

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.760 of 2010**

Arising Out of PS.Case No. -39 Year- 2006 Thana –Goreakothi District- SIWAN

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1. Prabhunath Bhagat son of late Bijan Bhagat,
 2. Sanjay Bhagat,
 3. Ajay Bhagat, both sons of Ramnath Bhagat, all are residents of Village –
 Goreakothi, Sheo Gulam Bhagat Ke Tola, P.S. Goreakothi, District - Siwan
 Appellant/s

Versus

State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 862 of 2010

Arising Out of PS.Case No. -39 Year- 2006 Thana –Goreakothi District- SIWAN

=====

1. Ram Nath Bhagat S/O Late Bijan Bhagat R/O Village – Goreakothi, Sheo Gulam
 Bhagat Ke Tola, P.S. Goreakothi, District - Siwan
 Appellant/s

Versus

1. State Of Bihar

.... Respondent/s

Appearance :**(In CR. APP (SJ) No. 760 of 2010)**

For the Appellant/s : Mr. Ajay Kumar Pandey, Advocate

For the Respondent/s : Mr. Bipin Kumar Singh, APP

(In CR. APP (SJ) No. 862 of 2010)

For the Appellant/s : Mr. Ajay Kumar Pandey, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 13-08-2015**

Cr.Appeal (SJ) No. 769/2010 wherein Prabhunath

Bhagat, Sanjay Bhagat and Ajay Bhagat are the appellants while

Cr.Appeal (SJ) No. 862/2010 wherein Ram Nath Bhagat is the

appellant, commonly originate against the judgment of conviction and

sentence dated 08.07.2010 passed by Sessions Judge, Siwan in

Sessions Trial No. 371/2010 convicting appellant Ram Nath Bhagat

for an offence punishable under Sections 304(II) of the IPC and

sentenced to undergo RI for five years while remaining appellants,

namely, Prabhunath Bhagat, Sanjay Bhagat and Ajay Bhagat under Section 323 IPC and sentenced to undergo RI for one year, have been heard together and are being disposed of by a common judgment.

2. PW-8, Lali Devi gave her Fard-e-beyan on 12.06.2006 at Sadar Hospital, Siwan where her husband, Basudeo Bhagat (since deceased) was undergoing treatment alleging inter alia that on 11.06.2006 at about 6:00 p.m. while her husband Basudeo Bhagat was digging his field with spade, and she was weeding, during course thereof, Ram Nath, Prabhunath, Sanjay and Ajay came and forbade her husband over which, her husband disclosed that as the land belonged to him, on account thereof, he was digging the same. This answer irritated them and on account thereof, Ram Nath snatched spade from her husband and gave a stroke over his head causing injury thereupon. Her husband fell down and became unconscious. When she intervened, Prabhunath, Sanjay and Ajay assaulted her with bamboo, on account of which she sustained injury over her head. As is evident, though instant case was registered initially under Sections 341, 323, 307/34 of the IPC, however, during course of treatment, the deceased was shifted to PMCH where he died. That being so, Section 302 IPC was added and accordingly, after completion of investigation charge-sheet was submitted thereunder which ultimately led trial before court of sessions having ultimate result, the subject matter of instant appeals.

3. The defence case, as is evident from mode of cross-examination as well as from the statement recorded under Section 313 Cr.P.C., is of complete denial as well as of false implication on account of village politics. However, neither any DW nor any kind of document has been exhibited in support thereof.

4. In order to substantiate its case the prosecution had examined altogether 11 PWs out of whom, PW-1 Shankar Dayal Kumar, PW-2, Ramprit Prasad, PW-3, Basant Prasad, PW-4, Kisuni Prasad, PW-5, Jitendra Kumar, PW-6, Ramparas Prasad, PW-7, Dharam Raj Kumar, PW-8, Lali Devi PW-9, Binod Kumar, PW-10, Dr. Ravi Shankar Singh and PW-11, Dr. Arun Kumar Singh. Side by side had also exhibited Ext-1 series, endorsement over Fard-e-beyan, Ext-2, Formal FIR , Ext-3, Fard-e-beyan, Ext-4 Series, injury report and Ext-5 postmortem report.

5. From the evidence available on the record, it is evident that right from PW-1 to PW-6, they have supported the factum of injuries having over person of deceased, Basudeo Bhagat as well as informant, Lali Devi but they have not identified the appellants being the authors. Therefore, the evidence of these PWs could be identified as corroborating the manner of occurrence having committed on the alleged date and time of occurrence and further, they had found these two persons in injured conditions. They have also contended, more particularly, PW-6, PW-1 that the deceased

along with Lali Devi was firstly taken to Goriakothi Hospital where first aid was provided and then they both were forwarded to Sadar Hospital, Siwan. They have also stated that on the following day, the deceased was forwarded to PMCH where they came to know about the death of the deceased during course of treatment.

6. Now coming to the evidence of remaining witnesses, their status happens to be, PW-7, Dharam Raj Kumar, son of PW-8 as well as that of deceased, PW-8, Lali Devi, an injured, PW-9, Binod Kumar, Investigating Officer, PW-10, Dr. Ravi Shankar Singh, a doctor of Sadar Hospital, Siwan who examined the deceased as well as PW-8 and PW-11, Dr. Arun Kumar Singh who performed postmortem after death of deceased, Basudeo Bhagat.

7. From the evidence of PW-10, Dr. Ravi Shankar Singh, it is evident that he had examined Lali Devi on 12.06.2006 at 5:00 a.m and found following injuries:-

2 ½” long stitched wound over scalp, simple in nature but with regard to weapon and time, he did not disclose as injury was stitched.

In like wise manner, he examined Basudeo Bhagat and found the patient unconscious. He had also found single stitched wound 4” long over occipital region. Patient was referred to PMCH. No opinion was given relating to the aforesaid injuries.

8. Furthermore, on query made by the prosecution, the doctor had stated that the injury might be possible from back part of spade, although, in absence of his opinion with regard to injuries as

stated earlier, is found unwarranted. During cross-examination, he had accepted the suggestion that stitched wound attracts surgical interference in some of the cases, however, the present case did not suggest like so. The doctor was right in asserting during course of cross-examination that as the injury was stitched wound, therefore, he would be unable to say whether it was a sharp cut injury or a lacerated one. His opinion was based upon attending circumstances. Same manner of answer has been given with regard to injuries having over person of PW-8 Lali Devi.

9. PW-11 had conducted postmortem over the dead body of Basudeo Bhagat on 15.06.2006 and found the following ante-mortem injuries:-

1. One stitched wound of 3 ½" length on back of right side of head 4" from right ear and 6" behind the right eye brow corner,

On dissection-- Haematoma under scalp. Haematoma under scalp found in all region. One communitated fracture of 8"x5" size situated obliquely on right temporal, right parietal and left parietal bone intending ½" behind from right orbit to behind of left. 4 ½" from left ear x 3 ½" from right ear.

Left parietal occipital sectuse was found separated. Extradural Haematoma was found of 6"x5" in right parietal and temporal region subdural Haematoma was found on both side of brain. More on left side and left face.

Stomach contain about 100 ml like green colour fluid. In general all viscera were found congested.

10. He had further opined that the injury was sufficient in ordinary course of nature to cause death. During cross-

examination, nothing has been explicated from the mouth of this PW whereupon the nature of injury, presence of injury could be doubted, although, he had faced lengthy cross-examination mainly on the point of haemotoma.

11. Now coming to the evidence of PWs, eyewitness who happens to be as well as one of the victims, PW-7, Dharam Raj Kumar had stated that at the time while his father was digging his field with spade and his mother was weeding. All the accused came, forbade and after getting proper reply by his father that he was digging his field, Ram Nath abused and further saying that he is to be buried, Sanjay, Ajay and Prabhunath caught hold of his father while Ram Nath after snatching spade, gave a single blow over his head. Thereafter, Sanjay, Ajay and Prabhunath assaulted his father with bamboo. His father fell down. His mother came in his rescue who was also assaulted by Sanjay, Ajay and Prabhunath. He also rushed, however, the accused persons chased him and on account thereof, he ran away towards village raising alarm. Villagers came and then his father and mother were taken to Goriakothi hospital. First aid was provided to them and then the doctor advised to carry the injured to Sadar Hospital, Siwan and from there, as per advice, he took his father to PMCH where during course of treatment, he died. It has also been narrated by him that at Siwan police had come and recorded statement of his mother over which he had also put his signature.



During cross-examination, he had disclosed that road runs north to south. At western side of the road, Bathan of so many persons including accused as well as he himself were present while his land lies east to the aforesaid road. His father was digging land east to the road. He was also digging and his mother was weeding. Occurrence took place on road. Two persons caught hold of his father from behind while one person caught hold his father from front. At that point of time, his father was at western front and he was assaulted by the spade from behind. His father caught hold of his head and began to wriggle and then after covering some distance, he fell down by the side of the road. His father was also assaulted by Sanjay, Ajay and Prabhunath before falling. Then thereafter, witnesses came, got the injuries wrapped by towel, lifted the injured on a cot and went to Goriakothi Hospital. Then there happens to be some sort of contradictions as well as suggestion to the effect that on account of slipping by his father as well as mother, they had sustained aforesaid injury.

12. PW-8 is Lali Devi, one of the injured as well as informant. She had reiterated her earlier version having some sort of improvement attracting Sanjay, Ajay and Prabhunath also to be assailants of Basudeo by means of bamboo. She had further disclosed that villagers had come, lifted the injured to Goriakothi hospital where she had also gone and got herself treated and then her husband was referred to Siwan where police came and recorded her statement.

Thereafter, her husband was referred to PMCH where, during course of treatment, he died. During cross-examination, she had not been cross-examined on the point of occurrence save and except, that she had stated that during course of grappling, her husband had sustained injury.

13. It has been submitted on behalf of the learned counsel for the appellants that development during course of evidence by the prosecution witnesses, more particularly, PWs-7 and 8 have been taken into account by the learned lower court and on account thereof, appellants, Sanjay, Ajay and Prabhunath were convicted and sentenced only for an offence punishable under Sections 323 IPC. It has also been submitted that they remained under custody during course of trial and further, taking into account the nature of allegation as well as the manner whereunder prosecution had tried to drag these appellants arbitrarily, which could not be justified because of the fact that injury on the person of deceased, Basudeo did not attract their complicity. In likewise manner, injury on the person of informant Lali Devi also did not justify the finding as per version, there happens to be three appellants while single injury has been found by the doctor.

14. With regard to appellant, Ram Nath Bhagat, it has been submitted that though there happens to be some sort of lapses on the part of the defence while cross-examining the witnesses, even then, right from inception of the instant proceeding, it is evident that



dispute had arisen on account of claiming of land by the rival parties. Furthermore, it has been submitted that there happens to be slackness on the part of the Investigating Officer during course of investigation because of the fact that prosecution had claimed that occurrence took place while they were digging their field lying east to the road which, the Investigating Officer failed to trace out, therefore, the motive for occurrence is not at all found duly substantiated. It has further been submitted that presence of appellants along with prosecution party having their Bathan west to the road is admitted. From the evidence of the son PW-7, presence of deceased at the western side of road has been admitted. That being so, a probable story could be found with regard to illegal activity of the prosecution party at the western side of the road which, purposely and intentionally been clouded by the Investigating Officer just to defeat interest of defence. Also submitted that none of the witnesses have stated that any of the accused was armed since before. Those things are indicative of the fact that neither there was an intention which has rightly been perceived by the learned lower court nor was knowledge at the end of appellants that the scuffle which took place would end costing life of the deceased. Therefore, appellant Ram Nath Bhagat be convicted for an offence punishable under Section 325 IPC as injury so disclosed was caused from the back side of the spade.

15. On the other hand, learned APP opposed the prayer and

submitted that forbidding the prosecution party and then the manner whereunder stroke was given that too by a spade over the delicate part of the body, i.e. head would ultimately give an inference regarding action of the accused and for that, has rightly been convicted and sentenced for an offence punishable under Sections 304(II) of the IPC.

16. It has also been submitted that PW-7 has not been cross-examined to that extent, more particularly, where he had shown the place of occurrence, the place where digging was going on and in likewise manner to PW-8. Furthermore, the Investigating Officer had rightly not traced out as the place of occurrence was visited by him after so many days. Therefore, there happens to be no substance in the submission made on behalf of defence. It has also been submitted that defence could not dare to cross-examine the witness that they had encroached or attempted to encroach at the western side of the road where his Bathan lies and in the aforesaid background, defence had got no ground to justify their action. In likewise manner, defence had also failed to cross-examine other PWs, i.e. PW-7, PW-8 or PW-9 that even at eastern side of the road, his land lies in the boundary of the land belonging to the prosecution party. That means to say, presence of appellants at the field lying at eastern side of the road was nothing but an outcome of high handedness of the appellants.

17. After giving minute observation of the record inconsonance with evidence, it is evident that prosecution has

succeeded in proving its case beyond all reasonable doubt. That being so, the judgment of conviction recorded by the learned lower court is affirmed. However, considering the facts and circumstances of the case the sentence inflicted against appellants, Prabhunath Bhagat, Sanjay Bhagat and Ajay Bhagat with regard to Section 323 of the IPC is modified as sentence already undergone. Since they are on bail, they are discharged from the liability of their bail bonds.

18. So far appellant, Ram Nath Bhagat is concerned, his sentence is maintained. Appeals are found devoid of merit and are, accordingly, dismissed.

(Aditya Kumar Trivedi, J)

Patna High Court
August 13th 2015
Perwez/AFR

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