

Criminal Appeal (DB) No 365 of 1992

Against the judgment of conviction dated 05.08.1992 and order of sentence dated 07.08.1992 passed by Shri J P Paul, Additional Sessions Judge I, Madhubani in Sessions Trial No 23 of 1984/31 of 1988.

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1 Suresh Thakur
2 Ratneshwar Thakur
3 Hira Thakur
4 Musharu Thakur @ Mahendra Sharma @ Mahendra Thakur, sons of Bahru Thakur, residents of Village – Basuara, PS – Madhubani, District - Madhubani
..... Appellant/s

Versus

State of Bihar

..... Respondent/s

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For the Appellant/s : Mr Neeraj Kumar @ Sanidh (Amicus Curiae)

For the State : Mr Ajay Mishra, APP

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

The four appellants were found guilty of offence punishable under Sections 302/34 of Indian Penal Code (IPC) and having been sentenced to imprisonment for life by the Additional Sessions Judge I, Madhubani by judgment of conviction and order of sentence dated 05.08.1992 and 07.08.1992 respectively in Sessions Trial No 23 of 1984/31 of 1988 have filed this appeal. It may be noted that another person Bahru Thakur was also tried but he has been found guilty of offence punishable under Section 323 of IPC and has been left with mere admonition. The appellants have been further directed to pay a fine of Rs 1,000/- each, on failure whereof, six

months further rigorous imprisonment.

2 When the appeal was called out, no one appeared for the appellants to press the appeal. We, accordingly, requested Shri Neeraj Kumar @ Sanidh to assist the Court amicus curiae. We have heard the learned amicus curiae and the learned APP Shri Ajay Mishra and perused the records.

3 The prosecution case is based upon a Fardbayan recorded by one Tara Devi (PW 6) which was recorded by Sub Inspector of Police Ram Lakhan Singh (PW 7) on 16.09.1983 at 5 pm at Village – Sighariya wherein, inter alia, it was alleged that at about 7 in the morning, informant's husband had climbed a palm tree for breaking leaves for burning. The accused persons started abusing and beating. When the informant and her sons Mahendra Mahto and Ramchandra Mahto (deceased) tried to intervene, they were all beaten. First her husband was beaten by fists, slaps, bricks and then her young son Ramchandra Mahto (deceased) was also beaten by fists, slaps, kicks, bricks as a consequence whereof all of them were grievously injured. Upon this information, a formal first information report (FIR) was registered. It appears that Ramchandra Mahto, the son of the informant was then admitted to Government Hospital for treatment where on the next day that is 17.09.1983, in the morning, he died allegedly in course of treatment. The inquest was prepared and

body was sent for post mortem and the case was then converted into one under Section 302 of IPC. After investigation, the five accused persons were chargesheeted. They pleaded not guilty. They were charged and after trial, four have been convicted as noted above and the fifth Bahru Thakur has been left after due admonition.

4 Learned amicus curiae submits that it may not be necessary to go into all evidences in detail because as per the FIR, the informant, her daughter-in-law, her husband and her two sons including one deceased, they were all brutally beaten up by fists and slaps and brickbats by the accused persons but there is not a single injury report produced in support thereof. When we come to the deceased, the first thing is the inquest report. Though the deceased died in the Government Hospital, in the inquest report, there is mention that there is no external physical injury seen which is totally incompatible with the Fardbayan. When we come to the post mortem report, here again, except a lacerated wound without any indication of any dimension, there is no other external injury. Learned amicus curiae submits that this itself establishes that the whole story that has been set up is not true. On the other hand, the learned amicus curiae would submit that there has been a consistent suggestion given by the defence that in fact the young son of the informant had died because of snake bite and because of old enmity, the accused persons have



been dragged in. For the said purpose, he drew our attention to the evidence of PW 5 Mahendra Mahto. PW 5 Mahendra Mahto admits having been interrogated by the police in course of investigation. He denies the suggestion that the deceased had died of snake bite. The Investigating Officer (IO) (PW 7) clearly states that in course of investigation, PW 5 Mahendra Mahto had clearly disclosed that the boy had died because of delayed treatment for snake bite. We perused the records and find that these submissions are correct. The matter does not end there. Defence has then examined two doctors as DWs 1 and 2. Both these doctors were the attending physicians to the deceased in the Government Hospital. They have both testified in Court that the deceased was brought and admitted to the Hospital not for any physical injury because of brickbats or being beaten up but for snake bite and he died because of that. The bed head ticket of the deceased had also been exhibited and marked as Exhibit C by the defence. That bed head ticket clearly mentions snake bite. We are further taken to the evidence of the IO (PW 7) who also admits that the bed head ticket shows snake bite treatment.

5 In our view, the prosecution has consciously and deliberately tried to conceal these facts. This leads us to believe that the occurrence, in the manner in which it is sought to be established by the prosecution, did not take place at all. It is clear that the

deceased died due to snake bite. That being there, the informant, taking advantage of this and in order to settle scores, has falsely implicated the appellants. Defence evidence clearly establishes the long standing animosity between the informant Tara Devi (PW 6) and Bahru Thakur. The others happen to be agnates. Various Court cases (civil and criminal) have been brought on evidence by the defence.

6 Thus seen, apparently the actual cause of death of the deceased was snake bite. We may, at this juncture, also refer to the observation as made by the doctor who conducted the post mortem examination. In the post mortem examination, it is clearly noticed at several places that though the post mortem examination was being done after about 12 hours of death or within 12 hours of death, there was lot of liquid blood still in the body. This is clearly suggestive of non-coagulated blood which normally happens in case of poisoning or snake bite. Further, the post mortem report itself shows that the doctor has taken precaution to preserve the tissue and various vital organs of the body which would not be necessary at all if he did not suspect death by poisoning or snake bite. Neither in the inquest report nor in the doctor's report, there is any external injury which should have been there to corroborate the story as narrated in the Fardbayan and confirmed in the Court of beating by fists, slaps and brickbats is to be accepted.

7 Thus, in our view, the occurrence, as sought to be projected by the prosecution, cannot be said to be believable. There is much doubt and that being so, the benefit must arise to the appellants. Appellants are, thus, entitled to be acquitted from the charges and the conviction, as aforesaid.

8 This appeal is, accordingly, allowed and the judgment of conviction and order of sentence as passed by the learned Additional Sessions Judge I, Madhubani in Sessions Trial No 23 of 1984/31 of 1988 is set aside. The appellants are freed from the liabilities of their bail bonds.

(Navaniti Prasad Singh, J)

**Patna High Court,
The 05th of January, 2015,
NAFR, M E Haque/-**

(Anjana Mishra, J)

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