

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.12 of 2002

=====

1. GANESH JHA @ GUNA JHA.

2. RUDRAKAR JHA.

3. BHASKAR JHA.

ALL 1 TO 3 ARE SONS OF LATE STYA NARAYAN JHA.

4. PAPPU JHA, SON OF UDIT NARAYAN JHA,

ALL RESIDENTS OF VILLAGE-BARA P.S.-BIHRA, DISTRICT-SAHARSA.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

=====

Appearance:

For the Appellant/s : Mr. Mahendra Pathak, Adv.

For the State : Mr. Sunit Kumar Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

C.A.V. JUDGMENT

Date: 21-01-2015

Appellant, Ganesh Jha @ Guna Jha, Rudrakar Jha, Bhaskar Jha, Pappu Jha, out of whom appellant Ganesh Jha @ Guna Jha, Rudrakar Jha have been found guilty for an punishable under Section 307 IPC. 148 IPC and each one has been directed to undergo R.I. for three years, R.I. for two years respectively with a direction to run the sentences concurrently, Bhaskar Jha and Pappu Jha have been found guilty for an offence punishable under Section 143 IPC and each one has been directed to undergo R.I. for three months vide judgment

of conviction and sentence dated 13.12.2001 passed by IIIrd Additional Sessions Judge, Saharsa in Sessions Trial No.24 of 1994, have filed instant appeal.

2. Shashi Nath Jha, PW-1, gave his fardbeyan on 30.03.1990 at about 12 O'clock while he was admitted at Sadar Hospital, Saharsa disclosing therein, that on 28.03.1990 at about 05:00 PM, while he was sitting at his *Darwaja*, Guna Jha @ Ganesh Jha, Rudrakar Jha, Bhaskar Jha, Satya Narayan Jha, Pappu Jha came at his *Darwaja*. At that very time, Guna Jha was armed with *Farsa*, Rudrakar Jha was armed with arrow, Bhaskar Jha was armed with pistol, Satya Narayan Jha and Pappu Jha were armed with *Lathi*. They, after coming, disclosed that none is present to save you and as, he used to file Sanha against them, on account of which, he will be cut. He became apprehensive. Fortunately, his son Sudhakar arrived at his *Darwaja*. At that very moment, Guna Jha inflicted *Farsa* blow which was caught hold by his son Sudhakar Jha. Then thereafter, Guna Jha ordered his brother Rudrakar to assault whereupon, Rudrakar bow arrow which stroke over left 'Panjra' and he became injured. Thereafter, he became unconscious. He regained sense today. They have also made house trespass but what offence they have committed, he is unaware. He had further narrated the motive for occurrence as about three months ago, he had purchased 1 Kattha 3 Dhurs of land adjacent to his *Darwaja* and on account thereof, the accused

persons became annoyed.

3. On the basis of the aforesaid fardbeyan, Saharsa P.S. Case No.130 of 1990 was registered followed with investigation as well as submission of charge sheet after concluding the same whereupon, accused persons were put on trial and ultimately met with the finding recorded by the learned trial court, adverse to their interest hence, this appeal.

4. From perusal of the lower court it is evident that, initially charge under Section 307/149 was framed on 22-12-1995 however, vide order dated 27-05-1999 the charge was amended whereunder Rudrakar Jha and Bhaskar Jha were charged under Section 148 IPC and again Ganesh Jha @ Guna Jha, Rudrakar Jha charged for an offence punishable under Section 307,148 IPC and it is evident from the aforesaid order that accused persons have not intended to recall the witnesses for cross-examination hence, the trial proceeded on the evidence already available since before.

5. The defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial of the occurrence. It has also been disclosed that it was the prosecution who were aggressor and who assaulted Ganesh Jha @ Guna Jha, Satya Narayan Jha for which counter case was instituted and only to save their skin, instant case has been filed subsequently after coming to know about institution of case against them. It has

also been disclosed that during course of occurrence Sudhakar Jha, son of informant was armed with bow and arrow and the arrow bowed by him had caused injury over the person. Two DWs have been examined on behalf of defence including exhibit of relevant documents.

6. In order to substantiate its case, the prosecution had examined altogether ten PWs out of whom, PW-1 is Shashinath Jha the informant, PW-2 is Rajendra Jha, PW-3 is Brajkishore Jha, PW-4 is Luchayi Kamat, PW-5 is Arun Kumar Jha, PW-6 is Sudhakar Jha, PW-7 is Dr. Suddheshwar Prasad Singh, PW-8 is Vijay Kumar Jha, PW-9 is Parikshan Singh, PW-10 is Shyam Lal as well as also exhibited Ext.1- Signature of informant over fardbeyan, Ext.2- Injury report. So far status of witnesses are concerned PW-1 is the victim, PW-6 is his son, PW-7 is a doctor who had examined PW-1, PW-9 is the part Investigating Officer. who had simply submitted charge sheet and PW-10 is Shayam Lal, the Investigating Officer. So far, remaining witnesses are concerned, PW-2, PW-3 were declared hostile while PW-4, PW-5, PW-8 were tendered. At the other end defence had also examined two DWs, DW-1 Mahaveer Jha, DW-2 Ghanshayam Jha and had exhibited Ext.-A, Fardbeyan of Bihra P.S. Case No.126 of 1990, Ext.-A/1 to Ext.-A/2, Signature over fardbeyan, Ext. -B, formal FIR, Ext.-B/1, Signature of Shayam Lal over formal FIR, Ext.-C Series, Signature of executant witness identified respectively over Sale Deed No.



875 dated 23.01.1990, Ext.-D, Sale Deed No.875 dated 23.01.1990, Ext.-E, rent receipt, Ext.-F Series, Prescription, Ext.-G, order dated 05.02.1990, Ext.-G/1, order dated 08-03-1991, Ext.-G/2, order dated 07-10-1990 to 08-06-1993 relating to Mutation Case No.491 of 1992, Ext.-G/3, order dated 05.09.1994 passed in Mutation Case No.10 of 1993, Ext.-H, application dated 08.03.1991, Ext.-I, Notice of Misc. Case No.552, Ext.-J, Injury register, more particularly Serial No.3477, 3478, PHC Panchgariha of 1990, Ext.-K, paragraph 26, 27 of Behea P.S. Case No.126 of 1990 (Carbon Copy).

7. PW-7 the doctor, during course of his evidence has stated that on 28.03.1990 at about 09:30 PM he had examined Shashi NathJha and found following injuries over his person:-

i) Piercing wound arrow in situ, left west near illiac crest.

X-ray was advised and X-ray Plate No.128 dated 29.03.1990 showed the presence of arrow on the left illiac bone. As per expert opinion Dr. B.N. Jha who had performed surgical maneovre on 29.03.1990 the arrow had pierced the grutial muscle. Half of the point of arrow was deep in the illiac bone vide BHT No.462 dated 28.03.1990. In the opinion the injury was grievous and it was caused within six hours and examination and accordingly exhibited the same as Ext.-2.

8. He was cross-examined and during course thereof he had stated that X-ray was not done in his presence however

he had seen arrow piercing the body of patient at the time of admission and then thereafter, as the patient was taken care of by Dr. B.N. Jha who had conducted surgery, he had not seen the arrow. In para-6 he had stated that he had prepared the injury report seeing the register.

9. From evidence of this PW it is apparent that though patient was admitted on 28-03-1990 itself but he had not mentioned the fact that the patient, at the time of admission was unconscious. It is also apparent from evidence of this PW that X-ray was conducted on 29-03-1990 and on account thereof, certainly the injured would not have been in unconscious state as claimed by him while giving his fardbeyan.

10. PW-1 had stated that the occurrence is about seven years ago. It was 05:00 PM. On the alleged date and time of occurrence, the accused persons (named) along with respective weapons having in their hand came at his *Darwaja*. At that very time, his son Sudhakar Jha arrived. Ganesh Jha @ Guna Jha inflicted farsa which was caught hold by his son Sudhakar. Subsequently, Ganesh Jha @ Guna Jha ordered Rudrakar Jha to bow arrow which struck over his left '*Panjara*'. He became unconscious and fell down. Then he heard sound of firing. After the arrow been extricated at hospital, he regained sense and then fardbeyan was recorded, over which he had put his signature. In para-2 he had stated that he had purchase 1



Kattha of land adjacent to his house and with regard thereto, he had filed Sanha. From cross-examination at para-4 he had shown inter se relationship. In para-9 of his cross-examination, he had admitted purchase of land by the accused persons as well as having in possession of accused. In para-11 he had also admitted purchase by accused from the sons of Laxmikant Jha on the same day, on which, he had also purchased land. Out of same survey plot number. He had further detailed in para-12, so far occurrence is concerned stating that accused persons were not present at their *Darwaja*. All on a sudden, they arrived. They were not raising alarm rather were saying caught hold Shashi Nath Jha. He became apprehensive. When the accused persons arrived, then he came out from *Baithka* where he was assaulted. In para-13 he had stated that he is not remembering the distance from where arrow was bowd. He is also not remembering the side wherefrom arrow was bowd.

11. In para-8 of his cross-examination he had admitted that accused persons have also instituted case against him, Ravi Shankar, Diwakar and Sudhakar Jha but he shown ignorance with regard to admission of injured at hospital. Suggestion has been given that the arrow was bowd by his son Sudhakar Jha which caused injury to him and in order to save their skin, from the counter case, instant case has been registered.

12. PW-6 is Sudhakar, son of informant. He in chief had



said that on the alleged date and time of occurrence he arrived from Saharsa and found some persons having encircled his father and were abusing. He identified Ganesh Jha, Rudrakar Jha, Bhaskar Jha, Satya Narayan Jha, Pappu Jha amongst them. He inquired, over which Ganesh Jha @ Guna Jha ordered to kill as well as also inflicted *Farsa* which he caught hold. Then thereafter Ganesh Jha @ Guna Jha has directed his brother Rudrakar Jha to bow arrow which he accordingly bowed causing injury over left *Panjara* of his father. His father became unconscious. At that very moment, Bhaskar had fired. He heard sound only. Satya Narayan had assaulted his father with *Lathi*. Others also hurled *Lathi* and on account thereof, he escaped therefrom. After departure of accused, he came and found his father unconscious. Then he was lifted to Sadar Hospital where he was treated. Then had stated that on account of litigation relating to land dispute, instant case has been registered. In para-6 of his cross-examination he had shown ignorance regarding presence of counter case. In para-8 he had stated that he used to live outside his village on account of his service. In para-9 he had admitted that accused persons are also claiming over the disputed land on the basis of sale deed. He had further stated that he had not seen the sale deed. He further shown ignorance regarding details of the land. In para-11 he had stated that when the police had gone to investigate the case, Ganesh Jha @ Guna Jha and Satya Narayan Jha were



present. In para-14, there happens to be material contradiction. He had disclosed in the aforesaid paragraph that all the accused persons have encircled his father and Ganesh Jha @ Guna Jha had inflicted *Farsa* blow from a distance of 2-3 hands. He had further stated that no repetition of blow was given. He had further disclosed that Rudrakar Jha had bowed the arrow at a distance of 2½ - 3 meters on an order of Ganesh Jha @ Guna Jha. In para-21 also there happens to be contradiction. In para-24 he had denied the suggestion more particularly relating to counter case.

13. PW-2 though was declared hostile but before such declaration he had deposed that he had seen Ganesh Jha @ Guna Jha, Satya Narayan Jha and Shasi Nath Jha lying in injured condition. Shasi Nath Jha had sustained arrow injury. He had not seen the assailant and then thereafter he was declared hostile.

14. PW-3 denied the occurrence and so, he was declared hostile.

15. PW-4 was tendered, had stated that he had not seen the occurrence.

16. PW-5 who also been tendered had stated during course of cross-examination that he had seen Narayan Jha and Ganesh Jha @ Guna Jha severely injured and were admitted to Panchgachiya Hospital for treatment. Then had detailed the description regarding land purchased by the accused persons.

17. PW-8 has also been tendered.

18. PW-9 is the part Investigating Officer who had submitted charge sheet after concluding investigation of Saharsa (Bihra) P.S. Case No.130 of 1990 (Present One). During cross-examination at para-2 he had admitted that he was Investigating Officer of counter case no.126 of 1990.

19. PW-10 is the Investigating Officer, Shayam Lal who had stated that he took up investigation on the basis of fardbeyan Shashikant Jha and gone to hospital where he took further statement of informant. He had also recorded statement of another injured Sudhakar Jha. He had issued injury report for the respective injured. Then he proceeded to inspect place of occurrence which was shown by Sudhakar Jha. In para-3 he had inspected the place of occurrence. He had seen Baithka of informant which happens to be having southern front. Baithka of accused Satyanarayan lies adjacent west to the Baithka of informant and in front thereof, there happens to be open land and for that there happens to be dispute. The occurrence has been shown to have committed near the road. He took statement of other witnesses. Supervision was conducted in his presence. Received injury report and on 17.06.1990 he handed over charge on account of transfer. In para-9 statement of witness Rajendra Jha (PW-2) has been drawn wherein he had stated that he had seen Satyanarayan, Ganesh, Sudhakar, Rudrakar, Bhaskar, Parsuram, Pappu Jha armed with armed



with *Lathi*, *Farsa* and arrow and further, had seen Satyanarayan Jha and Ganesh Jha in an injured condition. In para-10 his attention has been drawn up towards statement of Braj Kishore Jha, PW-3 wherefrom it is evident that on an order of Gunna Jha, Sudhakar Jha had bowed arrow causing injury over Shashikant Jha. In para-14 his attention has been drawn up towards statement of Sudhakar Jha in the context that he had stated before him Bhaskar Jha had fired from pistol as well as arrow stroke over *Panjara*.

20. Primarily, the obligation happens to be on the prosecution to prove its case beyond all reasonable doubt. The manner of occurrence should be properly established. By the evidence of the DW it is apparent coupled with Ext.-A that FIR on the basis of fardbeyan of appellant Ganesh Jha had already been recorded and instituted on 28.03.1990 itself at Panchgachhia State Dispensary and the presence of counter case though ignored by PW-6 had already been admitted by the informant himself. It is also evident from other prosecution witnesses that they have seen Bhuneshwar, Ganesh as well as informant lying in an injured condition. It is also apparent from the evidence of PW-7, the doctor, that he had not found informant to be unconscious and that cannot be because on 29.03.1990 X-ray was conducted. That means to say the prosecution intentionally and purposely withheld themselves to lodge a case at an earliest and when they came to know that

accused persons have already instituted a case, then in that event, aforesaid case was instituted.

21. In each and every case delay in institution of a case is not always found fatal to the prosecution but in case, where happens to be counter version and further, the conduct of prosecution is perceived dubious then in that event, certainly the delay will adversely affect upon the prospect of prosecution case.

22. At this juncture, the conduct of Sudharkar is also to be looked into. He had deposed that he along with Rajendra, Braj Kishore Jha had taken his father to hospital. Said Rajendra Jha is the PW-2 who had clarified the status of accused also lying in injured condition along with informant and Braj Kishore. PW-3 whose earlier statement was also on that very count identifying Sudhakar, PW-6 to be the assailant of his father. Then in that event, at least it was expected at the end of Sudhakar to have instituted a case. The conduct of the prosecution in the aforesaid background is not found above board more particularly, in the background of status of the parties as well as recognition by the prosecution itself, the accused persons to be purchaser from the sons of Laxmikant Jha on the same day on which he had purchased as well as in absence of the evidence disclosing exclusive possession of the prosecution. Not only this, the so alleged incidence of filing of Sanha as disclosed in fardbeyan has neither been produced

during trial nor before the Investigating Officer during course of investigation. Hence, motive is not at all found substantiated.

23. As such, it is found and held that prosecution has not come up with clean hand so far genesis as well as manner of occurrence is concerned, and on account thereof, the judgment of conviction and sentence recorded by the learned trial court is set aside. Appeal is allowed. Appellants are on bail hence are discharged from its liability.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated, the 21st day of Jan, 2015
Prakash Narayan

U		T	
---	--	---	--