

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 1106 of 2009

Arising out of P.S. Case No. -87 Year- 2004 Thana –Ghoshi
District- JEHANABAD

- =====
1. Punit Mochi S/o Mahesh Mochi R/o Vill.- Surdaspur, P.S.- Ghosi, Distt.- Jehanabad.
 2. Pinku Mochi S/o Jagu Mochi R/o Vill.- Surdaspur, P.S.- Ghosi, Distt.- Jehanabad.
 3. Karu Mochi S/o Jagu Mochi R/o Vill.- Surdaspur, P.S.- Ghosi, Distt.- Jehanabad.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

with

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Criminal Appeal (DB) No. 398 of 2010

Arising out of P.S. Case No. -87 Year- 2004 Thana -Ghoshi
District- JEHANABAD

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Yogeshwar Mochi S/o Late Ganga Mochi R/o Village-Surdspur,
P.S.Ghosi, Distt.-Jehanabad.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

(In CR. APP (DB) No.1106 of 2009)

For the Appellant/s : Mr. Yogesh Chandra Verma, Sr. Adv.

For the State : Mr. S. N. Pd. APP.

(In CR. APP (DB) No.398 of 2010)

For the Appellant/s : Mr. Yogesh Chandra Verma, Sr. Adv.

For the State : Ajay Mishra, APP.

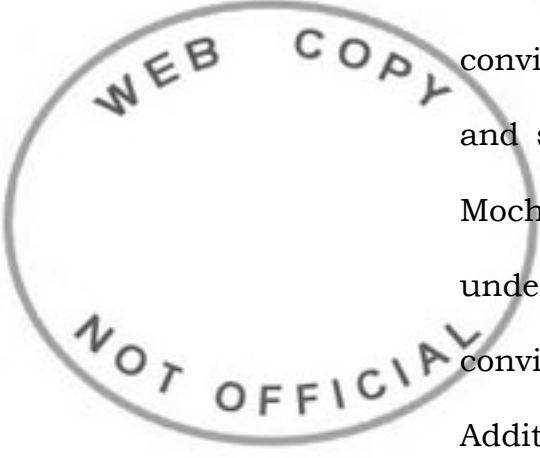
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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 17-05-2016



01. The Appellants, Punit Mochi, Pinku Mochi and Karu Mochi of Cr. Appeal (DB) No. 1106 of 2009 have been convicted under Section 302/149 of the Indian Penal Code and sentenced to R.I. for life and the Appellant, Yogeshwar Mochi of Cr. Appeal (DB) No. 398 of 2010 has been convicted under Section 302 of the Indian Penal Code by a judgment of conviction and order of sentence dated 18/21.07.2009 by the Additional District & Sessions Judge, F.T.C.-IV, Jehanabad in S.Tr. Nos. 145/05/(S.J.)305/05 and 88/07 (145/05)/305/05(S.J.) arising out of Ghoshi P.S. Case No. 87 of 2004.

02. The case of the prosecution according to Ramphal Mochi, P.W. No. 10/6 is that on 09.05.2004 at about 8 P.M, his son, Akhilesh Kumar aged about twelve years was playing in front of the door where a lot of other children were also playing the mother of Akhilesh Kumar told him that he plays in front of her door. Just then the Appellant, Yogeshwar Mochi, Bundel Mochi, Pinku Mochi, Karu Mochi, Suchit Mochi and Punit Mochi who were returning from a Barat reached his door and started to abuse. Then Appellant, Yogeshwar Mochi ran inside his house and brought out a "Fasuli" and attacked Akhilesh Kumar (deceased) on the left leg and right hand on account of which his hand was completely amputated. Then the rest of the accused persons also started to assault with lathies. A number of persons gathered there and pacified the

fight. The child, Akhilesh Kumar was brought to the Jehanabad Hospital where unfortunately he died. The statement was recorded in the Hospital itself on 10.05.2004 at 1.30 A.M. It appears that two Session Trials were held one being S.Tr. No. 145 of 2005 whereas the next one was S.Tr. No. 88 of 2007,

03. P.W. 1, Jogeshwar Ravidas was examined as P.W. 1 in the next trial whereas P.W. 2, Jogendra Mochi was examined as P.W. 3, Dukhharan Mochi, P.W. 4 was examined as P.W. 4, Dular Chand Mochi, P.W. 5 was examined as P.W. 2, Urmila Devi, P.W. 6 was examined as P.W. 5, Dr. Dharendra Prasad Singh, P.W. 8 was examined as P.W. 7 and Ramphal Mochi, P.W. 10 was examined as P.W. 6. Thus, it appears that seven witnesses were out of eleven were common in both the trials.

04. P.W. 1, Jogeshwar Ravidas stated that on the date of occurrence while he was at home his grandson, Akhilesh Kumar (the deceased) was screaming when he screamed the Appellant, Yogeshwar Mochi and the rest came with pistols at his door where the child was playing. Sujit Mochi is said to have caught hold of the deceased whereas Appellant, Yogeshwar Mochi assaulted him with "Fasuli" on his right hand which was amputated. He then assaulted him. Then Akhilesh Kumar was taken to the Police Station where he gave his statement and then was taken directly to Jehanabad

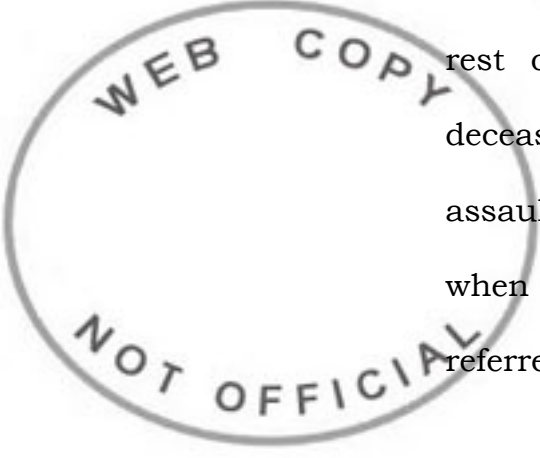
Hospital from there but it was on the way he died whereafter the post-mortem was held.

In cross-examination, he stated that all the accused persons were separate in mess and there was no enmity between them from before. He further stated that the accused persons came together where mother of Akhilesh Kumar was screaming and then the child warned that they were coming to assault. He was himself detained by one of the accused on pistol point.

He further stated that the accused who were next door neighbours were chased after the occurrence but they succeeded in fleeing away in the darkness. It was suggested to him that in fact he had implicated the accused persons on account of land dispute in the next Sessions Trial. He gave more or less the same account.

However, his attention was drawn to the earlier statement that he had not stated about accused, Sujit Mochi had caught hold of the hand of Akhilesh Kumar (deceased) and with regard to complicity of the rest of the accused persons. He further stated that after murder he ran towards place of occurrence and saw his grandson injured and bleeding.

05. P.W. 2, Jogendra Mochi also stated that while he was at his door in the evening of the occurrence the son of Ramphal Mochi i.e. the deceased screamed and warned his mother to run since his hand had been cut. He also ran there



and saw the boy injured. He confirmed that place of occurrence and presence of Appellant, Yogeshwar Mochi and rest of the accused persons. He further stated that the deceased had disclosed to him that the Appellant had assaulted him and he disclosed this fact to the Police Officer when he had gone to the Outpost from where they were referred to the hospital but Akhilesh Kumar died.

In cross-examination, he stated that his house was next door and when he reached there that he had seen that the family members were crying whereas accused persons had already run away. They were allegedly not chased. He stated that he had not seen any of the accused persons intervening in the occurrence and it was suggested to him that the Appellant, Punit Mochi was trying to push away Appellant, Yogeshwar Mochi.

In cross-examination, in the subsequent Sessions Trial he stated that Ramphal P.W. 10/6 was his cousin brother and there was no enmity between the parties from before. He further admitted that he was not an eye-witness to the occurrence of actual assault.

06. P.W. 3, Sunil Mochi stated that on the date of occurrence both the parties were fighting with each other over children in which all of them were involved. He was declared hostile since he did not support the case of the prosecution.

07. P.W. 4, Dukh Haran Mochi stated that he was

a next door neighbour and on the date of occurrence all the accused persons had gone to the door of the Informant and thereafter Appellant, Yogeshwar Mochi assaulted the deceased on the hand on account of which it was cut thereafter the child was taken to Okhari Outpost from where he was referred to the Hospital.

In cross-examination, he conceded that the Informant Ramphal Mochi was his own brother. From his further cross-examination, it appears that he was not an eye-witness to the occurrence and even he reached near the house where the child was being carried in the lap by the mother in an injured condition. It also appears 60-70 persons gathered where the fighting were taking place. He confirmed that the deceased had given a statement before the Outpost. This witness was examined as P.W. 4 in the subsequent trial who gives almost a similar account of the occurrence but in the cross-examination once again from the replies that he has given it appears that he is not an eye-witness to the actual murder.

08. P.W. 5, Dular Chand Mochi stated that on the date of occurrence at about 7-8 P.M. there was an altercation going on at which he went there and pacified every one. A little later, the deceased was screaming at which the Appellant, Yogeshwar Mochi assaulted him with a "Fasuli". When he asked him he stated that it was Yogeshwar Mochi who had

assaulted him.

In cross-examination, he stated that he was the cousin brother of the Informant and that after having pacified both the parties he had returned home which is at a distance of about 5-6 Bamboos i.e. about 150 feet away.

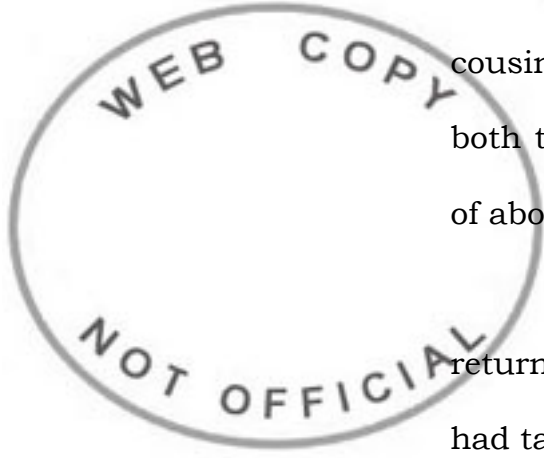
He stated that in his earlier statement he had returned that the children were fighting and the occurrence had taken place on account of such an incident.

He was examined as P.W. 2 in the subsequent trial that on the evening of the occurrence an altercation was going on but he had pacified the same. However, all the accused persons gathered at the place of occurrence and then the deceased disclosed that the Appellant, Yogeshwar Mochi had cut his hand. He was taken to the Outpost but immediately referred to the Hospital.

09. P.W. 6, Urmila Devi, mother of the deceased stated that on the night of occurrence the Appellant, Yogeshwar Mochi cut the hand of her son, Akhilesh Kumar due to which it was amputated and thereafter he died.

In cross-examination, she stated that she had taken the child to the Police Station. She has been examined as P.W. 5 in the subsequent trial. She has given more or less a similar account.

10. P.W. 7, Dr. Deepak Kumar conducted the Post-mortem along with Dr. Dharendra Kumar Singh found the



following injuries on the person of the deceased. He proved the Post-mortem Examination Report as (Exhibit-1).



“(i) Incised and amputated left forearm at the level of elbow with clotted and dried blood around wound. The left forearm is missing.

(ii) Incised wound 7”x4”x bone deep on medical aspect of right thigh with clotted and dried blood around the wound.

On dissection:-

Skull-Brain pale and intact.

Chest-Both lungs are pale and intact.

Heart-Both chambers are empty.

Abdomen- Liver, spleen and kidneys are pale and intact.

Stomach-Empty.

Cause of death-Hameorrhage and shock due to above injuries caused by sharp cutting substance.”

In cross-examination, he stated that apart from the aforesaid injuries no other wound was found on his person.

11. P.W. 8, Dr. Dhirendra Kumar Singh confirmed the factum of fighting and the injuries as mentioned by the earlier witnesses. He was examined as P.W. 7 in the subsequent trial and once again he proved the Post-mortem Examination Report as Exhibit-2.

12. P.W. 9, Kamlesh Kumar stated that on the date of occurrence he on hearing hulla came to his house and saw his younger brother, Akhilesh Kumar in an injured

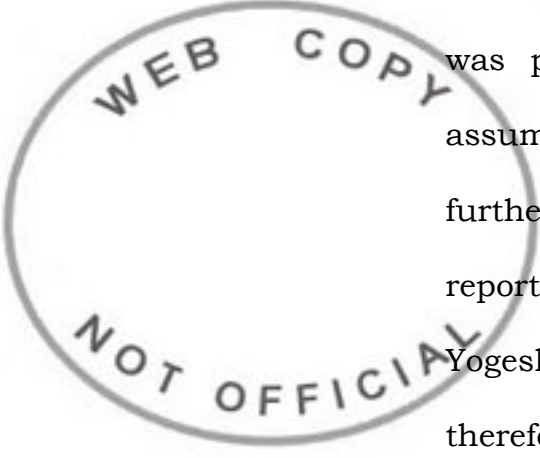
condition. He learnt that the present Appellants and some accused persons had committed this occurrence. He further confirmed the death at Jehanabad Hospital.

In cross-examination, he once again confirmed that he was not an eye-witness but only on hearing hulla he came to his house.

13. P.W. 10, Ramphal Mochi is the Informant who stated that on 09.05.2008 while his son was playing at the door along with some other children the accused persons came there. Then the accused persons assaulted his son on his hand and leg. He was screaming that the Appellant, Yogeshwar Mochi had cut his hand and was running away so he ran to catch him but Appellant, Punit Mochi threatened him on pistol point. Later when the villagers gathered all the accused persons fled away. He then stated that he went to Okhari Out Post on the same night and from there to the Hospital. He proved the signature in fardbeyan as (Exhibit-2).

In cross-examination, he stated that it was on hulla of his son he had gone and seen his amputated hand nearby. He once again confirmed that he did not have any issues with any of the villagers. The Informant was examined as P.W. 6 in the subsequent trial and gave a similar statement.

It, thus, appears from the evidence of the Informant that he was also not an eye-witness to the occurrence.



14. P.W. 11, Lallesh Kumar Mandal is the Investigating Officer who stated that on 10.05.2008 while he was posted at Okhari O.P. in Ghoshi Police Station. He assumed the investigation of the present case and recorded the further statement of the Informant and prepared the inquest report. He stated that the deceased stated that the Appellant, Yogeshwar Mochi had cut his hand with "Fasuli" and, therefore, he was immediately referred to the Hospital. He inspected the place of occurrence which was the house of the Informant and the houses of the Appellants were nearby. He thereafter submitted charge-sheet against all the accused persons.

However, he did not find any blood at the place of occurrence and P.W. 1, Jogeshwar Ravidas had not stated that accused, Sujit Mochi had caught hold of the hand of deceased. P.W. 5, Dular Chand Mochi was also not an eye-witness to the occurrence nor had Urmila Devi, P.W. 6 disclosed the names of any of the accused persons and had not attributed any overt act against the rest of the accused persons. Further from the earlier statement of P.W. 1, Jugeshwar Ravidas, it appears that no names were disclosed by him and he had not attributed any specific overt act to any one or that Appellant, Punit Mochi had caught hold of the deceased, Akhilesh Kumar.

15. It has been submitted on behalf of the Appellants that in the facts of the case at best offence under

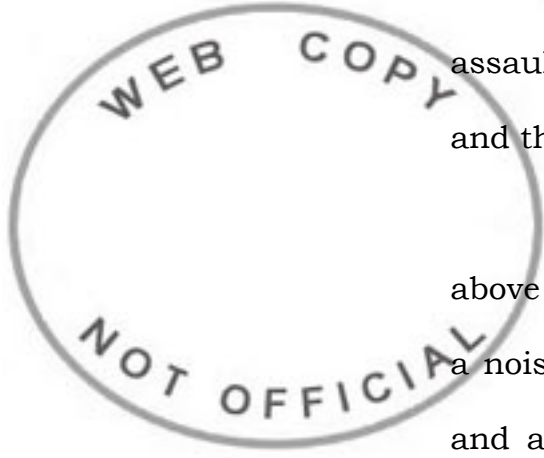
Section 304 Part-I is made out since suddenly in the midst of an altercation the Appellant, Yogeshwar Mochi is said to have assaulted the deceased who was merely twelve years of age and there was no cause for intending his death.

16. From the evidence which we have discussed above it is apparent that the children were playing and making a noise which had caused annoyance to the accused persons and an altercation started between both the parties. It is in course of this altercation, the Appellant, Yogeshwar Mochi assaulted the deceased with a "Fasuli" on his hand. The position of the two injuries appears that both of them could have possibly been caused by a single assault.

17. In such circumstances, we are inclined to hold that the Appellant, Yogeshwar Mochi of Cr. Appeal (D.B.) No. 398 of 2010 is liable for conviction under Section 304 Part-I IPC and he is convicted accordingly and sentenced R.I. for ten years.

18. As for the rest of the Appellants, Punit Mochi, Pinku Mochi and Karu Mochi, of Cr. Appeal (D.B.) No. 1106 of 2009, we do not find any overt act alleged against them and they appear to be merely members of one of the group which was fighting. No doubt, later on specific overt act has been alleged against Appellant, Punit Mochi but that appears to have been developed during trial.

19. In view of such, the Appellants, Punit Mochi,



Pinku Mochi and Karu Mochi of Cr. Appeal (D.B.) No. 1106 of 2009 are acquitted from the charges and the judgment of conviction and order of sentence dated 18/21.07.2009 passed by the Additional District & Sessions Judge, F.T.C.-IV, Jehanabad in S.Tr. Nos. 145/05/(S.J.)305/05 and 88/07 (145/05)/305/05(S.J.) arising out of Ghoshi P.S. Case No. 87 of 2004 is, hereby, set aside so far as they are concerned. They are discharged from the liabilities of their bail bonds.

20. Accordingly, Cr. Appeal (D.B.) No. 398 of 2010 is dismissed with modification in conviction and sentence and Cr. Appeal (D.B.) No. 1106 of 2009 is allowed.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

Vikash/-

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