

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.948 of 2015

Arising Out of PS.Case No. -185 Year- 2010 Thana -SAHPUR District- BHOJPUR

1. Ram Krishna Ojha, son of Late Ramgun Ojha, resident of village- Simariya, Ojha Patti, P.S.- Shahpur in the district of Bhojpur

.... Appellant

Versus

1. The State of Bihar

2. Umesh Ojha

3. Bagish Ojha,

2 and 3 are sons of Sri Bikrama Ojha, resident of Ojha Ke Simaria, P.S.- Shahpur in the district of Bhojpur

.... Respondents

Appearance :

For the Appellant : Mr. Akhileshwar Prasad Singh, Senior Advocate

For the Respondents : Mr. A. Ahmad, A.P.P.

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

AND

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 29-01-2016

The appellant herein has filed this application, under Section 372 of the Code of Criminal Procedure, against the acquittal of respondent Nos. 2 and 3 herein, under Sections 384 and 302 read with Section 34 of the Indian Penal Code, by judgment and order, dated 22.08.2015, passed, in Sessions Trial No. 360 of 2012, by learned Additional Sessions Judge III, Ara, Bhojpur.

2. The case of the prosecution is, in brief, as follows:



(i) On 17.10.2010, , at about 05:00 PM, when the informant, Ram Krishna Ojha, was sitting with his brother, Awadhesh Ojha (since deceased), at his door, accused Umesh Ojha and Bagish Ojha came there with a revolver and demanded money from Awadhesh Ojha by saying that the one week's time, which was given to him for making payment of *Rangdari* (i.e., extortion money), had already elapsed and, then, they started slapping Awadhesh Ojha and gave fist **blows on him**, they also threw brick bats on him leading to his death and when alarm was raised by the informant, their neighbours Hiranman Ojha, Satya Deo Ojha, Manish Ojha, Sampat Kumar Ojha, and Hari Kishun Ojha, came there to rescue Awadhesh Ojha, but the accused threatened them by showing them pistols and, then, the accused fled away. It is the further case of the prosecution that the two accused persons had demanded from Awadhesh Ojha extortion money of a sum of Rs. 1,00,000/-, which Awadhesh Ojha was unable to give and, hence, both the accused had killed Awadhesh Ojha.

(ii) On receiving information, in writing, describing the occurrence, as mentioned hereinbefore, Shahpur Police Station Case No. 185 of 2010 was registered under Sections 384/302/34 of the Indian Penal Code against the two accused, namely, Umesh Ojha and Bagish Ojha.

(iii). During investigation, inquest was held on the dead body of Awadhesh Ojha, which was also subjected to *post mortem* examination. On completion of investigation, a *charge sheet* was laid, under Sections 384/302/34 of the Indian Penal Code, against both the accused aforementioned.

3. At the trial, when charges, under Sections 384 and 302 read with Section 34 of the Indian Penal Code, were framed against the accused, they pleaded not guilty thereto.

4. In support of their case, prosecution examined as many as 10 witnesses. Accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examination aforementioned, the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence is that Awadhesh Ojha was an old man and died naturally, but the informant and other family members of the deceased, having enmity with the accused persons, lodged the case falsely against them.

5. The learned trial Court, having reached the conclusion that the case, as against the accused, under Sections 384 and 302 read with Section 34 of the Indian Penal Code, had not been proved beyond reasonable doubt, acquitted them, but convicted them under Section 385 and 323 of the Indian Penal Code on the ground that the

allegations of the offences, covered by Sections 385 and 323 of the Indian Penal Code, stood proved.

6. Being aggrieved by the fact that the two accused having been convicted merely under Section 385 and 323 of the Indian Penal Code, and not under Section 384 and/or 302 of the Indian Penal Code, the informant, as appellant, has, as indicated above, preferred this appeal.

7. We have heard Mr. Akhileshwar Prasad Singh, learned Senior Counsel, for the appellant, and Mr. A. Ahmad, learned Additional Public Prosecution, for the State.

8. According to the evidence of PW 1, Ramashanker Ojha, on the day of the occurrence, at about 05:00 PM, he saw accused Bagish Ojha and accused Umesh Ojha coming, armed with a revolver, to the door of Awadhesh Ojha, and told Awadhesh Ojha that the deadline for payment of Rs. 1,00,000/- had passed away and by saying this, they demanded money and when Awadhesh Ojha refused to pay money, both the accused persons started kicking him and slapping him and as he (Ramashanker Ojha) was at the courtyard, he raised alarm, people came there, whereupon the accused pelted brick bats and fled away.

9. PW 2 (Manish Kumar Ojha) has deposed that on 17.10.2010, at about 05:00 PM, when he was sitting at the door of Sudheshwar Ojha, he saw accused Umesh Ojha and



Bagish Ojha coming and the two accused told Awadhesh Ojha that he (Awadhesh Ojha) had not paid the *rangdari* (i.e., extortion money) and he would not, therefore, be left alive and, thereafter, Umesh Ojha and Bagish Ojha gave him fist blows, they also pelted brick bats, Awadhesh Ojha fell down and when the other co-villagers came there, accused fled away.

10. Close on the heels of the evidence of PW 1 and PW 2 is the evidence of PW 3 (Hira Lal Ojha), PW 4 (Hari Krishna Ojha), PW 5 (Sampat Ojha), PW 7 (Hiralal) and PW 8 (Raj Kumar Ojha).

11. PW 6 (Ram Krishna Ojha) is the informant of this case. He (PW 6) has deposed that on 17.10.2010, at about 05:00 PM, while he was sitting with Awadhesh Ojha, accused Umesh Ojha and accused Bagish Ojha came there and told Awadhesh Ojha that he had not paid Rs. 1,00,000/- and, then, both the accused started giving him slaps and fists blows. When Awadhesh Ojha fell down, accused pelted brick bats. On alarm being raised, Hira Lal Ojha, Hari Kishun Ojha, Manish Ojha, Rama Shanker Ojha and Sampat came there and the accused persons fled away showing their pistol and Awadhesh Ojha was taken to the Shahpur hospital, where the doctor declared him dead.

12. What is, now, important to note is that the

doctor (PW 10), who had conducted the *post mortem* examination, on the dead body of Awadhesh Ojha, found as follows:

"On external examination: No visible external injury was seen over the whole body, no fracture of ribs, spleen were intact, stomach has some digested food, kidney were intact, bladder was also normal, having a little urine."

13. In the opinion of the doctor (PW 10), no abnormality was detected internally or externally, Awadhesh Ojha died a natural death, because of cardio respiratory failure.

14. What needs to be pointed out, as has been noted by the learned trial Court, is that though the accused were alleged to have assaulted the deceased with slaps and fists blows and, on arrival of the neighbours, they also pelted brick bats, the *post mortem* report did not, admittedly, disclose any external injury and the death was natural. This clearly falsifies the prosecution's case that deceased Awadhesh Ojha was assaulted and he died, because of the assaults. This apart, it is the evidence of the prosecution's witnesses that when the neighbours came to the place of occurrence, the two accused had pelted brick bats on them. However, no injury is claimed to have been sustained by any of the neighbours of the deceased. This further shatters the case of the



prosecution. Moreover, had the accused intended to cause death of Awadhesh Ojha, nothing stopped them, in the facts and attending circumstances of the present case, from shooting Awadhesh Ojha dead by firing bullets from the fire-arms. All these facts when considered together left no room for doubt that the accusation, brought against respondent Nos. 2 and 3, were not entirely trustworthy.

15. The learned trial Court has correctly pointed out that there is no evidence that Rs. 1,00,000/-, which had allegedly been demanded by the two accused, was paid and, therefore, the offence under Section 384 of the Indian Penal Code cannot be said to have been committed and the accused-respondent Nos. 2 and 3 ought to be, therefore, held guilty of offences punishable under Section 385 of the Indian Penal Code. Similarly, learned trial Court has also taken the view that though Awadhesh Ojha could not be proved to have been murdered, the evidence on record proves that he was given slaps and fists blows and, therefore, the learned trial Court has convicted the two accused-respondent Nos. 2 and 3 herein under Section 323 of the Indian Penal Code.

16. We express no comment on the correctness of the conviction of the accused-respondent Nos. 2 and 3 herein under Sections 385 and 323 of the Indian Penal Code. We are, however, clearly of the view that so far as the charges, under

Section 384 and 302 read with Section 34 of the Indian Penal Code are concerned, these charges could not be brought home beyond reasonable doubt and the accused have been justifiably acquitted of the charges framed against them under Sections 384 and 302 read with Section 34 of the Indian Penal Code.

17. Situated thus, this appeal does not merit admission and is accordingly dismissed.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Prabhakar
Anand/-

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