

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.268 of 2013

Arising Out of PS.Case No. -114 Year- 1996 Thana -KATEYA District- GOPALGANJ

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1. Laxmi Mahto S/O Hemraj Mahto Resident Of Village- Giridhar Poiya, P.S.- Chitauna, P.S.- Kateya, District- Gopalganj
 2. Swaminath Mahto S/O Laxmi Mahto Resident Of Village- Giridhar Poiya, P.S.- Chitauna, P.S.- Kateya, District- Gopalganj
 3. Shivnath Mahto S/O Laxmi Mahto Resident Of Village- Giridhar Poiya, P.S.- Chitauna, P.S.- Kateya, District- Gopalganj
 4. Vishwanath Mahto S/O Laxmi Mahto Resident Of Village- Giridhar Poiya, P.S.- Chitauna, P.S.- Kateya, District- Gopalganj
 5. Ram Naresh Mahto S/O Vishwanath Mahto Resident Of Village- Giridhar Poiya, P.S.- Chitauna, P.S.- Kateya, District- Gopalganj
 6. Basant Mahto S/O Jagarnath Mahto Resident Of Village- Giridhar Poiya, P.S.- Chitauna, P.S.- Kateya, District- Gopalganj
 7. Jawahar Mahto S/O Nathuni Mahto Resident Of Village- Giridhar Poiya, P.S.- Chitauna, P.S.- Kateya, District- Gopalganj
 8. Jagarnath Mahto S/O Laxmi Mahto Resident Of Village- Giridhar Poiya, P.S.- Chitauna, P.S.- Kateya, District- Gopalganj

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Hemendra Prasad Singh, Sr. Advocate

For the State : Mr. Satyanarayan Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

and

HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 19-04-2017

The present Appeal is directed against the judgment of conviction dated 08.03.2013 and the order of sentence dated 12.03.2013, passed by learned Additional Sessions Judge IV Gopalganj in Sessions Trial No. 271 of 1998/56 of 2012. All the 07 appellants herein (along with co-accused Laxmi Mahto whose appeal



stands abated) were held guilty under Sections 302/149, 307, 323, 147 and 148 of the IPC and sentenced to undergo R.I. for life and fine with default clause, R.I. for four years with fine having default clause and R.I. for 01 years respectively. No separate sentence was awarded under Sections 147 and 148 of the IPC.

2. The prosecution case as unfolded in the '*fardbeyan*' of Prabhu Singh (PW-3) recorded on 1.11.1996 at 2 pm by the S.I. Mirganj Police station at camp Hathwa More at a private clinic where the injured(s) were being treated, in brief, is that on the relevant night the informant along with deceased and PW 1 and one Harendra Singh (not examined) had gone to the paddy field located in Girdhar Koian, about 1 and ½ kms from the village to keep watch over their standing paddy crops. The informant and the deceased in the torch light detected the appellants cutting the paddy. The accused were accosted and prevented from doing so whereafter it is alleged that co-accused Laxmi Mahto gave a blow on the head of the deceased with farsa. The other co-accused persons who were armed with *lathi* also assaulted the informant, PW-1 and Harendra Singh and thereafter they fled away. The deceased and the injured(s) were carried and admitted in a private clinic of PW-7 where the police arrived and registered the case. Thereafter the deceased was shifted to the government hospital in Patna and thereafter to another private clinic



where, in course of treatment, he died on 04.11.1996. The dead body was sent for post mortem examination. The Autopsy Surgeon conducted the post mortem at the PMCH on 05.11.1996 at 10 AM and submitted the post mortem report (Ext.4) which has been proved by PW-8. In course of investigation, the injury reports of PW-3 (informant), Harendra Singh (not examined) and PW-1 Dinanath Singh issued by PW-7 which were marked as Exts. 3, 3/1 and 3/2 respectively at the trial were also obtained. Upon conclusion of investigation, the charge sheet was led whereon cognizance was taken and the case, on commitment, came on the file of the learned Trial Judge where charges were framed and read over/explained to the appellants to which they pleaded not guilty and claimed to be tried. The defence was complete denial of the prosecution case.

3. To bring home the guilt of the appellants the prosecution, in all, examined 08 PWs besides exhibiting relevant documents. The defence also examined DWs-1 and 2 and also produced Exts. A and B. Neither the Investigating Officer of the case nor the doctor was produced and examined at the trial. On a consideration of the evidence adduced by the prosecution, the learned Trial Court found the charges were proved beyond shadow of doubts and accordingly they were convicted and sentenced in the manner stated above.



4. We have heard Mr. Hemendra Prasad Singh, Sr. Advocate in support of the appeal and Mr. S.N. Prasad APP for the State.

5. It has been submitted that the prosecution has failed to prove the time of occurrence as well as the place of occurrence. In the '*fardbeyan*' Ext. (1/1) the informant (PW3) is specific that they had left their village at 9 P.M.in the evening to go to the field where the occurrence was committed. However, in his examination-in chief, he has shifted the time of occurrence from 9 PM to 3 AM in the morning. Similarly, all the witnesses have said about the time of occurrence in the wee hours of the intervening night of 31.10.1996/ 01.11.1996. It is next submitted that the place of occurrence has also not been firmly established. The I.O. has not been produced who could have said about the place of occurrence upon physical inspection thereof. Non examination of I.O. has prejudiced the case of the defence. The cause of death has also not been firmly established. Vide Ext. B, the doctor, where the deceased was lastly being medically treated had opined the cause of death as cardio respiratory failure. He next submits that even accepting the evidence on record, it would not be a case falling under Sections 302/149 of the IPC. In this connection, he has drawn our attention to the '*fardbeyan*' (Ext. 1/1) where it has been stated that the accused were cutting the paddy at the dead of night. Summarizing



on the evidence of PWs 1, 3 and 4 which are relevant, it has been argued that explicitly the purpose of unlawful assembly was to commit theft of the standing paddy. He has taken us through the relevant evidence to highlight that the allegation of assault on the deceased by *lathi* or on the informant or PW-1 or Harendra Singh (not examined) was general and omnibus. The injury reports of PWs- 1 and 3 also indicate that they did not receive any serious injury caused by hard and blunt substance. On these evidence, the learned Trial Court has fallen in error in convicting the appellant under Section 307 of the IPC. On the basis of the evidence on record, it cannot be inferred that the appellants had intended to cause such bodily injury as was likely to cause death.

6. Learned counsel for the State, on the other hand, submits that although the I.O. has not been examined but from the evidence of PWs- 1 and 3 who are injured(s) witnesses the time of occurrence as well as the place of occurrence have been firmly established. It was the paddy field of the deceased in Girdhar Koijan, Bahiyar. Even if the informant is not believed on the point of time of occurrence but from the evidence of PWs 1, 4, as also of PW 2 (father of the deceased), it is firmly established that the occurrence had taken place in the field after the mid night. Now examination of the I.O. has not caused any prejudice to the defence.



7. In the light of the submissions advanced at Bar, we have perused the evidence. What was the purpose of unlawful assembly. It is not difficult for us to conclude on the point as to the purpose of unlawful assembly that was formed by the appellants. The '*fardbeyan*' (Ext. 1/1) clearly states that the accused had come stealthily to cut away the standing paddy crop. PW-2 father of the deceased has also spoken about the same. PW-4 in his examination in chief has categorically said that the accused had come to the field to commit theft of the paddy. What happened thereafter has been explained by the PWs 1 as well as 3. The land where the paddy was being cut was the land of the deceased. The accused persons were spotted while cutting the paddy and the protest was offered by the deceased and other PWs whereafter co-accused Laxmi Mahto gave a solitary blow on his head whereas the other accused persons also assaulted the deceased as well as the PWs 1 and 3. The post mortem report (Ext.4) found one stitched wound on the left parietal region. He was first treated at private clinic then admitted in PMCH and was then again shifted to a private clinic. In this context, we have perused the evidence of his father PW-2, who has stated that the deceased was not well treated at the PMCH and, therefore, he was shifted to another private clinic where he died on 04.11.1996. Highlighting the aforesaid part of the evidence, it has been submitted by the counsel



for the appellants that due to lack of proper treatment, the deceased died. We have also examined the injury reports (Exts. 3 series) of PWs 1 and 3. Both the PWs received injury caused by hard and blunt substance on their palm and there was no repetition on their person. What was the common object of the unlawful assembly, has to be gathered, in the backdrop of the facts illuminated at the trial. As we have already noticed that almost all the PWs are specific that the purpose of the accuseds forming a group and coming to the place of occurrence at the dead of night was to commit theft of the standing paddy crop. The prosecution party who had gone to the field to keep a vigil on the standing crop during night not only detected them but also protested/resisted.

8. In these factual backgrounds, the allegation is that co-accused Laxmi Mahto (since dead) gave one blow on the head of the deceased, as a result whereof, he died at least four days thereafter. It is not difficult for us to comprehend on the aforesaid facts proved at the trial that the common object of the unlawful assembly was to commit theft. The prosecution detected cutting of the paddy by them and offered resistance whereafter co accused Laxmi Mahto (since dead) inflicted singular farsa blow on head of the deceased. Initially, the common object of the unlawful assembly of the group was to commit theft. As they were detected by the prosecution and



protest was offered, the common object turned to give a thrash to the deceased who had come forward may be for the purpose of ensuring their safe retrieve from the place of occurrence. We find substance in the submission of the learned counsel for the appellants that had the accused(s) the common object to commit murder of the deceased, the co-accused Laxmi Mahto (since dead) could have repeated the blow and for other accused(s) like the present appellants to hit on the vital part of the deceased with *lathi*. It is, however, not the prosecution case.

9. The discussions made above, persuade us to find that it was not a case where the accused(s) had intended to commit murder of the deceased responsible for hiting on the head of the deceased with '*farsa*' which is a vital part. In the circumstances, knowledge that by such assault with *farsa* on head was likely to cause death can be attributed to co- accused Laxmi Mahto (since dead) but each accused not only forming the group they can also be held liable for having shared the common object with co-accused Laxmi Mahto. That the common object of the appellants was to stealthily harvest/remove the paddy crop from the field. It cannot be said that they had common object to do any acts mentioned in the five clauses of Section 141 of IPC. There was absolutely no premeditation to cause hurt to the deceased or any injured(s). The appellants used criminal force only to



ensure their safe retrieve from the place of occurrence. They would have returned back with stolen paddy, had the prosecution party not been present at the place of occurrence to watch their paddy crop. This shows that the occurrence was a sudden affair for which each of the appellants should be held liable for his individual act and not vicariously liable for the acts of others. The appellant (since dead) Laxmi Mahto had given one '*Farsa*' blow on the head of deceased which proved fatal. As the said assault was sudden, unanticipated and individual act of Laxmi Mahto, their assembly did not become unlawful at any stage and so other appellants cannot be held liable for the offence under Section 302/149 of the I.P.C. So, in this view of the matter, the conviction of appellants, on this count, is not sustainable in the eye of law.

10. On going through the evidence of PWs 1 and 3 and also the injuries found by PW-7, we are of the considered opinion that their conviction under Section 307 of the IPC is not sustainable in law. They are held guilty under Section 325 of the IPC. Mr. Singh, counsel for appellants, on going through the records, has pointed out that all these appellants have remained in custody after conviction recorded on 08.03.2013. Prior thereto they had also remained in custody for few months. In our view, the ends of justice shall be served if the appellants are sentenced under Section 304(2) of the IPC



r/w 149 of the IPC as well as Section 325 of the IPC for the period they have already suffered.

11. Let the appellant Nos. 2 to 8 be released from custody, if not required in any other case. The appeal is dismissed with the modification in the finding(s) and sentence.

(Kishore Kumar Mandal, J)

Shyam/-

(Sanjay Kumar, J)

AFR/NAFR	NAFR
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