

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction dated, 30.08.2010, and order of sentence dated 04.09.2010, passed by Sri Nand Kumar Shrivastava, learned Additional Sessions Judge-VIII, Motihari, East Champaran in Sessions Trial No. 88 of 1992, arising out of Ramgarhwa P.S. Case No. 65 of 1989)

Criminal Appeal (DB) No.1143 of 2010

1. Ramnath Mahto, son of late Deodhar Mahto
2. Asarfi Mahto, son of late Janak Mahto
3. Dhorha Mahto, son of late Singhashan Mahto
4. Bhoj Mahto, son of late Deonarain Mahto
All residents of Village- Murla, Police Station- Ramgarhwa, District- East Champaran
..... Appellants
Versus
State of Bihar
..... Respondent
With

Criminal Appeal (DB) No. 329 of 2013

Phulmati Devi, W/O Jagdish Mahto (Deceased), Resident of Village and P.O. Murla, P.S.- Ramgarhwa, District- East Champaran.
..... Appellant
Versus
1. The State of Bihar.
2. Lal Babu Mahto S/O Jagdish Mahto.
3. America Mahto S/O Late Singhashan Mahto.
4. Mundrika Mahto S/O Late Singhasan Mahto.
5. Laddu Mahto S/O Khedu Mahto.
6. Ramayan Mahto S/O Khedu Mahto.
7. Ramjit Mahto S/O Late Deonarain Mahto
All resident of Village and P.O. Murla, P.S. Ramgarhwa, District East Champaran.
..... Respondents

Appearance :
(In CR. APP (DB) No.1143 of 2010)
For the Appellant/s : M/s Uma Kant Shukla, Shakti Suman Kumar and Rajesh Ranjan, Advocates
For the State : Mr. A. K. Sinha, A.P.P.
For the Informant : M/s Arun Kumar Prasad & Manoj Kumar, Advs.
(In CR. APP (DB) No.329 of 2013)
For the Appellant/s : M/s Arun Kumar Prasad & Manoj Kumar, Advs.
For the Respondent/s : M/s Uma Kant Shukla, Shakti Suman Kumar and Rajesh Ranjan, Advocates
For the State : Mr. S. C. Mishra, A.P.P.



CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARUN KUMAR)

Date: 10-03-2017

Cr. Appeal (DB) No. 1143 of 2010 was initially preferred by four convicts, namely, Ramnath Mahto (since deceased), Asarfi Mahto, Dhorha Mahto and Bhoj Mahto, against the judgment of conviction dated, 30.08.2010, and order of sentence dated 04.09.2010, passed by learned Additional Sessions Judge-VIII, Motihari, East Champaran in Sessions Trial No. 88 of 1992, arising out of Ramgarhwa P.S. Case No. 65 of 1989, by which all the four appellants have been convicted under Sections 302/149 and 447 of the Indian Penal Code and sentenced to undergo R.I. for life and a fine of Rs.5,000/- each under Section 302/149 of the Indian Penal Code and in default to undergo S.I. for further three months. All the appellants have also been sentenced to undergo S.I. for one month under Section 447 of the Indian Penal Code. However, both the sentences have been ordered to run concurrently.

2. On the other hand Cr. Appeal (DB) No. 329 of 2013 has been preferred by the informant, namely, Fulmati Devi, against the judgment of acquittal of six accused persons, namely, Lal Babu Mahto, Amerika Mahto, Mundrika Mahto, Laddu Mahto, Ramayan Mahto and Ramjeet Mahto passed by the learned trial Court in the



instant case.

3. Learned counsel appearing for the appellants submits that during the pendency of Cr. Appeal (DB) No. 1143 of 2010, appellant nos. 1 and 4, namely, Ramnath Mahto and Bhoj Mahto, died and, as such, the appeal against them stands abated. Cr. Appeal (DB) No. 1143 of 2010 is being proceeded against two appellants, namely, Asharfi Mahto and Dhorha Mahto.

4. The prosecution case, in short, as made out in the fardbeyan of Fulmati Devi (P.W.6) wife of the deceased Jagdish Mahto, resident of village Murla, P.S. Ramgarhwa, District- East Champaran, recorded on 19.08.1989, at 2.15 P.M. by S.I. B. K. Mishra, officer-in-charge, Ramgarhwa police station, in short, is as follows:

5. The informant stated that on 19.08.1989, at about 1.00 P.M., her husband (Jagdish Mahto) was returning home after performing some agriculture work in his field. In the meantime, the accused persons, namely, Dhorha Mahto, son of Singhasan Mahto, armed with Farsa, Bhoj Mahto armed with Bhala, Ramnath Mahto and Asharfi Mahto, both armed with Farsa arrived fuming at her door, as goat of her husband had grazed their field. Soon thereafter Bhoj Mahto struck her husband below his neck with Bhala. Thereafter Dhorha Mahto and Asharfi Mahto also struck on the head of Jagdish



Mahto with Fasuli. Ramnath Mahto also struck Fasuli on the right chest of Jagdish Mahto, on account of which he sustained injuries and fell on the ground. When her husband's brother Jamuna Mahto, his wife Fulgena Devi and one Vikram Mahto tried to save him, they too were assaulted and injured by the accused persons. The informant's husband Jagdish Mahto as well as Jamuna Mahto were taken to hospital for treatment. However, on the way her husband Jagdish Mahto died, whereas Jamuna Mahto died one day after. The fardbeyan was read over to the informant, who finding the same to be true, put her thumb impression.

6. On the basis of the Fardbeyan of the informant, Ramgarhwa P.S. Case No. 65 of 1989, dated 19.08.1989 was registered for the offence under Sections 302, 448, 307, 324/34 of the Indian Penal Code.

7. The police in course of investigation took statement of the witnesses as well as restatement of the informant. The investigating officer inspected the place of occurrence. The investigating officer also prepared the inquest report and sent the dead body for post-mortem. The police thereafter obtained post-mortem report of the two deceased, namely, Jagdish Mahto and his cousin Jamuna Mahto and initially submitted charge-sheet against 10 accused persons including Dhorha Mahto, Bhoj Mahto, Asharfi Mahto,



Ramnath Mahto, Sinhasan Mahto and Awadh Mahto keeping the investigation pending against other accused persons. Subsequently, the police submitted charge-sheet against other 8 accused persons, namely, Lal Babu Mahto, Ramjeet Mahto, Amerik Mahto, Mundrika Mahto, Basudeo Mahto, Gopal Turha, Laddu Mahto and Ramayan Mahto.

8. Thereafter learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions for trial. Charges were framed against 12 accused persons, namely, Dhorha Mahto, Bhoj Mahto, Asharfi Mahto, Ramnath Mahto, Awadh Mahto, Lalbabu Mahto, Amerika Mahto, Mundrika Mahto, Gopal Turha, Singheshwar Mahto and Ramayan Mahto, to which they pleaded not guilty and claimed to be tried. However, Awadh Mahto and Singheshwar Mahto died during pendency of the trial, as such the case proceeded against only 10 accused persons.

9. The prosecution, in support of its case, examined 7 witnesses. P.W. 1 is Vikrama Mahto, P.W.2 is Sitaram Mahto, P.W. 3 is Banshi Mahto. P.W.4 is Rahunandan Mahto, P.W.5 is Fulgena Devi. P.W. 6 Fulmati Devi is the informant of the case and P.W. 7 is Moti Lal Prasad.

10. Besides oral evidence, the prosecution adduced documentary evidence including formal F.I.R., Post-mortem report



etc. However, the defence did not examine any witness nor adduced any documentary evidence in support of its case.

11. The case of the defence in the statement under Section 313 of the Cr.P.C. and as appearing from the mode of cross-examination is one of false implication. Their case is that the occurrence took place on a road, near to the Pokhar, situated east of the village and it is Jagdish Mahto and Jamuna Mahto of the prosecution side, who assaulted Singheshwar Mahto and chopped off his hand and four fingers.

12. The trial court on consideration of evidence on record acquitted six of the accused persons. While acquitting six accused persons, namely, Lal Babu Mahto, Amerika Mahto, Mundrika Mahto, Laddu Mahto, Ramayan Mahto and Ramjeet Mahto, and trial court convicted Asharfi Mahto, Dhorha Mahto, Ramnath Mahto and Bhoj Mahto under Section 302/149 and 447 of the Indian Penal Code.

13. As noticed earlier, two of the appellants, namely, Ramnath Mahto (appellant no.1) and Bhoj Mahto (appellant no.4) of Cr. Appeal (DB) No. 1143 of 2011 died and the appeal survived only against Dhorha Mahto and Asharfi Mahto.

14. The informant has also preferred appeal against the same judgment, acquitting six of the accused persons.



15. We have heard the counsel for the parties.

16. There is no dispute that two persons, namely, Jagdish Mahto and his cousin Jamuna Mahto were killed on 19.08.1989 by Bhala and Farsa in the village itself. The main issue for consideration is whether the accused persons have participated in the murder of the two deceased. As noticed earlier, the defence has disputed the genesis of occurrence, manner of occurrence and place of occurrence. In order to appreciate the issue, it would be necessary to notice the evidence of the witnesses in some brief:

17. P.W.1 Vikrama Mahto, P.W.2 Sitaram Mahto, P.W.3 Banshi Mahto, P.W.4 Raghunandan Mahto, P.W.5 Fulgena Devi (wife of deceased Jamuna Mahto) and P.W.6 Fulmati Devi (informant), all of them have claimed to be the eye witness of the occurrence.

18. P.W.1 Vikrama Mahto stated that the occurrence took place 3 ½ years ago on Saturday. At about 1.00 P.M., at the relevant day, he was at his door. In the meantime, Dhorha Mahto, Asharfi Mahto, Rangnath Mahto, Bhoj Mahto, Ramjeet Mahto, Lal Babu Mahto and others, totaling 26 in number, came variously armed at the door of Jagdish Mahto. They immediately entered into altercation on the issue of grazing of field by goats. In the process, Dhorha Mahto assaulted Jagdish with Farsa on his head, whereas



Asharfi Mahto also assaulted Jagdish with Farsa on the right wrist. Bhoj Mahto assaulted with Bhala on the neck, just below the clavicle, on account of which Jagdish Mahto fell on the ground. One Jamuna Mahto, cousin of Jagdish Mahto, who came to save Jagdish, was also assaulted by Ramjeet Mahto with Bhala on his chest, on account of which he also fell. Thereafter the rest of the accused persons also assaulted them. Thereafter, both Jagdish and Jamuna were carried to hospital, however, Jagdish Mahto died on the way. He further Stated that Jamuna Mahto died after one day.

19. P.W. 2 Sitaram Mahto too stated that the occurrence took place at about 1.00 P.M., on which date and time he was at his door. In the meantime, the present two appellants along with others, totaling 26 in number, came variously armed. Out of them Dhorha, Asharfi and Ramnath were armed with Farsa, Bhoj and Ramjeet were armed with Bhala and rests were armed with Lathi. He stated that on the order of Dinesh, Dhorha assaulted Jagdish Mahto on his head with Farsa. Thereafter, Asharfi also assaulted on his head with Farsa, Ramnath assaulted on the right wrist with Farsa. Bhoj Mahto assaulted at clavicle, just below the neck with Bhala. Jagdish Mahto slumped on the ground due to assault. One Jamuna Mahto, who tried to intervene, was too assaulted by Ramjeet Mahto and others on his chest with Bhala. Thereafter, both Jagdish and Jamuna were carried to



hospital, however, Jagdish Mahto died on the way and Jamuna Mahto died subsequently a day or two later. He stated that the occurrence took place on account of grazing of field by she goat of Jagdish Mahto.

20. The evidence of P.W.3 Banshi Mahto and P.W.4 Raghunandan Mahto are also to the same effect.

21. P.W. 5 Fulgena Devi is the wife of deceased Jamuna Mahto. She has supported the prosecution case. She stated that the occurrence took place about 3 ½ years ago, at about 1.00 P.M. At that time, she was at her door. In the meantime, 26 accused persons including Ramnath Mahto, Asarfi Mahto, Dhorha Mahto and Bhoj Mahto came to the door of Jagdish Mahto, all variously armed. She further stated that Bhoj Mahto was armed with Bhala, whereas Dhorha, Asharfi and Ramnath were armed with Farsa. She too stated that first of all Dhora Mahto assaulted Jagdish Mahto with Farsa on his head, whereas Asharfi Mahto assaulted with Farsa on the head of Jagdish. Ramnath assaulted with Farsa on the right wrist, whereas Bhoj assaulted with Bhala on the neck, below the clavicle of Jagdish Mahto, on account of which he fell and got badly injured. One Jamuna Mahto, the husband of this witness, who tried to intervene, was too assaulted by Ramjeet on his chest by Bhala, on account of which he also fell. She stated that other accused persons further



assaulted him.

22. P.W. 6 Fulmati Devi is the wife of the deceased. She stated that the occurrence took place about 3 ½ years back between 12.00 to 1.00 P.M. At the relevant time, she was sitting at her door along with her husband Jagdish (deceased), her Gotani Fulgena Devi (P.W.5) and her Bhaisur Jamuna Mahto. In the meantime 26 accused persons including Ramnath Mahto, Asarfi Mahto, Dhorha Mahto and Bhoj Mahto came to the door of Jagdish Mahto, all variously armed. She further stated that Bhoj Mahto armed with Bhala, whereas Dhorha, Asharfi and Ramnath were armed with Farsa. She too stated that first of all Dhorha Mahto assaulted her husband with Farsa on his head, whereas Asharfi Mahto assaulted with Farsa on the head. Ramnath assaulted with Farsa on the right wrist, whereas Bhoj assaulted with Bhala on the neck, below the clavicle of her husband, on account of which he fell and got badly injured. She stated that when her Bhaisur Jamuna Mahto tried to intervene, he too was assaulted by Ramjeet on his chest by Bhala, on account of which he also fell on the ground. She stated that other accused persons further assaulted him.

23. In absence of the doctor, the post report was proved by P.W. 7 Moti Lal Prasad. The post-mortem report of Jagdish Mahto and Jamuna Mahto are quoted herein below:



On the body of Jagdish Mahto, the following injuries have been found:

(i) Sharp cut injury 2" x ½" x 3" deep into the left lung upper part about 2" below the left clavicle.

(ii) Sharp cut injury 4" x ½" x bone deep over the upper part of the occipital region with oozing of blood and brain matter through the opening of the wound.

(iii) One sharp cut injury 1" x ½" x skin muscle deep on right wrist joint.

On opening skull bone: laceration and fracture of the occipital bone with laceration of brain tissue seen collective objects in the vicinity.

On opening of thorax: Left thorax cavity full of blood with sharp cut wound with left lung. Heart found empty. Stomach contains semi-digested food stuff. Bladder empty.

Time elapsed since death: 12 hours. Cause of death: above injury leading to massive haemorrhage and neurological shock and death.

On the body of Jamuna Mahto, the following injuries have been found:

(i) Incised wound 1" x ½" x scalp muscle deep with right parietal bone.



(ii) Penetrating wound 1 ½” x ½” x cavity deep with front of upper part of chest by the left side of left sternum with 2nd I.C.S. (2nd inter costal space).

(iii) Stitched wound 3” x ½” x muscle deep on the both of left forearm.

(iv) Swelling and blackening of left eye.

On dissection: (i) scalp bone was intact. (ii) Thorasic cavity: both thorasic cavity was full of blood and blood clot with laceration of right vascular artery.

(iii) Heart was empty. (iv) Lungs- Right lung: NAD. Left lung: upper lobe of left lung was ruptured.

(iv) Abdominal cavity- liver, spleen, kidney NAD. Stomach was full of gas and contains approximate 150 c.c. of fluid. Urinary bladder empty.

Weapon used: Sharp and penetrating weapon.

Cause of death: due to haemorrhage and shock caused by injury no.2.

Time elapsed since death: within 18 hours.

24. It is relevant to state here that the case is of the year 1989 and during trial all steps were taken by the trial court to obtain the presence of the doctor, but as he was not traceable in spite of all efforts, the post-mortem report was produced and proved by P.W.7



under Section 32 of the Evidence Act. It is further relevant to state here that the last eye witness was examined in the year 1993 and in spite of all efforts/steps, the investigating officer did not turn up for his evidence for 15 years and as such trial court proceeded to record the statement of the accused persons.

25. It would appear from the post-mortem report that Jagdish Mahto sustained 3 ante-mortem injuries, one on his head and other on his left clavicle and on his right wrist. The time elapsed since death was 12 hours, which tallies with the prosecution case, as the post-mortem was conducted on 20.08.1989 at 9.15 A.M.

26. The other deceased Jamuna Mahto sustained four injuries including one incised wound on his scalp and one penetrating wound on the upper part of his chest, besides stitched wound on left arm and swelling near his left eye. Time since death was 18 hours, which too tallies with the prosecution case, as post-mortem was conducted on 21.08.1989 at 9.00 A.M. in the morning

27. Mr. Umakant Shukla, learned counsel appearing for the appellants and also for respondents in the appeal against acquittal, being Cr. Appeal (DB) No. 329 of 2013. He submits that the prosecution case should be rejected out-right in view of material infirmities persisting in the evidence produced by the prosecution. The prosecution has not been able to prove either place of occurrence



or genesis of occurrence. He further submits that the informant has almost given a go bye to the prosecution case, as narrated in the F.I.R. He further submits that non-examination of the investigating officer has prejudiced the defence case, as it has not been able to take contradiction from the investigating officer with respect to various material aspects with regard to which the attention of the witnesses were drawn during trial. Elaborating his submission, learned counsel submits that in fact, the occurrence took place near the pond, east to the village, whereas the prosecution side, namely, Jagdish Mahto, Jamuna Mahto and Vikarma Mahto assaulted Awadh and Singhasan Mahto. In fact the four fingers of Awadh Mahto were chopped off, whereas the right arm of Singhasan Mahto was injured.

28. With regard to the genesis of occurrence, learned counsel submits that P.W. 6 in the F.I.R. stated that as she goat of Jagdish Mahto grazed the field of accused persons, they came to his house variously armed and assaulted Jagdish Mahto and Jamuna Mahto, who tried to intervene in the matter, leading to their death. However, the informant in her evidence stated that on account of grazing of field, one Lal Babu Mahto (co-accused) assaulted her husband on his head, whereafter many accused persons including the appellants came and committed Mar-pit at her door leading to death of Jagdish Mahto and Jamuna Mahto. In nut shell, the case of the



appellants is that none of the occurrence took place at the door of the informant, rather all the occurrence took place in one transaction near Pokhra, east to the village, in which two persons of the accused side, namely, Awadh and Singhasan Mahto were injured.

29. Lastly, learned counsel submits that as six out of 10 accused persons put on trial, have been acquitted. The trial court erred in not acquitting the other four accused persons on same evidence.

30. On the other hand, counsel for the State submits that the defence in order to save his own skin has tried to project that the incident took place at a Pokhra, east to the village, which is not correct, as the prosecution witnesses consistently stated that Jagdish and Jamuna Mahto were assaulted at the door of Jagdish Mahto, on account of which they succumbed to the injuries. He next submits that even assuming that an incident of Mar-pit took place at the Pokhra, in which two accused, namely, Awadh and Singhasan, were injured, the same is a separate incident than one, which took place at the door of the informant. Furthermore, the prosecution side has been acquitted in the counter case, being Ramgarhwa P.S. case no.66 of 1989. He next submits that all the witnesses right from P.W.1 to P.W.6 stated that the deceased Jagdish was assaulted by Dhorha Mahto on his head with Farsa first, whereafter he was also assaulted on head by Asharfi Mahto. He further submits that other two appellants have died, during



the pendency of the appeal, namely, Ramnath Mahto (appellant no.1) and Bhoj Mahto (appellant no.4), had also assaulted the deceased Jagdish with Bhala and Farsa on neck. He next submits that all the witnesses have consistently stated that Bhoj Mahto assaulted with Bhala below the clavicle of Jagdish Mahto, whereas Ramanth assaulted with Farsa on his right chest.

31. We find that there are ample materials on record, which negates the case of the defence that the entire occurrence took place at the Pokhra, east to the village, as suggested by the defence for more than one reason.

32. Firstly: all the witnesses right from P.W.1 to P.W.6 consistently stated that they were at the door of the house of Jagdish Mahto, on the relevant date at about 1.00 P.M., when the appellants along with others variously armed, came and entered into altercation with Jagdish Mahto. All the witnesses in one voice stated that Bhoj Mahto was armed with Bhala, whereas Dhora, Asharfi and Ramnath were armed with Farsa. They all stated that Dhorha Mahto first assaulted the deceased Jagdish Mahto with Farsa on his head followed by another assault by Asharfi Mahto on his head, itself. Thereafter Bhoj Mahto is alleged to have assaulted with Bhala on the left clavicle of the deceased and Ramnath is said to have assaulted the right chest with Farsa. Besides this, the defence has not been able to give



explanation for the same. However, if the defence case is believed that the occurrence took place near the Pokhara, nothing has been brought on record by them to explain the injuries on the person of Jagdish Mahto and Jamuna Mahto, one of whom died immediately and the other on the following day. Furthermore, the trial court has not believed the counter case filed by the defence and has acquitted the accused persons of the charges, as such, it is difficult for us to accept the contention of the defence that the entire occurrence had taken place near the Pokhara, east to the village.

33. The other point raised by the defence is that the prosecution has changed the genesis of the occurrence. In the FIR lodged by P.W.6, it is alleged that the accused persons assaulted Jagdish Mahto and Jamuna Mahto, who tried to save Jagdish Mahto, and occurrence took place on account of grazing of she goat of the prosecution side. However, in the evidence, P.W.6 stated that she goat of Fulena Devi, wife of Jamuna Mahto grazed the field of one of the accused Lal Babu Mahto, on account of which the accused persons came and assaulted the prosecution side.

34. We find that there is no vital contradiction in the evidence of this witness either at the stage of lodging of the F.I.R. or during trial. In the fardbeyan and evidence, she stated that the occurrence took place on account of grazing of she goat, in which



Jagdish Mahto was first assaulted and when his brother Jamuna Mahto tried to intervene, he too was assaulted, which led to their death, as such we are of the considered view that there is no major discrepancies in the evidence of this witness (P.W.6) or other witnesses with respect to the genesis of occurrence.

35. The defence had argued that non-examination of the investigating officer has prejudiced the defence case, as they are unable to take the contradictions from the investigating officer, with respect to the statements made by the witnesses in the Court. However, we find that the attention of the witnesses have not been drawn towards any major contradiction in statement before the police and the Court. As such, we are of the considered view that non-examination of investigating officer has not prejudiced the prosecution case.

36. From the mode of cross-examination, it would appear that there is main discrepancies with respect to number of persons, who had participated in the occurrence, whereas the informant has named only four persons, namely, Dhorha Mahto, Bhoj Mahto, Ramnath Mahto and Asharfi Mahto. To this extent, we may agree with the submission of the learned counsel for the appellants that the informant has subsequently named more persons, who are alleged to have participated in the assault on Jagdish Mahto and Jamuna Mahto



and this is exactly the reason, the trial court has acquitted the rest six accused persons, put on trial, other than the four, who are named in the F.I.R. As such, we do not find any merit in Cr. Appeal (DB) No. 329 of 2013, filed by the informant against acquittal of the six accused persons, who were tried along with four convicted appellants. The Cr. Appeal (DB) No. 329 of 2013 is thus dismissed.

37. However, we find that the prosecution has alleged specific overt act of assault against each of the original four appellants namely, Dhorha Mahto, Bhoj Mahto, Ramnath Mahto and Asharfi Mahto. The informant in particular had stated that Dhorha Mahto first assaulted Jagdish Mahto on his head with Farsa. Thereafter Asharfi Mahto also assaulted on his head with Farsa, Ramnath assaulted on the right wrist with Farsa, whereas Bhoj Mahto assaulted on the clavicle, just below the neck with Bhala. But as per the post-mortem report, there are only three injuries on the person of the deceased Jagdish Mahto. There is only one Farsa injury on the occipital region, whereas two persons, namely, Dhorha Mahto and Asharfi Mahto are alleged to have assaulted with their respective Farsa. The medical report, thus, falsifies the prosecution case to the extent that both Dhorha Mahto and Asharfi Mahto assaulted with Farsa on the head of the Jagdish Mahto.

38. So far as Cr. Appeal (DB) No. 1143 of 2013 is



concerned, as per the prosecution case and evidence of witnesses, four persons, namely, Dhorha Mahto, Bhoj Mahto, Ramnath Mahto and Asharfi Mahto assaulted the deceased. Dhorha is said to have assaulted first the deceased on his head with Farsa followed by further assault by Asharfi with Farsa on his head as well. Ramnath Mahto assaulted the deceased on his wrist with Farsa and Bhoj Mahto assaulted on the clavicle, just below the neck with Bhala. As per post-mortem report, there are only three injuries on the person of the deceased Jagdish Mahto. There is only one Farsa injury on the occipital region, whereas two persons, namely, Dhorha Mahto and Asharfi Mahto are alleged to have assaulted with their respective Farsa. Furthermore, two of the aforesaid accused-appellants, namely, Bhoj Mahto and Ramnath Mahto, have died. The post-mortem report points only one injury on the head of the deceased Jagdish Mahto, though Dhorha and Asharfi Mahto are alleged to have assaulted with Farsa. We find that it is the consistent evidence that Dhorha Mahto gave the first blow followed by Asharfi Mahto, as such the allegation against Asharfi Mahto is not supported by medical evidence and we grant him benefit of doubt and acquit him (Asharfi Mahto) of the charge under Section 302/149 of the Indian Penal Code.

39. As there is over whelming evidence that it is Dhorha Mahto, who assaulted first the deceased Jagdish Mahto on his



forehead, we uphold the judgment of conviction and sentence passed against him by the trial court.

40. In the result, Cr. Appeal (DB) No. 1143 of 2010 is allowed so far as appellant no.2, namely, Asharfi Mahto, is concerned and dismissed against appellant no.3, namely, Dhorha Mahto.

41. The appellant no.2, namely, Asharfi Mahto, is on bail and as such he is discharged from the liabilities of his bail bonds. The appellant no.3, namely, Dhorha Mahto, who is already in custody, would remain in custody, to serve the remaining part of the sentence.

(Samarendra Pratap Singh, J.)

Uday/-

(Arun Kumar, J.)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26-05-2017
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