

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.421 of 1992

Arising Out of P.S.Case No. 62 Year- 1989 Thana Chowk District- PATNA

- =====
1. Bhagawan Chowdhary,
 2. Mahavir Chowdhary,
 3. Lallu Chowdhary,
 4. Mithu Chowdhary
All sons of Shri Bishuni Chowdhary
 5. Bishuni Chowdhary son of Late Udal Chowdhary, all residents of mohalla-
Begum Pur, P.S. Chowk, District- Patna.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Shri Shankar Kumar, Amicus Curiae.

For the Respondent : Sushri Shashi Bala Verma, APP.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 11-08-2015

The present appeal has been filed by the five appellants against the judgment of conviction and order of sentence dated 08.09.1992 passed by the learned 2nd Additional Sessions Judge, Patna in Sessions Trial No.264 of 1990 by which the appellants were held guilty of committing offence under Section 302 read with 34 of the Indian Penal Code and after being heard on sentence each of them was directed to suffer rigorous imprisonment for life.

2. The prosecution case was contained in Ext-2, the fardbeyan of P.W.4 Sitabia Devi, wife of deceased Balgovind Beldar, in which she stated that on 25.04.1989 in between 6-7 P.M., the five



appellants started abusing the deceased Balgovind Balder after having surrounded him in front of his house. It was stated that the appellants were in the habit of treating the deceased abusively from before. The other reason was that the appellants had put in a window in the western wall of their house and they used to peep through it into the privacy of the courtyard of the informant which was always objected to by the deceased Balgovind Beldar and every occasion of raising the objection to the act of peeping into the privacy of the informant and his family, had a recoil effect in the appellants abusing the deceased.

3. In the above background, it was stated by the informant that appellant Lallu Chowdhary dealt blows with *Chhewani* (a sharp cutting sickle-shaped weapon used by toddy tapers) on the head of the deceased Balgovind Beldar causing injuries to him. Appellant Mithu Chowdhary and his brother appellants Mahavir Chowdhary and Bhagawan Chowdhary dealt blows to the deceased with *Paina* (small stick created after splitting the bamboo and finishing it) while appellant Bishuni Chowdhary gave blows to the deceased with *Baletha* which is a solid, round, *danda*-type wooden structure which is used to sharpen *Chhewani*. The informant stated that on account of being beaten up, the deceased was badly injured and the incident was witnessed by P.W.3 Birju Beldar. The lady stated

that she put her husband on a *Thela* and brought her to the hospital where deceased Balgovind Beldar was being treated and was unconscious at the time P.W.7 Uday Narain Singh recorded her fardbeyan (Ext-2).

4. It appears from the evidence of P.W.7 S.I. Uday Narain Singh that he had the information that some incident of assault had taken place in Begampur between inebriated persons and there was an unruly situation prevailing there. He entered the information into the station diary no.117 dated 25.04.1989 and also put on alert the Special Mobile Force and himself started for Begampur, where he came to know that there had been some incident of *marpit* between the appellant Bishuni Chowdhary and the deceased Balgovind Beldar in which the deceased Balgovind Beldar was badly injured and he had been taken to City Hospital, Patna City. He, accordingly, came to the City Hospital, Patna City to record the fardbeyan of informant Sitabia Devi (P.W.4), where he found the deceased Balgovind Beldar lying in the hospital in a badly injured condition so much so that he was not in a position to speak. He took up the investigation of the case and recorded the further statement of the informant along with the statement of the witnesses, like, Dilip Kumar and others. He inspected the place of occurrence which was a road running in front of the house of the informant and was going from east to west. He had not found



any blood at the place of occurrence because of the same being wiped out by the tyres of running vehicles. P.W.7 Uday Narain Singh was informed by P.W.4 Sitabia Devi, the informant, that her husband had died on 24.06.1989 and subsequently, he received the inquest report as also the copy of the post mortem examination report from Pirbahore police station.

5. After closing the investigation, P.W.7 Uday Narain Singh sent the five appellants up for their trial which ended in the impugned judgment.

6. The defence of the appellants was that P.W.3 Birju Beldar had taken the deceased Balgovind Beldar with him to a place known as Jalli for taking toddy and there had been some incident of *marpit* between the two and it was P.W.3 Birju Beldar who had inflicted injuries to him which subsequently proved fatal.

7. In support of the charges, the prosecution examined as many as eight witnesses, out of whom, P.W.6 Dr. Sita Bairolia had first attended on the injured Balgovind Beldar in the City Hospital, Patna City and had issued the injury report Ext-1. The postmortem on the dead body of deceased Balgovind Beldar was held by P.W.8 Dr. Uma Shanker Prasad and he had issued the postmortem examination report Ext-5. Out of the other witnesses, P.W.1 Budhan Beldar, the father of the deceased Balgovind Beldar was not an eye witness and



he had stated that he learnt from his grandson after he had returned from outside about the incident and he went to the place of occurrence to find his son lying injured there. This evidence of P.W.1 Budhan Beldar has come in examination-in-chief as also in paragraph-3 of his deposition. P.W.2 Matur Beldar had supported the incident to the extent that he had seen the deceased Balgovind Beldar being chased by the accused persons and during that course being inflicted with blows with *Chhewani* or *Baletha* but he did not name any particular accused who had dealt those blows either with *Chhewani* or with *Baletha*. P.W.2 also did not state that any other accused person had given any blow with any particular weapon. When it came to identifying the accused persons, P.W.2 Matur Beldar being a co-villager, did not identify appellant Mithu Chowdhary and also other appellants except appellant Bishuni Chowdhary which fact appears from paragraph-4 of P.W.2. Thus, on these scores, we find it utterly unsafe to place reliance upon the evidence of P.W.2.

Thus, the evidence which remained in support of the charges was that of P.W.3 Birju Beldar and P.W.4 Sitabia Devi, the wife of the deceased Balgovind Beldar and informant of the case. Both the witnesses were very specific as regards the deceased Balgovind Beldar being assaulted. Both witnesses stated that it was appellant Lallu Chowdhary who had given a blow with *Chhewani* to



the deceased and appellant Mithu Chowdhary had given blows with Baletha to the deceased Balgovind Beldar while other accused persons had assaulted him with *Paina*. During their cross-examination, the witnesses do not appear stating any fact which could be destroying the value of their individual statements. However, what we could find was that P.W.6 Dr. Sita Bairolia who had initially attended on the deceased when he was brought to the City Hospital, Patna City had found only two lacerated injuries on his person. The first lacerated injury was on the occipital area of his scalp measuring 2 ½"x ½"x 1" and was also 1"x1" in width. The other injury was on the right parietal area of the scalp 2"x ¾"x ¾". P.W.6 stated that the condition of the patient was very serious so much so that he was referred to the Surgical Emergency Ward of Patna Medical College Hospital, keeping the opinion as regards the two injuries reserved in want of x-ray reports, but was definite in giving his opinion that the two injuries had been caused by some hard and blunt substance. Thus, what we find from the perusal of the evidence of P.W.6 was that he did not find any other injury than the two, we have just noted and he also did not find any injury which could have been caused by any sharp cutting weapon, like, *Chhewani* and thus, the evidence of P.Ws.3 and 4 that deceased Balgovind Beldar was given blow with *Chhewani* on his head by appellant Lallu Chowdhary appears not supported by

P.W.6.

8. We had in that connection consciously considered the evidence of other Dr. P.W.8 Uma Shankar Prasad who had held the postmortem examination on the dead body of the deceased Balgovind Beldar and who had found the following ante-mortem wounds:-

- (i) Stitched wound 1" on right side of scalp 3" above the right ear. The wound was up to muscle deep.
- (ii) Stitched wound 2" on the right side of the scalp measuring 2" on the right side of the scalp measuring 2 ½" behind injury no.1. This wound was also up to muscle deep.
- (iii) Abrasion ½" x ½" on the left side of the forehead measuring ¾" above on the left eyebrow.
- (iv) Abrasion measuring ½" x ½" on left side of the forehead ¾" above injury no.3.
- (v) Abrasion 1 ½" x ½" on the frontal aspect of the left leg just below knee.
- (vi) Abrasion 1 ½" on the posterior aspect of the left elbow.

On dissection, P.W.8 Dr. Uma Shankar Prasad found massive hematoma all over the scalp. A linear fracture of 8" placed transversely was also found which had involved the fractures of frontal and right parietal bones. Another linear fracture of the size of 5" placed longitudinally was found over the right parietal bone. On removal of the scalp bone both extra-dural and sub-dural haemorrhage were found all over the brain matter. In the opinion of P.W.8, the death was due to the head injury as described above and injury nos.3 to 6, i.e., the abrasions of various dimensions were caused by hard and blunt object. The opinion regarding the injuries no.1 and 2 could not

be given out of the surgical interference. However, P.W.8 was very forthright in opining that death had been caused within 24 hours of holding of the post mortem examination.

9. Thus, what appears from the evidence of P.W.8 is that the nature of the wound and the nature of weapon which could have caused injuries no.1 and 2 could have been given only by the doctor who had first attended on the deceased Balgovind Beldar.

10. We have already referred to the evidence of P.W.6 Dr. Sita Bairolia who had stated that the two injuries in the form of lacerated wounds were caused by some hard and blunt substance. Thus, there could not be any doubt that there was no injury caused by any sharp cutting weapon, like, *Chhewania* and the ocular evidence of P.Ws.3 and 4 to that extent appear in conflict with the opinion of P.W.6 who was the doctor who had initially attended on the injured Balgovind Beldar. The appellant Lallu Chowdhary as per the evidence and the basic prosecution story was the person who had used *Chhewani* for inflicting injury to the head of the deceased Balgovind Beldar but as appears from the opinion of both P.Ws.6 and 8 that allegation and evidence run contrary to the opinion of P.W.6 and, as such, there is a serious doubt in the manner of occurrence which was stated by the two witnesses.

11. P.W.3 Birju Beldar was the only witness who had



come in support of P.W.4 Sitabia Devi, the informant of the case. It was suggested to him that after the incident, he had run away from his house along with his father and that fact had been denied by him as appears from his deposition in paragraph-4 of cross-examination. P.W.7 also stated that on account of P.W.4 Sitabia Devi having run away his statement could be recorded on 23.05.1989, i.e., after one month of the incident. we could not find out the reason as to why P.W.3 Birju Beldar who was the only witness to the occurrence as per his evidence and who had first arrived at the scene of occurrence even before P.W.4 had arrived, should run away from his house merely on account of the death of the deceased Balgovind Beldar and he should evade the police so much so that in spite of being searched by the police officer P.W.7 Uday Narain Singh he could not appear before him for giving his statement under Section 161 Cr.P.C. for a full period of about one month. It is true that the doctors did not find any trace of toddy or other alcoholical substance in the gut or other part of the body of the deceased Balgovind Beldar or they did not even find any such smell coming from the dead body or from the clothes of the deceased but the very suggestion was there that it was P.W.3 Birju Beldar who had assaulted the deceased Balgovind Beldar and had run away from there and had subsequently appeared to support the prosecution charge. P.W.4 Sitabia Devi, the information of the case



does appear an eye witness as per her claim but if P.W.3 Birju Beldar was the only person who had seen the occurrence as appears probably from the evidence of P.W.4 Sitabia Devi and he did not have any role in assaulting the deceased, then it remains a riddle for us as to why he had run away from the village. We cannot form a definite opinion but after having considered the oral testimony of P.Ws.3 and 4 and after having contrasted those testimonies against the evidences of P.Ws.6 and 8, we find that there could be ample reason for us to say that none of the two witnesses had seen the occurrence or if there was an occurrence, it was definitely in a manner different from what was projected by them. Probably that could be the reason that P.W.7 S.I. Uday Narain Singh had the initial information that a drunken brawl had ensued between inebriated persons in which deceased Balgovind Beldar had seriously been injured. If that was so as appears from the evidence of P.W.7, then there could be yet another inference on probability that the prosecution has probably suppressed the true facts relating to the incident.

12. After scanning the evidence of the witnesses in the light of the submissions and after having reached the conclusions which we have just recorded, we find merit in the present appeal. Accordingly, the same is allowed by setting aside the judgment of conviction and order of sentence. The five appellants are acquitted of

the charge they had been held guilty of. The appellants are on bail. Each of them shall stand discharged from the liabilities of their respective bail bonds.

13. Shri Shanker Kumar assisted the Court as Amicus Curiae and the Court desires that he be paid one fee of hearing by the Patna High Court Legal Services Committee and for that purpose let a copy of the first and last pages of this judgment be made over to Shri Kumar, appearing in this matter as Amicus Curiae.

(Dharnidhar Jha, J)

(Gopal Prasad, J)

Brajesh .Kr./-mrl.

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