

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.13 of 1992

Arising Out of PS.Case No.138 Year-1982 Thana – Jhajha District- JAMUI

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1. Chun Chun Jha son of Sri Bhola Jha
 2. Shyam Sundar Jha son of Sri Ram Prasad Jha
 3. Daya Nath Jha son of Sri Bhola Jha
 4. Rajni Kant Jha son of Late Murli Jha
 5. Jai Prakash Jha son of Sri Bhola Jha
 6. Sahdeo Jha son of Sri Ram Prasad Jha
 7. Naresh Choudhary son of Sri Chedi Choudhary
 8. Bachandeo Jha son of Sri Bhola Jha

All residents of village-Dadpur, PS-Jhajha, District (Munger), Jamui.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mrs. Rina Sinha, Amicus Curiae, Adv.

For the Respondent/s : Dr. Mayanand Jha, PP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 13-02-2015

The instant appeal has been preferred by the appellants against the judgment of conviction and the order of sentence dated 24th February 1992 passed by the 2nd Additional Sessions Judge, Munger in Sessions Trial No. 602 of 1983 by which they have been convicted for committing the murder of Mahavir Mistry on 2nd October 1982 at 8.00 A.M. in village Dadpur in the district of Munger. They are also alleged to have caused injury to P.W. 9 Arjun Mistry, P.W. 12 Harihar Mistry and P.W. 13 Paras Mistry.



The appellants, Shyam Sundar Jha and Chun Chun Jha have been convicted and sentenced to undergo rigorous imprisonment for life under section 302 IPC and rest of the appellants have been sentenced to undergo RI for life for the conviction under section 302 read with section 149 IPC and all the appellants have further been sentenced to undergo RI for six months each for the conviction under section 147 IPC. Appellant Bachandeo Jha has further been sentenced to undergo RI for one year for the conviction under section 325 IPC and appellants Dayanand Jha, Naresh Choudhary, Sahdeo Jha, Jai Prakash Jha, Rajni Kant Jha, Chun Chun Jha and Shyam Sunder Jha have further been sentenced to undergo RI for three months each for the conviction under section 323 IPC. Sentences have been ordered to run concurrently.

The case of the prosecution, in brief, is that on 2nd October 1982 about at 8.00 A.M. the appellants, armed with weapons of various descriptions came to a land near the house of Harihar Mistry, the informant (P.W. 12) in village Dadpur for erecting an electric pole and when the deceased Mahavir Mistry, P.W. 9, P.W. 12 and P.W. 13 objected the digging of the pit saying that since a dispute is already pending for adjudication, they should stop digging, the appellants are said to have dealt blow on the

deceased as well as on P.W. 9, P.W. 12 and P.W. 13. While the deceased is said to have fallen, P.W. 9, P.W. 12 and P.W. 13 rushed to their house and closed the door from inside for saving their lives. The informant is said to have asked the *Chaukidar* Madan Paswan (P.W.3) to inform the Police about the incident who, in turn, is said to have informed the Police.

On receiving the information, P.W.15, Laxman Das, Officer In-charge of Jhajha Police Station is said to have come to the place of occurrence and recorded the statement of P.W. 12 and registered Jhajha P.S. Case No. 138 of 1982 dated 2nd October 1982 for the offences punishable under sections 147, 148, 149, 379, 307, 324, 342, 337 and 323 IPC, around 01.30 P.M. It was also stated that the injured persons, including Mahavir Mistry were being treated at Jhajha and the Investigating Officer (P.W. 15) went there, and on finding the condition of Mahavir Mistry to be critical, shifted him to Jamui Hospital and in course of treatment, Mahavir Mistry died. Thereafter, the provision of law was altered by including section 302 IPC.

The inquest on the dead body of the deceased was conducted in the morning of 3rd October 1982 at Jamui Hospital and the *post mortem* was also conducted at the same place.

The Investigating Officer (P.W.15) undertook the

investigation and on completion of the same, filed charge sheet alleging offences under various provisions of law against the appellants.

Before the Trial Court, the prosecution examined altogether fifteen witnesses i.e. P.W. 1 to P.W. 15 and filed Ext- 1 to 14. One witness, namely, Satya Narayan Yadav was examined on behalf of the appellants as D.W. 1.

Mrs. Rina Sinha, learned counsel for the appellants submits that the very origin of the case against the appellants is shaky and defective and the Trial Court did not take notice of several infirmities in the case of prosecution. She further contends that the fard beyan, said to have been recorded from P.W. 12 is shaky and defective more so because the very witness stated that he made a protest as to the contents thereof. It is also pleaded that, in fact, the first information was given by P.W. 3 and P.W. 15 accepted the same and the investigation was commenced.

According to the learned counsel, there is no mention of the information being given by P.W. 9, P.W. 12 and P.W. 13 to P.W. 3, *Chaukidar*, much less a request to him to inform about the incident to the Police and effort was made by the prosecution to improve the case at every stage. Learned counsel further submits that in relation to the quarrel that ensued between the two parties,

case and counter case were registered so much so, P.W. 12, the informant and alleged injured witness was convicted by the Trial Court but was acquitted in appeal.

It is also argued that there is a substantial variation between the evidence of P.W. 8, the Doctor who examined the deceased and other injured witnesses at the State Dispensary at Jhajha on the one hand; and that of P.W. 7, the Doctor who conducted the *post mortem* of the deceased on the other. She contends that P.W. 8 found only two injuries on the deceased whereas P.W. 7 mentioned about four injuries on the same and the prosecution did not bother to examine the Doctor who treated the deceased at Jamui. By referring to Ext-8, the protest petition filed by P.W. 12, learned counsel submits that there is no mention about any complaint against the Doctor who treated the injured persons and issued certificate and this statement was made in the examination-in-chief itself.

Dr. Mayanand Jha, learned public prosecutor on the other hand submits that the deficiency pointed out by the learned counsel for the appellants is not serious in nature and the prosecution has proved the case against the appellants beyond any reasonable doubt. He submits that the information received by P.W. 3 was only about the occurrence and for that reason P.W. 15

recorded the fard beyan from P.W. 12. He submits that there are as many as three injured witnesses and all of them have explained consistently about the incident and the learned Trial Court has appreciated the evidence in correct perspective and arrived at proper conclusion. He submits that the impugned judgment of conviction and order of sentence do not warrant any interference.

Normally, when an incident takes place, the informant gives information or his statement, and on the basis of the same, FIR is registered. The Code of Criminal Procedure provides for several sources of information, on the basis of which Police can register the case and then proceed to enquire or investigate.

In the instant case, the information about the incident is said to have been received from P.W.3, *Chaukidar* in the Police Station. However, neither any FIR was registered nor any concrete step was taken and the Police proceeded to the place of occurrence and there, the statement of P.W.12 is said to have been recorded at about 1:30 P.M.

The evidence of P.W.3 is to the effect that when he was in the village, P.W.1 Chito Yadav came and informed him that a quarrel is taking place between the appellants and the prosecution party and when he came to the spot, he noticed the presence of appellants on the one hand and Mahavir Mistry and others, on the

other. He further stated that P.W.9, P.W.12 and P.W.13 went to their house and closed it from inside and when he asked about the incident, he heard the voice of P.W.12 telling him that his life is in danger and the information be given to the Police. P.W.12 however did not mention in his fard-beyan about the coming of P.W.3 to the place of occurrence or his requesting him, to inform the Police about the incident.

P.W.8 the doctor at Government Hospital, Jhajha stated that he treated P.W.9, P.W.12, P.W.13 and deceased Mahavir Mistry in the Hospital. The nature of injuries he noticed, were also mentioned. As regards Mahavir Mistry he stated that two simple injuries were found on his body. P.W.15, the investigating officer stated that after recording the fard-beyan of P.W.12, he proceeded to the Hospital and there he found the persons being given treatment and that one of the appellants was also being treated in the Hospital at that time. If P.W.12 was also being treated simultaneously with other injured, the question how he was at the place of occurrence when P.W.3 heard his voice, or when P.W. 15 visited that place, remains unexplained.

From the evidence of P.W.8 it is clear that Mahavir Mistry was referred to the Hospital at Jamui on finding his condition to be serious. However, no Doctor who treated the

deceased at Jamui was examined. The only evidence that is available from Jamui is the *Post Mortem* Report prepared by Dr. Dharmraj Rai (P.W.7). According to the evidence of P.W.7, he noticed as many as four injuries on the person of Mahavir Mistry.

There is substantial difference between the nature of injuries noticed by P.W.8 on the one hand and P.W.7 on the other. The two additional injuries found on the dead body of the deceased remained unexplained. The record is also silent about the time of occurrence. The *Post Mortem* Report is not specific as to the cause of death, and the prosecution failed to attribute the fatal injury to any particular appellant.

It is brought to our notice that there was a case and counter case, so much so that most of the prosecution witnesses were convicted by the Trial Court for the offences under sections 324 and 307 IPC but were acquitted in appeal.

It becomes clear that there was a free scuffle or quarrel between the two groups of persons resulting in injuries to persons on both sides. The prosecution failed to establish that the death of Mahavir Mistry was on account of any specific injury much less that any of the appellants had caused the injury. Even if it is proved that it may not be necessary to prove the fatal injury, the very origin of the case against the appellant is found to be

shaky and defective. P.W. 12 categorically stated that he protested against the contents of the fard beyan. Though the protest petition was made part of record, it was not decided as to whether anything mentioned therein is correct. The result is that there are conflicting versions from the prosecution side itself.

We are of the view that the conviction and sentence passed against the appellants cannot be sustained in law in view of the reasons mentioned above.

Accordingly, we allow this appeal and set aside the judgment of conviction and order of sentence dated 24th February 1992 passed by the 2nd Additional Sessions Judge, Munger in Sessions Trial No. 602 of 1983.

Since all the appellants are on bail, they are discharged from the liability of bail bonds.

(L. Narasimha Reddy, CJ)

(Shivaji Pandey, J)

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