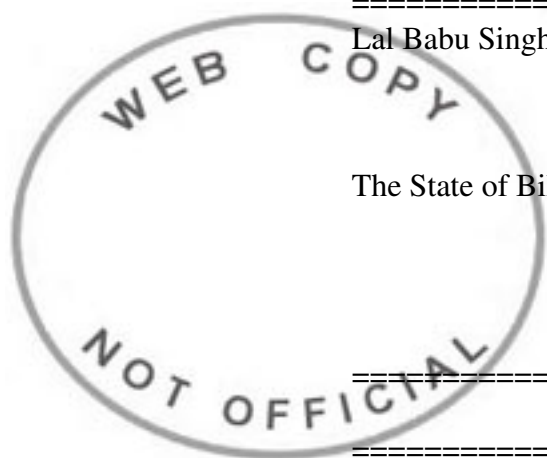




IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1051 of 2011

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Lal Babu Singh, Late Bidya Singh, Vill Bahiyara P.S. Chandi, District - Bhojpur

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

---with---

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Criminal Appeal (DB) No. 917 of 2011

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1. Kallu Singh S/o Late Bidhya Singh Resident Of Village- Bahiyara, Police Station- Chandi, District- Bhojpur.

2. Surendra Singh S/o Late Gaya Singh Resident Of Village- Baluwan, Police Station- Maner, District- Patna.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

---with---

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Criminal Appeal (DB) No. 936 of 2011

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Hari Charan Mallah S/o Late Butan Mallah R/o Vill.- Bahiara, P.S.- Chandi, District- Bhojpur

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

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Appearance :

(In CR. APP (DB) No. 1051 of 2011)

For the Appellant/s : Mr. S.R.P. Sinha, Sr. Advocate

For the Respondent/s : Mr. Rahul Nein

(In CR. APP (DB) No. 917 of 2011)

For the Appellant/s : Mr. Surendra Kumar Sinha

Mr. Prabhat Kumar Sinha

Mr. Tulika Singh

For the Respondent/s : Mr. S.N. Prasad, A.P.P.

(In CR. APP (DB) No. 936 of 2011)

For the Appellant/s : Mr. Sandeep Kumar,

Mr. Ansul

Mr. Archit Rajpal

For the Respondent/s : Mr. D.K. Sinha, A.P.P

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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: 10-02-2016

Heard learned counsel for the Appellants and
learned counsel for the Additional Public Prosecutor.

2. All the Appellants have been convicted under
section 302 of the I.P.C., have been convicted under section 302 of
the I.P.C. by a Judgment dated 02/06.09.2011 passed by the
Additional Sessions Judge, (F.T.C.-II), Ara, Bhojpur and sentenced
to Rigorous Imprisonment for life and fine of Rs. 10,000/-, in
default of which, further Simple Imprisonment for six months.

3. The case of the prosecution, according to
P.W.8, Shanti Devi, mother of the deceased, is that on 22.05.2000
at about 12.00 noon Appellants Lal Babu Singh, Kallu Singh and
Surendra Singh came to the place where her son was getting the
house constructed and threatened him of dire consequences.
Appellant, Lal Babu Singh specifically stated that within one hour
he would teach him a lesson and left the place by abusing. At
about 1.30 to 2.00 pm. Appellant Lal Babu Singh, accused Butan
Mallaha, Appellant Hari Charan Mallah and accused Mudrika
Paswan came and thereafter while Hari Charan Mallah and Butan

Mallah caught hold of the deceased, Dharmendra Kumar, and accused Mudrika Paswan and Appellant Lal Babu Singh assaulted the deceased on the neck with a Dab on account of which he fell down and died. This information was given at about 4.10 pm. It appears that only the present four Appellants faced trial whereas Mudrika Paswan, against whom there was an allegation of assault and Butan Mallah against whom there was allegation for having caught hold of the deceased, did not face trial.

4. During trial, the prosecution examined 10 witnesses. P.W.1 Gorakh Singh, a formal witness, proves some official documents whereas P.W.2, Vikash Kumar, has proved the *fardbeyan* of P.W.8, Shanti Devi. Although P.W. 3 is a hostile witness and is almost of no relevance since his earlier statement recorded under section 161 Cr. P.C., was not put to him.

5. P.W. 3, Ajay Singh is a seizure list witness, who stated that no document was prepared in his presence, whereas P.W.4, Ramu Patel, brother of the deceased has stated that while the house was being constructed, he had seen Appellants Kallu Singh, Surendra Singh and Lal Babu Singh. He stated that he had gone to the Police Station along with Vikas Kumar (P.W.2) when on the way, he learnt that his brother Dharmendra Kumar had been killed. He reached the place of occurrence on hearing this

and was informed by P.W.8, Shanti Devi that the Appellants had killed his brother. In cross-examination, he conceded that he was examined 5-6 days later and then he said that he was examined 4 months later.

6. From the evidence of P.W.6 and P.W. 8, we find that they have not corroborated his version as a hearsay witness and hence, his evidence is of no value.

7. P.W. 5, Lagandeo Singh, has been declared hostile.

8. P.W. 6, Sandhya Kumari, one of the eye witness and sister of the deceased, stated that at about 1.00 pm. when she along with her mother had gone to the house which was being constructed, she saw that Lal Babu, Kallu and Surendra came there. Lal Babu and Kallu are her cousin brothers whereas Surendra is brother-in-law of Lal Babu. They all stopped them from constructing the house and threatened them to leave. Subsequently, six persons including the present Appellants came and then Appellant Lal Babu and accused Mundrika Paswan assaulted Dharmendra with *Dab* on the neck whereas Butan Mallah and Hari Charan Mallah caught hold of him.

9. In cross-examination, she stated that after the occurrence, she and her mother went to the Police Station and her

statement was recorded at the Police Station at about 4.00 pm. She also stated that there was land dispute going on with Appellant Lal Babu Singh since last 20 years.

10. P.W.7, Dr. Sri Krishna Chandra Singh, conducted the Postmortem of the deceased and found following injuries :-

Sharp cutting injury in circling the neck from right side of the neck going through lower part of chin. The front side of neck was cut going up to left side of the neck, but left side of neck was not wholly cut below left ear portion - 5" x 3" x bone deep but head not separated from neck.

On dissection, Trachea and esophageal cut. On opening of skull – Bruce matter was pale. On opening of chest cavity - Lungs pale, both heart empty. Both chambers empty, pale in colour.

Opening of abdomen cavity – stomach contuse 402 of digestive fluid, muscle was pale. Liver, Spleen and Kidney Pale. Bowel loaded fockal material. Bladder was empty. Time elapsed since death to 6.00 pm to 36 hours.

Opinion - The cause of death due to severe

hemorrhage and shock as a result of above mentioned injuries caused by sharp cutting injury.

11. P.W.8, Shanti Devi, who is the informant and the next eye witness, stated that on the date of occurrence, while her son Dharmendra was getting the house constructed, Appellants, Surendra Singh, Lal Babu Singh and Kallu Singh came and threatened him and thereafter left. Subsequently, the six accused persons came including the Appellants came and then while Lal Babu and Mudrika Paswan assaulted the deceased with *Dab* on the neck, Hari and Buttan caught hold of him.

12. In cross-examination, several questions have been put about her enmity with other persons, which she denied. She also stated that there was land dispute going on between her family and Appellant Lal Babu Singh since 1960. She gave a slightly varied version as to when exactly the occurrence took place i.e. while she was feeding the deceased or after and he had eaten.

13. P.W. 9, Arun Kumar Rai, the Investigating Officer, stated that on 22.05.2000, when he was posted as the Officer-in-Charge of Chandi Police Station, he recorded the *fardbeyan* of informant (P.W.8), Shanti Devi, which he proves as



Exhibit-5. He also proved the First Information Report, as Exhibit-6, and stated that he visited the place of occurrence, which was a half constructed house where sand and some iron rods were lying. He then stated that he arrested the Appellant Hari Charan Mallah from Boring of Lal Babu Singh and produced him before the Court. In cross-examination, he stated that he had not noted in the case diary as to who had given information about the occurrence. He also stated that once he went to the place of occurrence, he turned only after conducting the entire investigation.

14. D.W.1, Birendra Singh, D.W.2, Ram Ekbal Sharma and D.W.3, Binod Sharma, have been examined on behalf of the Appellant Kallu Singh on the point of alibi.

15. The learned counsel for the Appellants submits that the First Information Report notes the fact that information had been received at the Police Station at 3.10 itself whereas the *farbeyan* was recorded at 4.10 pm. In such circumstances, the prosecution was duty bound to produce the initial information given to the Police Station and it not having done so, it deserves to be rejected. Further, the Investigating Officer did not find any objective evidence, such as the remains of the food, which would prove the presence of P.W.8, Shanti Devi, the informant.

16. Further, presence of P.W.8 is highly doubtful since she took no pains to reach the Police Station, which was only about two kilometers away. She has also contradicted herself as to when exactly the occurrence had taken place and hence, her evidence should be rejected.

17. On going through the evidence of eye witnesses, we find that P.W.6, Sandhya Kumari, P.W.8, Shanti Devi, P.W. 9 Arun Kumar Rai as also the P.W.7, Dr. Sri Krishan Chandra Singh are the material witnesses.

18. From the *fardbeyan*, we find that the Appellants Surendra Singh and Kallu Singh have been attributed only the role of initial threat having been meted out to the deceased and there is no mention that they once again came to the place of occurrence along with rest of the accused persons to carry out the assault.

19. However, during evidence in Court, P.W.6, Sandhya Kumari and P.W.8, Shanti Devi, both of them developed their case and attempted to implicate the aforesaid two Appellants by saying that they were also among the miscreants who had come subsequently and killed the deceased.

20. In view of such major contradiction, we would be inclined to reject their evidence so far as the complicity

of the Appellants Kallu Singh and Surendra Singh of Cr. Appeal No. 917 of 2011 are concerned. In the result, the Criminal Appeal No. 917 of 2011 is allowed. The Judgment dated 02/06.09.2011 passed by the Additional Sessions Judge, (F.T.C.-II), Ara, Bhojpur against Appellants namely, Kallu Singh and Surendra Singh is set aside.

21. We also find that as per evidence of the two eye witnesses, P.W. 6 and P.W. 8, no doubt, there is an allegation that Hari Charan Mallah of Cr. Appeal No. 936 of 2011 had caught hold of the deceased while Appellants Lal Babu Singh and accused Mudrika Singh gave '*dab*' blows but prosecution case appears to be highly improbable. Since there would be every likelihood of the accused themselves being also injured in the transaction.

22. We also find that prosecution has alleged that the reason for the occurrence was land dispute between Appellant Lal Babu Singh and the deceased whereas the Appellant Hari Charan Mallah had no such interest.

23. From the evidence of the Investigating Officer, we find that Hari Charan Mallah was caught hold after the occurrence in the village itself at the boring of Appellant Lal Babu Singh, which is not a likely conduct of a person, who had only

some minutes earlier facilitated the killing of a co-villager. We find that on scrutiny of the statement recorded under section 313 Cr. P.C., no question was put to him in regard to this specific role and hence, it cannot be fastened on him.

24. For these reasons, we are inclined to allow Cr. Appeal No. 936 of 2011. The Judgment dated 02/06.09.2011 passed by the Additional Sessions Judge, (F.T.C.-II), Ara, Bhojpur against Appellant, Hari Charan Mallah, is also set aside.

25. Now to deal with the evidence against Appellant Lal Babu Singh, we find that there is consistent evidence of P.W.6, Sandhya Kumari, and P.W.8, Shanti Devi that he had given a *Dab* blow on the neck of the deceased. Dr. Sri Krishan Chandra Singh had found such injury on his neck, which was the cause of death.

26. In such circumstances, when there is direct evidence, we would be inclined to ignore the fact that on the format of the First Information Report, the time of receipt of information has been mentioned at 15.10 instead of 16.10 which appears to be a careless mistake. Also since the information was given right after the occurrence and the First Information Report was dispatched to the Court received on the next day. Such promptitude belies any suspicion on the veracity of the *fardbeyan*

on this score.

27. As for non-availability of objective evidence, such as tiffin box etc., these are as minor an omission as the minor contradictions in the evidence of P.W.8 Shanti Devi.

28. In view of such, finding no merit in Criminal Appeal No. 1051 of 2011, the same is dismissed. Since the Appellant, namely, Lal Babu Singh of Cr. Appeal No. 1051 of 2011 is in custody, he is directed to serve the remaining period of sentence.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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