

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.492 of 1993

With

Criminal Appeal (DB) No. 511 of 1993

(AGAINST THE JUDGMENT OF CONVICTION AND THE ORDER OF SENTENCE, DATED 30.09.1993, PASSED BY SHRI SADANAND MUKHERJEE, ADDITIONAL SESSIONS JUDGE II, BARH IN SESSIONS TRIAL NO. 308 OF 1988, ARISING OUT OF BAKHTIARPUR POLICE STATION CASE NO.192 OF 1987.)

1. Sami Mahto @ Sani Mahto son of Bisa Mahto
2. Paras Mahto son of Sani Mahto,
Residents of village (Haranahiya) Bariarpur Police Station Bakhtiyarpur,
District Patna

--- --Appellants (**In Criminal Appeal (DB) No. 492 of 1993**)

WITH

1. Jugal Mahto son of Dhodha Mahto
2. Lal Babu Mahto son of Dhodha Mahto
3. Sakaldeo Mahto son of Jago Mahto
4. Parichhan Mahto son of Jago Mahto
Residents of village (Harnahiya) Bariarpur Police Station Bakhtiyarpur,
District Patna

---- ---Appellants (**In Criminal Appeal No.511 of 1993**)

Versus

The State of Bihar

---- ---Respondent (**In both the Appeals**)

Appearance:

(In CR. APP (DB) No. 492 of 1993)

For the Appellants : Mr. Bharat Lal (Amicus Curiae)

For the Respondent: Mr. Ajay Mishra, APP

(In CR. APP (DB) No. 511 of 1993)

For the Appellants : Mr. Surendra Prasad Singh, Advocate

Mrs. Soni Srivastava (Amicus Curiae)

For the Respondent: Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

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

Date: 18-03-2015



By this common judgment and order, we propose to dispose of Criminal Appeal (DB) Nos. 492 and 511 of 1993, which have arisen out of the judgment and order, dated 30th September, 1993, passed in Sessions Trial No. 308 of 1988, by the learned Additional Sessions Judge II, Barh, convicting all the accused-appellants under Sections 302 read with Section 149 of the Indian Penal Code and also convicting the appellants, Sami Mahto @ Sani Mahto and Parikshan Mahto, under Section 324 of the Indian Penal Code, and, further convicting the appellants, Jugal Mahto, Sakal Mahto and Lal Babu Mahto, under Section 323 of the Indian Penal Code. Following their conviction, under Sections 302 read with 149 of the Indian Penal Code, all the accused-appellants have been sentenced to suffer imprisonment for life. For their conviction under Section 324 of the Indian Penal Code, the accused-appellants, Sani Mahto @ Sami Mahto and Parikshan Mahto, have been sentenced to undergo rigorous imprisonment for six months each. For their conviction under Section 323 of the Indian Penal Code, the accused-appellants, namely, Jugal Mahto, Sakal Mahto and Lal Babu Mahto, have been sentenced to undergo rigorous imprisonment for a period of six months each. However, all the sentences have been directed to run concurrently.

2. The case of the prosecution, as unfolded by

the First Information Report, may, in brief, be described thus:

(i) On 7.10.1987, at about 6.30 PM, Bhagwati Devi, mother of Ramroop Mahto (PW 5), went to the house of accused Paras Mahto demanding return of Rs.200/- from the accused Paras Mahto, who had taken loan of the said amount from her. The demand, so made, gave rise to an altercation between Bhagwati Devi and accused Paras Mahto. Following the altercation, accused Paras Mahto fetched a *farsa* (a sharp-edged weapon) from his house and gave a blow with the same on the head of Bhagwati Devi. On receiving the blow, Bhagwati Devi fell down. On seeing the assault on his mother (Bhagwati Devi), the informant, Ramroop Mahto (PW 5), and his brother, Bindeshwar Mahto (PW 3), went to rescue their mother; but on seeing their coming, accused Sami Mahto and Parikshan Mahto assaulted the informant's brother, Bindeshwar Mahto (PW 3), by means of a *saif* (a pointed weapon) and accused Lal Babu Mahto assaulted the informant (PW 5) by means of a *lathi*. On *hulla* being raised, Dahur Mahto (PW 2) and others, namely, Mughal Mahto and Sakal Mahto, came rushing to the place of occurrence with *lathis* in their hands and before the police arrived at the place of occurrence, accused Jugal Mahto and accused Sakal Mahto gave multiple blows on the person of the informant (PW 5), his mother, Bhagwati Devi, and Kuseswar Mahto (PW 1) causing

injuries on their persons. While seriously injured Bhagwati Devi was carried at Bakhtiyarpur Police Station, PW 5(Ramroop Mahto) orally informed police about the occurrence and the version of the occurrence, so reported by PW 5, was reduced into writing in the form of his *fardbeyan* (Exhibit 3).

(ii) Treating the said *fardbeyan* as First Information Report, Bakhtiyarpur Police Station Case No. 192 of 1987, under Sections 347/307/324/323/34 of the Indian Penal Code, was registered against accused Paras Mahto, Sami Mahto, Parikshan Mahto, Lal Babu Mahto, Jugal Mahto and Sakal Mahto.

3. During the course of investigation, injured Bhagwati Devi was treated by the doctor at Nalanda Medical College and Hospital. However, on being discharged from the hospital, Bhagwati Devi died and Section 302 of the Indian Penal Code was also added to the other penal provisions of the case against the accused-appellants. *Inquest* was held on Bhagwati Devi's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, a *charge sheet* was laid, under Sections 323/324/307/302/34 of the Indian Penal Code, against the accused-appellants aforementioned.

4. In support of their case, prosecution examined altogether 7 (seven) witnesses. The accused



persons were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, the accused persons denied that they had committed the offences, which they were alleged to have committed, their case being that of denial and an assertion that the informant, accompanied by his mother and other prosecution witnesses, had assaulted the accused persons and, then, falsely implicated them in the present case. In support of their case, the defence adduced evidence by examining two witnesses. The learned trial Court, too, examined one witness as a Court witness.

5. Having, however, arrived at the finding that accused-appellants, Paras Mahto, Sami Mahto @ Sani Mahto, Parikshan Mahto, Lal Babu Mahto, Jugal Mahto and Sakal Mahto, had been proved guilty of the *charge* under Section 302 read with Section 149 of the Indian Penal Code and, further, accused-appellants, Sami Mahto @ Sani Mahto and Parikshan Mahto, had been proved guilty of commission of offence, under Section 324 of the Indian Penal Code and that the accused-appellants, Jugal Mahto, Lal Babu Mahto and Sakal Mahto, had been proved guilty of commission of offence under Section 323 of the Indian Penal Code, the learned trial Court convicted them accordingly. Following their conviction, sentences have been passed against the convicted persons as

already mentioned above.

6. Aggrieved by their conviction and the sentences passed against them, all the accused, as convicted persons, have preferred these two appeals.

7. While Criminal Appeal (DB) No. 492 of 1993 has been preferred by the accused-appellants, Paras Mahto and Sami Mahto, Criminal Appeal (DB) No. 511 of 1993 has been preferred by Parikshan Mahto, Lal Babu Mahto, Jugal Mahto and Sakal Mahto.

8. As both these appeals have arisen out of the judgment and order, dated 30.09.1993, passed, in Sessions Trial Case No. 308 of 1988, by the learned Additional Sessions Judge-II, Barh, Patna, we propose to dispose of both these appeals by this common judgment and order.

9. We have heard Mr. Bharat Lal and Ms. Soni Shrivastava, learned counsel, appearing as *Amicus Curiae* in the appeals. We have also heard Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

10. While considering the present appeal, it needs to be kept in view, as already indicated above, that the case of the defence is that the informant and the members of his family were aggressors, they had assaulted the accused persons, some of whom suffered serious injuries.

11. Because of the nature of the defence,



which has taken, at their trial, by the accused-appellants, it follows that the defence admits that an occurrence had taken place. However, while it is the contention of the defence that the informant and members of his family were the aggressors as indicated hereinbefore, the prosecution asserts that the accused-appellants were the ones, who were aggressors and assaulted the injured informant, his mother and others and as a result of the said assaults, Bhagwati Devi lost her life.

12. What is, however, necessary to note is that since it is the duty of the prosecution to prove its case beyond reasonable doubt, it logically follows that the prosecution has the duty to explain — if the Court finds that in the same occurrence, wherein Bhagirathi Devi suffered injuries, some of the accused-appellants and/or their family members, too, had received injuries — how the injuries were caused to the accused persons, particularly, if the injuries were not founded to be self-inflicted or is not to be superficial.

13. In other words, the prosecution cannot be allowed to present before the Court a colourized version of the occurrence or a description of the occurrence, which is found to be an admixture of half-truth and untruth and yet demand conviction of an accused.

14. Bearing, therefore, in mind the nature of duty, which prosecution is required to discharge in a criminal

case, let us, first, come to the evidence of doctor (PW 6), who has, admittedly, performed *post mortem* examination on the dead body of Bhagirathi Devi.

15. According to the evidence of Dr. Sushil Kumar Rungta (PW 6), on 21.10.1987, at about 4.00 AM, he performed *post mortem* examination on the dead body of Bhagwati Devi and found following *ante mortem* on the dead body of Bhagwati Devi:

"(i) *Surgical Bandage present over scalp, which were removed;*

(ii) On removal of bandage one would 2"x1/4" size was found on right frontal region of which posterior 1^{1/2}" was freshly heal and anterior 1/2" size was having slough and infection present over it.

On dissection, blood clots were seen in the layers of scalp. In the right frontal area measuring 3"x1" and anteriorly some sloughs was present into 1/2" x 1/2" area. Fracture of frontal bone was present extending from superior orbital margin to near the posterior boarder of frontal bone. Fracture line was covered by multiple tiny blood clots. Multiple fracture of both greater rings of sphenoid bone

was present. Blood clots were present in 3"x 2 1/2" area in extra dural area and pectoral area in right frontal area of brain. Causing depression of frontal area of brain measuring 2"x1" area and also under surface of right frontal area of brain measuring 1"x1";

(iii) On further dissection all internal organs were slightly pale. Both right and left chambers of heart were empty. Stomach contain 100 to 200 ml. of brown colour fluid with partially digested food particles intestine contains faecal matters and guess. Bladder empty. Uterus and its appendixes N.A.D."

16. In the opinion of the doctor (P.W. 6), the death was caused due to injuries, which had led to *intra cranial hemorrhage* and *infection*. It is also in the opinion of the doctor that the injuries, on the head, could have been caused by a sharp-edged weapon like *farsa*. However, in his cross-examination, the doctor (PW 6) has clarified that the injuries could have been caused by a hard and blunt substance or by a sharp-edged weapon.

17. Coupled with the above, it is imperative to note that according to the evidence of PWs 1, 3, 4 and 5, Bhagwati Devi died after about 12 days of the occurrence. In



fact, it has explicitly come in the evidence of PW 5 (Ramroop Mahto) that the said deceased remained in the hospital for 12 days and she died after her discharge from the hospital. Moreover, the doctor (PW 6) has clearly given in his evidence, as already indicated above, that on removal of bandage, he found one wound, measuring 2" x ¼", on right frontal region of which posterior 1½" was freshly healed and anterior ½" size was having slough and *infection* was present over it.

18. From the evidence on record, which we have pointed out above, it becomes more than apparent that it is not *intra cranial hemorrhage* alone, which had caused the death of Bhagwati Devi; rather *infection* resulted into her death.

19. Situated thus, it is not only difficult but impossible to hold that Bhagwati Devi died, because of the injuries, which she had sustained.

20. In the face of the fact that *infection* of the injuries sustained by the said deceased became the cause of her death, we are clearly of the view that no charge, under Section 302 of the Indian Penal Code, could have been framed against the accused-appellants and none of them could have convicted for the offence of murder, when there was no firm evidence that death of Bhagwati Devi was caused, because of the injuries sustained by the accused persons and not for any

other cause or factor, such as, *infection*.

21. In the backdrop of what have been discussed above, let us, now, look into the remaining evidence on record to determine if the prosecution has proved that it was at the house of the informant that the occurrence of assault on Bhagwati Devi and others had taken place. In this regard, we notice that according to the evidence of PW 3, the occurrence had taken place outside his house at its *verandah*, whereas PW 4 has claimed, in her evidence, that all were assaulted at the door of her house. Belying the evidence of PW 3 and PW 4, PW 5 has asserted that the occurrence took place at the field of Ramroop Mahto near the house of Ram Naresh and contradicting the assertions of PW 3, PW 4 and PW 5, PW 7 (Investigating Officer) has deposed that the place of occurrence was an open field situated in front of the house of the informant.

22. Thus, while according to the evidence of PW 3, the occurrence took place at the verandah of the house, PW 4 (Dahuni Devi) claims that the occurrence took place at the door of her house. Contradicting the evidence of PW 3 and PW 4, PW 5 (Ramroop Mahto) has deposed that the assault had taken place in the field of Ramroop Mahto located near the house of Ram Naresh, whereas belying not only PW 5, but also PW 3 and PW 4, the Investigating Officer has asserted that he

found blood in the field of Ram Naresh.

23. Though one could have, perhaps, ignored the failure of the prosecution to prove clearly the place of occurrence by giving the prosecution witnesses benefit of their perceptual error, what cannot be ignored is that the occurrence did not, admittedly, take place inside the house of the informant and though there are houses close by the house of the informant, not a single witness has been brought from the neighbourhood, who could have described the occurrence as an independent witness inasmuch as PWs 1, 2, 3, 4 and 5 are all members of the same family and while, on the one hand, some of them, such as, PW 1 claimed that the assault had taken place at the door of his house, PW 2 (Dahur Mahto) has deposed that the said deceased was *chased* and, then, assaulted at the house of the deceased. If the deceased had gone to the house of the accused-appellants demanding money and the accused came out of his house and assaulted the said deceased by means of a *farsa* as was sought to be made out by the informant in the First Information Report as well as in his evidence, the question of *chasing* the said deceased and the said deceased rushing to the field of Ram Naresh would not have arisen. However, even PW 4 (Dahuni Devi) has deposed that the deceased was *chased* and assaulted.



24. Thus, the infirmity in describing the place of occurrence by prosecution witnesses cannot be lightly brushed aside. This apart, we cannot ignore the fact that the said deceased and the members of her family were not the only ones, who had received injuries, but we find from the evidence on record that even the members of the family of the accused had, according to the evidence on record, suffered injuries. In fact, it was specifically suggested to PW 1 that his family were aggressors and though this suggestion has been denied by PW 1 (Kuseshwar Mahto), he admits that he is an accused in a counter case. Similarly, PW 2 (Dahur Mahto) admits that accused Parikshan Mahto also sustained injuries by means of a *saif* (a pointed weapon). However, PW 3 (Bindeshwar Mahto) denies that any injuries to the accused were caused and so is the evidence of PW 4 (Dahuni Devi), who has claimed that no assault had taken place on the accused and none of them was injured. No different is the evidence of PW 5 (Ramroop Mahto) inasmuch as we find that he (PW 5), too, has claimed that he did not notice any assault taking place on Aklu Mahto, Kameshwar Mahto and Sami Mahto.

25. Contrary to what the prosecution witnesses had claimed asserting that the accused and their family members were not assaulted and no injury had been caused to

them, the evidence, which has come on record, from the sole Court Witness, namely, Dr. Jay Kumar Singh, is that he, on examining Smt. Bhagwati Devi, on 08.10.1987, at 1.45 A.M, at B.K.P. State Dispensary, found the following injuries:

"Incised wound 1¹/₂"x ¼"x1/4" with swelling on upper part of head. Opinion reserved till X-ray. Patient referred to surgical emergency Patna Medical College and Hospital. Caused by sharp edged substance such as farsa."

26. On the same day i.e., 08.10.1987, at 3.00 AM, the doctor (CW 1) examined injured Ramroop Mahto, son of Akalu Mahto, and found following injuries:

"Lacerated wound measuring 2"x1/4"x1/4" on the upper part of head. Simple in nature, caused by hard and blunt substance, such as, lathi."

27. On the same day i.e., 08.10.1987, at 1.30 AM, the doctor (CW 1) examined Kuseswar Mahto, son of Akalu Mahto, and found following injuries:

"(i) Penetrating wound ¾"x1/4"x2" on upper end of outer media part of left arm with swelling on upper part of left side of chest;

(ii) Bruise 1"x1/2" on posterior part of right wrist;

(iii) Bruise 2" x 1" on left side of back;"

28. It is also in the evidence of the doctor (CW

1) that the patient was referred to surgical emergency Patna Medical College and Hospital.

29. In his evidence, the doctor (CW 1) has clarified that the injured Kameshwar Mahto, son of Akalu Mahto was examined on the basis of reference made by the police and found following injuries:

"(i) Incised wound 2¹/₄" x 1/4" x 1/4" on the right lateral part of chest;

(ii) Incised wound 1" x 1/4" x 1/4" on posterior part of right wrist;

(iii) Bruise 2" x 1" on right side of back;

(iv) Bruise 1¹/₂" x 1/2" on lateral part of right leg;"

30. On the same day i.e., 08.10.1987, at 2.15 AM, the doctor (CW 1) examined Akalu Mahto and found following injuries:

"(i) Incised wound 1" x 1/4" x 1/4" on upper and interior part of left thigh;

(ii) Bruise 2" x 1" with swelling on dorsal part of left hand."

31. What crystallizes from the above discussion is that though the prosecution alleges that the occurrence took place at the house of the deceased and asserts that none from the accused persons was assaulted or injured, injuries, caused by sharp cutting weapons, have been found on the person of the accused and the members of their family and the place of occurrence, too, has not been consistently described.



32. In the circumstances indicated above, this Court has no option, but to hold, and we do hold, that the prosecution witnesses have suppressed the truth from the Court and have given, if not wholly, a colorized version of the occurrence. This interference gets reinforced from the fact that according to the evidence of doctor (PW 6), the injury caused to Bhagwati Devi was on the right frontal region of her head, whereas the evidence of PWs 2, 4 and 5 have deposed that the said deceased was assaulted from behind. On no aspect of their case, therefore, the prosecution has failed to give consistent, coherent and reliable evidence.

33. What logically follows from the above discussion is that the evidence on record was not such, which could have enabled the Court come to firm conclusion as to how the occurrence had taken place, who was or were the aggressor or aggressors and who was or were the victim or victims. When the prosecution itself has presented before the Court more than two different versions of the occurrence, the learned trial Court could not have, ignoring the inconsistencies with which the entire case of the prosecution suffered from, held the accused-appellants guilty beyond reasonable doubt.

34. At any rate, therefore, in the light of the evidence on record, the accused-appellants deserved to be accorded, at least, benefit of doubt.

35. In the result and for the forgoing reasons, we allow these two appeals. The impugned conviction of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offences, which they stand convicted of, and they are hereby acquitted of the same under benefit of doubt.

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

37. Let the *Amicus Curiae* be paid a fee of Rs.5000/- each.

38. 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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