

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.48 of 2014

Arising Out of PS.Case No. -375 Year- 2010 Thana -DARBHANGA SADAR District-
DARBHANGA

- =====
1. Baleshwar Manjhi S/O Videshi Manjhi Resident Of Village- Haripur, P.S.-
Sadar (Mabbi O.P.), District- Darbhanga
 2. Darshan Manjhi S/O Kapileshwar Manjhi Resident Of Village- Haripur, P.S.-
Sadar (Mabbi O.P.), District- Darbhanga

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 100 of 2014

Arising Out of PS.Case No. -375 Year- 2010 Thana -DARBHANGA SADAR District-
DARBHANGA

- =====
1. Binod Manjhi Son Of Late Bideshi Manjhi
 2. Kapileshwar Manjhi Son Of Late Bideshi Manjhi
 3. Chhote Manjhi Son Of Late Bideshi Manjhi All R/O Village Haripur, P.S.
Sadar (Mabbi O.P.), District - Darbhanga

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No.48 of 2014 and CR. APP (DB) No.100 of 2014)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Md. Imteyaz Ahmad, Advocate

Mrs. Babita Kumai, Advocate

Mr. Shashank Shekhar, Advocate

For the Respondent/s : Mr. S.N. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 21-07-2017

The Cr. Appeal (DB) No. 48 of 2014 arises out of S.T.



No. 317 of 2011 whereas Cr. Appeal (DB) No. 100 of 2014 has arisen from S.T No. 519 of 2011. Both the trials were taken up together. The learned 1st Additional Sessions Judge, Darbhanga by two separate judgment(s) of conviction passed on 21.02.2013, convicted the appellants under Sections 302 and 149 of the Indian Penal Code and sentenced to undergo R.I. for life with fine having default clause. The charge under Section 448 of the IPC was held not proved.

2. It may be noted that in S.T. No. 317 of 2011, 10 prosecution witnesses were examined including the informant (P.W.9) whereas in S.T. No. 519 of 2011, 09 prosecution witnesses were examined. The informant, Kailash Manjhi (P.W. 9) was examined as P.W. 7 in S.T. No. 519 of 2011. P.W. 3 Kumar Ashok Singh, who had recorded the fardbeyan of the informant and examined in S.T. No. 317 of 2011 was, however, not examined in S.T. No. 519 of 2011.

3. Both the parties have argued before us referring to the evidence of the prosecution witnesses examined in S.T. 317 of 2011. We shall, thus, refer the relevant evidence produced on behalf of the parties in S.T No. 317 of 2011.

4. The First Information Report (Ext. 2) was lodged by P.W. 9 Kailash Manjhi, recorded by P.W. 3 Kumar Ashok Singh, at the emergency ward of the Darbhanga Medical College Hospital (DMCH), on 20.10.2010 at 8.05 a.m., alleging that on the previous evening at about 9 p.m while he was sitting with the family members



at his house, all of a sudden the appellants armed with farsa, lathi, brick and rod etc. arrived there and dragged away his brother Prakash Manjhi (deceased) and started assaulting him indiscriminately. The accused also attempted to assault him when he tried to intervene but he escaped. On alarm raised, the people in the vicinity arrived at the place of occurrence whereafter the accused/appellants escaped. The prosecution assigned motive for the occurrence. It is alleged that residents of the Mohalla used to dump trash on a place adjoining to the PCC road which was forcibly occupied by the accused persons who started using the place as cowshed which was objected by the informant and others. The fardbeyan gave rise to a formal FIR (Ext. 4). The injured was carried to the Hospital after the assault where the fardbeyan was lodged after the injured succumbed to the injury. After recording the fardbeyan the police prepared the death inquest report (Ext. 3) in presence of P.W. 8 Prem Manhi, and the informant. The dead body was sent for post-mortem examination. The Doctor, P.K. Das (P.W. 2) was then posted as Assistant Professor, FMT, DMCH. He held the autopsy on the cadaver on 20.10.2010 at 12:45 p.m. and found following ante mortem injuries :

“On removal one lacerated wound measuring $1 \times 1\frac{1}{2} \times \frac{1}{2}$ “x1/8” was found over right upper limb. One lacerated wound $1 \times 1\frac{1}{2}$ “x1/8” was found on right parietal eminence with bruising all around in 6” diame area.

On cutting scalp tissues underlying soft tissue and muscles were deeply contused with infiltration of blood and blood clots. On cleansing



the are right temporal bone was fracture in 4" length. On removal of skull cap-there was extra dural and subdural, haematoma over right hemisphere of the brain with collection of blood and blood clots at the base of cranial cavity. Four linear cylindria bruises with abraded margins were seen over right leg in middle portion measuring 1"x1/2", 1/2"x1/2", 2"x1/2 and 1"x1/2" situated one below the other two linear lindral 1/2"x1/2" and 1"x1/2" with abraded margins were seen over right arm in the middle. Two rounded bruises 1/4"x1/4" were found over left elbow on back."

5. After conclusion of the investigation, the charge-sheet was filed which ultimately gave rise to the two trials of the present appellants on the file of the Trial Court where charges were framed and explained to the appellants to which they pleaded not guilty. From the suggestions given to the witnesses, it appears, the defence of the appellants is that the deceased died in a road accident.

6. In order to bring home the guilt, the prosecution examined 10 witnesses. P.W. 1 Hare Ram has deposed as an eye-witness to the occurrence. He has narrated the time, place, and the manner of occurrence as well as the complicity of the appellants in the crime. According to him, the appellants armed with various weapons arrived at the place of occurrence, captivated and dragged the deceased and thereafter, assaulted with their respective weapons. P.W. 2 Dr. P.K. Das, as noted above, is the autopsy surgeon who conducted the post-mortem examination and proved the postmortem report (Ext. 1). P.W. 3 is the ASI of Mabbi Police outpost who had recorded the



fardbeyan of the informant and proved the same at the trial as Ext. 2. He is also the author of the death inquest proceeding which has been proved as Ext. 3. P.W. 4 Sita Ram Manji is another witness who, upon hearing the assault on the victim by the appellants reached the place and saw the victim lying on the road having received the assault by the appellants who were seen escaping from the place of occurrence. P.W 5 Prem Devi, is the wife of the deceased. During the relevant time she was in the Angan when the appellants armed with various weapons entered into the Angan, dragged and started assaulting him. She has also stated about the motive for the occurrence. P.W. 6 is the wife of the informant and sister-in-law of the deceased. On hearing alarm raised by the deceased, she also came out from the 'Angan' and witnessed the assault on him by the appellants. P.W. 7 is the father of the deceased as well as the informant. He has supported the prosecution case as far as the assault on the deceased by the appellants is concerned. He was in the house and after hearing the cry/screaming of the deceased came on the road and witnessed the occurrence. P.W. 8 Prem Manji, is not an eye-witness of the occurrence. He was then crossing through the road. Having seen the slew of persons assembled on the road, he went there where the informant, his father P.W. 7 and other witnesses disclosed him about the occurrence. He helped the witnesses in carrying the injured to the Hospital. He is also an attesting witness to the fardbeyan. P.W. 9 is the informant himself.



In his examination in chief he has fully supported the prosecution case. As he was a witness to the inquest report, he has proved his signature thereon (Ext. A). According to this witness, he had four more brothers. They were living in separate houses having a common courtyard whereas he was residing separately. P.W 10 was then posted as the In-charge of Mabbi Police Outpost. On recording the fardbeyan of the informant (P.W. 9), he conducted the investigation wherein the place of occurrence was inspected and recorded the statements of the witnesses. Before he could lay the charge, he was transferred. The defence adduced the evidence of two D.Ws. On critical analysis of the evidence adduced at the trial, the trial Court held the appellants' guilty of offence. The Trial Court, however, specifically found and noted that who gave the assault on the head of the victim which proved fatal was not deciphered and proved by the prosecution.

7. We have heard Mr. A.K. Thakur, who appeared in support of both the appeals and Mr. S.N. Prasad, learned APP for the State.

8. It has been urged on behalf of the appellants that the prosecution has not been able to prove the place of occurrence. The relevant evidence on this point denotes that the occurrence was committed in the Angan or at the door of the Angan whereas the dead body was found on the PCC road. Few witnesses have stated that the



PCC road in front of the house of the some of the appellants as well as the witnesses was a thoroughfare on which vehicles used to move. It was an accidental death of the deceased and as the parties were inimical to each other from before they have been wrongly framed in the case. It is further submitted that no witness has stated specifically about the assault made by any of the appellants on the head of the deceased. Drawing our attention to the post-mortem report Ext. (1), he argued that the deceased received diverse injuries on the non-vital parts of his body which were superficial in nature. The lacerated injury 6” in diameter, found over right parietal bone with bruising all around actually caused the death of the deceased. Several superficial injuries on non-vital part of the deceased is a clear indicator of the fact that the appellants had not intended to kill the deceased. The conviction recorded against them by the learned Trial Court under Sections 302/149 is not sustainable in law. To buttress his submission he relied on **Sarman v. State of M.P.** reported in **AIR 1993 SC 400**. He also relied on **Thakore Dolji Vanvirji v. State of Bihar** reported in **AIR 1993 SC 209**.

9. Counsel for the State conversely submits that the consistent evidence of P.W. 1, P.W. 4, P.W. 5, P.W. 6, and P.W. 9 along with the evidence of the Doctor P.W. 2 conclusively prove every crucial aspects of the prosecution case. The appellants having assaulted the deceased indiscriminately and causing injury on the



head have been rightly convicted under Sections 302/149 IPC. As the Trial Court, on the basis of the prosecution evidence, could not decipher as to who, amongst the appellants, inflicted the injury on the head of the deceased which alone was responsible for his death, to counter the submission of Mr. Thakur, he has relied on **Khujji @ Surendra Tiwari vs The State Of Madhya Pradesh** reported in **(1991) 3 SCC 627**.

10. Before we examine the contentions made by the parties, it is noted that the death of the deceased being homicidal in nature has not been disputed before us. The time of the occurrence is also not much in dispute. We find from the evidence of the eye-witnesses as well as the I.O. P.W. 10 that the appellants and the prosecution witnesses reside very close to each other. Their houses are on two sides of the PCC road. It has been urged on behalf of the defence that the place of occurrence has not been fixed. P.W. 6 Anita Devi and P.W. 5 have stated that the deceased was in the Angan when the accused had arrived. The place of occurrence according to them was the Angan of the deceased whereas the dead body was found on the PCC road in front of the house.

11. Learned APP on the other hand, has pointed out from the evidence of P.W. 1 P.W. 4 P.W. 7 as well as P.W. 10 that the assault was perpetrated on the deceased after taking him out from the Angan to the road. We have closely examined the relevant evidence



referred by the parties. There are some aberrations in describing the actual place of occurrence but the description of place of occurrence narrated by P.Ws. 1, 4, 6, 7 and 10, in our considered view, firmly proved the place of occurrence being the PCC road in front of the house of the deceased. Minor contradiction(s) in describing the exact place of occurrence is normal feature as the witnesses are deposing seven years after the occurrence. There may be some omission but every omission is not a contradiction. In the case of **Rohtas Kumar vs. State of Haryana** reported in **2013 (14) SCC 434** the Hon'ble Supreme Court has dealt with on this aspect and observed as under :

“24. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters which do not affect the core of the case of the prosecution, must not prompt the court to reject the evidence in its entirety. Therefore, unless irrelevant details which do not in any way corrode the credibility of a witness should be ignored. The court has to examine whether evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the



earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness. Thus, the court must read the evidence of a witness as a whole, and consider the case in light of the entirety of the circumstances, ignoring the minor discrepancies with respect to trivial matters, which do not affect the core of the case of the prosecution. The said discrepancies as mentioned above, should not be taken into consideration, as they cannot form grounds for rejecting the evidence on record as a whole. (See: [State of U.P. v. M.K. Anthony](#),, State v. Saravanan and Vijay v. State of M.P.)”

12. On going through the relevant evidence placed before us and in the light of the above observations of the Apex Court, we entertain no doubt in our mind that the prosecution has been able to establish beyond reasonable doubt the genesis, place, time and the manner of occurrence. Their evidence unerringly prove the complicity of the appellants in the crime.

13. It has been canvassed before us that the facts proved at the trial would not justify the conviction of the appellants under Sections 302/149 of the IPC. As many as five accused persons are



said to have assaulted the deceased but the objective finding of the Doctor in the post-mortem report (Ext. 1) eloquently indicate that barring the injury sustained on head (parietal part), all other injuries were superficial in nature. Most of them were on non vital parts. The Doctor opined that the injury sustained by the victim on his head caused hemorrhage, compression and shock resulting in death. No prosecution witness has stated in course of trial about the author of this injury. In the fardbeyan also there is general and omnibus allegation of assault by the appellants on the deceased. Similarly P.Ws. 1, 4, 5, 6, 7 and 9, in their respective examination(s) - in - chief, have stated about the assault on the deceased by the appellants.

14. In **Sarman** (supra), the appellants before the Hon'ble Supreme Court were convicted by the Trial Court under Sections 302 read with Section 149 and Section 147 IPC and the Appeal filed thereagainst was dismissed. The Apex Court considered the particular facts of the case and in paragraph 5 held as under :

“5. Now coming to the nature of the, offence it is true that the doctor found a number of injuries. However, it must be noted that even according to the prosecution all the appellants were only armed with lathies and were charged for offence punishable Under [Section 147, I.P.C.](#) The doctor, P.W. 19 who conducted post mortem noticed 17 Injuries. Out of them injuries Nos. 1, 3, 10, 11 and 14 were described as incise wounds. Though they resulted in



bleeding but no other damage was noticed. It is only injury No. 15 which resulted in a depressed fracture of parietal bone and ultimately proved in membrane puncture. Though the doctor in a general way stated cause of death was due to multiple injuries but he has specifically stated that on injury No. 15 he noticed a depressed fracture of parietal bone which individually was sufficient to cause death of the deceased. In these circumstances question that arises is whether all the other accused also responsible for the death of the deceased, the prosecution has not explained as to how the deceased received incise wounds though they are simple. The prosecution case in general is that all of them were found with lathies. Nobody has stated that which of them caused the injury No. 15 which unfortunately resulted in the death of the deceased. If anyone of the appellants had exceeded the common object and acted on his own, it would be his individual act. In this case unfortunately no witness has come forward as to which of the accused has caused which injury. In these circumstances we find it difficult to award punishment under [Section 302/149, I.P.C.](#)”

15. Having held so, the conviction of the appellants in the said case under Sections 302/149 IPC was set aside and they were held guilty under Sections 304 II/149 of the IPC.

16. In **Thakore Dolji Vanvirji** (supra), the Apex Court



having considered the fact that all injuries found on the person of the deceased were simple in nature, held that the common object of the assembly was only to cause grievous hurt.

17. Counsel for the State, on the other hand, has submitted that the accused had come together armed with various weapons, dragged the deceased and indiscriminately assaulted with their respective weapons. One of the injuries sustained by the deceased was on the vital part i.e., parietal part of the head which proved fatal. These circumstances proved at the trial would denote that they had common intention of causing homicidal death of the deceased. He relied on **Khuji @ Surendra Tiwari** (supra). In the said case the appellant before the Supreme Court was held guilty by the Trial Court under Section 302 IPC as well as by the learned Appellate Court. The allegation attributed to him was that he and his associates surrounded the deceased who was moving on Rickshaw and attacked on him. The deceased tried to run away and a chase was offered by the accuseds. P.W. 4, however, managed to escape in different direction but the deceased was over powered and given stab injury to which he succumbed. All other accuseds except the appellant was acquitted. He was held guilt under Section 302 IPC. In these fact situation, the Apex Court, on an independent appreciation of the evidence of the three eye-witnesses, held that even if the other accused(s) were acquitted of the charge, the appellant, in the facts of



the case, would be held guilty under Section 302/34 of the IPC. The facts of the present case are, however, different. Several other injuries suffered by the deceased are found to be superficial in nature and on the non-vital parts. This is a clear indication of the intent and the common object of the accuseds. If they had come with a common object to kill the deceased, in all probability, they could have caused more than one grievous injuries on the vital part of the body. This was however, not so. If any one in the group exceeded the common object and acted on his own, it would be his individual act. Others joining him would not be held to have the same common object. However, we have no doubt in our mind that by engaging themselves in the assault on the victim, the appellants had the knowledge that it was likely to cause his death although they may not have the intention to cause death. We may usefully note the relevant observations of the Apex Court in **Mavila Thamban Nambiar v. State of Kerala** reported in **AIR 1997 SC 687**. (Para 10) which is extracted herein below :-

“10. Mr. Lalit then, seriously challenged the conviction of the appellant under [Section 302](#) of the Indian Penal Code. He urged that the appellant had neither intention nor knowledge that such an injury would result into the death of Madhavan. He, therefore, urged that the appellant at the most could be convicted for any other minor offence. Mr. George, appearing for the State of Kerala urged that the appellant was rightly convicted under [Section 302](#) of the Indian Penal Code and no interference was called for. After giving our careful thought to the nature of offence, we are of the considered view that the offence of the appellant would more appropriately fall under [Section 304](#) part [II of the Indian Penal Code](#). The appellant



had given one blow with a pair of scissors on the vital part of the body of Madhavan and, therefore, it would be reasonable to infer that he (appellant) had knowledge that any injury with the pair of scissors on the vital part would cause death though he may not have intended to commit the murder. We accordingly alter the conviction of the appellant from 302 [IPC](#) to one under [Section 304](#) part II of the [IPC](#).”

18. In the light of the discussions made above, we hold the appellants guilty under Section 304 part II/149 IPC. Accordingly, the conviction recorded against them under Sections 302/149 IPC by the Trial Court is set aside. The appellants are convicted under Section 304 part II IPC and are directed to suffer RI for 8 years. Each of them is also imposed a fine of Rs. 5000/-. In the event of non-payment of fine, each of the appellants shall further suffer RI for three months.

19. With the above modification in conviction and sentence, the appeals are dismissed.

(Kishore Kumar Mandal, J)

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	NAFR
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