

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 482 of 1993

WITH

Criminal Appeal (DB) No. 531 of 1993

(Against the judgment of conviction and order of sentence, dated 04.10.1993, passed by Shri Sohailur Rahman, learned 1st Additional Sessions Judge, Darbhanga, in Sessions Trial Case No. 140 of 1988/26/1988, arising out of Bahera P.S. Case No. 92 of 1987, corresponding to G. R. No. 1379/1987/T.R. No. 784 of 1988).

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1. Ram Pret Jha @ Ram Pravesh Jha, Son of Bindeshwar Jha
 2. Ram Udesb Jha, Son of Bindeshwar Jha
 3. Ram Sagar Jha, Son of Ram Khelawan Jha
- All of resident of village – Balni, Police Station – Bahera, District - Darbhanga
4. Jitan Jha, Son of Prayag Jha
 5. Tej Narain Jha, Son of Ramdhani Jha
- Both resident of village – Ughra, Police Station – Bahadurpur, District - Darbhanga
- Appellants (**In Criminal Appeal (DB) No. 482 of 1993**)

With

Bindeshwar Jha @ Boot Lal Jha, Resident of village – Balni, Police Station – Bahera, District - Darbhanga

.... Appellant (**Criminal Appeal (DB) No. 531 of 1993**)

Versus

The State of Bihar

.... Respondents (**In both the Appeals**)

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Appearance :

(In CR. APP (DB) No. 482 of 1993)

For the Appellants : None

For the Respondent : Mr. Ajay Mishra, A.P.P.

Mr. Bharat Lal, Advocate as *Amicus Curiae*

(In CR. APP (DB) No. 531 of 1993)

For the Appellant : None

For the Respondent : Mr. Ajay Mishra, A.P.P.

Ms. Fauzia Shakeel, Advocate as *Amicus Curiae*

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

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

Date: 12-03-2015

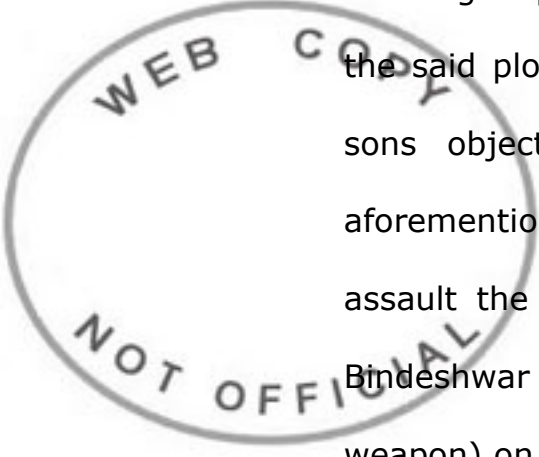
Under the judgment and order, under appeal, the

appellants of Cr. Appeal (DB) No. 482 of 1993, Ram Pret Jha @ Ram Pravesh Jha, Ram Udesb Jha, Ram Sagar Jha, Jitan Jha and Tej Narain Jha, stand convicted under Section 302 read with

Section 149 of the Indian Penal Code and as far as appellants, Ram Pret Jha @ Ram Pravesh Jha and Ram Udes Jha, are concerned, they also stand convicted under Sections 323 and 324 of the Indian Penal Code respectively. By the impugned judgment and order, under appeal, the appellant, Bindeshwar Jha @ Boot Lal Jha, of Cr. Appeal (DB) No. 531 of 1993, stands convicted under Section 302 of the Indian Penal Code *simplicitor*. Following their conviction under Section 302 read with Section 149 of the Indian Penal Code, the accused-appellants, namely, Ram Pret Jha @ Ram Pravesh Jha, Ram Udes Jha, Ram Sagar Jha, Jitan Jha and Tej Narain Jha, have been sentenced to suffer imprisonment for life. The accused-appellant, Bindeshwar Jha @ Boot Lal Jha, has been sentenced to suffer imprisonment for life under Section 302 of the Indian Penal Code *simplicitor*. No separate sentence, for conviction under Sections 324 and 323 of the Indian Penal Code, has been passed against accused-appellants, namely, Ram Pret Jha @ Ram Pravesh Jha and Ram Udes Jha.

2. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described thus:

(i) On 21.06.1987, at about 6:00 A.M., when the informant, Jai Govind Jha, along with his two sons, Subhkant Jha (deceased) and Harekant Jha, was planting seedling of paddy, accused Bindeshwar Jha @ Boot Lal Jha, Ram Pret Jha @ Ram Pravesh Jha, Ram Udes Jha, Ram Sagar Jha and Tej Narain Jha, along with 8 to 10 other persons, came, variously armed, to the



paddy field of the informant and asked him to stop planting of seedling of paddy until the dispute, which they had with regard to the said plot of land, was resolved. As the informant and his two sons objected to the resistance so offered by the accused aforementioned, accused Bindeshwar Jha instigated others to assault the informant and his two said sons and, then, accused Bindeshwar Jha gave a blow, by means of *garasa* (a sharp edged weapon) on the head of the informant. On receiving the blow on his head, the informant fell down. Accused Ram Sagar Jha, then, assaulted the informant with *lathi*. In the meanwhile, accused Bindeshwar Jha gave a blow, by means of his *garasa*, on the informant's son, Subhkant Jha, on his head. As Subhkant Jha suffered injury on his head, he fell down and became unconscious. Accused Ram Udes Jha assaulted Harekant Jha by means of *lathi* and all the accused persons, who had assembled there, then, assaulted the informant and his two sons by means of *lathis*.

(ii) As the informant's co-villager, Shyam Sunder Mishra, Ram Suresh Jha, Bishambhar Jha and Ghanshyam Jha, came running to the place of occurrence, the accused persons took to their heels.

(iii) In injured condition, the informant and his two sons were carried to Bahera State Dispensary, where Assistant Sub-Inspector, B.K. Sharma, a Police Officer from Bahera Police Station, arrived and recorded injured Jai Govind Jha's statement (Ext. 4) with regard to the occurrence and treating the same (Ext.

4) as First Information Report, Bahera Police Station Case No. 92 of 1987, under Sections 147/148/323/324/307 of the Indian Penal Code, was registered against accused Bindeshwar Jha @ Boot Lal Jha, Ram Pret Jha @ Ram Pravesh Jha, Ram Udesb Jha, Ram Sagar Jha, Jitan Jha and Tej Narain Jha. However, during the course of investigation, as Subhkant Jha succumbed to his injuries, Section 302 of the Indian Penal Code was added to the case aforementioned.

(iv) Inquest was held over Subhkant Jha's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, a *charge sheet* was laid, under Sections 147/148/149 /323/325/447/302 of the Indian Penal Code, against accused Bindeshwar Jha @ Boot Lal Jha, Ram Pret Jha @ Ram Pravesh Jha and Ram Udesb Jha.

3. At the trial, apart from framing a charge under Section 302 of the Indian Penal Code against accused Bindeshwar Jha @ Boot Lal Jha, another charge, under Section 302 read with Section 149 of the Indian Penal Code, was framed against accused Bindeshwar Jha and also Bindeshwar Jha, Ram Pret Jha @ Ram Pravesh Jha, Ram Udesb Jha, Ram Sagar Jha, Jitan Jha and Tej Narain Jha. A charge was also framed under Section 324 of the Indian Penal Code against accused Ram Prit Jha @ Ram Pravesh Jha. Yet another charge was framed, under Section 323 of the Indian Penal Code, against accused Ram Udesb Jha. All the accused

aforementioned pleaded not guilty to the respective charges framed against them.

4. In support of their case, prosecution examined altogether 7 (seven) witnesses including the Investigating Officer (P.W. 6). 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 land, in question, had been in the possession of the accused. The defence, too, adduced evidence by examining two witnesses.

5. Having found accused Bindeshwar Jha @ Boot Lal Jha, guilty of offence under Section 302 of the Indian Penal Code was *simplicitor* the learned trial Court has convicted the accused Bindeshwar Jha @ Boot Lal Jha accordingly. Having, however, found accused Ram Pret Jha @ Ram Pravesh Jha and Ram Udes Jha guilty of offence under Section 302 read with Section 149 of the Indian Penal Code, learned trial Court convicted them also accordingly. Having also found accused Ram Pret Jha @ Ram Pravesh Jha and Ram Udes Jha guilty of offences under Sections 324 and 323 of the Indian Penal Code respectively, the two accused were convicted accordingly and sentenced to suffer imprisonment as already indicated 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 Cr. Appeal (DB) No. 482 of 1993 has been preferred by accused-appellants, Ram Pret Jha @ Ram Pravesh Jha, Ram Udesb Jha, Ram Sagar Jha, Jitan Jha and Tej Naran Jha, Cr. Appeal (DB) No. 531 of 1993 has been preferred by Bindeshwar Jha @ Boot Lal Jha.

8. As both these appeals have arisen out of the judgment and order, dated 04.10.1993, passed, in Sessions Trial Case No. 140 of 1988/26 of 1988, by learned 1st Additional Sessions Judge, Darbhanga, we propose to dispose of both these appeals by this common judgment and order.

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

10. Because of the nature of the case, which was presented at the trial by the prosecution, it is apposite to, first, take note of the findings of the doctor with regard to the injuries sustained by Subhkant Jha, Harekant Jha and Jai Govind Jha and the cause of death of Subhkant Jha.

11. According to the evidence of the doctor (PW 5), who has, admittedly, conducted *post mortem* examination

on the dead body of Subhkant Jha, the *post mortem* examination revealed following injuries on the said dead-body:



"(i) One 2-1/2" long stitched wound on left of head directed from before backwards. On removing the stitches the wound measured 2 1/2" x 1/2" x up to skull bone. The margins of the wound were bruised ragged and irregular. On removing the skin, the underlying and adjacent scalp tissues were found deeply bruised with bruising of left temporal muscles. There was a linear fracture involving left parietal and left temporal bones. On removal of skull cap a big epidural haematoma was found compressing upon left parieto-temporal area of the brain.

(ii) One bruise 1"x 1/2" with tiny abrasions and swelling on outer side and back of right elbow."

12. In the opinion of the doctor (P.W. 5), both the injuries, which had been found on the said dead body, were *ante mortem* in nature and injury No. (i) was sufficient to cause death of a person in the ordinary course of nature. It is also the opinion of the doctor that the injury No. (i) was caused by hard and blunt object, whereas injury No. (ii) could have been caused by fall on hard substance.

13. In his cross-examination, the doctor (P.W. 5) has clarified that a *garasa* (a sharp-edged weapon) or *farsa* (a sharp-edged weapon) can also cause the injury No. (i), which had

been found on the said dead body provided that blunt edge of such a sharp-edged weapon was used.

14. We notice that the injury reports of the two injured, namely, Jai Govind Jha and Harekant Jha, have been proved as Exts. 6 and 6/1 respectively.

15. In the light of Exhibit-6, the injuries, which were sustained by Jai Govind Jha, were as follows:-

"(i) Incised wound over left side of front of head of size 1-1/2" x 1/2" x 1/2" with blood and blood clots over it, head cut – by sharp cutting weapon – simple in nature.

(ii) Incised wound over right side of front of head of size 1" x 1/2" x 1/2" with blood and blood clots over and had cut over it – sharp cutting weapon – simple in nature.

(iii) Bruise over left shoulder 1-1/2" x 1/2" by hard blunt."

16. In the light of Ext-6/1, the injuries, sustained by Harekant Jha, were found as follows:-

"(i) Incised wound over middle part of skull of size 1" x 1/4" x 1/4" with cut and blood clots – sharp cutting instrument – simple in nature.

(ii) Bruise over left side of shoulder joint of size 1-1/2" x 1" by hard blunt substance – simple in nature."

17. From a close reading of the findings of the doctor (P.W. 5), it clearly transpires that Subhkant Jha (deceased) had not suffered any incised wound by any sharp cutting weapon;



rather, he had sustained injuries, which could have been caused by hard blunt substance or by blunt edged of a sharp cutting weapon, whereas Jai Govind Jha had sustained two incised wounds on his head and one bruise on his left shoulder indicating that he had sustained, at least, two injuries by sharp cutting weapon or weapons. As far as Harekant Jha was concerned, he had sustained one incised wound on the middle part of his skull and bruises on his left shoulder reflecting thereby that sharp-edges of sharp cutting weapon or weapons were used for assaulting Harekant Jha as well.

18. Bearing in mind, therefore, the fact that while the said deceased had not sustained any incised wound, as described hereinabove, Jai Govind Jha and Harekant Jha had sustained incised wounds, we come to the alleged account of the occurrence given by the witnesses, namely, by PW 1 (Ghanshyam Jha), P.W. 2 (Ram Suresh Jha), P.W. 3 (Harekant Jha) and P.W. 4 (Jai Govind Jha), who is also informant of the case, as eyewitnesses to the occurrence.

19. In the light of the medical evidence on record, when we consider the evidence of P.W. 1 (Ghanshyam Jha), we notice that according to his evidence, accused Bindeshwar Jha @ Boot Lal Jha had assaulted Subhkant Jha on his head by means of a *garasa* and accused Ram Pret Jha @ Ram Pravesh Jha had assaulted Subhkant Jha on his neck by means of *garasa* and

this was followed by multiple assaults on him by other accused persons.

20. If the above description of the occurrence were true, Subhkant Jha would have, ordinarily, sustained one incised wound on his head, another incised wound on his neck and multiple wounds on other parts of his body, whereas he sustained merely a bruise on his elbow and a stitched wound on his head, both the injuries having been caused by hard blunt substance.

21. Ordinarily, therefore, the description of the occurrence, which has been given by P.W. 1 (Ghanshyam Jha), could be considered to have been belied by the medical evidence on record. However, the evidence, which have been given by P.W. 2 (Ram Suresh Jha), P.W. 3 (Harekant Jha) and P.W. 4 (Jai Govind Jha), with regard to the assault on Subhkant Jha, seek to resolve the conflict between the ocular evidence, on the one hand, and the medical evidence, on the other, inasmuch as P.W. 2 (Ram Suresh Jha) has deposed, in his evidence, that it was the blunt edge of *garasa* with which the blow by accused Bindeshwar Jha was given on the head of Subhkant Jha and, similarly, accused Ram Pret Jha @ Ram Pravesh Jha assaulted Subhkant Jha by the blunt edge of *farsa*. Similarly, according to P.W. 3 (Harekant Jha) and P.W. 4 (Jai Govind Jha), accused Bindeshwar Jha gave blow, on the head of Subhkant Jha, by the blunt edge of *garasa* and Ram Pravesh Jha gave blow by the blunt edge of *farsa*.

22. What cannot, however, be ignored is that in their previous statements made during investigation, neither PW 3 nor PW 4 had claimed that it was blunt edge of the weapon, which had been used by the two accused aforementioned, while assaulting Subhkant Jha.

23. Clearly, therefore, P.Ws. 2, 3 and 4 have made improvements on their previous statements in order to bring their evidence in tune with the medical evidence on record.

24. Situated thus, we are clearly of the view that the evidence, given by PW 2, PW 3 and PW 4, are wholly unsafe to place reliance upon. The inference, which we have so drawn, gets reinforced from the fact that no injury was found by the doctor (P.W. 5) on the neck of Subhkant Jha either caused by blunt edge of a sharp cutting weapon or by blunt edge weapon, though Subhkant Jha is alleged to have been assaulted on his neck. This apart, if the evidence of P.Ws. 1, 2, 3 and 4 were true, there would have been multiple injuries on the dead body of Subhkant Jha inasmuch as all these witnesses have, in tune with each other, deposed that the said deceased was assaulted by all the accused persons by *lathis*.

25. Coupled with the above, we also notice, we have already pointed out above, that while Jai Govind Jha sustained two incised wounds on his head, Harekant Jha sustained one incised wound on his skull. It is well-nigh impossible to hold confidently that any of the accused, while assaulting Subhkant Jha,

had used blunt edge of his sharp cutting weapon, but while assaulting Jai Govind Jha and Harekant Jha, they would have used sharp edges of sharp cutting weapons.

26. Because of what have been discussed and pointed out above, it becomes abundantly clear that P.Ws. 1, 2, 3 and 4 have suppressed the truth from the Court and have presented before this Court either completely false version of the occurrence or have given evidence, which is nothing, but a mixture of half-truth and untruth. At any rate, the truth, if any, is so inextricably mixed with half-truth and untruth that it has become impossible to disengage the truth from falsehood.

27. Without knowing with certainty as to how the occurrence had taken place, how the said deceased had sustained the injuries, which he was found to have suffered, and how the remaining two injured, namely, Jai Govind Jha and Harekant Jha had sustained the injuries, which they were found to have suffered, it will be too hazardous and wholly unsafe to sustain their conviction.

28. Sadly enough, we find that the learned trial Court has not taken note of the prominently noticeable infirmities with which the evidence, adduced by the prosecution witnesses, suffered from.

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

30. 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.

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

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

33. 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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