

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.502 of 1993

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(AGAINST THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE, DATED 16TH OCTOBER, 1993, PASSED BY SHRI ASHIM KUMAR DUTTA, 7TH ADDITIONAL SESSIONS JUDGE, MUNGER, IN SESSIONS CASE NO. 36 OF 1988, ARISING OUT OF MUFFASIL POLICE STATION CASE NO.244 OF 1986.)

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1. Jyotish Mandal, S/o. late Suresh Mandal,
 2. Inderdeo Mandal, S/o. late Meto Mandal,
 3. Mantoo Mandal, S/o. Sri Khantar Mandal,
 4. Garib Mandal, S/o. late Manik Mandal,
- All resident of village Sita Kunddih, Police Station- Mufasil, District- Munger.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rakesh Kumar Sinha, Advocate.
Mr. Sunil Kumar Mandal, Advocate.

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

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

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

Date: 12-03-2015

Under the judgment, dated 16.10.1993, passed, in Sessions Trial No. 36 of 1988, by learned 7th Additional Sessions Judge, Munger, the appellants, Jyotish Mandal, Inderdeo Mandal, Garib Mandal and Mantoo Mandal, stand convicted under Section 302 read with Section 34 of the Indian Penal Code. Following their conviction, the accused-appellants have been sentenced to suffer imprisonment for life.

2. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:

(i) On 30.07.1986, at about 06.00 PM, while informant (PW 6) was sitting on the roof of her house, she saw her husband, Bipin Mandal (since deceased), running through the field and he was being chased by accused Jyotish Mandal, Inderdeo Mandal, Garib Mandal and Mantoo Mandal and when Bipin Mandal reached near *Waisa Pahar* (hillock), all the said four accused persons threw Bipin Mandal to the ground and assaulted him by means of *lathis* and also threw stones on his head. Seeing her husband, Bipin Mandal, being so mercilessly assaulted, PW 6 (Yasoda Devi) raised hue and cry and ran towards the mountain. Attracted by the *hulla*, which she had raised, some of her co-villagers, too, pushed to place of occurrence. On reaching the place of occurrence, when PW 6 tried to lift her husband, she found that he was already dead, because of the injuries sustained at the hands of the accused aforementioned.

(ii) The dead-body of Bipin Mandal was, then, carried to his house and police were informed. When police reached the house of the deceased, statement of his wife, i.e., PW 6, was recorded and

treating the same as First Information Report, Muffasil Police Station Case No. 244 of 1986, under Sections 302/34 of the Indian Penal Code, was registered against the accused persons, namely, Jyotish Mandal, Inderdeo Mandal, Garib Mandal and Mantoo Mandal.

3. During investigation, inquest was held over Bipin Mandal's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, *charge sheet* was laid, under Section 302/34 of the Indian Penal Code, against four accused persons.

4. At the trial, when a charge, under section 302 read with Section 34 of the Indian Penal Code, was framed against four accused persons, namely, Jyotish Mandal, Inderdeo Mandal, Garib Mandal and Mantoo Mandal, they all pleaded not guilty thereto.

5. In support of their case, prosecution examined altogether 7 (seven) witnesses. Accused were, then, examined under Section 313(1)(b) of the Code of Criminal Procedure and, in their examinations aforementioned, all 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. No evidence was adduced by the defence.

6. Having, however, arrived at the finding that accused-appellants, Jyotish Mandal, Inderdeo Mandal, Garib Mandal and Mantoo Mandal, had been proved guilty of the charge under Section 302 read with Section 34 of the Indian Penal Code, the learned trial Court convicted them accordingly. Following their conviction, sentence has been passed against the convicted persons as mentioned above.

7. Aggrieved by their conviction and the sentence passed against them, all the convicted persons have preferred this appeal.

8. We have heard Mr. Rakesh Kumar Sinha, learned Counsel, appearing on behalf of the appellants, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

9. Before we come to the ocular evidence on record, we deem it fit to take note of the medical evidence adduced by the prosecution. We notice that according to the evidence of Dr. Pramod Bihari Lal (PW 7), who had, admittedly, conducted, on 31.07.1986, at about 10.00 AM, *post mortem* examination on the dead body of Bipin Mandal, he found following *ante mortem* injuries on the said dead body:

"(i) Lacerated wound measuring 2" x 3/4"

x bone deep situated $1\frac{1}{2}$ " above left eyebrow;

(ii) Diffuse swelling on the lateral aspect of left leg just below the knee measuring 3" x 2";

On dissection of injury No.i, the frontal lobe was found fractured and blood clots were found present under the injured part of the skull on the surface of the bone.

On further dissection, the meninges were found lacerated with blood clots present on the surface of the meninges and on the surface of the brain.

On dissection of brain, dark blood found present.

On dissection of injury No.(ii), haematoma was found present."

10. In the opinion of the doctor, cause of death was shock and haemorrhage inside the brain as a result of injury No. (i), which was caused by hard and blunt substance, such as, brickbat and pieces of stones. In the opinion of doctor (PW 7), injury No.(i) was sufficient to cause death in the ordinary course of nature,

time elapsed since death being within 24 hours.

11. In the light of the medical evidence on record, which discloses only one major injury, i.e., fracture of the frontal bone and defused swelling on the lateral aspect of the left leg, when we turn to the evidence of PW 6 (Yasoda Devi), wife of the deceased, who has been treated as informant of the case, we notice that according to her evidence, the occurrence took place at about 6.00 PM, when she was sitting in her house. She initially claimed that she had seen four accused persons, namely, Jyotish Mandal, Inderdeo Mandal, Garib Mandal and Mantoo Mandal, assaulting her husband by means of stone and stick near *Waisa Pahar*, she has, in the same breathe, deposed that, she could not see the assailants clearly due to darkness.

12. On the basis of the evidence of PW 6, it, therefore, could not be confidently held that she had seen the present accused-appellants assaulting her husband.

13. In tune with the evidence of PW 6, PW 2 has deposed that on hearing *hulla*, he rushed towards the place of occurrence and he found some persons assaulting a person, but he could not see their faces and could not, therefore, recognize the assailants. So far as

PWs 4 and 5 are concerned, their evidence do not improve the case of the prosecution inasmuch as their evidence, too, showed that they had not been able to recognize the persons, who had been assaulting the husband of PW 6.

14. As far as PW 3 is concerned, he is merely scribe of the First Information Report, which has been proved as Exhibit-2.

15. Thus, we are left with the evidence of PW 2, whose evidence, we find, is that on the day of occurrence he was present in his house and he came out of his house, on being attracted by the *hulla* raised by the wife of deceased that murder had taken place and saw Yasoda Devi (PW 6) crying and running towards *Wiasa Pahar* and he (PW 2), too, then, ran in the same direction and found the four accused persons, namely, Jyotish Mandal, Inderdeo Mandal, Garib Mandal and Mantoo Mandal, assaulting Bipin Mandal by means of *lathis* and also pelting stones on him and when he reached the place of occurrence, all the accused persons had fled away.

16. If the description of the occurrence given by PW 2 were true, the said deceased would have sustained multiple injuries on his body; whereas the medical evidence, on record, shows that he sustained

only two injuries, one being, as already pointed out above, diffuse swelling on the lateral aspect of the left leg and the other one, which proved fatal, was a lacerated wound, measuring 2" x 3" x bone deep, situated 1^{1/2}" above left eyebrow on the scalp and, on dissection, this injury revealed fracture of the frontal lobe.

17. What, thus, crystallizes from the above discussion is that the description of the occurrence, given by PW 2, is completely belied by the medical evidence on record and as far as the other witnesses, including the widow of the said deceased, are concerned, their evidence do not implicate the accused-appellants.

18. Situated thus, it becomes clear that in the light of the evidence, which had been adduced by the prosecution, the accused-appellants ought to have been acquitted.

19. At any rate, in the light of the nature of the evidence on record, the prosecution could not have been held, and ought not to have been held, to have proved their case beyond reasonable doubt against the accused appellants. Consequently, the accused-appellants deserved to be acquitted.

20. Situated thus, we are clearly of the view that in the facts and attending circumstances of the

present case, the accused-appellants ought to be acquitted.

21. 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.

22. Since the accused-appellants are on bail, their bail bonds are hereby cancelled and their sureties shall stand discharged.

23. 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.)

(Gopal Prasad, J.)

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