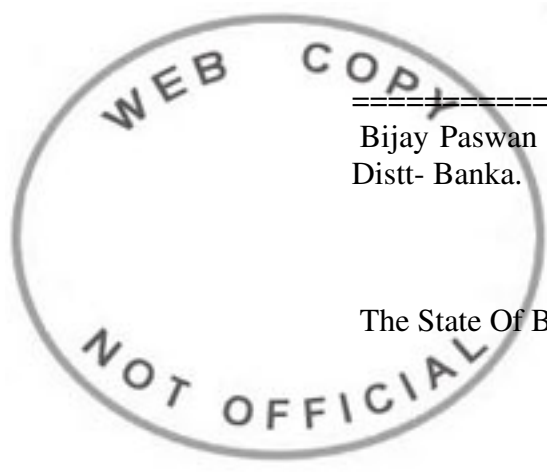




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1110 of 2011

Arising Out of PS.Case No. -80 Year- 2007 Thana -null District- BANKA

Bijay Paswan S/O Karu Paswan R/O Village- Gradhar, P.S. Dhoniya (Dhankund)
Distt- Banka.

The State Of Bihar
Versus
with
Appellant/s
Respondent/s

Criminal Appeal (DB) No. 552 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- BANKA

Chander Paswan S/O Late Jagdeo Paswan R/O Village - Guruduwar, P.S.
Dhoraiya, District - Banka

The State Of Bihar
Versus
with
Appellant/s
Respondent/s

Criminal Appeal (DB) No. 557 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- BANKA

Arun Paswan S/O Nepali Paswan R/O Village - Dhankar, P.S. Sabour, District -
Bhagalpur

The State Of Bihar
Versus
with
Appellant/s
Respondent/s

Criminal Appeal (DB) No. 619 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- BANKA

Banarsi Paswan

Versus
Appellant/s

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 1110 of 2011)

For the Appellant/s : Mr.

For the Respondent/s : Mr.

(In CR. APP (DB) No. 552 of 2011)

For the Appellant/s : Mr.

For the Respondent/s : Mr.

(In CR. APP (DB) No. 557 of 2011)

For the Appellant/s : Mr.

For the Respondent/s : Mr.

(In CR. APP (DB) No. 619 of 2011)

For the Appellant/s : Mr.

For the Respondent/s : Mr.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 08-02-2016

1. The four Appellants have been convicted under Section 302/34 of the Indian Penal Code and sentenced to Rigorous Imprisonment for life and also imposed fine of Rs. 5,000/- each and in default of fine simple imprisonment for six months by judgment dated 30.04.2011 and 06.05.2011 passed in Sessions Trial No. 181 of 2008 by the 2nd Additional District and Sessions Judge, Banka.

2. The case of the prosecution according to Vijay Kumar Sah P.W. 7, the son of the deceased, is that on 03.07.2007 his father Motilal Sah had gone to Dhoraya Village. While he and co-villager Pramod Paswan P.W. 2 and Manoj Paswan (not examined) had gone to attend the call of nature, in the evening at 07.30 PM in the fields, suddenly they heard the cries of his father. They then ran towards

the place of occurrence and in torch light, saw 9 accused persons one of which was holding a tangi and rest lathies including the Appellants having surrounded him and assaulting him. He then caught hold of his father and saw a number of injuries on his person. He stated that the reason of occurrence was some previous dispute with the accused persons. This *fard beyan* was given on 03.07.2007 at 8.30 P.M to the Officer-in-Charge Md. Abdul Mojib P.W. 11.

3. During trial the prosecution examined 11 witnesses.

4. P.W. 1 Shambhu Sah, P.W. 3 Bindeshwari Sah and P.W 8 Mahesh Sah who are the sons of the deceased have deposed as eye-witnesses to the occurrence. But in corss-examination the Investigating Officer P.W. 11 Md. Abdul Mojib found that in fact they had earlier stated that on having heard of the occurrence from the informant they had gone to the field and seen their father dead. So also P.W. 2 has been declared hostile and is irrelevant.

5. P.W. 3 Bindeshwari Sah who was not named in the first information report is also son of the deceased who stated that about having heard the cries of his father he had reached the place of occurrence and seen the accused persons assaulting his father for reason of land dispute. He stated in cross-examination that he along with P.W. 1 Shambhu Sah, P.W. 8 Mahesh Sah and P.W. 4 Tara Devi had gone there whereas the rests had reached there later. In

such circumstances, it appears that he is not an eye-witness to the occurrence.

6. P.W. 4 Tara Devi who is the wife of the deceased Moti Lal Sah stated that she had run on the cries of her husband and seen the accused assaulting him but from the evidence of P.W. 3, it appears that she had also gone there along with her other sons and not seen the actual occurrence.

7. P.W. 5 Md. Mustafa Ansari, the Doctor who performed the post-mortem of the deceased, found said 12 injuries. All of them were caused by sharp cutting weapon. Thus, it disproves the prosecution case that the deceased had been assaulted with 'lathies'

8. P.W. 6 Shankar Prasad Sah, the father-in-law of the deceased stated that on the date of occurrence while he was coming back to the village, he saw the deceased being assaulted by the Appellants and also talks of the presence of the informant Vijay Kumar Sah.

9. We find from the evidence of the informant that he has named him in the first information report as eye-witness. However, in cross-examination he conceded that he had not seen the accused persons assaulting but had only seen them fleeing. He also admitted that he did not know the names of all the villagers since he did not belong to the said village and he could identify them by face but not

by names. In such circumstances, it is strange that he had named the Appellants by name and hence we are not inclined to accept his evidence on point of identification.

10. P.W. 7 Vijay Kumar Sah, is the son of the deceased and the informant who repeats the version of the occurrence given in the *fard beyan* and proves his signature on the same as Ext. 2 and 2/1. In cross-examination he stated that he did not know as to who had informed the police and also when he had gone to the place of occurrence. He further stated that he had seen the accused persons fleeing and seen his father dead as also admits land dispute between the parties.

11. In such circumstances, we find that when the informant has himself conceded that he was not eye-witness to the actual occurrence and had merely seen the accused fleeing away from the place of occurrence in torch light it is highly unsafe to rely on such identification

12. P.W. 9 Horil Paswan, stated that on the date of occurrence he had heard the cries from the fields of Ajay Kapri and when he reached there, in torch light, he saw the accused persons fleeing with Tengari and Hasua. He also saw Pramod Paswan standing there and crying. He stated that Mahesh Sah P.W. 8 had also gone there and when he reached the fields, the deceased had already died.

Evidently, this witness who was on inimical terms with some of the accused persons, does not inspire confidence.

13. P.W. 10 Devendra Shah stated that on 03.07.2007 at about 7-7.30 PM in the evening he heard the cries and saw the deceased being assaulted by the accused persons. During cross-examination he conceded that the deceased was his uncle (Mousa) and he had seen and identified the accused in torch light which was not given to the Police Officer. It also appears that he belongs to another village and does not explain as to how he was in the village and witnessed it.

14. P.W. 11 Md. Abdul Mojib is the Investigating Officer who proves the *fard beyan* as Ext. 4 as also inquest report as Ext. 5 and the seizure list as Ext. 6. He stated that the place of occurrence was the field of Ajay Kapri situated within Garayua village, Police Station- Dhankund. He found blood at the place of occurrence and nearby area with marks of trampling. He further stated that Gurudwar village was about 15 Kms away from the police station and it is only on the next morning at 06.10 AM he had heard about the murder. No information was given by anyone to the police authority and a number of person had gathered near the dead body. He further stated that the informant had alleged that all the accused persons were holding Lathi. His attention was drawn to the statements of P.W. 1, P.W 3, P.W 7 and P.W. 8 which have already been mentioned above.

15. The defence examined one Bisun Paswan who stated did not identify any assailant.

16. On going through the evidence of the witnesses the Court finds that admittedly occurrence had taken place at 07.30 P.M on 03.07.2007 but no effort was taken to inform the police authority at any point of time. Even though one of the witnesses had stated that Choukidar had informed the police station by telephone but neither the prosecution proved such statement nor the Investigating Officer confirmed this fact. He only said that he had heard a rumour at 06.10 AM on 04.07.2007. We also find that the post mortem-examination report is completely contrary to the prosecution case inasmuch as all 11 injuries sustained by the deceased were said to have been caused by sharp cutting weapon, whereas the case of the prosecution is that only one person was holding sharp cutting weapon and the rest were holding lathi. This gives rise to suspicion in the mind of the Court as to whether the witnesses had actually seen the occurrence or the case was lodged after the dead body was recovered the next day on speculation against the accused persons for reasons of land dispute.

17. Moreover, it appears that all the witnesses have stated that they had identified the accused persons in torch light but no torch was ever produced before the Investigating Officer who specifically stated this fact in Court. We also find it highly unlikely that such a

large number of persons would be identified at 07.30 evening in darkness while running away and in our opinion there is always a possibility of wrong identification.

18. In view of the above discussion, the Appeals are allowed. The impugned Judgment of conviction and Order of sentence dated 30.04.2011 and 06.05.2011 in Sessions Trial No. 181 of 2008 passed by the 2nd Additional District and Sessions Judge, Banka is hereby set aside. The, Appellants who are in jail custody, is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Prakash/-
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