

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.492 of 2011

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Md. Kalam, S/o Late Ibrahim Resident of Village Chera Khera, Police Station
Alauli, District Khagaria.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

---With---

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Criminal Appeal (DB) No. 431 of 2011

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1. Md. Minajul @ Minajul S/o Md. Kalam
2. Md. Alam @ Alam S/o Md. Kalam
3. Noor Mohammad S/o Md. Kalam,
All are R/o Vill. Chera Khera, P.S. Alauli, District - Khagaria

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. S.N.P Sinha, Sr. Adv. Mr. Abhay Kumar Singh, No.1 Mr. Bharat Bhushan Mr. Rohit Kumar Mrs. Sangita Sharma
For the State	:	Mr. Ashwani Prasad Sinha
For the Informant	:	Mr. Pranav Kumar Dr. Indihar Kumari.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 04-03-2016

Heard learned counsel for the Appellants and

learned counsel appearing on behalf of the State as well as learned

counsel for the Informant.

2. The above named Appellants have been convicted under section 302/34 of the I.P.C. and sentenced them to undergo for life imprisonment and fine of Rs. 5000/-, in default of which, further imprisonment for one year by a Judgment dated 26/27.04.2011 by the Additional District and Sessions Judge, F.T.C. IIIrd, Khagaria.

3. The case of the prosecution, according to the written information given by the deceased himself, is that on 27.04.2008 when he was going for ease himself, the present Appellants surrounded him and started to abuse him and said that he should give evidence in their favour in the earlier case pending between them. In the course of altercation, the Appellants started to assault him brutally with the *butt* of guns, *lathis* and climbed on top of his chest. They then hanged him on the tree and further assaulted him. The case was initially instituted under section 307 of the I.P.C. but the deceased died next day and section 302 of the I.P.C. was added.

4. During trial, the prosecution examined 11 witnesses. P.W. 7, Dr. Ajay Kumar, held the Postmortem of the deceased and found the following injuries on his person :

External Examination :

1. *Contusions right side face 1 ½" x 1 ½"*

2. *Contusions right forehead.*
 3. *Lacerated wound lower lip 1 ½" x ½" muscle deep.*
 4. *Abrasion upper part of left upper arm 3" x 1 ½".*
 5. *Contusion right shoulder 1" x ½"*
 6. *Abrasion on front of left elbow 5" x ½"*
 7. *Abrasion on front of right elbow 7" x ½"*
 8. *Abrasion right side chest wall exterior 1" x ½"*
 9. *Contusion on left side exterior chest wall 5" x 1 ½"*
 10. *Contusion left side lower part of thigh 2" x 1"*
 11. *Abrasion on left thigh lower part 3" x 1 ½"*
 12. *Contusion left leg front part 6" x 3" body and cloths contained blood stain.*
- Rigor mortis present in neck and all face, limbs.*

Internal Examination :

Dissection – Skin and subcutaneous tissues

corresponding to the site of injuries were congested and contained blood and clots. There was fracture of sternum at the level on their rib. There was also fracture of fourth and fifth ribs, right side anterior chest wall. There was laceration of lungs, chest, cavity contained blood and clots. Left side of heart was empty and right contained blood. Visceras, liver, spleen, kidney were pale.

5. P.W. 10, Dr. Mahendra Prasad Singh, examined P.W. 8, Md. Jamaluddin and found following injuries on his person :

i) Lacerated wound on left arm above elbow of side 1" x ½" x muscles deep

6. P.W. 11, Dr. Yogendra Singh Prayasi, examined Md. Salauddin, the deceased when he was in an injured condition and found following injuries on his person :

i) Linear Bruise 4" x ½" on medial side of left thigh.

ii) Liner Bruise 4" x ½" on lateral side of right thigh.

iii) *Linear bruise 4" x ½" on lateral side of right thigh.*

iv) *Reddish black in various size on gluted region. X-ray Right hip AP Lateral.*

v) *Linear bruise 6" x ½" on right arm.*

vi) *A lacerated wound ½" x ½" x skin deep on posterior surface of right elbow. X-ray right elbow. AP lateral.*

vii) *A lacerated wound ¼" x ¼" skin deep on lateral. Malleolus of right ankle joint. X-ray right ankle with foot APS lateral.*

viii) *Pain and swelling left foot. X-ray left foot. A.P. Lateral including ankle joint.*

ix) *Pain chest x-ray chest. A.P. view.*

x) *A linear bruise on abdomen 3" x ½.*

xi) *Reddish black bruise on right side of face.*

xii) *Black reddish linear bruise on right scapular region 6" x ½".*

7. P.W. 1, Afroza Khatoon, who is the niece of the deceased, stated that on the morning of occurrence, she heard that the Appellants assaulted her father Md. Salauddin and had hanged him on the tree and further assaulted him.

8. P.W. 2, Inamul Haque, stated that on the morning of occurrence, he saw the accused persons assaulting the deceased who later on died. His attention was drawn to their earlier statement that he had not taken the names of Appellants but merely heard that father and sons had committed this act.

9. P.W. 3, Subodh Pandit, is a formal witness, who merely stated that some fight had taken place between Md. Salauddin and accused persons in which course assault had taken place.

10. P.W. 4, Kapildev Poddar, stated that he went to the place of occurrence on the cries of Md. Salauddin and saw the accused persons assaulting him. He further stated about the motive of the occurrence that they were coercing the deceased to compromise the earlier case. His attention was drawn to the earlier statement that he was not, in fact, an eye witness.

11. P.W. 5, Md. Riyaz @ Budhna, stated that the accused persons had assaulted the deceased with fists and slaps and when he had gone to save him, he was pushed, on account of which he fell down. The deceased was then taken to Sadar Hospital, Khagaria but on the way, he died. He stated that there was no earlier dispute between the parties. In cross-examination, he stated that he along with others had gone for treatment and on

the way, Maulana Ashraf, as guardian, was with them. Maulana Ashraf had taken the thumb impression of deceased Md. Salauddin and when he died, he got recoded a written report in the name of the deceased and given the said report to the Police. He further stated that P.W. 2, Inamul Haque, P.W. 3, Subodh Pandit and P.W. 4, Kapildev Poddar were not eye witnesses and they had been informed about the occurrence.

12. P.W. 6, Abhay Prasad Yadav, is the Investigating Officer, who stated that on 27.04.2008, he had received the written report of the deceased and the First Information Report, which is marked as Exhibits-1 and 2 respectively.

13. In cross-examination, he also asserted that on 27.04.2008 at 3.45 pm. he had received the written report of the deceased. He also asserted that the deceased was still alive when he had been brought to the Police Station. However, we find that he has not noted about taking further statement of the deceased. There is nothing which is of note in his evidence.

14. P.W. 8, Jamaluddin, brother of the deceased and also injured, had stated that on the date of occurrence, the accused persons started to assault the deceased with fists, slaps, lathis and butt of gun, on account of which, he became injured.

Thereafter, the deceased was also hanged on the tree and was further assaulted and when the accused persons left the place, he was brought down and taken to the Police Station where his statement was recorded and when he was referred to Khagaria for further treatment, he died. The Police then came to Khagaria and got performed the Postmortem Examination. The motive of the occurrence was the earlier case pending between the parties.

15. P.W. 9, Fool Hasan Haji, also stated about the factum of occurrence but in cross-examination, he stated that he had learnt as to where the deceased had been injured and taken.

16. It has been submitted on behalf of the learned counsel for the Appellants that motive, which has been attributed to the Appellants, is completely without any basis, since the case for which the deceased was being coerced had already ended and the informant had already been examined in the said case. When this occurrence had taken place, there was no cause for assault on this count. The further submission is that the evidence on record points to the suspicious character of First Information Report.

17. P.W. 5, Md. Riyaz @ Budhna, has stated that the written report was scribed by Maulana Ashraf after the deceased died and it was given to the Police in his name. Thus, when the foundation of the case on which the entire edifice is built



is itself doubtful, the prosecution case must be rejected. No doubt, the written report of the injured-deceased has been proved as Exhibit-1 but the scribe of the written report, that is Maulana Ashraf, has not been examined. We also find that the P.W.8, Jamaluddin, had stated that the deceased himself had given a statement before the Police on his reaching there but the prosecution has not produced the same.

18. On the other hand, learned counsel for the Informant submits that since a number of witnesses have supported the factum of occurrence that there is no scope of interference for these reasons.

19. After having gone through the evidence on record, we find that, no doubt, P.W.1, P.W.2, P.W.3, P.W.4 and P.W.9 have deposed as eye witnesses, however, they have inter se contradicted each other, which makes their evidence doubtful. Md. Riyaz @ Budhna (P.W.5) and Jamaluddin (P.W.8) are the only credible eye witnesses in our opinion. From the evidence of P.W. 5, we find that the assault was only with fists and slaps and there were no arms with the accused whereas P.W.8 Jamaluddin has stated that assault was with lathi and butt of guns. Thus, there is serious contradiction in regard to the manner of occurrence. Apart from the fact that the manner of occurrence is highly

doubtful, we also note the case originated in the back drop of 107 Cr. P.C. proceeding pending between the parties.

20. It also appears that the Inquest Report was prepared at 8:15 pm., on 27.04.2008 at the Veranda of Primary Health Centre, Alauli, whereas the case of the prosecution is that the deceased was firstly taken to Allauli Primary Health Centre and thereafter was being taken to Khagaria Hospital but he died on the way. It is not explained as to how the dead body reached Allauli Health Centre after the Written Report was given at the Police Station purportedly at 3.45 pm. There is no Police requisition in this regard. In the background of the evidence of P.W. 5 that the *fardbeyan* was scribed by Maulana Ashraf on the thumb impression of the deceased, these materials gain great importance. Also when P.W. 5 says that this written statement was given after the death of the deceased, it would naturally mean that it was after 8.15 pm. but the First Information Report reveals the written statement was received at the Police Station at 3.45 pm. i.e. much earlier. These disparities in timings are not explained by the prosecution giving them benefit of doubt.

21. Under such circumstances, the Appeal is allowed. The Judgment of conviction and Order of sentence dated 26.04.2011/27.04.2011 passed by the Additional District and

Sessions Judge, F.T.C.-3, Khagaria in connection with Sessions Trial No. 663 of 2008 arising out of Khagaria/Alauli P.S. Case No. 56 of 2008 is hereby set aside. The above named Appellants, who are in jail custody, are directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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