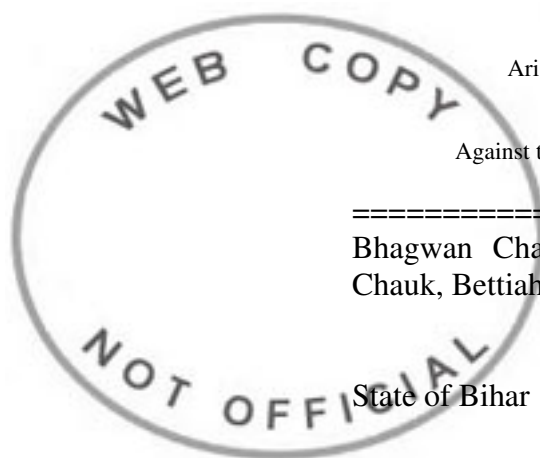




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.435 of 1991

Arising Out of Bettiah Town PS.Case No. 290 Year- 1984 Thana –Bettiah Town District-
WESTCHAMPARAN (BETTIAH)

Against the judgment dated 09.10.1991 passed by learned 2nd Additional Sessions Judge, Bettiah in
Sessions Trial No. 119 of 1987.

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Bhagwan Chaturvedi, son of Sri Hari Narayan Chaturvedi, Mohalla-Gaishlal
Chauk, Bettiah, P.S.Bettiah, District West Champaran.

.... Appellant

Versus

State of Bihar

.... Respondent

with

=====

Criminal Appeal (DB) No. 446 of 1991

Arising Out of Bettiah Town PS.Case No. 290 Year- 1984 Thana –Bettiah Town District-
WESTCHAMPARAN (BETTIAH)

Against the judgment dated 09.10.1991 passed by learned 2nd Additional Sessions Judge, Bettiah in
Sessions Trial No. 119 of 1987.

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Ranvijay Kumar Yadav @ Ran Vijay Yadav, son of Sri Wakil Prasad Yadav,
resident of Mohalla Professors Colony, Near Ram Lakhan Singh Yadav College,
P.O. and Police Station Bettiah, District West Chamapran.

.... Appellant

Versus

State of Bihar

.... Respondent

with

=====

Criminal Appeal (DB) No. 456 of 1991

Arising Out of Bettiah Town PS.Case No. 290 Year- 1984 Thana –Bettiah Town District-
WESTCHAMPARAN (BETTIAH)

Against the judgment dated 09.10.1991 passed by learned 2nd Additional Sessions Judge, Bettiah in
Sessions Trial No. 119 of 1987.

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Sampat Lal @ Samapat Lal Patwa, son of Late Chunnilal Patwa, resident of
Mohalla-Bulaki Singh Chak, Police Station-Bettiah Town, District West
Champaran

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance:**(In CR. APP (DB) No. 435 of 1991)**

For the Appellant : Mr. Biny Kant Manti Tripathi, Advocate
 Mr. Rakesh Kumar Sinha, Advocate
 Mr. Aaruni Singh, Advocate

For the Respondent : Dr. Mayanand Jha, APP

(In CR. APP (DB) No. 446 of 1991)

For the Appellant : Mr. Biny Kant Manti Tripathi, Advocate
 Mr. Rakesh Kumar Sinha, Advocate
 Mr. Aaruni Singh, Advocate

For the Respondent : Dr. Mayanand Jha, APP

(In CR. APP (DB) No. 456 of 1991)

For the Appellant : Mr. Biny Kant Manti Tripathi, Advocate
 Mr. Rakesh Kumar Sinha, Advocate
 Mr. Aaruni Singh, Advocate

For the Respondent : Dr. Mayanand Jha, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 12-02-2015

These three appeals arise out of the judgment dated 09.10.1991 rendered by the learned Court of IInd Additional Sessions Judge, Bettiah in Sessions Trial No. 119 of 1987. Each of the appellants figured as accused in the said case. Apart from them one Ramesh Kurmi who was also tried in the case and he filed Criminal Appeal (DB) No. 449 of 1991. Since he died during the pendency of the appeal, it was dismissed as abated.

All the appellants were tried for the offences punishable under Section 302/149 of the Indian Penal Code. The allegation



against them was that, they committed murder of one Raj Kumar Mahto at 12.00 Noon on 30.08.1984. The trial Court convicted them for the offences punishable under Section 302 read with Section 149 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life with a fine of Rs.1,000/- each and in default of payment thereof they were directed to undergo rigorous imprisonment for six months.

The case against the accused appellants started with the recording of statement from one Sri Rajat Kanti Banerjee, PW5. He has stated that after taking lunch on 30.08.1984 he proceeded to the house of Feroz Ahmad, PW1 and both of them went to the house of the deceased Raj Kumar Mahto. All the three are said to have gone to the cycle shop of Gurjeet Singh, PW3. He further stated that their common friend Ajay Kumar Gupta, PW2 came from Bombay at that time and all the four, who assembled at cycle shop went to the house of PW2 mainly with a view to collect the stickers. After spending some time at the house of PW2, PW5, PW1 and the deceased are said to have disbursed.

PW5 further stated that by the time they were about to disburse all the accused and some other persons waiting on the other side of the road, called the deceased towards them, and when the deceased proceeded to them, Sampat Lall, A2 caught hold of the deceased Raj Kumar Mahto and Ran Vijay Yadav, A1



gave a blow with a knife on Mahto. The other two accused were said to be standing nearby. He further stated that PW3, Gurjeet Singh tried to chase some of the assailants, but was not successful. The deceased Raj Kumar Mahto said to have run upto some distance but fell down with the severe injuries. PW5 is said to have taken Mahto to hospital in rickshaw. At the hospital the Doctor is said to have declared Mahto as dead. The statement is said to have been recorded from PW5 by the PW7, the Investigating Officer.

The PW7 completed the steps such as, conducting of inquest and post mortem and on completion of the investigation and filed a charge sheet alleging that all the four accused attacked the deceased with a common intention, and caused his death.

Before the trial Court, PWs 1 to 7 were examined and exhibits 1 to 7 were filed. On behalf of the accused, DWs 1 to 4 were examined. The result of the case has already been indicated in preceding paragraphs.

Sri Binay Kant Mani Tripathi, learned counsel for the appellants submits that there was absolutely no evidence to convict the appellants. He further submits that not even a single member of the family of the deceased has neither complained or has deposed as witness in the case and the manner in which the information about the death of the deceased came his notice was



not stated by the Investigating Officer, PW7. He submits that suggestions were made to PW5, the informant, that the father of the deceased gave a complaint against him stating that PW5 and another committed offence punishable under Section 302 of the Indian Penal Code and thereby the evidence of PW5 cannot be relied upon.

Learned Counsel for the appellants further submits that though Gurjeet Singh, PW3 was examined as an injured witness, he did not support the case of the prosecution and there is virtually nothing to connect the incident with the appellants. Another contention of the learned counsel is that the gathering of the deceased, PW1, PW3 and PW5 is said to have taken place in the house of PW2 and they are said to have spent considerable time there, and though the incident is said to have been taken place soon after they left the house of PW2, the prosecution got PW2 declared as hostile. Learned counsel for the appellants submits that the prosecution did not indicate any motive to the appellants even in a remote sense and the judgment of the trial Court deserves to be set aside.

Dr. Mayanand Jha, learned Additional Public Prosecutor on the other hand submits that though PW2 and PW3 turned hostile the evidence of PW5, the informant is consistent throughout and coupled with the evidence of PW7 the involvement of the appellants in the murder of the deceased is

proved. He contends that mere non-examination of the family members of the deceased is not fatal and that the various aspects pointed out by the learned counsel for the appellants are trivial in nature.

The incident, leading to the death of the deceased Raj Kumar Mahto is said to have taken place right at mid-day. From the record it appears that almost all the Prosecution Witnesses and the accused are of same age group of 16-20 years and they were students of different institutions at that place. The Fardbeyan was recorded from PW5. It is not the case where an eye witness or a close relation of the deceased approached any police official, offering to furnish information. PW7 stated that he received an Outdoor Patient slip from the hospital and when he proceeded to the hospital, PW5 was waiting nearby the dead body of the deceased. He stated that he did not verify as to under what circumstances PW5 accompanied the deceased.

If an incident of death, that too of a student takes place any person who notices it would inform the same to the parents of the deceased. It is not the case of PW5 that he is a stranger to the deceased. Even according to him he went to the house of the deceased and took him to the shop of PW3 and thereafter to the house of PW2. If the murder has taken place right in the presence of PW5 the first thing expected of him is that he should have informed the incident to the parents and family members



of the deceased. To a specific question in the cross examination, in this behalf, he stated that he did not inform anyone, about the incident. Another important aspect is that the father of the deceased was very much in the Court during the trial and the prosecution did not explain as to why he was not examined as a witness or that his statement was not recorded during the investigation. These are certainly important aspects which would weaken the case of the prosecution.

PW3 is projected as an injured witness. It is fairly well known that the evidence of an injured witness is more significant and commands greater acceptance, compared to that of ordinary witness. PW5 stated that PW3 chased some of the assailants after the occurrence and during the process PW3 received injuries. However, PW3 was declared hostile by the Court, at the instance of the prosecution.

Prelude to the murder of the deceased was said to be gathering of the deceased, PW1, PW3 and PW5 at the house of PW2. The truth of the gathering would have been certainly a factor to be taken note off, as an event immediately preceding the occurrence. However, the evidence of PW2 was totally disbelieved. Thereby the very theory that PW1, PW3 and PW5 met at the place of PW2, remains not proved.

The act or commission leading to injury or death of a person would take place if only there existed some motive



behind it. In certain cases the motive may not be clear and consistent. All the same a motive must exist in a criminal case. It is a different matter that in certain cases the prosecution may not be able to substantiate the motive. Many a time mere assertion of motive by the prosecution could be treated as sufficient. In the instant case, however, neither PW5 nor PW7, much less any other witness, have spoken even a word about the motive for the appellants to cause any harm to Raj Kumar Mahto, the deceased. Though this could be a sole basis to set aside the conviction or punishment, it would certainly constitute an important factor.

A specific suggestion was made to PW5 that he figured as an accused, in a complaint submitted by the father of the deceased alleging offences punishable under Section 302 of the Indian Penal Code. Another suggestion was that the father of one of the appellants i.e. Ran Vijay Yadav was a Principal of an Institution and he dismissed a Lecturer by name Mankeshwar Prasad Singh and the said Mankeshwar Prasad Singh was a tutor of PW5. The witness was not able to explain this important circumstance.

The cumulative effect of our discussion is that the prosecution has miserably failed to provide any link between the death of the deceased Raj Kumar Mahto and the appellants.

Therefore, the appeals are allowed. We set aside the

conviction and sentence ordered against all the appellants. The appellants were released on bail during the pendency of these appeals. They are discharged from the liabilities of their bail bonds.

(L. Narasimha Reddy,CJ)

(Vikash Jain, J)

A.F.R

Chandran/Md.Ibrarul

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