

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.481 of 1994

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1. Chandeshwar Singh, son of Rambali Singh
 2. Hari Lal Bhagat son of Dahari Bhagat
 3. Balindar Singh son of Rampujan Singh
 4. Janardan Singh son of Narsingh Singh
 5. Shri Lal Manjhi son of Harihangl Manjhi
 6. Ram Nath Kandu son of Ram Nagina Kandu, all resident of village
Chit Bisharam, post Samatar, Police Station Guthani, District- Siwan
- Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 508 of 1994

Ram Pravesh Manjhi, son of Late Chhatu Manjhi, resident of village
Chitvishram, Police Station Guthani, District- Siwan

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Yogendra Pd. Sinha, Advocate
For the State	:	Mr. D.K.Sinha, APP
		Mr. Ajay Mishra, APP

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date : 25-11-2017

Both the appeals arise out of the common judgment and order of conviction and sentences dated 20.9.1994 passed in Sessions Trial No. 117 of 1986 arising out of Guthni P.S. Case No. 11 of 1985 by the 3rd Additional Sessions Judge, Siwan, whereby the sole appellant of Cr. Appeal No. 508 of 1994 has been



convicted for offence under Sections 302 and 452 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life under Section 302 and under Section 454 rigorous imprisonment for one year whereas the appellants in Cr. Appeal No. 481 of 1994 were convicted under Section 302/149 and 454 IPC and they have been sentenced to undergo rigorous imprisonment for life under Section 302/149 and rigorous imprisonment for one year under Section 452 of the Indian Penal Code.

2. The prosecution case, in short, is that one Tiliachi Devi, PW 3 lodged first information report on 30.3.1985 at about 11.35 PM at State Dispensary, Guthani, is to the effect that on the very day at 9.30 A.M., Ramanath Manjhi was mending Khalihan on northern Dih of the village and the informant was carrying wheat bundle and keeping it on the same Dih and by then Harilal Bhagat came and forbade Ramawadh Manjhi from mending Khalihan there and Ram Awadh left. At this Madan Singh who was getting wheat bundle heaped there, had a scuffle with Harilal on issue of Khalihan and there was exchange of words and Hathapai and brick batting and after some time all dispersed. It is further stated that the informant's Dewar Mohan Rajbhar deceased was throwing bricks on behalf of Madan Singh caused injury to



accused Ram Pravesh Manjhi. Another sequence of the incident in the fardbeyan is that in the evening hours at 6.00 p.m the deceased Mohan Raj Bhgar was taking Horha and all the eight named accused persons armed with lethal weapon and dagger suddenly assembled there, trespassed into the informant's house and after picking up Mohan Raj Bhar, took him to the southern well from the house, fell him down and accused Ram Pravesh Manjhi stabbed him and he became unconscious and then they all decamped. On hulla several villagers assembled and the injured was taken to one Dr. Nasir Ahmad and there from to Guthani Hospital where Mohan Rajbhar succumbed to injury. Motive behind the occurrence stated to be litigation between Suraj Singh and accused Tejbahadur Singh and the informant and deceased used to work for Suraj Singh and the accused persons are the party men of Tej Bahadur Singh.

3. On behalf of the prosecution seven witnesses were examined P.W. 1 is Dr. Radhakant Choubey, who held the post-mortem of the deceased, P.W. 2 is Girja Devi wife of the deceased, P.W.3 is Tilaichi Devi (informant) Bhabhi of the deceased P.W. 4 Ramayan Bhar is a seizure least witness, P.W. 5 Bhiswanath is Dresser, P.W. 6 Sudama Pandey is a constable and has supported the post-mortem of the deceased, P.W.7 is Jamuna Ram who is the



Police Officer who submitted the charge sheet and P.W.8 Chandramaheswari Pandey, who had recorded the Fardebayan of the informant P. W.3.

4. The police after investigation submitted charge sheet against 8 persons for offences under section 302/149 and 452 of the Indian Penal Code. After taking cognizance the case was committed to the Court of Session. The Trial Court after framing the charges, proceeded with the trial on the appellants pleading not guilty. The Trial Court on the scrutiny of the evidence of the parties convicted the appellant Rampravesh Manjhi of Cr.Appeal No. 508/1994 under sections 302 and 452 of the Indian Penal Code whereas the appellants of Cr.Appeal No. 481 of 1994 were convicted under sections 302/149 and 452 of the Indian Penal Code and sentenced them in the manner as indicated above.

5. Mr Yogendra Prasad Sinha, learned counsel appearing on behalf of the appellants in both the cases has submitted that the Trial Court has committed error in convicting the appellants. He submitted that in the instant case there was only 2 eye-witnesses namely P.Ws 2 and 3 and from there version, it is apparent that there is contradiction in the deposition of these two so called eye witnesses in the matter of commission of crime and participation of the appellants in the commission of crime. He



submitted that there are sharp contradiction in the version of Pws. as to the place of occurrence, according to P.W.2 the place of occurrence is adjacent north of well whereas P.W. 3 said that the place of occurrence is two steps south of well.

6. He submitted that in the instant case the sole appellant in Cr. Appeal No. 508 of 1994, namely, Ram Pravesh Manjhi, although named in the FIR but was not sent up by the police. However, he was convicted by the trial court after summoning him under Section 319 Cr.P.C.

7. He submitted that there are major discrepancy in the prosecution case and the evidence adduced by the prosecution does not establish that the appellants have committed offence. He submitted that the doctor, who conducted post mortem, has only found three injuries on the person of the deceased, one incised wound on the neck, two bruises on the left leg and swelling below the left eye was found ante-mortem in the post mortem report. He submitted that the manner of assault attributed to the appellants in commission of the crime is not supported by the medical evidence.

8. Mr. Sinha referred to the deposition of the PW 2 the wife of the deceased, who has stated that her husband was assaulted by the accused persons for nearly half an hour, who were variously armed with weapons. However, the medical report



falsifies the allegation of assault by various weapons including *lathi, bhala, chura*, etc.

9. He submitted that the appellants have been falsely implicated in this case as the prosecution side is Karinda of Suraj Singh and the appellants have been implicated in this case at the instance of Suraj Singh. Defence has made suggestion to that effect to PWs 2 and 3 during the trial. He submitted with reference to deposition of P.Ws. 2 and 3 and P.W. 1 that it is not clear that who is responsible for causing injury which led to death of the deceased.

10. Lastly he submitted that in the totality of the facts of this case, there is only allegation of causing injury by *Chura* against the sole appellant, Ram Pravesh Manjhi in Cr. Appeal No. 508 of 1994. There is no allegation of any overt act which proved fatal.

11. Mr. D.K.Sinha, assisted by Mr. Ajay Mishra, appearing on behalf of the State in the two appeals has submitted that the eye witnesses, who are the widow and Bhabhi of the deceased, have in most unambiguous terms narrated the entire occurrence in the trial and in their statement they are consistent before the police and before the court about the commission of crime by the appellants and in particular the sole appellant in Cr.



Appeal No. 508 of 1994 Ram Pravesh Manjhi. The eye witnesses are consistent and their version is duly supported by the medical evidence. The post mortem report is also on the line of the deposition of the P.Ws. 2 and 3, the eye witnesses of the occurrence.

12. We have gone through the entire materials on record and on perusal of the materials on record and the consistent deposition of the PWs. 2 and 3 supported by the medical evidence, we have no reason to differ from the finding recorded by the trial so far as the conviction of sole appellant Ram Pravesh Manjhi in Cr. Appeal No. 508 of 1994 as the witnesses are consistent on the point of commission of crime by Ram Pravesh Manjhi. He was confronted with each and every adverse circumstance which surfaced against him during the trial while examination under Section 313 Cr.P.C. The trial court on the basis of scrutiny of the evidence of the prosecution has convicted the appellant Ram Pravesh Manjhi for giving *Chura* blow, which led to the death of the deceased Mohan Rajbhar. The minor contradiction in the version of P.W.2 and P.W.3 as to place of occurrence is of no consequence having regard to the background of the witnesses who are rustic villagers, moreover, they are consistent on the point of assault by Chura which is fully corroborated by medical



evidence. However, on deeper scrutiny of the evidence, we find that conviction of the appellants of Cr. Appeal No. 481/1994 is not safe in view of lack of consistency in the version of the prosecution witnesses as to their participation in crime and the fact that there is no material to indicate that the appellants in Cr. Appeal No. 481 of 1994 have really committed the crime as suggested by the prosecution. From the record it appears that there was no specific allegation of any overt act which is supported by medical report/post mortem report.

13. In the aforesaid backdrop of fact, we are of the view that the Cr. Appeal No. 481 of 1994 deserves to be allowed extending the benefit of doubt as the materials available on the record does not indicate that the appellants have committed crime. So far as the sole appellant of Cr. Appeal No. 508/1994 Ram Pravesh Manjhi is concerned, the conviction is supported by the P.Ws. 2 and 3 as well as corroborated by the post mortem report and the deposition of the Doctor, P.W.1.

14. Accordingly, Cr. Appeal No. 508/1994 preferred on behalf of the sole appellant Ram Pravesh Manjhi is dismissed and his conviction and sentence is affirmed. He is directed to surrender before the court below to serve the remainder of the sentences at once. In the event of his failure to surrender, the



district administration is directed to take necessary steps to ensure his arrest so that he may serve the remaining part of the sentences in terms of the judgment of conviction and order of sentence dated 20.9.1994.

15. Cr. Appeal No. 481 of 1994 is allowed and the judgment of conviction and order of sentence dated 20.9.1994 is set aside, so far as the appellants of this criminal appeal are concerned. The appellants are on bail. They are accordingly, discharged from the liability of the bail bonds.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
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