

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1288 of 2010

Arising Out of PS. Case No.43 Year- 1994 Thana Gaya Kotwali, District- GAYA

Vijay Kumar Mahto, son of late Ram Kishun Mahto, r/o village Manjhosh, P.S. Makhdumpur, Distt. Jehanabad.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 988 of 2013

Arising Out of PS. Case No. -43 Year- 1994 Thana -GAYA KOTWALI District- GAYA

Ram Deo Mahto, son of late Ram Kisun Mahto, resident of village Manjhosh, P.S. Makhdumpur, Distt. Jehanabad.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 1288 of 2010)

For the Appellant/s : Mr. Sucheta Yadav, Adv.

For the State : Mr. A.K. Sinha, A.P.P.

(In CR. APP (DB) No. 988 of 2013)

For the Appellant/s : Mr. Sucheta Yadav, Adv.

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

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 27-11-2015

Heard learned counsel for the Appellants and the State.

2. Both the Appellants have been convicted under

Sections 302/34 of the Indian Penal Code and sentenced to rigorous

imprisonment for life whereas Appellant Vijay Kumar Mahto has

been awarded fine of Rs.3,000/- in default of which further

imprisonment for three months by the Additional Sessions Judge-III, Gaya, in Sessions Trial No. 267 of 2009/25 of 2009 by a Judgment and order of sentence dated 5/7.10.2010. The Appellant Ram Deo Mahto has been awarded fine of Rs.10,000/- in default of which six months rigorous imprisonment by a Judgment and order of sentence dated 19/22.8.2013 in Sessions Trial No. 576 of 2009/242 of 1997.

3. The case of the Prosecution according to the Informant Rinku Kumari is that on 16.2.1994 she had gone at about 6:00 A.M. with her grandmother, deceased, Laxminiya Devi @ Mukhiyaien to consult a lawyer since there was going to be a decree in a case in which she was a Party and was returning from there. Suddenly, she saw 4-5 accused persons standing on the Road. Out of them, the Appellants Vijay Kumar Mahto and Ram Deo Mahto are said to have caught hold the deceased and, thereafter, assaulted her with Fasuli, on account of which, she fell down. Once, she had fallen down, the Appellant Vijay Kumar Mahto cut her neck due to which she died. She alleged that since her grandmother was on litigating terms with the two Appellants, they had committed this act. She then ran to her house and informed her mother and when she returned, she found her grandmother dead.

4. During Trial, the Prosecution examined four witnesses.



5. Suchita Devi, PW-1, in both the Sessions Trial, is the mother of the Informant. She stated that she was the daughter-in-law of the deceased and she stated that there was a land dispute going on between the two Appellants, and her mother-in-law had gone to consult the Lawyer in regard to a pending case. When she was returning from there, at about 9:30 A.M., her daughter PW-2 Rinku Kumari came crying and told her that the Appellants along with the 2-3 others unnamed persons had committed the murder of her mother-in-law with Fasuli. She then also went to the place of occurrence and found the deceased dead. When she reached there, several persons had gathered including the Hawaldar and the Daroga. The Daroga then recorded the statement of her daughter. In cross-examination she clarified that no other witness heard about the occurrence from her daughter. She stated that her husband used to drive a Road Roller and was not present at home on the date of occurrence. In cross-examination she also stated that the place of occurrence was a very busy road and several vehicles passed from there. In the earlier Sessions Trial, she stated that the place of occurrence was about one K.M. away from her house.

6. PW-2, Rinku Kumari, was examined in both the Sessions Trials as PW-2. She reiterated the statement given in the Fard beyan and that while she along with the deceased was returning

from the house of the Advocate, they were waylaid by the accused persons who assaulted her grandmother with Farsa on account of which she died. She proves the signature of Fard beyan as Ext.-1. She stated that at the time of occurrence, she was about 12-13 years of age and that the house of the Advocate was about 1 and ½ K.M. away from the place of occurrence. When questioned as to whether she was in a position to give documents with regard to the land dispute, she replied in the negative. She also explained that the place of occurrence was a busy place but she had not met anyone when she was returning from there. She stated that she ran home screaming which was half Kilometer away. She also stated that her grandmother was called Mukhiyaien, even though, she had not contested any election but she was in the Congress Party. She also stated that she started screaming but no one came to save them.

7. The Doctor who had conducted the Postmortem examination has been examined as PW-3 in the earlier Sessions Trial and PW-4 in the later one. He found the following injuries on the person of the deceased:

- i) *One Transvers incised wound of size 6 ½" x 1 ½" x bone deep was present over Middle of neck covering the front and both sides. All structure in the Middle and sides of neck including muscles vessles, nerves, Trachia and esophagus were sharply cut in front of 3rd and 4th servical vetibral body. The wound was filled with blood clots.*
- ii) *Incised wound left side of chin of size 1 ½" x 1 ½"*

- x 1/4" bone deep (Mandable)*
iii) *Transvers incised wound over the pamar aspect of Middle of Rt. Palm of size 2" x 1/2" x 1/4" bone deep.*
iv) *Amputation right Middle finger at the level of Middle Pharings.*

In cross-examination, he stated that the injuries might have been inflicted approximately at 2:30 A.M.

8. In Sessions Trial No. 267 of 2009, one Uma Shankar Prasad has been examined as PW-4 who proves the Fard-bayan (Ext.-3) and First Information Report as Ext.-4. He appears to be a formal witness.

9. In Sessions Trial No. 271 of 2006, one Surendra Kumar Sinha has been examined as PW-3 who stated that his house was situated across the place of occurrence and at about 10:00 A.M., he heard hulla at which he had gone there and saw the dead body.

10. PW-5 Narendra Kumar Verma is another witness who has been examined in Sessions Trial No. 271 of 2006 who proves the Fard bayan (Ext.-3) and the Formal First Information Report (Ext.-4).

11. In the earlier Sessions Trial, several Defence witnesses had been examined on the point that the deceased was a wayward lady who used to often leave home without any information and people were generally aggrieved with her behaviour. Some documents with regard to the Complaints against her, have also been

proved by the defence.

12. On going through the evidence of the witnesses, we find that apart from PW-2 Rinku Kumari, the Informant, there is no other eye witness. Her eye witness account does not seem credible for the simple reason that she was merely 12-13 years of age at the time of occurrence and yet the accused persons who were about 4-5 in number, did not attempt to harm her which is improbable in the facts of the case. Her presence, thus, appears to be highly doubtful and unlikely. The next reason for disbelieving her evidence is that even though, she says that the place of occurrence was a busy place and she heard the deceased shouted for help but there is no corroboration on any point. In fact, one of the witness (PW-3) examined in Sessions Trial No. 271 of 2006 has stated that at about 10:00 A.M., he heard hulla and then he saw the dead body. He does not corroborate the presence of the Informant (PW-2).

11. We also find that the Investigating Officer has not been examined who alone could have given an objection view of the incident. The fact that there was a land dispute between the Parties, has been asserted by the Prosecution, which gives rise to a suspicion in our minds that in fact, the two Appellants have roped in forcibly on account of the said dispute.

12. In view of the above discussion, both the Appeals

are allowed and the Judgment and order of conviction dated 5/7.10.2010 and 19/22.8.2013 passed by the Additional Sessions Judge-III, Gaya, in Sessions Trial No. 267 of 2009/25 of 2009 and 576 of 2009/242 of 1997 respectively, are hereby, set aside. The Appellant of Cr. Appeal (DB) No.988 of 2013, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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