

Criminal Appeal (DB) No 385 of 1991

- 1 Sant Mahto, son of Radha Mahto
- 2 Binod Prasad, son of Mushari Mahto, residents of Village – Masuda,
Police Station – Warisaliganj, District - Nawada

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

WITH

Criminal Appeal (DB) No 424 of 1991

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Ramadhin Mahto, son of Bundi Mahto, resident of Village – Masuda,
Police Station – Warisaliganj, District - Nawada

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

WITH

Criminal Appeal (DB) No 443 of 1991

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Kailash Pasi, son of Surju Pasi, resident of Village – Masuda, PS –
Warisaliganj, District - Nawada

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Against the judgment of conviction and order of sentence dated
30.09.1991 passed by Shri Shiva Bachan Singh, Sessions Judge,
Nawada in Sessions Trial No 439 of 1989.

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For the appellants : Mr Vindhiya Keshri Kr, Sr Advocate
With M/s Rakesh Kumar Sinha, Neeraj Kr
@ Sanidh & Sudarshan Sharma,
Advocates

For the State : Mr Ajay Mishra, APP

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HONOURABLE JUSTICE SMT ANJANA MISHRA

ORAL JUDGMENT

(Per: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH)

The four appellants have been charged and found

guilty of committing an offence under Sections 302/34 of Indian Penal Code (IPC) and sentenced to rigorous imprisonment for life by judgment of conviction and order of sentence dated 30.09.1991 as recorded by the Sessions Judge, Nawada in Sessions Trial No 439 of 1989. Having been convicted, the four appellants have preferred the three appeals. It may be recorded that there was a fifth person also chargesheeted, namely, Rajo Mahto @ Rajendra Prasad but he has been acquitted by the trial Court on the same set of evidence.

2 The prosecution case is based upon a Fardbayan of Mohan Yadav (PW 7), the brother of the deceased Ram Balak Yadav recorded by the Officer-in-charge of Warisaliganj Police Station (PS) Chandra Mohan Jha (PW 9) at Warisaliganj PS at about 3.15 pm on 10.05.1989, inter alia, alleging that the informant and his two brothers that is Khole Yadav (PW 6) and Ram Balak Yadav (deceased) had gone in the morning of 10.05.1989 to their agricultural field where they had planted sugarcane. In the afternoon, Khole Yadav (PW 6) and the informant (PW 7) went home to have food and when they returned, their younger brother Ram Balak Yadav, the deceased said that he would have a bath and then go home for lunch. To have bath, he went on the boring of appellant Kailash Pasi. Soon thereafter, the informant and his brother heard shout and cry for help from Ram Balak Yadav (deceased). They rushed to the boring of appellant

Kailash Pasi and they found the four appellants assaulting Ram Balak Yadav, the deceased. Two of them had dragged Ram Balak Yadav, the deceased to the ground and were holding him there whereas appellant Kailash Pasi had a handle, which is used to start diesel pump, and the other appellant with a saif assaulting Ram Balak Yadav, the deceased on the head. When the informant and his brother tried to intervene, they were also threatened and chased. They then also started shouting for help. Several villagers came and seeing them, the miscreants escaped. The reason behind this was that about 15 days earlier, the informant (PW 7) had requested for water for irrigating his sugarcane field from the boring of appellant Kailash Pasi who refused. In retaliation, they filled the irrigation channel with mud which annoyed appellant Kailash Pasi and, accordingly, having got an opportunity, he, alongwith the other appellants, killed Ram Balak Yadav. It may be noted here that when this statement was given at the Warisaliganj PS, the informant had carried the body of his younger brother to the PS and, as such, the Inquest was prepared at the PS and, thereafter, investigation was taken up. In course of investigation, the name of one Rajo Mahto @ Rajendra Prasad came up who was also then arrested and upon completion of investigation, chargesheet, having been submitted against the five persons, cognizance having been taken, the case was committed to the Court of Session. Charges

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were framed against all five persons under Sections 302/34 of IPC which was denied by the accused persons. They were tried. They were convicted with the exception of Rajo Mahto @ Rajendra Prasad who was acquitted. Hence, the three appeals by the four convicted persons.

3 In order to establish the prosecution case, prosecution has examined nine witnesses. PW 8 is Dr B B Bhagat. PW 9 is Chandra Mohan Jha, the Investigating Officer (IO). The rest are private witnesses. PWs 4 and 5 are named in the First Information Report (FIR) as eye witnesses. PW 7 is the informant Mohan Yadav. PW 6 is his elder brother Khole Yadav. All these witnesses professed to be eye witnesses. But, in our view, none of the witnesses other than PWs 6 and 7 are in fact eye witnesses. The reasons are if we look to the evidence of PW 1 and that of PWs 6 and 7, we find that PW 1 clearly states that he was allegedly the first persons to reach the place of occurrence. He found the dead body of Ram Balak Mahto lying in the field and only the two brothers Khole Yadav PW 6 and Mohan Yadav (PW 7) there. The miscreants had already run away. From this, it is clear that even PW 1 had not seen the occurrence or the miscreants. Therefore, if any other witness turned up claiming that he had seen the incident or seen the appellants, he would not be truthfully so deposing. The evidence of PWs 6 and 7 is also

consistent that once the miscreants ran away, the neighbouring villagers came. By way of abundant caution, they add that they had seen the miscreants run but when we come to the evidence of PW 2 Fulia Devi, the mother of the deceased, she claims to be eye witness giving graphic details of the evidence corroborating the FIR. For the reasons stated above, her evidence cannot be relied upon. Another thing which persuades not to rely her evidence is that she does not even know whether police had come on the spot to pick up the body or the body was taken to the Thana. She is untruthful and cannot be relied. PW 3 Ramdeo Yadav is also a hearsay witness who had been a witness to the seizure list and the inquest. He was told that the appellants were the culprits. We then come to PWs 4 and 5 who are mentioned in the Fardbayan as eye witnesses. For the reason already discussed, it is apparent that their names have been added in the Fardbayan but in fact they were not present. Even the trial Court has not accepted their testimony. Thus, we are left with only four witnesses that is informant (PW 7) Mohan Yadav, his elder brother (PW 6) Khole Yadav, the evidence of Dr B B Bhagat (PW 8) and the IO (PW 9) Chandra Mohan Jha. From the evidence of PWs 6 and 7, we find that the prosecution case is a definite case that the three brothers had come empty stomach in the morning to plough their sugarcane field which had been irrigated three days back. In the

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afternoon, PWs 6 and 7 went home to have a bath and have lunch. Once they returned to the agricultural field, the younger brother, the deceased Ram Balak Yadav went to have a bath at the boring of appellant Kailash Pasi whereafter he was to go home to have his lunch. It is at this time that the incident had taken place. Appellant Kailash Pasi used the handle used for starting the pump to smash the head of the deceased. Two other appellants caught hold of the deceased and the fourth used the saif to pierce the skull. The deceased died at the spot near the boring of appellant Kailash Pasi. This being the definite case, it is not explained by the prosecution that when post mortem is done by Dr B B Bhagat (PW 8) who proves the post mortem report, he finds undigested rice in stomach. That can only be possible if the person had taken meals about an hour or two prior to his death. This does not fit in the prosecution case at all. Either the incident had taken place in the night before or much later and not in the manner, as alleged. There is no explanation by the prosecution explaining this discrepancy. PW 7 Mohan Yadav was specifically questioned in this regard and he clearly stated that they all had come empty stomach in the morning and Ram Balak Yadav, the deceased was to go home to have food. This is a very vital discrepancy in the prosecution case which creates doubt with regard to not only the genesis but the manner of occurrence. We may also note that in the

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FIR, informant (PW 7) clearly states that appellant Kailash Pasi was enraged because on his refusal to give water for irrigation to the informant and his family, they had filled up his irrigation channel with mud. It is this dispute that led the occurrence. But when they come to the Court, the prosecution gives a total go by to this motive rather, to the contrary, they consistently take a stand that there had been no prior dispute of whatsoever nature with appellant Kailash Pasi. This change in stand with regard to motive and then to no motive remains unexplained. The third thing we would like to notice is that the prosecution evidence is consistent that when people came, they found Ram Balak Yadav dead lying in the field. Instead of informing the police and letting the police come and recover the body why did the informant (PW 7) Mohan Yadav and his brother Khole Yadav (PW 6) took pains to load the body on a rickshaw cart and bring it to the PS to hand over the body to the police. This is not a normal conduct. The prosecution has given no explanation and what is worse, the IO clearly admits that he had made no enquires from any rickshaw cart driver or owner in this regard. The appellants rightly submit that if these three things are taken into account then the prosecution story becomes doubtful. It was incumbent upon the prosecution to tie each end of the story. They have failed to do so.

4 Having considered the matter, in our view, the

appellants cannot be held guilty on the evidence, as recorded. The submissions are correct on behalf of the appellants. They are, accordingly, accepted.

5 Accordingly, the appeals are allowed giving benefit of doubt to the appellants. The conviction and the sentence are set aside. They are relieved from the liabilities of their bail bonds.

(Navaniti Prasad Singh, J)

Patna High Court,
The 09th of January, 2015,
NAFR, M E Haque/-

(Anjana Mishra, J)

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