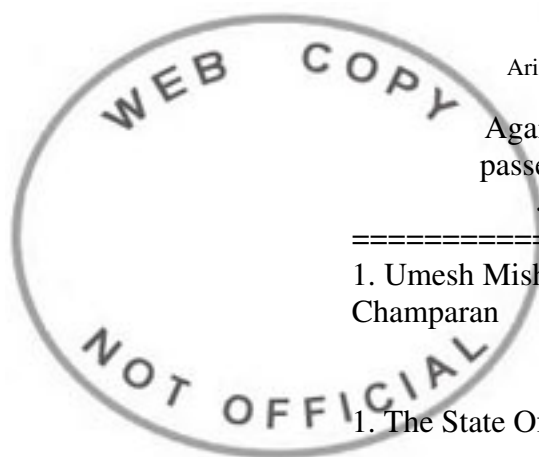




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.908 of 2009

Arising Out of PS.Case No. -0 Year- Thana - District- WESTCHAMPARAN(BETTIAH)

Against the judgment and order of conviction dated 5.9.2009/8.9.2009 passed by Shri Rajendra Prasad Mishra, Additional District & Sessions Judge-IV, West Champaran in Sessions Trial No.650 of 2005.

1. Umesh Mishra S/O Late Udhav Mishra Vill.- Dhamaura, P.S.- Sathi, Distt.- West Champaran

.... Appellant/s
Versus

1. The State Of Bihar

.... Respondent/s
with

Criminal Appeal (DB) No. 854 of 2009

Arising Out of PS.Case No. -0 Year- null Thana - District- WESTCHAMPARAN(BETTIAH)

Dinesh Mishra, son of late Udhav Mishra, resident of Village- Dhamaura, Police Station- Sathi, District- West Champaran

.... Appellant/s
Versus

State of Bihar

.... Respondent/s
with

Criminal Appeal (DB) No. 892 of 2009

Arising Out of PS.Case No. -0 Year- null Thana - District- WESTCHAMPARAN(BETTIAH)

1. Ramesh Mishra S/O Late Udhav Mishra Vill-Dhamaura,P.S-Sathi,Distt-West Champaran

.... Appellant/s
Versus

1. The State Of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 908 of 2009)

For the Appellant/s : Mr. (Advocate)
For the Respondent/s : Mr. Amarendra Nath Verma

(In CR. APP (DB) No. 854 of 2009)

For the Appellant/s : Mr. (Advocate)
For the Respondent/s : Mr. Amarendra Nath Verma, advocate

(In CR. APP (DB) No. 892 of 2009)

For the Appellant/s : Mr. (Advocate)
For the Respondent/s : Mr. Amarendra Nath Verma (Advocate)

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
and
HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)
Date: 21-07-2015

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The three appeals arising out of the same impugned judgment have been heard together. Whereas appellant, Dinesh Mishra, of Cr. Appeal No.854 of 2009 has been convicted under Sections 148 and 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years and a fine of Rs.2,000/- and in default of payment of fine three months simple imprisonment respectively, appellants of Cr. Appeal No. 892 of 2009 and 908 of 2009 i.e. Ramesh Mishra and Umesh Mishra have been convicted under Sections 148 and 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years and rigorous imprisonment for life with a fine of Rs.5,000 and in default of payment of fine simple imprisonment for one year respectively.

2. The case of the prosecution according to Om Prakash Mishra (P.W.7) recorded at 9.30 P.M. at M.J.K. Hospital, Bettiah 3.10.2004 in an injured condition is that on the same day in the morning his sister-in-law, Mamta Devi had gone to ease herself on a certain piece of disputed land. She was abused by Santosh Mishra. When she returned the sister-in-law told them

the story at which his brother deceased, Jai Prakash Mishra, stated that they would bring this to the knowledge of the villagers who would take suitable action.

3. However, thereafter Santosh Mishra (being tried in separate trial), appellants son Subodh Mishra, Ramesh Mishra, Umesh Mishra and Dinesh Mishra came to the indoor and started abusing them. As soon as both the brothers came out Umesh Mishra assaulted the deceased on the stomach with the Bhala. When he fell down he once again assaulted him with the same Bhala on his chest. Then Santosh Mishra and Ramesh Mishra assaulted him with Farsa on the head, on account of which he was severely injured. Subodh Mishra and Dinesh Mishra assaulted the informant with Farsa causing also injuries on his leg. The occurrence was witnessed by many nearby bystanders. After the occurrence accused persons ran away whereas the injured were removed to the hospital where his brother died and he himself was treated.

4. To prove its case the prosecution examined 11 witnesses. P.W.1 Nitu Kumar daughter of the deceased, P.W.2, Mangani Mishra father of the deceased, P.W.3, Kanchan Jha. P.W.4, Baiju Kant Mishra cousin of the deceased, P.W.5 Pintu Jha, P.W.6, Mamta Devi, wife of the deceased and P.W.7 Om Prakash

Mishra the informant deposed as eye witnesses. P.W.9. Jag Niwash Singh was the first Investigating Officer whereas P.W.10, Singheshwar Paswan, is the second Investigating Officer. P.W.11 Aftab Alam proved the injury report of the informant and P.W.8, Dr. Awadh Kishore conducted the post mortem examination.

5. The evidence of the witnesses in brief have been discussed so as to enable the reader to understand the final conclusion arrived at by this Court.

6. P.W.1, Nitu Kumari, daughter of the deceased who was about 12 years of age on the date of occurrence stated that his mother had gone to ease herself in the morning where she was abused by Santosh Mishra and then accused persons came upon their door and assaulted in the manner stated in the First Information Report. She stated that the injured were taken to Chanpatia and then Bettiah where her father died. In cross-examination she stated that none of the witnesses who are neighbours have been examined. She describes that house of the appellants Umesh Mishra and Ramesh Mishra was north to her house. She expressed her ignorance with regard to any Panchayati having been held about the disputed land and further she explained how close the accused persons lived to their house.

There is nothing else which is worth noticing in her evidence except that the police had come to the place of occurrence on the next day.

7. P.W.2, Mangani Mishr alias Dasrath Mishra is father of the deceased who explains the manner of assault in the same way as P.W.1. He also says that injured were removed to Chanpatia and then to Bettiah where his son died. In paragraph 9 he says that accused persons were his own agnates with whom there was partition suit pending. He also explains that the place of occurrence is situated at a heavily populated area and that there is no witness of the immediate neighborhood in the present case. In paragraph 11 he has stated that he took possession only of the land which was apportioned to him. He has stated that he has no knowledge of being accused earlier in any criminal case. In cross-examination he admits that he did not go to the police station to inform about the occurrence, even though there was a cycle in his house and it takes only 25-30 minutes to reach the police station. He also explained that Chanpatia police station and Sathi are equal distance and that the police had been informed by the Doctor at Chanpatia where he was not examined. He admits that he did not go to Bettiah hospital. His attention was drawn to the statement under Section 161 of the Code of

Criminal Procedure that he had not stated about abuse to the daughter-in-law by the accused.

8. P.W.3, Kanchan Jha, ia chance witness who deposed as an eye witness and repeated the version of P.Ws. 1 and 2. He is incidentally a witness on the Fardbeyan and also the inquest report. He stated that he had gone to the village to call the labourer when he witnessed the occurrence. In his cross examination he says that all the accused persons after surrounding the two injured had assaulted them and that he never went to inform the police. His attention was drawn towards the statement rendered under Section 161 of the Code of Criminal procedure wherein he had not deposed as an eye witness and he had in fact stated that it was only on Hulla that he had gone to the place of occurrence where he had found, two injured fallen on the ground.

9. P.W.4, Baiju Kant Mishr stated that on the date of occurrence he was at his door when on hearing Hulla he went to the place of occurrence and witnessed the same. He repeats the version of the earlier eye witnesses. He has mentioned that the injured were firstly taken to Chanpatia where the Doctor referred them to Bettiah and thereafter the informant was referred to Patna. In paragraph 6 he explains his relationship with the

informant by which it is deducted that he is the cousin of the informant. He also concedes that he did not go to the police station and surprisingly states that police had come to the place of occurrence on date of the same day but the time he could not remember.

10. P.W.5, Pintu Jha, is a chance witness who stated that he had gone to the site of occurrence for collecting Chanda for some Puja when he witnessed the scene. He is also a witness to the inquest report. He states that he had been threatened by the accused persons and for which he had given an application before the court concerned. In paragraph 5 he has stated that on the date his statement was recorded he put his signature and that his statement had been recorded by Daroga of Sathi police station. He did not say that the Officer Incharge had come to Bettiah hospital at 4.45 P.M. but he was not present there. He says that he had gone to Chanpatia hospital where only formal bandage was done for about 30-35 minutes. He admits that Chanpatia hospital was only one and half K.M. form the Chanpatia police station and on the road he also says that case was instituted at 9 P.M to 9.30 P.M. and there was no enmity with the accused persons nor any difference over the land. When question about his house states that same was situated towards east-north to the village

and there were 3-4 persons running towards the place of occurrence.

11. P.W. 6, Mamta Devi, the wife of the deceased stated about the factum of occurrence in the manner the rest of the witnesses have stated. In cross examination she has stated that there was no dispute with the accused persons from before. She also describes that the accused persons were their close neighbours.

12. P.W.7, Om Prakash Mishr is the informant who also repeats the factum of occurrence as he had earlier done. He has conceded that there was a police case for kidnapping of his second wife against him. In his deposition he has stated that he was taken to Chanpatia hospital where he was preliminarily examined by Dr. Bishwanath Prasad and thereafter referred to Bettiah hospital where he was referred to Patna after his statement was recorded by the Officer Incharge. He also explains that the accused and the prosecution party are close neighbors.

13. P.W.8, Dr. Awadh Kishore, is said to have held the post mortem of the deceased on 4.10.2004 at 7.10 A.M.. He found the following injuries on his person:

- (i) Stitched wound 3” in length on right side of head
- (ii) Stitched wound 1 ½” in length near injury no.(i)

(iii) Stitched wound 2 ¼ in length on left side of abdomen

(iv) Stitched wound 1 ½” in length near the interior angle of right side of scapular.”

14. On dissection he found that right lung was punctured and was in continuation with injury no.iv which was under scapula. He also found a linear fracture. According to him injury nos. (i) and (ii) were caused by hard and blunt substance whereas injury nos. 3 and 4 were caused by sharp pointed weapons and death was caused on account of shock and hemorrhage.

15. In cross-examination he states that injury nos. (i) and (ii) could not have been possibly caused by Farsa since bone of head was not cut. As per him injury nos. (iii) and (iv) were both separate.

16. P.W.9, Jag Niwash Singh is the first Investigating Officer who states that he had recorded the statement of the informant at M.J.K. Hospital, Bettiah and proves the document marked as Exts.3, 4 and 5. He examined the place of occurrence which was 20’x8’ Verandah and Gali leading going to east and west. In cross-examination he has stated that Sathi police station was 25 KM from Bettiah hospital and that he had recorded the statement on 3.10.2014 at 9.30 P.M. To a specific query about only earlier case he says that he did not get any information about the same.



He visited the place of occurrence but did not search the house of accused. No document with regard to the disputed land was shown to him by the prosecution. According to him P.W.2 had not stated that the accused had abused Mamta Devi in the morning and that P.W.3 was not an eye witness to the occurrence as per his statement recorded under Section 161 of the Code of Criminal Procedure.

17. PW.10, Sidheshwar Paswan, is the next Investigating Officer who did no investigation the case since he had joined only on 22.12.2004 i.e. about two months later. He has stated that he had attempted to get the injury report of the injured from Dr. Bishwanath Prasad but it was not mentioned in the case diary.

18. P.W.11, Aftab Alam, has proved the injury report of the informant which is Ext.8. The injury report had been penned by Dr. S. Das who had examined the injured which is proved as Ext.8.

19. The above is the sum and substance of the prosecution case. The view we have recorded is (i) Undoubtedly no effort had been taken to report to the police about the occurrence even though police station was located only one and half K.M. from the village (ii) There is no explanation as to how from Sathi police station the deceased finally reached Bettiah at 9.30 P.M.



(iii) Undoubtedly the Police Officers from Chanpatia police station had reached Bettiah hospital and prepared the inquest report of the deceased. (iv) the Doctor who had examined the informant at Chanpatia, Bettiah or at Patna has not been examined. (v) The Doctor who initially examined the deceased Jai Prakash Mishra has also not been examined. (vi) There is no explanation why no information was given to the police station situated only 25-30 K.M. away.

20. Counsel for the defence submits that the prosecution has suppressed the earliest version that was given to the Police Officer who prepared the inquest report. There is no injury report of the injured in support of his oral submission. The post mortem examination report is not in conformity with the prosecution case.

In the light of the above the prosecution should be disbelieved.

21. On the other hand, learned counsel for the informant submits that since the informant and his family members were rustic villagers whose anxiety was only to save the lives of two injured, their not going to the police station does not adversely affect the case of the prosecution but to the rest of the points he has no reply.

22. Undoubtedly the prosecution has not given any explanation to the point raised by the defence counsel but we find

that there is consistent eye-witness account to the actual occurrence. Even though there is no evidence in support as to the nature of the injuries of the informant received but when P.W.11 has proved the injury report, the court will have to accept that the informant was also an injured witness. His evidence thus cannot be lightly shaken.

23. We find from the evidence of P.W.8 that he was of the opinion that two injuries no. 3 and 4 could not have been caused by a single blow. However, we are of the opinion that it was only the doctor who had first examined the injuries on the person of the deceased who could have testified to this fact conclusively. The bald opinion of the Doctor conducting the post mortem report that injury nos. 3 and 4 were caused by two blows, when we see its nature on dissection, is difficult to accept. Hence this Court would be inclined to hold that only one Bhala blow was dealt upon the deceased by Umesh Mishra. While on the evidence of P.W.8 we find that he has stated that the injury on the head could not have been caused by Farsa and hence that part of the prosecution case would have to be discarded.

24. On a consideration of the manner of occurrence, we would think it suggests that the occurrence had taken place in the heat

of passion when immediately before the assault an altercation had taken place. The occurrence does not appear to be premeditated in which circumstances we convert the conviction of appellants, Ramesh Mishra and Umesh Mishra from one under Section 302 Indian Penal Code to one under Section 304II Indian Penal Code and reduce the sentence to a period already undergone by them. However, the fine of Rs.5,000/- is increased to Rs.15,000/- each which shall be deposited within six weeks from the date of receipt of this judgment. The same shall be disbursed to the wife/heirs of the deceased on proper verification. Conviction of Dinesh Mishra is also maintained with the modification in the sentence to the period already undergone. However, the amount of fine of Rs.2,000/- is also to be paid to the informant/wife/heirs within six weeks of receipt of this judgment.

25. With the aforesaid modification in conviction and sentence, these appeals are disposed of.

Vinay/-

(Anjana Prakash, J)

(Shivaji Pandey, J)

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