

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.712 of 2009

Janun Thakur, S/o Late Jageshwar Thakur, R/o Vill. Lalpura, P.S. Bhagwanpur,
District – Vaishali.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Anish Chandra, Advocate

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

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 08-04-2016

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

2. The Appellant has been convicted under
sections 302 Indian Penal Code and 3(ii)(v) of Scheduled Caste
and Scheduled Tribe (prevention of atrocities) Act and sentenced
to undergo Rigorous Imprisonment for life and fine of Rs.
10,000/- each, in default of which, further six months of Rigorous
Imprisonment passed by the 1st Additional District and Sessions
Judge-cum-Special Judge, Vaishali at Hajipur on 10/12.06.2009
in Sessions Trial No. 643 of 2009 arising out of Bhagwanpur P.S.
Case No. 79 of 2007 correspondent to G.R. No. 2756 of 2008.

3. The case of the prosecution, according to



Rajendra Das (P.W. 6) is that on 29.08.2007 at 1:00 pm. while his grandson Amod Kumar, the deceased was playing in his orchard after taking food, the Appellant Jamun Thakur, who is a Barber, crossed through the banana orchard of the Informant and plucked a few banana, which the deceased Amod Kumar saw and questioned him. The Appellant then thought that this boy would publicize in the village that he had stolen the banana so he caught hold of him and took him to a nearby corn field and having climbed on his chest cut his neck with a Razor. The Informant and others rushed towards corn field, in the meantime, Appellant fled away. On hulla, *villagers* were came, who saw his grandson dead.

From the statement of the Informant, it is not clear as to whether he was an eye witness to the occurrence and he does not mention anyone else as being an eye witness of the occurrence from whom he had heard about the same.

4. During trial, the prosecution examined 9 witnesses. P.W. 1 Chulahi Ram is the nephew of the Informant, who stated that on the date of occurrence while he was at home, he was informed by Reena Kumari (P.W. 2) that the Appellant Jamun Thakur had cut the neck of the deceased with a Razor. He merely stated in cross-examination that he had seen the Appellant

in the village at about 1:00 to 1:30 pm. and about 50 to 60 persons had reached the place of occurrence before he came. It was suggested to him that there was land dispute between the Informant and the Appellant but he denied the same.

5. P.W. 2 Reena Kumari is the sister of the deceased and grand-daughter of the Informant, who stated that she along with Shradha Kumari and deceased Amod Kumar were playing when she saw the Appellant cutting the banana of grand-father to which the deceased objected, so the Appellant pulled him away to the corn field nearby and in front of her cut his neck.

In cross-examination, it was suggested to her that she had not stated in her earlier statement that she was near the jackfruit tree and the Appellant had climbed on to the chest of the deceased. She stated that she had raised the *hulla* and gone to the corn field and seen the occurrence. She herself was threatened by the Appellant. She stated that on *hulla*, Dinesh, Chulahi and Ram Das came who have not been examined. It was suggested to her that in fact, there was land dispute between her grand-father and the Appellant on account of which he was falsely implicated but she denied the suggestion.

We find that she has given an eye witness account of the occurrence and Shradha was also playing along

with them. Shradha has not been examined nor she herself be named by her grand-father in the First Information Report as eye witness.

6. P.W. 3 Ram Chandra Ram is brother of the Informant, who stated that on the date of occurrence, the Appellant had stolen Banana of his brother and thereafter, killed the deceased dragging him to the corn field and fled away.

In cross-examination, he stated that he had poor eyesight and also had not been examined during the investigation.

From the cross-examination, we find that he was sitting to the extent of 20-25 feet so he could possibly have not seen the occurrence.

7. P.W. 4 Chandni Devi, mother of the deceased, stated that while she was at home and the children were playing outside, the Appellant came and stole the Banana to which her son objected, at this, the Appellant caught and took him to the corn field and climbed on his chest assaulted him on the neck with Razor on account of which he died. It seems that she is the eye witness to the occurrence. She also stated that she along with the grand-parents and Reena Kumari had run to catch hold of the Appellant but they could not do so.

In cross-examination, it was suggested to her that she had not given an eye witness account to Investigating Officer but she denied the same. It was also suggested that in fact, the informant had tried to forcibly capture the land of the Appellant, therefore, he was forcibly implicated.

We find from her evidence even though she had deposed as an eye witness, she does not mention the presence of Reena Kumari (P.W. 2) having been played along with the deceased and Shradha Kumari. We also find that the Informant has failed to mention her as an eye witness.

8. P.W. 5 Shanti Devi is the grand-mother of the deceased, who stated that the Appellant had stolen the Banana and when the deceased objected, he was put to the corn field and assaulted with Razor on account of which he died. She stated that her grand-daughter started screaming then she ran away and in the corn field, the Appellant committed the crime.

In cross-examination, it was suggested to her that she had not mentioned about the Appellant's stealing the Banana which of course she denied.

She stated that the land of the Appellant was behind her house and it was suggested to her in fact, the Appellant had been implicated on account of land dispute.

9. P.W. 6 Rajendra Das, Informant, stated that he was lying down under jackfruit tree, when the Appellant stole his Banana to which his grant-son objected, the Appellant caught hold the deceased and took him to the corn field and cut his neck. When his grand-daughter Reena Kumari (P.W. 2) saw the corn field shaking vigorously, she ran towards of place of occurrence and saw the deceased and she fainted. The Appellant was chased but could not be caught.

In cross-examination, it was suggested to him that he had merely stated that he had gone to the place of occurrence and seen his grandson dead.

10. P.W. 7 Dr. Rajendra Prasad Khetan is a formal witness under whose supervision Postmortem was held. He proved the Postmortem Report as Exhibit-2 and signature on the same as Exhibit-2/1.

11. P.W. 8 Dr. Arun Kumar, who conducted the Postmortem and found the following injuries :

Incised wound 6" x 2" x 3" over front of neck.

Dissection of scalp - No bony injuries found on opening of scalp. Brain matter and méninges found pale.

Dissection of neck - Jugular vain and arteries of

both side found severed. Trachea is found severed completely. Esophagus is also found severed. All nerves of the front side of the neck found severed. Blood clot was also found.

Dissection of chest and abdomen – No bony injuries found on the chest wall. On opening both lungs are found pale. All four chambers of the heart are found empty. All abdominal viscera are found pale. Stomach contains four ones of semi digested food material. A loop of small and large intestine contains gas and feral matter. Bladder is found empty.

12. P.W. 9 Gyaneshwar Jha is the Investigating Officer, who stated that on 29.08.2007 he had assumed investigation and the *fardbeyan* had been recorded by Surendra Kumar Singh, which is proved as Exhibit-3 and the endorsement as Exhibit-3/1. He also proved the formal First Information Report as Exhibit-3/2 including the Inquest Report as Exhibit-4. He inspected the place of occurrence being a corn fields wherefrom about 25 yards away was the orchard of the Informant. Surprisingly, he did not examine any neighbouring witness. He corroborated the factum of the contradictions elicited

from the witnesses.

13. The Defence also examined Ram Sagar Thakur as D.W. 1, who stated that there was land dispute between the Appellant and the Informant. In fact, the Informant never worked as a barber.

14. On going through the evidence, we find that no doubt, there is an allegation against the Appellant of having assaulted the grandson of the deceased with Razor cutting his neck but the circumstances, which emerge from the narrative given by the witnesses one tends to suspect the veracity of the same, adversely.

15. The suspicious part in the present case is that all witnesses namely, P.Ws. 1 Chulahi Ram, 2 Reena Kumari, 3 Ram Chandra Ram, 4 Chandni Devi, 5 Shanti Devi and 6 Rajendra Das, belong to the same family. Not a single independent corroborative witness has been examined. So much so Shradha Kumari, who was allegedly playing along with the deceased and P.W. 2 Reena Kumari has also not been examined. The fact that none of the witnesses, who later depose as eye witness, are mentioned in the First Information Report also casts a reasonable doubt on their stand later in Court.

16. Moreover, we find that the Investigating

Officer has stated that the field where the dead body was found, was about 25 yards away from the Orchard, so it is not believable that a person would be dragged for 25 yards in presence of witnesses without any intervention and no dragging marks would be found by the Investigating Officer to corroborate this part of the story.

17. In view of the aforesaid, we are inclined to give such benefit of doubt to the Appellant. Accordingly, The Appeal is allowed. The Judgment of conviction and order of sentence passed by the 1st Additional District and Sessions Judge-cum-Special Judge, Vaishali at Hajipur in Sessions Trial No. 643 of 2009 are hereby set aside. The Appellant, who is in jail custody, is directed to be released forthwith, if not wanted in any other case and he is acquitted of the charges.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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