

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.233 of 2014

Arising out of PS.Case No. -128 Year- 2006 Thana -PAKARIBARAW District- NAWADA

- =====
1. Ramashrai Singh
 2. Sevak Singh Both Are Son of Bado Singh Village- Dumrawa, P.S-
Pakribarawan, District- Nawada.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

----with----

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Criminal Appeal (DB) No. 259 of 2014

Arising out of PS.Case No. -128 Year- 2006 Thana -PAKARIBARAW District- NAWADA

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Manoj Singh S/o Badho Singh R/o Dumrawan, P.S.- Pakribarawan, Distt.- Nawada

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Banwari Sharma Mr. Amresh Kumar Sinha Mr. Shashi Bhushan Singh Mr. Sheo Kumar
For the Respondent/s	:	Mr. A.K. Sinha, A.P.P. Mr. A. Sharma, 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: 25-04-2016

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

2. The Appellants have been convicted under section
302/34 I.P.C. and sentenced to undergo Rigorous Imprisonment for

life and also a fine of Rs. 5000/- each, in default of which further Rigorous Imprisonment for six months by a Judgment dated 24.01.2014 passed by the *Adhoc* Additional Sessions Judge-III, Nawada in Sessions Trial No. 293 of 2007/58 of 2012 arising out of Pakribarama P.S. Case No. 128 of 2006 corresponding to G.R. No. 1622 of 2006.

3. The case of the prosecution, according to P.W.1 Chamari Yadav, the brother of the deceased, is that on 14.12.2006 at about 4:00 P.M. he along with his brother, deceased Bundi Yadav was returning to his village from Dumarama. When they were crossing the house of Appellant Manoj Singh, three brothers namely, Manoj Singh, Ramashrai Singh and Sevak Singh surrounded his brother armed with rod and spade. Appellant Ramashrai Singh is said to have assaulted the deceased Bundi Yadav with iron rod on his head, on account of which he fell down. Thereafter, Appellant Manoj Singh assaulted him with spade on his hand and legs. When the Informant tried to intervene, he was also chased by them so he ran away. This occurrence was seen by Aako Mian (P.W. 2) and Sukan Mian (P.W.4), who were also returning to the village and saw the accused persons running away. The motive of the occurrence was the earlier dispute between the Appellant Manoj Singh and the deceased over watering the fields,

in which Appellant Manoj Singh had threatened the deceased.

4. During trial, the prosecution examined 9 witnesses.

First of all, we would like to see the evidence of P.W. 8 Doctor Nand Kishor Chaudhary, who conducted the Postmortem and found the following injuries on the person of the deceased :

1. *Sharp cut injury over right leg above the ankle with bone.*
2. *Sharp cut injury over left leg above the ankle with bone.*
3. *Sharp cut injury over forearm on right wrist with bone.*
4. *Sharp cut injury over left wrist bone.*

All cut injuries – only hanged – skin and bone tendon attached—posteriority.

5. *Sharp cut injury over skull forehead about 4" x 2" deep cavity (to the brain)*
6. *Sharp cut injury over face right side about 1" x 1/2"*

On Dissection :

The Doctor has found heart chambers empty. Brain matter lacerated. All organs were pale and intact. Stomach and bladder empty.

Cause of death - shock and hemorrhage due to above noted injuries caused by sharp substances.

In cross-examination, he stated that none of the above injuries on the deceased could be caused by hard and blunt

substance like rod and all the injuries were sharp cut and it is not always that injuries caused by a spade would be curved.

We, thus, find that the allegation against Appellant Manoj Singh has been corroborated by the independent expert evidence.

5. As for the rest of the eye witnesses, we find that P.W. 1 Chamari Yadav is the informant, who repeats the factum of occurrence as stated in the First Information Report. However, here he added that even Sevak Singh assaulted the deceased with *Chhura* along with Appellant Manoj Singh.

In cross-examination, he stated that he immediately informed the Police, who came and saw the dead body and proceeded with investigation. He stated that when he and deceased were walking, he turned around to see as to why Appellants were abusing and chasing his brother and saw the assault on the head, hands and legs. He also tried to explain about the earlier dispute with Manoj Singh, which had arisen on account of a Tractor having ploughed his fields. He denied that the deceased had been assaulted since he had committed theft in the house of the accused in which he had also participated and that the Appellant Sevak Singh had instituted a case in which the argument was going on and he had come to depose in the said case which was pending.

6. P.W. 2 Akbar @ Aako Mian is named in the First Information Report as one of the persons who had witnessed the occurrence. He stated that about 4.:30 pm. while he was returning, he saw a crowd gathered in which the Appellant Ramashrai Singh assaulted the deceased on the head with iron rod and Appellant Manoj Singh having assaulted with spade on the hand and legs. The Appellant Sevak Singh, brother of Manoj Singh had assaulted him with Chhura when the Informant started claiming for help, several persons including Sukhan Mian (P.W.4) also came and went to inform the family members of the deceased.

In cross-examination, he stated that there was crowd of 50 persons in front of the house of Appellant Manoj Singh. However, he could not name them and he had seen the occurrence from a distance and went to inform the family members of the deceased and when he returned, the deceased was severely injured.

His attention was drawn to the earlier statement about the specific allegation attributed against each of the accused persons. He specifically stated that none of the children of the deceased were present at the place of occurrence and it was only on information that they had come.

We, thus, find that this witness has ruled out the presence of the informant P.W. 1 Chamari Yadav, P.W. 3

Ravindra Yadav, P.W 6 Anandi Yadav, both sons of the deceased and P.W. 5 Keshri Devi is his wife. We also find that he has stated a crowd had gathered where the occurrence had taken place and he on seeing the crowd went to inform the deceased, who belonged to another village.

7. P.W. 3 Ravindra Yadav, another son of the deceased, stated that he was at his village Bardiha, which was at a little distance, he heard *hulla* at Dumranwa towards the house of the Appellant Manoj Singh, so he went there and saw the Appellant Manoj Singh assaulting the deceased with an instrument used for cutting fodder whereas Appellant Ramashrai Singh assaulted the deceased with big spade on his leg. The Appellant Sevak Singh also assaulted his father on his head.

We find from his evidence that he has given a totally different version of the manner of assault.

In cross-examination, he stated that after the occurrence, he had gone to the Police Station where the statement was recorded upon which he had signed and thereafter, the Police had come to the place of occurrence and taken the dead body from there. He did not examine anyone at that point of time and even Chamari Yadav (P.W.1), Informant was present at that time.

We, thus, find that he concedes the fact of giving an

information to the Police before the present *fardbeyan* was instituted purportedly later at the place of occurrence, which version has been suppressed by the prosecution, thus, causing prejudice not only to the accused but also to the Court since we are also left in doubt as to the first and real version of the occurrence.

8. P.W. 4 Surun Mian also named in the First Information Report stated that he saw the deceased fighting with three Appellants, in course of which Appellant Manoj Singh assaulted the deceased with an iron rod whereas Sevak Singh assaulted with spade on his legs and in an instrument used for cutting fodder. He did not dare to intervene and thus ran away. The son of the deceased Bundi Yadav immediately came and informed the Police.

We, thus, find that even he has given another version of the manner of assault which differs from that of the informant and even P.W.2 Akbar @ Aako Mian.

In cross-examination, he stated that he had seen the occurrence from about 12-13 bamboos i.e. 60-70 feet away and 20-25 persons had gathered around there. He did not know the cause of dispute. He stated that he had been examined by the Police on the very same day.

His attention was drawn to the earlier statement but

since Investigating Officer has not been examined, we decline to entertain the same. We also note that from his evidence, it appears that 20-25 persons had gathered around, the relevance of which we will discuss later.

9. P.W. 5 Keshri Devi is the wife of the deceased, who stated that on the date occurrence, she learnt that her husband was being assaulted by the Appellants and gives an eye-witness account. In cross-examination, she stated that both the villages were separate but the distance of which she could not give accurately.

In cross-examination, her attention was drawn to the earlier statement that in fact, she was not an eye witness and by the time she reached the place of occurrence the deceased had already been killed. It was suggested to her that in fact, the deceased had committed theft and it was while running away when he was caught hold of by the villagers and assaulted due to which he died. Of course, she denies the same.

10. P.W. 6 Anandi Yadav is another son of the deceased who stated that on *hulla*, he reached at the place of occurrence and saw the Appellant Ramashrai Singh cutting his father's legs and Appellant Manoj Singh assaulting his father with Sabal and Khanti and Appellant Sevak Singh cutting the hands

with an instrument used for cutting fodder.

It, thus, appears that he had also given a different version of assault. He stated that the distance of place of occurrence was more than one kilometer away from his house, but he reached there within 5 minutes and saw his father lying injured. His attention was drawn to the earlier statement that in fact, he was not an eye witness to the occurrence.

11. P.W. 7 Amirak Mahto is a formal witness, who is said to have prepared the Inquest Report at the Police Station, which is marked as Exhibit-1.

12. P.W. 9 Binod Chaudhary was posted at Pakribarama who proved the *fardbeyan* as Exhibit 3, carbon copy of the Inquest Report as Exhibit-4 and Formal First Information Report as Exhibit 5. He identified the signature of Officer-in-charge as Exhibit-3/1 but the same are not required to be discussed.

13. In all, four Defence Witnesses had also been examined in this case. D.W. 1 Kranti Singh had stated about the deceased having been caught by the villagers while he was committing Dacoity and assaulted by the villagers due to which he died.

14. D.W. 2 Kusheshwer Singh is also on a similar

point. Both the witnesses were examined during investigation and there appears no contradiction, since her attention was not drawn to the earlier statement.

15. D.W. 3 Ramanand Kumar, is a Typist, who had scribed the complaint instituted by the Appellant Ramashrai Singh in regard to the occurrence of the same day, which is marked as Exhibit-A.

16. D.W. 4 Rajendra Prasad, who is a Police Officer, proved the First Information Report, which was instituted by Appellant Ramashrai Singh, as also the documents which have been proved by D.W. 3 as Exhibits D and D/1.

17. On going through the evidence of witnesses, we find some glaring points, which give rise to suspicion in regard to veracity of the prosecution case.

Firstly, we find that all the witnesses have given contradictory statements in regard to the manner of assault.

Secondly, it is not explained as to how the Inquest Report was prepared at the Police Station when the *fardbeyan* was recorded at the place of occurrence itself. In usual course of investigation, the Inquest Report would be prepared at the place where the dead body was found. This fits in with the evidence of P.W.3, son of the deceased, who stated that he had gone to the



Police Station where his statement was recorded and his signature taken and thereafter, the Police had taken the dead body to the Police Station. Thus, the *fardbeyan* given at the place of occurrence is apparently an interpolation. The Investigating Officer has not been examined, who alone could have explained this disparity and in absence we feel it has caused great prejudice to the accused.

Thirdly, we find that independent witnesses P.W. 2 and P.W. 4 have stated that a large crowd had gathered where the assault was taking place, which indicates that there is some truth in the defence case that in fact, the deceased had been caught by the villagers and assaulted by them, while he was fleeing away in course of Dacoity. The fact that of the Doctor finding injuries on the hands and legs are also suggest that there could be some truth in the defence version.

18. For the aforesaid reasons, we are inclined to give the Appellants benefit of doubt. Hence, these Appeals are allowed. The Judgment of conviction and Order of sentence dated 24.01.2014 passed against the Appellants by the Adhoc Additional Sessions Judge-III, Nawada in Sessions Trial No. 293 of 2007/58 of 2012 is set aside. They are acquitted of charges. The above named Appellants are in custody, therefore, they are directed to be

released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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