this appeal.

5. A report was called for regarding the death of appellant Master Md. Shafiullah in Cr. App (DB) No. 761 of 2017, which fact stands confirmed.

6. As such, the appeal of Late Master Md. Shafiullah abates in view of the provisions contained in



Section 394 of the Code of Criminal Procedure.

7. The FIR in this case was registered by one Md. Jakallah (P.W. 11) before the A.S.I., M.M. Ram of Pirbahore Police Station (Camp P.M.C.H., Patna) on 01.09.2010 at about 10:00 A.M. in which it has been alleged that on the previous day i.e. on 31.08.2010 at about 07:45 P.M., while one Md. Raja, aged about eight years, son of Md. Naushad was singing in front of his darwaja, the appellants and several others came and started assaulting him. Seeing this, Irshad and Irfan (P.Ws. 2 and 5 respectively) came to his rescue. Then, it has been alleged that Late Master Md. Shafiullah exhorted the accused persons to kill both Irshad and Irfan. On such call by Late Shafiullah, all the accused persons including the appellants started assaulting Irshad and Irfan by means of lathi, danda etc. As a result of the assault, Irfan was injured in his head and started bleeding profusely. In the meantime, one Md. Sanaullah also arrived for their rescue, when he too was



assaulted by the accused persons. Appellant/Md. Inayatullah is then said to have given a "bhujali" blow in the stomach of Sanaullah as a result of which he was severely injured and his intestines came out. By this time, one Md. Nurul Hoda also arrived at the scene of occurrence and tried to save Sanaullah, but again, on the orders of Late Md. Shafiullah, appellant Ashif Ali @ Munna assaulted him by means of a sword on his right hand, as a result of which, Md. Nurul Hoda also got severely injured.

8. Hearing all this palaver, Sakil (P.W. 6), Maqsud Ahmad (P.W. 3) and Parvej (not examined) arrived at the place of occurrence, who too were assaulted by all the accused persons. After the occurrence, it has been alleged, the victims were taken to P.M.C.H. where during the course of treatment, Md. Sanaullah died. Md. Nurul Hoda also died on 01.09.2010 in the morning. Md. Sakil (P.W. 6) and Chand Alam (P.W. 1) were treated at Rajeshwar Hospital, Patna,



whereas Maqsud Ahmad (P.W. 3) and Md. Irfan (P.W. 2) underwent treatment at Ruben Hospital, Patna.

9. The occurrence according to P.W. 11 was witnessed by many.

10. On the basis of the aforementioned fardbeyan-statement, Taraiya P.S. Case No. 91 of 2010 dated 01.09.2010 was registered for investigation against 13 accused persons including the appellants under sections 147, 148, 149, 323, 324, 325, 326, 307 and 302 of the Indian Penal Code.

11. The fardbeyan was also signed by one Md. Nurul Hoda.

12. It appears from the FIR that after recording the fardbeyan of P.W. 11 (Md. Jakauallah), the same was forwarded to the S.H.O. of Taraiya Police Station, where the FIR was registered. It further appears that at Taraiya Police Station, the information regarding the occurrence was received at about 09:00 P.M. on 31.08.2010 only. However, the FIR, on the fardbeyan



being forwarded to Taraiya Police Station, was recorded on 01.09.2010 at about 11:30 P.M.

13. It may be noted here that Md. Raja and his father/Md. Naushad and one of the victims viz. Parvej have not been examined at the trial.

14. It appears from the records that after investigations, initially, charge sheet was submitted against appellants Md. Inayatullah, Nasim Akhtar, Ashif Ali @ Munna and one Nawajish Raza (juvenile) whereas the investigation continued against others.

15. Subsequently, another charge sheet was submitted against Late Master Md. Shafiullah, appellants Alauddin, Nasim Akhtar, Muzibullah, Samsul Zoha and Salauddin. The allegations against Md. Wajid, Md. Khalid, Saifullah, Jasimuddin and Md. Amir were found to be false.

16. The cases of Nawajish Raja, Samsul Zoha and Md. Safiullah was separated and sent to the Juvenile Justice Board for determination of their guilt.



17. The Trial Court after having examined thirteen witnesses on behalf of the prosecution and five on behalf of the defence convicted and sentenced the appellants as aforesaid.

18. While assailing the Trial Court judgment, Mr. Ajay Thakur, learned Advocate, who led the arguments, submitted that the earliest version of the case which Manoj Kumar, the Investigating Officer (P.W. 12) had received in the evening of 31.08.2010 has been suppressed and not brought on record. He has further submitted that even though the counter case lodged by appellant/Md. Inayatullah was on record, the same was not taken note of by P.W. 12 as also the Trial Court in correct perspective.

19. Mr. Thakur has taken us to the deposition of witnesses and has tried to build up the argument that the place of occurrence could not be proved at all. Some of the important witnesses have not been brought to the witness-stand and no explanation also has been offered



for their non-examination. No blood or any objectionable material was found at the place of occurrence and the witnesses had prevaricated with respect to the source of light for them to have identified the appellants in the night of the occurrence.

20. There is a complete absence of any explanation for the injuries on the side of the accused persons, which according to Mr. Thakur, has made the entire prosecution case unworthy of reliance. Though a motive was introduced by the prosecution but that was not taken to any logical conclusion.

21. In sum and substance, the argument of Mr. Thakur is that there was a fight between the two groups of one community, in which both sides received injuries but unfortunately two of the persons of one particular group died. In such an event, convicting all the appellants under Sections 302/149 of the IPC was neither warranted nor justified.

22. As opposed to the aforementioned contentions,



Mr. Vishwanath Prasad Singh, learned Senior Advocate for the informant and Mr. Ajay Mishra, learned APP have submitted that there are eye witnesses account of the injured persons which cannot be ignored. No doubt, fardbeyan was recorded in P.M.C.H., but the endorsement on such fardbeyan clearly reflects that since the place of occurrence fell under the territorial jurisdiction of Taraiya Police Station, the fardbeyan was forwarded to the Taraiya Police Station for registering the FIR. There has not been any delay in recording of the FIR or the same having been sent to the Chief Judicial Magistrate, as would appear from the endorsement of the Additional Chief Judicial Magistrate, which is on 02.09.2010.

23. Both the learned Advocates have also submitted that even if the motive could not be established, that does not make the case of the prosecution any weak. Minor contradictions in the deposition of witnesses are bound to occur when



witnesses had deposed before a Court of Law sometimes after the occurrence, especially when many persons are involved in the act of assault. Witnesses have categorically stated that they identified the assailants/appellants in the solar light which was burning at the place of occurrence. The place of occurrence has been established to be the darwaja of Md. Naushad. The injury reports of the accused persons clearly reflect that those were simple in nature and therefore, non-mentioning of such injuries would cast no doubt on the truthfulness of the prosecution version.

24. It has been reiterated by both the learned Advocates that two persons have been killed in the occurrence, whereas seven persons including Md. Raja and Parvej, who have not been examined, were injured. Some of the female folk also have received injuries. In this background, it has been urged that the Trial Court judgment is perfectly justified requiring no interference.

25. It would first be necessary to see as to how



the case was registered at Taraiya Police Station when the fardbeyan of P.W. 11 was recorded at Pirbahore Police Station (Camp P.M.C.H.) at Patna.

26. From the deposition of P.W. 11 and other witnesses as well, it is clearly reflected that after the occurrence, leaving two of the persons severely injured, whereas several others injured, the two deceased viz. Sanaullah and Nurul Hoda were brought to P.M.C.H. in the same night. Sanaullah was declared dead in no time and Nurul Hoda died on the next day at about 10:00 A.M. at P.M.C.H. Four of the victims, who had received serious injuries were treated at two different Hospitals at Patna. Rest of the injured persons were treated at Taraiya Hospital and were discharged.

27. The argument of the appellants that when the information about the occurrence was received in the Taraiya Police Station and P.W. 12, the investigator had visited the Taraiya Hospital in the night of the occurrence, the FIR should have been recorded in the



night of 31.08.2010 only, requires to be evaluated.

28. There is no denying that in a promptly filed FIR, there are reduced chances of embellishment, fabrication or distortion in memory, but for the prosecution case to be rejected, it is always necessary to look for the explanation or the presence of any ulterior motive in delayed filing of the FIR. The Courts are required to assess the effect of the delayed filing of the FIR on the credibility of the prosecution version.

29. As early as in 1944, the ***Privy Council in King Emperor vs. Khwaja Najir Ahmad (AIR 1945 P.C. 18)*** had observed that the receipt and recording of information report by the police is not a condition precedent to the setting in motion of a criminal investigation. Nor does the statute provide that such information report can only be made by an eye witness. FIR under Section 154 of the Code of Criminal Procedure is not even considered a substantive piece of evidence but can only be used to corroborate or



contradict the informant's evidence in Court.

30. However, the information received first in point of time and recorded is the basis of the case set up by the informant. It is really useful if it is recorded before there is time and opportunity to embellish the accusation or before the informant's memory fades.

31. In the case at hand, the records reveal that the occurrence took place in the night of 31.08.2010, where some of the victims were seriously injured. Those who were not seriously injured were treated at Taraiya Hospital whereas those who were seriously injured were taken to P.M.C.H. for the needful. One of the deceased died immediately, whereas the other died on the next day. Since many persons had been injured from one side, it appears that no effort was made to register the FIR in the same night at Taraiya Police Station, which is the nearest police station.

32. Nonetheless, we find that immediately after the death of the two deceased of this case, the FIR was



registered at Pirbahore Police Station (Camp P.M.C.H.). This cannot be stated to be an unreasonable delay, giving rise to any suspicion for the Trial Court to look for any possible motive or the explanation for the delay or consider its effect on the trustworthiness or otherwise of the prosecution version.

33. There is no hard and fast rule which can be applied to determine the effect of delay in lodging the FIR.

34. In ***Ram Jag and Ors. vs. State of Uttar Pradesh (1974) 4, SCC 201***, the Supreme Court has explained that every hour's delay is not required to be explained and a common sense view has to be taken in ascertaining whether the FIR was lodged after an undue delay so as to afford enough scope for manipulating the evidence. The Supreme Court went on to explain that whether the delay is long enough to throw a cloud of suspicion on the seeds of the prosecution case, it would depend upon variety of factors which would vary from



case to case [also refer to the ***State of M.P. vs. Ratan Singh and Ors. (2020) 12 SCC 630***].

35. The investigator (P.W. 12) could have registered the FIR in the night of 31.08.2010 but his not having done so does not straightaway malign the FIR registered by P.W. 11 at Patna, which was forwarded to Taraiya Police Station on the same day but at about 11:30 in the night.

36. The argument of the appellants that the other victims of the case were treated at Taraiya Police Station in the night of the occurrence and that the statement of P.W. 12(I.O.) that he had visited the Taraiya Police Station in the night of 31.08.2010 and had also gone to the place of occurrence along with some of the injured persons and then not recording of the FIR at Taraiya Police Station discredits the prosecution version in its entirety, is not acceptable.

37. The reason for saying so is that even with the FIR not having been registered in the night of



31.08.2010, there was practically no time for the injured persons or the prosecution side to have thought about as to who all should be made accused in this case.

38. One would not expect two of the persons so critically injured to be left unattended for promptly registering the FIR.

39. For all we know, P.W. 12 was not aware about the critical health of Sanaullah and Nurul Hoda, who had been referred to P.M.C.H. Whether they died on way or were being treated at P.M.C.H. was not known to him. This perhaps appears to be the reason for not registering the FIR. True it is that the recorded fardebayan was forwarded to the Taraiya Police Station through a Chowkidar, who has not been examined and there is nothing on record to indicate that the Chowkidar was entrusted by P.W. 12 to bring the fardebayan, but even then, the time gap is not such which would send us doubting about the prosecution case being false in its entirety.



40. An Investigating Officer being a Public Servant is of course expected to conduct the investigation fairly and while doing so he has to look for materials available for coming to a correct conclusion.

41. In ***Arvind Kumar @ Nemichand and Ors. vs. State of Rajasthan (2021) SCC online, SC 1099***, the Supreme Court with respect to fair, defective or colourable investigation has explained that whenever a homicide occurs, an Investigating Officer is expected to cover all the aspects and has to keep in mind whether the offence would come under the purview and mischief of the Sections charged. If it is a case of murder, the I.O. shall always keep in mind whether the offence would come under Section 299 or Section 300 of the IPC. He is the first official responder whose duty is to find out the truth and help the Court in coming to the correct conclusion. He ought not to know sides either of the victim or the accused but shall only be guided by law and be an "*epitome of fairness*" in his investigation.



42. While explaining all this, the Supreme Court has very succinctly laid down that there is a difference between the defective investigation and one which is done in a calculated and deliberate manner or which reflects inaction on the part of the police. A defective investigation *per se* would not inure to the benefit of the accused, unless it goes into the root of the very case of the prosecution being fundamental in nature. In instances of defective investigation, a Court of Law is required to winnow the evidence available and find out the truth on the principle that "*every case involves a journey towards truth*". "*There shall not be any pedantic approach either by the prosecution or by the Court as a case involves an element of law rather than morality*".

43. An investigation, we must acknowledge, would become colourable when there is suppression of motive or of injuries or of other existing factors viz. perfunctory investigation. In such an event, there are possibilities of the entire narrative appearing to be false.



If the very foundation of the prosecution case is found to be false, then no conviction can be recorded.

44. In this context we have re-appraised the evidence of the witnesses especially of the informant (P.W. 11) and the investigator (P.W. 12). We have also examined the evidence of the injured witnesses. There does not appear to be any inconsistency so far as the story of assault leaving many persons injured is concerned. The aforementioned witnesses except P.W. 12 have stated that the victims were taken to different hospitals for treatment. Some of them stayed back and got themselves treated at Taraiya Hospital and also made statements before the P.W. 12 who had visited the Taraiya Hospital. As noted above, the FIR could have been registered in the night of 31.08.2010 but if P.W. 12 waited for the exact information to pour in from P.M.C.H., where two of the critically injured persons had been referred to, it would be difficult for us to label his investigation to be colourable and for the purposes of



taking sides of one group.

45. After having said that, we must seek for some reason for the omission in the FIR and in the statement of witnesses about the injuries received from the side of the accused persons especially when P.W. 12, the investigator is in know of such injuries. P.W. 12 has, during cross-examination, said that on the request of such injured persons of the side of the accused party, necessary requisitions were sent by him to the hospital. The injuries suffered by them were all simple in nature which appears from the deposition of Doctor/Alok Bihari Sharan, who has been examined on behalf of the prosecution as well as the defence both. On behalf of the prosecution he has been examined as P.W. 8, whereas on behalf of the defence he has been examined as D.W. 5.

46. On behalf of the prosecution, he had examined Manjur Alam (not examined), Mazda Khatoon (P.W. 10) and Nishant Praveen (P.W. 4), all of whom



were found to have suffered simple injuries. On behalf of the accused persons, he has examined Nawajish Raja (juvenile), Nasim Akhtar, Ashif Ali, Anaitullah and Baida Khatoon, all of whom also had received simple injuries. One Doctor/Surendra Prasad Singh (P.W. 7) had examined one person on behalf of the prosecution viz. Sheikh Hasimullah who also had received simple injuries.

47. The learned Advocate for the appellants have given stress on the fact that no doctor of Rajeshwar Hospital or Ruben Hospital at Patna or the Doctor at P.M.C.H. has been examined at the trial. Whether the persons who were treated in Rajeshwar and Ruben Hospitals had received injuries in the same transaction or not, therefore, could not be proved by the prosecution. What was the condition of health of the two deceased could have been known only if Doctors of P.M.C.H. would have been examined.

48. We have further found that prosecution has exhibited the fardbeyan of Taraiya P.S. Case No. 92 of



2010 filed on behalf of the accused persons as also the charge sheet in that case. The injury reports of Nawajish Raja, Nasim Akhtar, Ashif Ali, Anaitullah and Baida Khatoon, referred to above, also have been brought on record as Exts. B to B/4. There does not appear to any motive of hiding the factum of the FIR from the side of the accused persons and injuries on them by the prosecution. But why was it not stated in the fardbeyan and the deposition of the witnesses is a question that needs resolution.

49. In ***Laxmi Singh vs. State of Bihar (1976) 4 SCC 394***, the Supreme Court has held that in a murder case, the non-explanation of the injuries sustained by the accused at about time of occurrence or in the course of altercation is a very important circumstance from which the Court can draw either or all of the inferences viz.

(I) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus



not presented the true version;

(II) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable; or

(III) that in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution case.

50. In ***Arvind Kumar @ Nemichand and Ors. vs. State of Rajasthan*** (supra), the Supreme Court has reiterated that the omission on the part of the prosecution to explain the injuries on the person of the accused, assumes a much greater importance when the evidence consists of interested or inimical witnesses or where the defence gives a version which is antithetical to the story of prosecution.

51. From the evidence of P.W. 12 as also the other witnesses, it appears that there was some dispute



between the two groups of Muslim community in the village over the issue of either controlling the affairs of the local mosque or over the issue of offering Namaj. The story of Raja (not examined) singing a song at his darwaja being the *casus-belli* does not appear to be correct. The mosque according to the topography derived from the deposition of the witnesses does not appear to be in close vicinity of the houses occupied by Raja, his father/Naushad and injured persons viz. Irfan and Irshad. The I.O. claims to have heard a rumor that two groups in a village had fought amongst each other. In the night of the occurrence, when he tried to visit the P.O., he had found blood beneath the wall of one Md. Tasaduq. No blood was found by P.W. 12 at the darwaja of Md. Naushad. Keeping these facts in mind, if a clash took place between two groups of villagers following the same religion and persons of one group having received minor injuries, omission to talk about such injuries in the fardebayan or in the deposition of the witnesses would



not reduce the entire prosecution case to complete falsehood. Most of the injured persons from the prosecution side have also received simple injuries.

52. However, not mentioning of such injuries in the fardbeyan or in the deposition of witnesses at the trial points towards one aspect of the matter in a very clear way that the motive stated to be the cause of occurrence in the FIR is incorrect. From the tenor of the deposition of the witnesses as also the statement of P.W. 12 at the trial, it appears to be very probable that two groups would have clashed amongst each other.

53. There is yet another aspect of the matter which requires consideration and analysis of evidence. Did a minor fight galvanize into a full fledged warfare? Unless it is proved to the contrary, the appellants cannot be saddled with the charge of common object of killing the deceased persons. It is quite noticeable that no lethal weapon was used by anyone of the accused persons except appellant/Inaitullah [Cr. App (DB) No.



900 of 2017)] and Md. Ashif Ali [Cr. App (DB) No. 901 of 2017)].

54. What was the immediate cause of conflagration remains unknown.

55. It further appears from the deposition of witnesses that the assailants kept pouring in. All those persons who came to the rescue of Raja, Irfan, Irshad etc. were also assaulted. One of the deceased viz. Nurul Hoda is a complete outsider as he is resident of different locality. There is no evidence that there was any concerted or premeditated plan to execute the murder of the two deceased. In such a circumstance, non-mentioning of injuries on the side of the accused in the fardebayan and in the deposition of witnesses would be reduced to insignificance.

56. So, if common object of killing does not stand established, then each of the appellants/accused persons would be entitled to be dealt with according to the role played by them.



57. We will come to this aspect a bit later.

58. However, before that, we need to state that normally a case and a counter case, if triable by the Court of Sessions, should be tried by the same Trial Court simultaneously. It has been a salutary practice that when two criminal cases relate to the same incident, they are tried and disposed of by the same Court by pronouncing judgments on the same day.

59. However, there is nothing on record to indicate that the case lodged from the side of the defence was also triable by a Sessions Court.

60. Coming to the specific overt act, appellant Inaitullah [Cr. App (DB) No. 900 of 2017)] is said to have given a Bhujali blow resulting in the innards of deceased/Sanaullah coming out. The oral testimony is supported by the post-mortem report and the examination of Dr. Arbind Kumar, who conducted the post-mortem examination. He had found several abrasions and contusions and incised wounds on the



dead body. However, the fatal injury was an incised wound which was in stomach, cavity deep below the umbilicus, taking out a portion of the gut to outside and exposed. Inside the abdominal cavity, there were blood and blood clots. There were contusions in the left temporal region of the deceased as well. According to P.W. 9, the death was because of the injury in the stomach and the time fixed for death was 6 to 24 hours since the post-mortem examination.

61. The same Doctor had conducted the autopsy on Nurul Hoda who is said to have been assaulted by Md. Ashif Ali [Cr. App (DB) No. 901 of 2017)] by a Sword which had hit him in his arm. P.W. 9 had found one stitched wound on the right elbow, back to the right forearm and also to the inner parts of right wrist and the anteriors of the palm. On further dissection of the surgical bandage, the radius and ulna in the right hand was found to be cut completely. The bones of the right wrist also were cut. The intervening soft tissues



had incised injuries with blood and clots at places. The death in this instance was because of haemorrhage and shock and may be, which the Doctor (P.W. 9) has not stated because of fat-embolism because of the damage to the larger bone.

62. The ante-mortem injuries on the two deceased clearly conform to the ocular testimony regarding the assault perpetrated by Md. Inaitullah and Md. Ashif Ali respectively. The case of Md. Inaitullah would thus fall squarely within the mischief of Section 302 of the IPC as falling under Section 300 (thirdly). Appellant Ashif Ali may not have intended to cause such injury which would, in ordinary course of nature, result in death. His act, therefore, would fall in the category of Section 307 IPC. Since for four of the injured persons who were more seriously injured than the others, there is no medical evidence on record, the other appellants cannot be saddled with any specific charge except Section 324 of the IPC.



63. All the appellants are but guilty for the offence under Section 148 of the IPC.

64. Considering these aspect of the matter and the reasons cited above, we convert the conviction of appellants Md. Alauddin, Nasim Akhtar and Md. Muzibullah in [Cr. App (DB) No. 761 of 2017)] and Wasim Akhtar in [Cr. App (DB) No. 827 of 2017)] to one under Sections 148 and 324 IPC. It would only be appropriate to sentence them to the period that they have already undergone in custody. It appears that they were on bail during the trial but are in jail since the date of their conviction.

65. As noted above, the case of appellant/Master Md. Shafiullah has already abated.

66. The conviction of appellant/Ashif Ali is converted into one under Section 307 of the IPC. It would only be appropriate to sentence him to undergo R.I. for ten years for the offence under Section 307 of the IPC and we order accordingly.



67. The conviction of appellant/Md. Inaitullah @ Sonu @ Md. Enayatullaha [Cr. App (DB) No. 900 of 2017] is confirmed.

68. It appears from the record and as has been communicated to us the appellants viz. Md. Alauddin, Nasim Akhtar and Md. Mojibulla [in Cr. App (DB) No. 761 of 2017], Wasim Akhtar @ Tunna [in Cr. App (DB) No. 827 of 2017] and Md. Ashif Ali @ Munna [in Cr. App (DB) No. 901 of 2017] are all in jail. Appellant/Md. Ashif Ali @ Munna is in custody since 26.05.2017. He shall be released after completing ten years in custody. Rest others viz. Md. Alauddin, Nasim Akhtar and Md. Mojibulla [in Cr. App (DB) No. 761 of 2017], Wasim Akhtar @ Tunna [in Cr. App (DB) No. 827 of 2017] are directed to be released forthwith, if not detained or wanted in any other case.

69. Cr. Appeal (DB) Nos. 761, 827 and 901 of 2017 are partially allowed.

70. Cr. Appeal (DB) No. 900 of 2017 (Md.



Inaitullah @ Sonu @ Md. Enayatullah) is dismissed.

71. Let this order be communicated to the concerned Superintendent of Jail for record and compliance.

72. Let the records of these appeals be sent to the court below forthwith.

73. The I.A.(s), if any, shall also stand disposed off.

(Ashutosh Kumar, J)

(Shailendra Singh, J)

krishna/-

AFR/NAFR	AFR
CAV DATE	21.07.2023
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