

a 10. We are of the considered opinion that in such circumstances, there being no evidence to establish the case of the prosecution, it was not possible to sustain the conviction of the accused. Thus, taking into consideration the facts and circumstances of this case, the High Court has rightly acquitted the accused. Therefore we see no reason to interfere with the impugned order.

b 11. The appeals are, accordingly, dismissed. Pending applications, if any, also stands disposed of.

Result:- Appeals dismissed.

c **ABC 2018 (I) 7 SC**
ACQUITTAL & BAIL CASES
SUPREME COURT OF INDIA
 (Mohan M. Shantanagoudar & Arun Mishra, JJ.)
 Criminal Appeal Nos. 1787-1789 of 2017
 d (Arising from SLP(CrI.) Nos.637-639/2016)
 (From Patna High Court)
 Decided On 13 October, 2017

DEO NATH RAI

- Appellant.

Versus

e **STATE OF BIHAR ETC. ETC.**

- Respondents

f **Law Covered:- (A) Indian Penal Code 1860- Sections 149, 302 — Murder — Sudden quarrel —escalated without any premeditation — deceased succumbed to the injury during the course of transit to the hospital —Evidence of the doctor & the post-mortem corroborates the testimony of the eye witnesses —only one accused was actually involved in causing injury on the deceased — Sentence u/s 304 Pt- II held as proper. (Para 9)**

g **(B) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Injury sustained by the accused — Explanation by prosecution — Accused caught hold of the deceased — during which time he also sustained injuries because of the assault by other accused — Held, injuries on accused explained. (Para 8)**

h **Held:-** The injuries on the accused – Wakil Rai were explained by the prosecution. The evidence on record discloses that Wakil Rai was holding the deceased – Mohan Rai from the back at the

time of assault on Mohan Rai during which time he also sustained injuries because of the assault by accused – Parsuram Rai. Thus, the explanation offered by the prosecution was that the injuries sustained by the accused – Wakil Rai were as a result of assault by Parsuram Rai during the course of incident. Hence the High Court has rightly concluded that injuries on accused are thus explained. (Para 8)

Looking to the totality of the facts and circumstances of the case and the evidence on record, it is clear that it was only the accused – Parsuram Rai who had assaulted Mohan Rai with the help of sword, whose assault resulted grievous injury, and the deceased Mohan Rai ultimately succumbed to the said injury during the course of transit to the hospital. The incident had taken place when the deceased was returning from the disputed land and the accused persons were busy in the adjacent field transplanting paddy seedlings from where they saw Mohan Rai crossing their land. There was no premeditation of any kind on the part of the accused to commit the murder of the deceased. However, the eye witnesses have deposed that accused - Wakil Rai came and started quarreling with Mohan Rai when other family members also joined. The quarrel not only suddenly erupted but also escalated without any premeditation. As rightly concluded by the High Court, the whole incident was spontaneous and went out of hand that too within short spell of time. (Para 9)

JUDGMENT

MOHAN M. SHANTANAGOUDAR, J.: - 1. Leave granted.

2. These appeals arise out of the judgment and order dated 17.10.2014 passed by the High Court of Judicature at Patna in Criminal Appeal (DB) No. 59 of 1992, Criminal Appeal (DB) No. and Criminal Appeal (DB) No. 111/1992, whereby a Division Bench of the High Court, while dismissing the appeals preferred by the accused – the private respondents herein, altered the conviction of the accused Wakil Rai, Ramayan Rai, Raj Ballam Rai, Ashok Rai and Sheo Kumar Rai from Section 302/149 IPC to one under Section 304 Part-II IPC and that of accused – Parsuram Rai from Section 302 IPC to Section 304 Part-II IPC. The High Court reduced the sentence of all the convicted accused from life imprisonment to the period already undergone by them, which is approximately two years. However, the High Court did not interfere with the judgment and order of conviction and sentence passed by the trial Court for the offences punishable under sections 342 and 324 of IPC.

a 3. The case of the prosecution is that, all the accused, in a group armed with weapons like Sword, Bhala etc. and committed the murder of deceased – Mohan Rai at about 7.30 a.m. on 29.07.1988. There appeared to be a dispute relating to agricultural land between the accused and the family of the deceased and the dispute arose in the matter of transplanting paddy seedlings on the date of the incident. PW7 (Hira Lal Rai) lodged the first information report.

b 4. In order to prove his case, the prosecution examined 14 witnesses. Among them, PW1(Uday Kumar Rai), PW2(Deonath Rai) and PW4-A(Ramnath Rai) are the sons of the deceased – Mohan Rai. PW5(Munaki Devi) is the wife of the deceased. PW7(Hira Lal Rai), c who lodged the first information report, is the brother of the deceased. PW8(Rukmani Devi) is the wife of the informant. PW4 (Kripal Rai) is also near relative of the deceased. It has come into evidence that it is a very small village having about 10 to 15 houses only. It is also not in dispute that these witnesses were the residents of d the very village. The evidence of all the eye witnesses, more particularly injured PW2(Deonath Rai), PW4-A(Ramnath Rai) and PW5(Munaki Devi) is consistent, cogent and reliable. Both the courts below have rightly relied upon the versions of the eye witnesses, coupled with other material on record, and convicted the accused.

e 5. As mentioned supra, though the trial Court convicted all the accused for the offence punishable under Sections 302/149 and 302 of the IPC, the High Court modified the conviction to one under Section 304 Part-II, IPC. Being aggrieved by the impugned judgment of the High Court, the appellant has filed these appeals for restoration of the judgment of the trial Court.

f 6. While issuing notice in these appeals on 07.01.2016, this Court confined the scope of these appeals to the question of sentence only. In other words, this Court has confirmed the judgment and order of the High Court convicting the accused for the offence punishable under Section 304 Part-II, IPC.

g 7. The evidence on record also discloses that PW2, PW4-A and PW5 were also assaulted and they also sustained certain simple injuries. One of the accused, namely, Wakil Rai also sustained four injuries, out of which injuries nos. 1 and 2 suffered h by him were grievous in nature. Be that as it may, as mentioned supra, these appeals are confined for considering the question of sentence only.

8. The evidence of the Doctor – Dr. Anil Kumar Sinha, who conducted the post-mortem on the dead body of deceased Mohan Rai and the post-mortem report (Ext.4) disclose the following injuries on the body of the deceased – Mohan Rai: a

“1. Incised wound on the right shoulder and in front of the chest with very profound bleeding of the size 11” x 2” and cutting the bone up to the cavity depth. The right clavicle of the first and second rib and the rib of the right lungs were found incised. The large artillery and blood vessels and the nerves were found to be incised. b

2. Skin from the back portion was found.”

From the aforementioned, it is evident that the deceased – Mohan Rai had sustained only one injury. All the eye witnesses were consistent in their evidence that it was accused – Parsuram Rai, who inflicted the sword blow on the deceased – Mohan Rai, which was grievous in nature and the deceased – Mohan Rai ultimately succumbed to the injury during the course of transit to the hospital. The doctor has opined that the death of Mohan Rai was as a result of incised deep wound sustained by him on his right shoulder running up to chest on the right side. The evidence of the doctor and the post-mortem report (Ext.4) corroborates the testimony of the eye witnesses regarding the incident. From the afore-mentioned, it is amply clear that no accused other than Parsuram Rai was actually involved in causing any injury on the deceased. On the other hand, other accused i.e. other than Parsuram Rai must have assaulted the injured PW2, PW4-A and PW5, who suffered simple injuries. As mentioned supra, accused – Wakil Rai also sustained four injuries, out of which two were stated to be grievous in nature. The injuries on the accused – Wakil Rai were explained by the prosecution. The evidence on record discloses that Wakil Rai was holding the deceased – Mohan Rai from the back at the time of assault on Mohan Rai during which time he also sustained injuries because of the assault by accused – Parsuram Rai. Thus, the explanation offered by the prosecution was that the injuries sustained by the accused – Wakil Rai were as a result of assault by Parsuram Rai during the course of incident. Hence the High Court has rightly concluded that injuries on accused are thus explained. c
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9. Looking to the totality of the facts and circumstances of the case and the evidence on record, it is clear that it was only the accused – Parsuram Rai who had assaulted Mohan Rai with the help of sword, h

a whose assault resulted grievous injury, and the deceased Mohan Rai ultimately succumbed to the said injury during the course of transit to the hospital. The incident had taken place when the deceased was returning from the disputed land and the accused persons were busy in the adjacent field transplanting paddy seedlings from where they saw Mohan Rai crossing their land. There was no premeditation of any kind on the part of the accused to commit the murder of the deceased. However, the eye witnesses have deposed that accused - Wakil Rai came and started quarreling with Mohan Rai when other family members also joined. The quarrel not only suddenly erupted but also escalated without any premeditation. As rightly concluded by the High Court, the whole incident was spontaneous and went out of hand that too within short spell of time.

d 10. In the facts and circumstances of the case, though the High Court was justified in altering the conviction of the accused from Section 302 and 302/149 IPC to Section 304 Part-II IPC, it was not justified in imposing lesser sentence on the accused, particularly on accused – Parsuram Rai, who gave a sword blow on the right shoulder of the deceased – Mohan Rai running up to the chest, which was grievous in nature and because of which Mohan Rai died during the transit to the hospital. In our considered opinion, the High Court ought to have imposed a sentence of 5 years on the accused – Parsuram Rai along with a fine of Rs.50,000/- and on the other accused, while altering the sentence to the period already undergone, which in this case is approximately 2 years, the High Court ought to have imposed a fine of Rs.5,000/- on each of the other accused, namely, Wakil Rai, Ramayan Rai, Raj Ballam Rai, Ashok Rai and Sheo Kumar Rai. The conviction and sentence ordered by the High Court in respect of other offences stands confirmed. Since the sentences in respect of the other offences run concurrently, there is no need for the accused to undergo imprisonment in respect of these other offences inasmuch as the sentence imposed on them is already suffered by them. Accordingly the following order is passed:

g (a) the accused – Parsuram Rai is hereby sentenced to undergo rigorous imprisonment for 5 years for the offence punishable under Section 304 Part-II IPC and also to pay a fine of Rs.50,000/-, which shall be deposited by him in the trial Court within six months from today. In case of default of payment of fine, he shall further undergo imprisonment for one year. The accused – Parsuram Rai be taken into custody forthwith to serve out the remaining portion of his sentence;

(b) insofar as the other accused, namely, Wakil Rai, Ramayan Rai, Raj Ballam Rai, Ashok Rai and Sheo Kumar Rai are concerned, the judgment and order of conviction and sentence passed by the High Court stands confirmed. However, all these accused are directed to pay a fine of Rs.5,000/- each, which shall be deposited in the trial Court within eight weeks from today, and in default of payment of fine, all these accused shall undergo rigorous imprisonment for two months;

(c) the accused are entitled to the benefit of set-off as provided under Section 428 of the Code of Criminal Procedure; and

(d) the amount of fine, as directed above, if deposited, shall be paid to the wife of the deceased – Mohan Rai as compensation.

11. The instant appeals stand disposed of in the aforesaid terms.

Result:- Appeals disposed of.

ABC 2018 (I) 12 SC
ACQUITTAL & BAIL CASES
SUPREME COURT OF INDIA
 (N.V. Ramana & Amitava Roy, JJ.)
 Criminal Appeal No.1110 of 2016
 (From Himachal Pradesh High Court)
 Decided on 10 November 2017

KHEKH RAM

-Appellant(s)

Versus

STATE OF H.P.

-Respondent(s)

Law Covered:- (A) *Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 20 & 29 — Possession & transportation of charas — acquittal by trial Court conviction by High Court — Appeal against — Conscious possession — Seizure from the vehicle — the registration certificate of the vehicle and the passbook in the name of the appellant — recovery of — abscondence of driver on seeing police party — no participation of any independent witness — contradiction in the evidence of witnesses — conscious possession not proved — Held, the recovery of bank passbook from the vehicle cannot be acted in isolation to base the conviction — it is clear that arrest was due to the recovery of his bank passbook & not on the basis of his spot identification. (Para 20 & 22)*