

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.149 of 1993

(Against the judgment of conviction and order of sentence, dated 19.03.1993, passed by Shri Nagendra Narayan Singh, 2nd Additional District & Sessions Judge, Jamui in Sessions Case No. 137 of 1984, arising out of Khaira P.S. case No. 79 of 1983, G.R. No. 870 of 1983)

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1. Janki Yadav, Son of Mathura Yadav	
2. Thakuri Yadav, Son of Suchal Yadav	
Both residents of Village- Bhojpur, Khana Police Station, District- Munger.	 Appellants
	Versus
The State of Bihar	 Respondent

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Appearance :

For the Appellant/s : Mr. Rakesh Kumar Sinha, Advocate
For the Respondent/s : Mr. Ajay Kumar Mishra, Addl. P.P.

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 04-02-2015

The present appeal has been filed against the judgment of conviction and order of sentence, dated 19.03.1993, under Sections 302 read with Section 34 of the Indian Penal Code, passed by the learned 2nd Sessions Judge, Jamui, in Sessions Case No. 137 of 1984, arising out of Khaira Police Station Case No. 79 of 1983 (corresponding to G.R. No. 870 of 1983) and sentencing them to suffer imprisonment for life.

2. The case of the prosecution may, in brief, as made out in *First Information Report*, be described as under:

The informant, Bhuneshwar Tanti, filed his written report stating therein, *inter alia*, that at on 19.09.1983, at



about 2.00 P.M., one Janki Yadav and Thakuri Yadav left their she-buffaloes for grazing in the paddy field of his father and to this act of accused Janki Yadav and accused Thakuri Yadav, Churaman Tanti, father of the informant, protested, whereupon both the accused persons took away their she-buffaloes to their tand. The informant's father also followed them and enquired from them as to why they had left their buffaloes at his paddy field to graze. Accused Janki Yadav and Thakuri Yadav reacted by assaulting Churaman Tanti by means of *lathis*. In order to save his father, Churaman Tanti, the informant, namely, Bhuneshwar Tanti, along with Rohan Tanti and Chandrika Tanti rushed to intervene. However, by the time they could reach the place, where Churaman Tanti was being assaulted, Churaman Tanti fell down on the ground on being injured by the assaults at the hands of the two accused aforementioned. When the informant reached near his father, he found his father dead. On seeing the informant, the two accused fled away towards their houses. On hearing alarm raised by the informant, a number of people gathered at the place of occurrence and they saw Churaman Tunati lying dead. The people, who had gathered there, also kept, in confinement, the buffaloes, which had been left at the field of Churaman Tuanti for grazing by the accused aforementioned.

3. On the basis of the written report of

Bhuneshwar Tanti, *Khaira* Police Station Case No. 79 of 1983, under Section 302/34 of the Indian Penal Code, was registered against the two accused aforementioned.

4. Upon competition of investigation, police submitted *charge sheet* under Sections 302/34 of the Indian Penal Code, against Janki Yadav and Thakuri Yadav.

5. At the trial, when a charge, under Section 302 read with Section 34 of the Indian Penal Code, was framed against the two accused aforementioned, they pleaded not guilty thereto.

6. Prosecution examined altogether 7 (seven) witnesses, who are as follows: P.W. 1 (Kartik Prasad), a Pleader Clerk, who proved F.I.R., which is Ext.-1. P.W. 2 (Narayan Tanti), P.W. 3 (Chando @ Chandrika Tanti) and P.W. 4 (Bhuneshwar Tanti) have claimed to be eye witnesses to the occurrence. P.W. 5 (Dr. Dharamraj Roy) was the one, who had, admittedly, performed, on 29.09.1983, *post mortem* examination on the dead body of Churaman Tanti,. P.W. 6 (Laxmi Sonar) is also a pleader clerk and proved the case diary of *Khaira* Police Station Case No. 79 of 1983. P.W. 7 (Fakira Yadav) is a formal witness. The prosecution has also brought on record *inquest report* (Ext.-3) and *post-mortem* report (Ext-4).

7. On closure of the prosecution's case, the two



accused were examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, the accused denied that they had committed the offence, which was alleged to have been committed by them, the case of the defence being that of denial. The defence, too, adduced evidence by examining four witnesses, namely, D.W. 1 is Jagdish Thakur, D.W. 2 is Suraj Pandit, D.W. 3 is Bhuneshwar Yadav and D.W. 4 is Dwarika Yadav.

8. The learned trial Court, on consideration of the materials on record, came to the conclusion that the prosecution has been able to prove the charge beyond all reasonable doubt and, as such, convicted both the accused aforementioned under Sections 302 read with Section 34 of the Indian Penal Code and sentenced them to suffer life imprisonment.

9. The convicted accused have challenged the judgment of their conviction and the order of sentence in this appeal. They submit that the *Post-mortem* report (Ext.-4) and *inquest report* (Ext.3) do not support the prosecution's case.

10. Learned counsel for the appellants submits that the prosecution case is based on evidence of P.W.2, P.W.3 and P.W.4. He submits that P.W. 2, at paragraph 8 of his evidence, has stated that when he reached at the place of occurrence, he saw that the deceased was lying dead on the



ground and he could not have, therefore, seen the assault on the said deceased. Learned Counsel for the appellants also submits that similarly, P.W. 3 has deposed that on hearing *halla*, he proceeded towards the place of occurrence and saw the appellants assaulting the said deceased from a distance of about 100 yards; whereas it is not possible to have seen the occurrence of assault from a distance of as long as 100 yards.

11. Learned counsel for the appellants argues that in view of their own statements, P.W. 2 and P.W. 3 could not have been held to be eye witnesses to the occurrence. The learned Counsel for the appellants further submits that P.W. 4, at paragraph 14, has deposed that when he reached at the place of occurrence, he saw his father was lying dead. On this basis, learned Counsel submits that P.W. 4, in such circumstances, cannot be said to be an eye witness to the occurrence.

12. On the other hand, Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing for the State, submits that it cannot be said that P.W. 4 was not an eye witness. In support of his submissions, he has referred to paragraph 1 of the deposition of P.W.4, wherein he has deposed that on hearing brawl between his father and the appellants, he, immediately, proceeded towards the place of occurrence and saw the accused persons assaulting his father and also saw

the accused persons pressing his father's neck with the help of *lathi*.

13. We have perused the materials on record and considered the submissions of the learned counsel for the parties. We find that the prosecution examined 07 witnesses in support of its case; out of which, P.W.2, P.W.3 and P.W. 4 have claimed to be eye witnesses. The Investigating Officer of the case has not been examined; rather, the signature of the Investigating Officer, on the written report and the F.I.R., has been queerly proved by the Pleader's Clerk so also the case diary. This is, indeed, a serious flaw in the conducting of trial by the prosecution.

14. We may also note that P.W. 2 has deposed that on the fateful day, he was at his house and heard *halla* that the said deceased was being assaulted by the accused persons, whereupon he proceeded towards the place of occurrence, where he saw the deceased lying dead. P.W. 2, at the best, in our considered view, as already indicated above, cannot be described as an eye witness.

15. P.W. 3, too, has deposed that he was present in his house at the time of occurrence, he heard *halla* that the deceased was being assaulted by two accused persons and, thereafter, he proceeded from his house and from a distance of 100 yards, he saw Churaman Tanti being assaulted, who,



subsequently, fell down and died due to the assaults. If the statement of P.W. 3 is to be believed, then, the logical inference would be that the deceased was repeatedly assaulted by the accused persons with *lathi*. This assertion of P.W. 3 is belied by doctor's evidence, *post mortem* report (Ext.4) as well as *inquest report*. The doctor did not find any *ante mortem* or *post mortem* injury on the person of the deceased except swelling on the frontal region of the neck. If a person is said to have been assaulted by two persons repeatedly by *lathis*, the inescapable inference has to be that he would sustain multiple injuries. Further-more, even the police, in the *inquest report*, did not find any injury on the person of the deceased save and except his swollen neck.

16. As against the findings recorded in the *post mortem report* and the *inquest report*, we, now, have the solitary evidence of P.W. 4 as an eye witness. There is no denial that in the case of conflict between ocular evidence and medical evidence, the former would prevail provided that the ocular witness is found to be so reliable that medical evidence can be brushed aside. This is not the position in the present case. P.W. 4 was not present, when the brawl took place between his father and the appellants. He has clearly deposed that on hearing *halla*, he proceeded towards the place of occurrence and saw the accused persons assaulting his father.

P.W. 4, in his earlier statement, did not state that the accused persons pressed the neck of his father with the aid of *lathi*. However, he, subsequently, in his deposition, has tried to improve the case by adding the aforesaid allegations, which are not borne out of either from the *post-report* or the inquest report.

17. In such circumstances, it is difficult to rely upon the solitary evidence of P.W. 4 to convict the accused-appellants under Section 302 read with Section 34 of the Indian Penal Code.

18. Situated thus, we are of the considered view that the prosecution has failed to prove the charge under Sections 302 read with Section 34 of the Indian Penal Code against the appellants beyond all reasonable doubts. At any rate, the accused-appellants ought to have been accorded, at least, benefit of reasonable doubt.

In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellants and the sentence passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offence, which they stand convicted of, and they are hereby acquitted of the same under benefit of doubt.

19. Hence, the impugned order of conviction is set

aside and the accused-appellants are hereby acquitted of the charges framed against them. Consequently, the impugned sentence passed against them shall also stand set aside.

20. The appellants are already on bail. Their bail bonds are hereby cancelled and their sureties shall stand discharged.

21. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J.)

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(Samarendra Pratap Singh, J.)

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