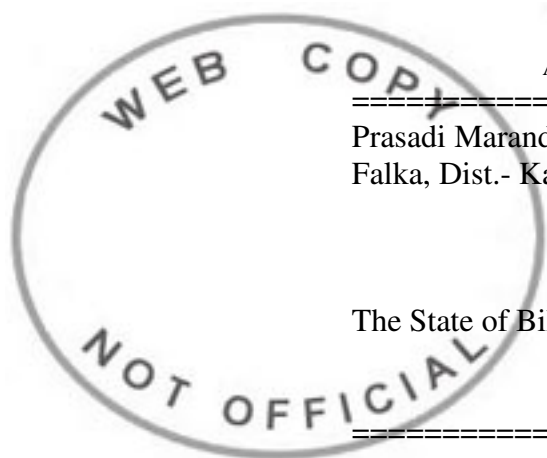




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.61 of 2010

Arising Out of PS.Case No. -141 Year- 1989 Thana -FALKA District- KATIHAR

Prasadi Marandi, S/O Late Dumma Marandi, R/O Vill.- Ojhabari (Hathwara), P.S.- Falka, Dist.- Katihar.

The State of Bihar
Versus
With
Appellant
Respondent

Criminal Appeal (DB) No. 719 of 2009

Arising Out of PS.Case No. -141 Year- 1989 Thana -FALKA District- KATIHAR

- 1. Jetha Hansda @ Jetha Tudu, son of Late Bhola Hansda
 - 2. Suffal Tuddu
 - 3. Chunnu Tuddu, both sons of Late Karma Tuddu
 - 4. Baburam Mistri, son of Late Shiv Charan Mistri
 - 5. Mangal Tuddu, son of Late Matal Tuddu
 - 6. Motka Tuddu, son of Late Pradhan Tuddu
 - 7. Marangmai Devi, wife of Late Tala Soren
- All residents of village Santhal Tola Ojhabari, P.S. Falka, District Katihar

The State of Bihar
Versus
Appellants
Respondent

Appearance :
For the Appellants : Mr. Bimal Kumar, Advocate
Mr. Birendra Kumar, Advocate
For the State : Mr. A.K. Sinha, APP
Mr. S.C. Mishra, APP

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE V.N. SINHA)
Date: 09-09-2015

Heard learned counsel for the appellants and the
State.

2. Both these appeals arise out of judgment/ order



dated 27/ 29.07.2009, passed by Additional District and Sessions Judge-II, Katihar, in Sessions Trial No. 99/1990/ Tr. No. 69/09 whereunder Accused No. 3, appellant in Criminal Appeal (DB) No. 61 of 2010 has been convicted for the offence under Section 302 of the Penal Code and sentenced to suffer rigorous imprisonment for life with further direction to pay fine of Rs. 1,000/- and in default of payment of fine to suffer rigorous imprisonment for six months. Accused Nos. 1, 2, 4 to 8 appellants in Criminal Appeal (DB) No. 719 of 2009 have been convicted for the offence under Sections 302/ 149 of the Penal Code and sentenced to suffer rigorous imprisonment for life with further direction to pay fine of Rs. 1,000/- and in default of payment of fine to suffer rigorous imprisonment for six months. Accused No. 2 has further been convicted for the offence under Section 323 of the Penal Code and directed to suffer rigorous imprisonment for six months. Accused Nos. 1, 4 to 8 have further been convicted for the offence under Section 148 of the Penal Code but no separate sentence has been awarded. Sentences imposed on Accused No. 2, however, have been directed to run concurrently.

3. Prosecution case, as set out in the *fardbeyan* of Ramjani Mansuri, resident of Village Hathwara Balutola, P.S. Falka, District Karihar, recorded by S.I. K.P. Dubey, Officer-in-Charge, Falka Police Station on 23.08.1989 at 9.45 hours in his field at Ojhabari in presence of local Mukhiya Sri Arun Kumar Jha and other



villagers, is that in the morning at 6.00 A.M. his son Abbas Mansuri had gone to Ojhabari to ease himself by attending the call of nature, saw Accused No. 3 Prasadi Marandi along with 20-25 men variously armed with arrow, bow, lathi, spear, sword harvesting paddy crop in his field. Son of the informant having seen harvesting of paddy crop returned, informed his father and others about the harvest being made by Prasadi Marandi and others. Informant along with his wife Paro Khatoon and son Abbas Mansuri came to the field around 7.00 A.M., saw Prasadi Marandi and 16 others including the eight accused persons put on trial harvesting his paddy crop, asked them not to do so but the accused persons asserted that they shall not only go ahead with the harvest but shall also carry the harvested crop. Prasadi Marandi inflicted arrow blow causing injury to Abbas the son of the informant in his chest and he fell down. Accused No. 8 Marangmai Devi assaulted the wife of the informant with *lathi*. Abbas Mansuri somehow succeeded in taking out arrow from his chest but while writhing in pain succumbed to the injury after 15 minutes. Accused No. 2 Suffal Tuddu inflicted arrow injury on the left hand of the informant. Other accused persons named in the *fardbeyn* also assaulted the members of the prosecution party with *lathi*. In the *fardbeyan* informant asserted that he purchased the lands in question 15 years earlier from Mostt. Savitri Devi and since purchase has been in cultivating possession of the land. Recently Accused No. 2 Suffal



Tuddu and his father laid their claim over the lands in question and asked the informant not to cultivate the same. Accused persons not only harvested the entire paddy crop but also carried the same to their house. Informant further stated that Accused No. 3 Prasadi Marandi also took out Rs. 600/- from the pocket of his wife. Informant also asserted that the title deed and the rent receipt of the lands in question are also in his possession. On alarm being raised by the informant and others co-villagers Suleman Mansuri, Md. Farid and others came to the place of occurrence. *Fardbeyan* statement was read over to the informant and he having found the statement correctly recorded put his Left Thumb Impression over the same. S.I. K.P. Dubey forwarded the *fardbeyan* of the informant to Falka Police Station for registration of the case stating that he has already taken up investigation of the case at the place of occurrence itself. Later Falka P.S. Case No. 141/89 dated 23.08.1989 for the offences under Sections 147, 148, 149, 379, 323, 324, 307, 447, 302 of the Penal Code was registered on the same day at 09.45 A.M. by A.S.I. R.B. Ram of Falka Police Station and dispatched from the police station to court through special messenger, which was received in court on 24.08.1989. S.I. K.P. Dubey having taken over investigation of the case after recording the *fardbeyan* inspected the place of occurrence and seized incriminating articles from the place of occurrence at 10.20 A.M. After seizure of the incriminating articles Investigating Officer conducted inquest



proceeding over the dead body of Abbas Mansuri at 10.30 A.M. on the place of occurrence itself in presence of Sri Arun Kumar Jha, local Mukhiya and Akhtar Mansuri. From perusal of inquest report it appears that the deceased was done to death by inflicting arrow injury on his person. After inquest proceedings the dead body was sent to Sadar Hospital, Purnea for post mortem at 11.10 A.M., which was received in the dead house on the same day at 4.00 P.M. and post mortem conducted at 5.00 P.M. From the post mortem report also it is evident that Abbas Mansuri suffered sharp incised wound below the right mammary and death caused due to injury on the right side of his heart. In view of the contents of the *fardbeyan* statement of the informant, police statement of mother of the deceased and other villagers as also the contents of the inquest, post mortem report of Abbas Mansuri Investigating Officer having found the allegation true during investigation submitted charge-sheet. In the light of the charge-sheet cognizance was taken and after supply of police papers to the accused persons case was committed to the Court of Sessions. Sessions Court framed charge under order dated 25.02.2002 to which the accused persons pleaded not guilty and claimed to be tried.

4. In support of the charge prosecution examined as many as 15 witnesses, namely, P.W. 1 Md. Sikandar is a formal witness as he is signatory to the seizure-list wherefrom it appears that the harvested paddy bundles were seized from the place of occurrence



by the Investigating officer. P.W. 2 Md. Suleman Mansuri claims himself to be an eye-witness of the occurrence and is named in the *fardbeyan* as the one who came to the place of occurrence after alarm being raised by the informant and others. According to him it is one Supan who inflicted arrow injury to the deceased Abbas Mansuri, informant was also assaulted by Supan and Tuddu Marandi with arrow but in the instant trial neither Supan nor Tuddu Marandi is accused. P.W. 3 Shabir Mansuri, though not named in the First Information Report, but claims himself to be an eye-witness of the occurrence and has supported the prosecution case. P.Ws. 4, 5, 6 Md. Siraj Mansuri, Nazir Mansuri, Kalimuddin Mansuri also claimed themselves to be an eye-witness of the occurrence and have supported the prosecution case but are not named in the *fardbeyan* as the one who came to the place of occurrence. P.W. 7 Akhtar Mansuri is witness to the inquest proceeding conducted over the dead body of Abbas Mansuri. P.W. 8 Nizamuddin is a formal witness as he identified the signature of A.S.I. Ram Bilash Ram of Falka Police Station, who drew formal F.I.R. P.W. 9 Bibi Paro Khatoon is the wife of the informant and mother of the deceased. She had come to the place of occurrence along with her husband, son after learning from her son that Prasadi Marandi and his men are harvesting the paddy crop. P.W. 10 Rasul Mansuri has been tendered. P.W. 11 Md. Rushtam is a formal witness as he put his signature on the seizure-



list. P.W. 12 Ramjani Mansuri is the informant of the case and father of the deceased. P.W. 13 Dr. Arun Kumar Ambastha is the Civil Assistant Surgeon posted at Purnea Sadar Hospital, who conducted autopsy on the dead body of Abbas Mansuri. P.W. 14 Arun Kumar Jha is the local Mukhiya in whose presence *fardbeyan* was scribed and is also a witness of inquest proceeding conducted over the dead body of Abbas Mansuri. P.W. 15 Mohinuddin Ahmad is an Advocate's Clerk and formal witness who proved the handwriting of A.S.I. Ram Bilash Ram of Falka Police Station who drew the formal First Information Report.

5. Learned counsel for the appellants assailed the conviction of the appellants and submitted that the prosecution case that it was Prasadi Marandi who inflicted the fatal arrow blow to Abbas Mansuri resulting in his death within 15 minutes of his suffering the injury does not appear to be worthy of acceptance as while stating such fact informant also claimed that he was also inflicted arrow injury on his left hand by Suffal Tuddu. Informant further claimed that the other accused persons also assaulted him and his wife. The injury report indicating injury suffered by the informant and his wife in the same transaction, though available on record, has not been proved by examining the doctor who treated them after the occurrence. It is submitted that the claim of the informant that his son suffered arrow injury in his presence and thereafter took out arrow



from the chest after falling down while writhing in pain and succumbed to the injury at the place of occurrence itself within 15 minutes does not appear to be reliable, as from the seizure-list it will appear that the blood soaked soil has not been seized from the place of occurrence and thereby the claim of the informant that his son died after falling down within 15 minutes of receiving the arrow injury does not appear to be true as with arrow injury there has to be profuse bleeding at the place he had fallen down but there is no seizure of blood soaked soil from the place of occurrence field. In this connection, learned counsel also referred to the evidence of Md. Suleman Mansuri (P.W. 2), who in his evidence claimed that it was Supan whose arrow blow caused injury on the chest of Abbas Mansuri and submitted that from the post mortem report of Abbas Mansuri it is evident that he suffered only one injury, then the question required to be answered is that whose arrow caused the death of Abbas Mansuri, it was either Prasadi Marandi or Supan causing death of Abbas Mansuri. Presence of P.W. 2 at the place of occurrence admitted by the informant in his *fardbeyan* as the one who came to the place of occurrence hearing the alarm raised by him, the evidence of P.W. 2 that it was Supan who inflicted the fatal arrow blow on the deceased cannot be ignored.

6. Counsel for Accused Nos. 1, 2, 4 to 8, appellants in Criminal Appeal (DB) No. 719 of 2009 submitted that



Accused Nos. 1, 2, 4 to 8 have not been found to have caused any injury to the deceased. They have been held guilty of the charges levelled against them for their presence at the place of occurrence as it is said that the other accused persons assaulted the informant and his wife but their injury report being not formally proved by examining the doctor, who examined the two, it cannot be said with certainty that it was Accused Nos. 1, 2, 4 to 8 who assaulted the informant and his wife. If assault by Accused Nos. 1, 2, 4 to 8 on the person of the informant and his wife is not established then their presence at the place of occurrence becomes doubtful and as they have not even touched the body of Abbas Mansuri there is no evidence on record to sustain their conviction under Section 302/149 I.P.C. The conviction of Accused No. 2 under Section 323 I.P.C. and of Accused Nos. 1, 4 to 8 for the offence under Section 148 I.P.C. also cannot be sustained as there is no evidence on record to maintain the same.

7. Learned counsel for the State, on the other hand, supported the impugned judgment but could not defend the conviction of Accused Nos. 1, 2, 4 to 8 under Section 302/ 149 and of Accused No. 2 under Section 323 and that of Accused Nos. 1, 4 to 8 under Section 148 of the Penal Code, as the injury report indicating assault on the person of the informant and his wife though available on record but has not been proved by examining the doctor who

examined the two.

8. Assertion of the prosecution witnesses about the presence of Accused Nos. 1, 2, 4 to 8 at the place of occurrence does not inspire confidence, as we are of the view that the prosecution has involved them in the occurrence to establish that with their support the paddy crop was being harvested. There is, however, no definite evidence on record that Accused Nos. 1, 2, 4 to 8 were engaged in harvesting the paddy. In the circumstances, we have no option but to grant them benefit of doubt about their presence at the place of occurrence. Accordingly, Accused Nos. 1, 2, 4 to 8, appellants in Criminal Appeal (DB) No. 719 of 2009 are acquitted of the charge levelled against them. They are on bail in the light of the order of the High Court dated 10.08.2009, as such, are discharged from the liability of their respective bail bonds. Criminal Appeal (DB) No. 719 of 2009 is, accordingly, allowed.

9. So far Accused No. 3, appellant in Criminal Appeal (DB) No. 61 of 2010 is concerned, we are satisfied from the contents of ocular evidence of informant (P.W. 12), his wife (P.W. 9) that it was Accused No. 3 who inflicted arrow injury to Abbas Mansuri causing his death but the injury being only one and the weapon used being traditional weapon of the *Santhals*, we modify the conviction of Accused No. 3, appellant in Criminal Appeal (DB) No. 61 of 2010 from Section 302 of the Penal Code to one under Section

304 Part I I.P.C. and sentence him to suffer sentence of period already undergone by him in the prison as under-trial and after conviction, as we have been informed by his learned counsel that all along he has been in custody and by now he has remained in jail for about eight years.

10. With the modification in conviction and sentence of Prasadi Marandi Criminal Appeal (DB) No. 61 of 2010 is dismissed. If by now Prasadi Marandi has remained in custody for eight years he be released forthwith.

(V.N. Sinha, J)

(Jitendra Mohan Sharma, J)

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