

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.321 of 1993

1. Garho Mahto,
2. Ram Bilas Mahto,
3. Baran Mahto.

Both sons of Garho Mahto, all residents of village and Post-Kachchiyana,
P.S.-Lakhisarai, District-Munger.

... .. Appellants

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Animesh Kumar Mishra, Amicus Curiae
For the Respondent/s : Mr. A.K. Sinha, A.P.P.

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 07-10-2017

We have heard parties and perused the records of this case.

The appellants have filed this appeal assailing the judgment of conviction and order of sentence dated 28.05.1993 passed by 8th Additional Sessions Judge, Munger in Sessions Case No. 712 of 1990 arising out of Lakhisarai P.S. Case No.82 of 1990 by which they have been convicted for the offences punishable under Sections 302/34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life.

The prosecution case in brief is that one Muneshwar Rajak gave his fardbeyan on 14.03.1990 at about 10.00 A.M. alleging



therein that on previous night, i.e., on 13.03.1990, his father had gone to watch the field at about 8.00 P.M. The co-villagers, namely, Baran Mahto, Ram Bilas Mahto and Garho Mahto went near his father, caught hold of him and started assaulting with knife and injured him. His father started crying on which Gopal Singh and Sanjay Singh, who were watching their crops came there and saw the accused persons assaulting with dagger. When they came near him, all three accused persons fled away. Gopal Singh and Sanjay Singh started shouting loudly that Harkhit was killed. On hearing 'hulla', the informant, his two brothers and several villagers came there and saw the accused persons running towards their house. The night was moonlit and everything was clearly visible. When they came near the father of the informant, he was dead and the dead body was lying. The motive behind the alleged occurrence was old enmity and litigation.

On the basis of aforesaid fardbeyan of the informant, the police registered a case under Sections 302/34 of the Indian Penal Code vide Lakhisarai P.S. Case No. 82/1990. The police took up the investigation of the case. After investigation, the police submitted charge sheet against the appellants under the aforesaid sections of the Penal Code. Thereafter, cognizance was taken and the case was committed to the court of sessions, where charges



were framed under Sections 302/34 of the Indian Penal Code, to which, the accused person pleaded not guilty. Thereafter, trial started against the appellants.

During trial, the prosecution has examined altogether ten witnesses in support of its case. P.W.1 is Sanjay Singh, P.W. 2 is Gopal Singh, P.W. 3 is Gokhul Rajak, P.W. 4 is Banarsi Rajak, P.W. 5 is Biranchi Rajak, P.W. 6 is Muneshwar Rajak, P.W. 7 is Dr. A.P. Mandal, P.W. 8 is Dharamdeo Singh, P.W. 9 is Gagan Prakash Kindo and P.W. 10 is Rajendra Sharma.

The defence has not examined any witness on its behalf.

The trial court after hearing learned counsel for the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charges against the appellants and, accordingly, the aforesaid judgment of conviction and order of sentence has been passed.

Now this Court is required to reappraise the prosecution evidence to see as to whether the prosecution has been able to substantiate its case beyond shadow of all reasonable doubts or not?

From perusal of evidence on record, it appears that the medical evidence does not corroborate with the ocular evidence as there is constant evidence of all the prosecution witnesses that the



deceased was done to death by daggers only but the post mortem report shows that most of the injuries were caused by hard and blunt substance or at best sharp cutting weapon but there is no penetrating wound on the person of the deceased. It is also constant case of the prosecution that there was instantaneous death of the deceased due to injuries but the column III of the Post mortem report shows that both chambers of the heart were empty and P.W. 7, the Medical Officer, has testified in para 3 of his deposition that when an injured is dead due to oozing out of blood slowly then the chamber of the heart empties slowly and if the death is instantaneous the chamber is full of blood. In the present case both chambers were empty and so there may be a case that the dead was not instant. It is a case of prosecution that the deceased was given several blows with daggers but the doctor has stated in his deposition that no penetrating wound was found on the person of deceased. Relevant portions of deposition of the doctor, i.e., P.W.7 are extracted and reproduced as under :-

“8. I have not mentioned about all the bones whether they were cut or broken. On this basis of this report it can be said whether the bones were cut or broken. No penetrating wound was found on the person of the deceased.

9. Temporal and frontal bones are densely covered by skin. Even they are hit by hard and blunt substance. There



cannot be looked like incised wound. It is not a fact that I have mentioned wrongly that a hard substance cannot cause a incised injury on temporal bone”.

(emphasis is mine)

This statement of prosecution witnesses negates the allegation of daggers blow on the person of the deceased. Thus, it is clear that the doctor has given a complete go by to the story of assault by daggers.

The prosecution has also failed to prove the genesis and manner of occurrence. The delay has not been explained by the prosecution and defence has been able to make out a probable case in view of the fact that the occurrence is said to have taken place at about 8.00 P.M. on 13.03.1990 and the matter was reported to the police on 14.03.1990 at about 10.00 A.M. while the place of occurrence was only at a distance of 2 to 2.1/2 miles (kosh). The P.W.9 has stated in para 12 of his evidence that he went to place of occurrence suo motu to verify the rumour of murder.

As per fardbeyan and evidence of prosecution witnesses, it was moonlit night and the identification of the accused persons is claimed in the light of moon but the distance from which identification was made is not given either in fardbeyan or the evidence of prosecution witnesses but para 2 of case diary (Ext.6) shows that field of P.Ws. 1 and 2 lies at a distance of 300 yards from the place of occurrence. This version finds support from the



evidence of P.W. 8 in para 6 and P.W.9 in para 6 also. P.W. 1 himself admits in his cross-examination that he saw the occurrence from a distance and raised alarm on which the accused persons fled away and, thereafter, he went to place of occurrence. As such, he can not have a close glimpse of the accused persons.

In our considered opinion, the prosecution has failed to substantiate the charge beyond reasonable doubt against the appellants as several links in the chain of evidence is missing. Thus, the conviction by the trial court cannot be sustained and upheld.

In the result, this appeal succeeds. Judgment of conviction and order of sentence are set aside. The appellants are acquitted of the charges. Since, the appellants are on bail, they are discharged from the liabilities of their bail bonds.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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