

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.966 of 2009

Arising Out of Kochai Kote P.S.Case No.111 Year- 1986 District- GOPALGANJ

Mangru Pandit, son of late Godhar Pandit, resident of village Bishamberpur Tola Phulwaria, P.S. Kachai Kote, Distt. Gopalganj.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 949 of 2009

Arising Out of P.S. Case No.111 Year- 1986 Thana Kochai Kote District- GOPALGANJ

1. Jagarnath Pandit, son of Lal Pandit
2. Yogendra Pandit, son of Khublal Pandit
3. Hasmat Mian @ Hasarat Mian
All residents of village Bishamberpur Tola Phulwaria, P.S. Kachai Kote, Distt. Gopalganj.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 893 of 2009

Arising out of P.S. Case No.111 Year- 1986l Thana Kochai Kote District- GOPALGANJ

Ramashankar Rai, S/O - Late Bramhadeo Rai. R/O + Vill - Bishambharpur Fulwariya , P.S. - Bishambharpur , Distt - Gopalganj

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 966 of 2009)

For the Appellant/s : Mr. Pragati Anand on behalf of Dr. Shashi S. Kishore
For the State : Mr. Abhimanyu Sharma, A.P.P.

(In CR. APP (DB) No. 949 of 2009)

For the Appellant/s : Mr. Pragati Anand on behalf of Dr. Shashi S. Kishore
For the State : Mr. Abhimanyu Sharma, A.P.P.

(In CR. APP (DB) No. 893 of 2009)

For the Appellant/s : Mr. Pragati Anand on behalf of Dr. Shashi S. Kishore
For the State : Mr. Abhimanyu Sharma, A.P.P.

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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

Heard learned counsel for the Appellants and the State.

2. All the Appellants have been convicted under Sections 302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life by a Judgment of conviction and order of sentence dated 15.9.2009 passed by the 2nd Additional District & Sessions Judge, Gopalganj, in connection with Sessions Trial No. 155 of 1987/248 of 2009 arising out of Kochai Kote P.S. Case No. 111 of 1986. In addition, they are required to pay a fine of Rs.5,000/- each to the wife of the deceased in default of which further imprisonment of three months.

3. The case of the Informant Abdulla Alim is that on 18.7.1986 at about 11:00 A.M. while he was on his land in front of his house, Ramashankar Rai and Yogendra Pandit started filling earth in the vacant land, he approached the deceased asking them to stop saying that they were filling earth on his lands. This enraged the accused persons who started abusing the Informant and the deceased. When they protested, Ramashankar Rai ordered at which Yogendra hit his brother with lathi resulting in his fall. Then the deceased was

assaulted with a bhalu on his stomach by Appellant Mangru Pandit. The rest of the accused persons also started assaulting both of them and fled away on arrival of the villagers. The Informant started to remove his injured brother Abdulla to the Hospital, once again the accused persons namely, Md. Alim Mian and Rambha Pandit started abusing him and also assaulted him with fists and slaps. This statement was recorded by S.I. Kuchai Kote of Gopalganj Police Station at Camp Sadar Hospital, Gopalganj.

4. During Trial, the Prosecution examined seven witnesses out of which PW-1 Raghunath Pandit is a formal witness who has proved the signature of K.P. Yadav, Officer-In-charge of Kochai Kote which is marked Exhibit-1 and signature of Sunil Kumar which is marked as Exhibit-2.

5. PW-2 Bachcha Gond allegedly an eye witness has not supported the prosecution case and was declared hostile.

6. PW-3 Abdul Alim, Informant, is an eye witness who stated that on the date of occurrence, when the accused persons started filling earth near his door, he and his brother Abdullah asked them not to do so, at which Ramashankar Rai is said to have given orders to assault. Then Ash Mohammad, Alim and Yogendra are said to have started assaulting them with lathi due to which his brother fell down on the ground. Then Appellant Mangru, is said to have



assaulted him with Bhala on his chest. He is then said to have rushed his brother to Kuchai Kote where the Doctor referred him to Gopalganj Hospital where he was treated for 12 days but then he died. He proves his thumb impression on the Fard beyan Exhibit-3. In cross-examination, he stated that he did not know the plot numbers and details of the place of occurrence. He stated that the accused persons were moving earth from 8:00 A.M. till 10:00 when he was in his house but he did not stop them. It was only at 10:00 A.M., when they started putting earth on his land that they protested. He concedes that there was an altercation from both sides on account of moving of earth which continued from 9:30 A.M. The accused persons were his neighbours and there was no demarcation of the land. Since earth was being moved, the accused persons had Kudal and lathi with them.

7. PW-4 Jago Devi is the wife of the Informant who stated that the accused persons were filling earth on their lands and when a protest was made the assault took place. She stated that the earth was being filled at about 1:00 P.M. and that the lands of Appellant Jagarnath was adjacent to her land and the earth was being filled on the same land which he had purchased from Ramashankar about four years ago. They themselves had attempted to buy this land but Ramashankar did not give it to them and instead gave it to Appellant Jagarnath which had hurt her husband. She stated that her



lands and the land of Jagarnath were adjacent and contiguous to each other without any demarcation. Both the Parties at the time of filling of earth started staking their claims on the lands in question which led to an altercation and assault. It was suggested to her that since her husband had wanted to buy the land which Appellant Jagarnath had purchased, there was an altercation and scuffle in which the deceased had fallen down on a spade and hurt himself.

8. PW-5 Hasbu Nisha is the wife of the deceased who stated that on the date of occurrence, the accused persons were filling earth on lands which was stopped by the deceased. There was some pushing and elbowing as also scuffling. It was then that Ramashankar gave orders at which Mangru assaulted her husband with Bhala on account of which he was injured and died eleven days later. She is also unable to say as to the exact details of the land and merely stated that the accused persons wanted to capture the land. She did not know as to whether the Police had ever recorded the statement of the deceased in the eleven days while he was alive.

9. PW-6 has proved the postmortem prepared by Doctor Bhatt who has been examined as P.W-7.

10. PW-7 has stated that he had conducted postmortem examination on the deceased on 29.7.1986 i.e. 11 days later and found three wounds on his person.

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- i) One infected wound 16"x 1 1/2" of operation (laparotomy right paramedian, on abdomen.
 - ii) One infected wound 1 1/4"x2/3" on left side of abdomen in ambital region (wound of entry).
 - iii) One infected wound 1"x1 1/2" on right Lumber region of abdomen (wound of exit)

On Dissection:

There was fistula in small intestine. Three wound in small intestine and mesentery were found. The abdominal cavity contained large quantity of pus and faecal matter

In his opinion, death was due to septicaemia and shock as a result of injury to small intestine and mesentery caused by sharp penetrating weapon which was grievous in nature.

11. Thus from the Postmortem examination report, we find that all the injuries were infected and the Doctor has stated that the death was on account of Septicaemia.

12. The defence also examined one witness as DW-1 namely, Seshman Tiwari who proved documents with regard to the land, to show that the place of occurrence belonged to the accused and not the Prosecution.

13. From the evidence as discussed above, it is apparent that the occurrence had taken place on part of the land which was contiguous without any demarcation. In such circumstances, the important question which would arise is as to whether the land belonged to the Prosecution or the accused. Even if the accused did



not claim right of private defence of property in the Court below, it would still be open to them at this stage. Notwithstanding the absence of their defence when we find that when Investigating Officer has not been examined who alone would have positively proved the fact of ownership of the land either way, it would be unsafe to rely on the one sided version of the Prosecution in its regard in circumstances, when the Investigating Officer has not been examined to pin point the exact location of the place of occurrence which would sway the mind of the Court one way or the other, his non-examination has to be dealt with adversely.

14. Also the non-examination of the Investigating Officer in a case like the present, in our opinion, has caused serious prejudice to the Appellants. We are aware that it is not in every case, that non-examination of the Investigating Officer would deal a fatal blow to the prosecution case, but in the present case, when the admitted position is that both the Parties were claiming the land in question which was contiguous and the Prosecution also concedes that they were aggrieved on account of the land being sold to the Appellant Jagarnath, we would think it unsafe to place complete reliance on the same.

15. Moreover, the postmortem examination report also does not conclusively point as to whether the injuries were

sufficient in the ordinary course of nature to cause death when all the injuries were inflicted. There is no positive evidence given by the Doctor as to whether the injuries were the direct cause of the death. Hence, We hold it would be difficult to conclude that the intent of the Appellant was to cause death of the deceased.

16. In circumstances enumerated above, we have no option but to allow the Appeal.

17. Hence, the Appeal is allowed and the Judgment of conviction and order of sentence dated 15.9.2009 passed by the 2nd Additional District & Sessions Judge, Gopalganj, in connection with Sessions Trial No. 155 of 1987/248 of 2009 arising out of Kochai Kote P.S. Case No. 111 of 1986 is hereby set aside. The Appellants Jagarnath Pandit, Yogendra Pandit, Hasmat Mian @ Hasarat Mian and Ramashankar Rai are discharged from the liabilities of their respective bail bonds. The Appellant Mangru Pandit, who is in custody, shall be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Shivaji Pandey, J)

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