

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.452 of 1994

.....

{Against the Judgment of conviction dated 03.09.1994 and sentence order dated 06.09.1994 passed by the learned 2nd Additional Sessions Judge, Jamui, in Sessions Case No.517 of 1984}.

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1. Bahadur Sah, son of Thakur Sah alias Jojo Sah, resident of village-Chokla, P.S. Chandramandih, District-Jamui.
 2. Radhey Singh, son of Churku Singh, resident of village-Keluadih, P.S. Chandramandih, District-Jamui.
 3. Rameshwar Singh, son of Ishari Singh.
 4. Arjun Singh, son of Devi Singh.
Both resident of village-Chhata, P.S. Chandramandih, District-Jamui.
 5. Ayodhya Singh alias Ajhola Singh, son of Munshi Singh, resident of village-Manjhala Khurchuha, P.S. Bengwar, District-Giridih.

... .. Appellants.

Versus

The State of Bihar

... .. Respondent.

with

Criminal Appeal (DB) No. 523 of 1994

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1. Sahdeo Singh, son of Tipan Singh.
 2. Tejlal Singh, son of Devi Singh.
Both residents of village-Chhata, P.S. Chandramandih, District-Jamui.

... .. Appellants.

Versus

The State of Bihar

... .. Respondent.

Appearance :

{In Criminal Appeal (DB) No. 452 of 1994) and in Criminal Appeal (DB) No. 523 of 1994}

For the Appellants	:	Mr. Bharat Lal, Advocate.
For the State	:	Mr. S.C. Mishra, A.P.P.
For the Informant	:	Mr. Ramesh Kumar Chaudhary, Advocate.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 02-04-2018

Both the above stated criminal appeals have arisen out of the common Judgment of conviction and sentence order dated 03.09.1994



and 06.09.1994 respectively and, accordingly, common Judgment is being passed in both the above stated criminal appeals.

2. The appellants have challenged the impugned Judgment of conviction and sentence order passed by the learned 2nd Additional Sessions Judge, Jamui, in Sessions Case No.517 of 1984, by which and whereunder he convicted the appellants in Criminal Appeal (DB) No.452 of 1994 for the offences punishable under Sections 148 and 302 read with Section 149 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for three years under Section 148 of the Indian Penal Code, whereas to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code. Furthermore, the learned 2nd Additional Sessions Judge, Jamui, convicted the appellants in Criminal Appeal (DB) No.523 of 1994 for the offences punishable under Sections 302 and 148 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for three years under Section 148 of the Indian Penal Code and to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code. However, all the sentences were ordered to run concurrently.

3. P.W.4 Baldeo Singh gave his fardbeyan to the S.I. of Chandramandih Police Station on 07.11.1982 at about 11.30 A.M. at village-Chhata to this effect that there was litigation in respect of 1 acre 17 decimals land of village-Chhata in between Babulal Sao of village-Bakula and Barku Manjhi etc. of village-Saotari-Chhata but when Barku Manjhi felt inconvenient to contest the litigation on account of



his poverty, he transferred the aforesaid land to the deceased Bhola Singh, who purchased the said land in the name of his son Etwari Singh (P.W.5) and after purchasing the aforesaid land, the deceased Bhola Singh started paying the cost of litigation. However, the aforesaid litigation was decided in favour of Barku Manjhi in the month of July. The informant (P.W.4) further claimed that out of the aforesaid 1 acre 17 decimals land, paddy crops were riped over 80 decimals of land and on 07.11.1982 at about 09.00 A.M., the daughter as well as daughter-in-law of Giro Singh were cutting the paddy from the said field upon which the deceased Bhola Singh went to his field and ousted the aforesaid ladies from the field. P.W.4 further stated in the fardbeyan that the F.I.R. named 13 accused persons armed with variously weapons came to the aforesaid field and encircled the deceased Bhola Singh upon which the deceased Bhola Singh ran towards west side of the filed and reached at the field of one Ram Singh but, in the meantime, Sahdeo Singh gave one Bhujali blow, hitting below the knee of his left leg, as a result whereof Bhola Singh sustained injuries but, even then, the deceased tried to flee from there but the accused Tejlal Singh and Khooblal Singh with their respective weapons started assaulting him on his head, whereas the remaining F.I.R. named accused started assaulting the deceased with their respective weapons, as a result whereof the deceased died then and there. P.W.4 further claimed that he tried to intervene into the quarrel but someone threw bhala which hit on his left leg. He further claimed that the aforesaid occurrence was



witnessed by Radhey Singh (P.W.1), Sato Singh (not examined), Kheman Singh (P.W.2), Chhotu Singh (not examined) and Jagdish Singh (not examined). P.W.4 further claimed that he and others brought the dead body of the deceased Bhola Singh near his house and kept the dead body on a cot below the Imli tree.

4. On the basis of the aforesaid fardbeyan, Chandramandih P.S. Case No.72 of 1982 under Section 302 and other minor Sections of the Indian Penal Code was registered on 07.11.1982 and on the same day, formal F.I.R. was drawn up against the appellants and others. The matter was investigated and after completion of investigation, charge-sheet was submitted. The cognizance of the offence was taken and case was committed to the court of sessions in usual way. The appellants were put on trial and during the pendency of the trial, some F.I.R. named accused died and, accordingly, their case abated. However, the learned trial court passing the impugned Judgment of conviction and sentence order, convicted and sentenced the appellants, who have filed the above stated two separate criminal appeals.

5. The appellants {in Criminal Appeal (DB) No.523 of 1994} stood charged for the offences punishable under Sections 148 and 302 of the Indian Penal Code, whereas the remaining appellants stood charged for the offences punishable under Sections 148 and 302 read with Section 149 of the Indian Penal Code.

6. In course of trial, the prosecution examined, altogether, 9 witnesses and also got exhibited fardbeyan (Ext.1), seizure list (Ext.2



series), signature on the formal F.I.R. (Ext.3), formal F.I.R. (Ext.4), post-mortem report (Ext.5), inquest report (Ext.6) and page no.1 to 43 of the police case diary (Ext.7).

7. The statements of the appellants were recorded under Section 313 of the Code of Criminal Procedure in which they denied the prosecution story and claimed their innocence. The defence also got examined, altogether, 5 defence witnesses and got exhibited some rent receipts as well as the sale deeds as documentary evidence in support of defence.

8. The learned trial court, after analyzing the entire materials, available on the record, passed the Judgment of conviction and sentence order having relied upon the testimony of the prosecution witness no.3 and the prosecution witness no.5 coupled with Ext.7 as well as other exhibits.

9. Learned counsel appearing for the appellants challenged the impugned Judgment of conviction and sentence order, arguing that the learned trial court failed to take note of this fact that except P.W.3, not a single prosecution witness claimed to have seen the occurrence and P.W.3 claimed that she had seen the occurrence from the distance of 300 yards and, furthermore, the learned trial court failed to take notice of this fact that P.W.3 is the wife of the deceased and, therefore, only on the basis of testimony of P.W.3, it was unsafe to convict the appellants, particularly, in the circumstance, when there was admitted land dispute between the parties and it appears from the prosecution case itself that it



was deceased, who went to prevent the persons from cutting the paddy crops from the disputed field.

10. Learned counsel for the appellants relied upon the decision of **Joseph Vs. State of Kerala** reported in {(2003) 1 Supreme Court Cases 465} in which Their Lordships held that evidence of solitary witness must be wholly reliable so as to record conviction on that basis but if the evidence of solitary witness appears to be doubtful, it would be unsafe to convict the accused solely on the basis of the solitary witness.

11. Learned counsel for the appellants further submits that the defence brought Ext.D on record to show that one of the F.I.R. named accused, namely, Churku Singh, sustained injuries on the alleged date of the occurrence but P.W.3 as well as the other prosecution witnesses failed to disclose as to how the aforesaid accused sustained injuries on the alleged date of the occurrence. He submitted that the aforesaid fact goes to show that the prosecution suppressed the real story and came with false and concocted story. He also submitted that the prosecution could not explain the injuries as found on the person of Churku Singh. He further submitted that neither the Investigating Officer nor the doctor was examined before the trial court and the post-mortem report of the deceased as well as the case diary were proved by the formal witnesses and the appellants could not get an opportunity to cross-examine the doctor and the Investigating Officer on the point of contents of the post-mortem report as well as the entries made in the



case diary respectively and, therefore, serious prejudice has been caused to the appellants due to non-examination of the Investigating Officer and the doctor but the learned trial court failed to take notice of the aforesaid facts.

12. On the other hand, learned Additional Public Prosecutor appearing for the State assisted by the learned counsel appearing for the informant supported the impugned Judgment of conviction and sentence order, arguing that P.W.3 has very clearly stated that she had seen the occurrence and she also stated about the participation of the appellants in the alleged crime. Learned Additional Public Prosecutor for the State further submitted that P.W.3 gave a vivid picture of the occurrence. He frankly admitted that except P.W.3, not a single prosecution witness supported the prosecution story but submitted that the Judgment of conviction can be passed even on the solitary statement of the witness and, therefore, there is no illegality, irregularity or perversity in the impugned Judgment of conviction and sentence order. He further submitted that the non-examination of the Investigating Officer and the doctor is not fatal to the prosecution case unless it is proved that prejudice has been caused to the defence but, in the present case, the defence failed to show that due to non-examination of the Investigating Officer and the doctor any prejudice has been caused to the appellants and, therefore, there is no scope to interfere into the impugned Judgment of conviction and sentence order.



13. As we have already stated that altogether 9 prosecution witnesses were examined, out of them P.W.1 Radhe Singh, P.W.2 Kheman Singh and P.W.4 Baldeo Singh, who happens to be the informant, were declared hostile. P.W.5 admitted in his testimony that he had not seen the alleged occurrence rather prior to the alleged occurrence when tension prevailed between the parties, he left his village to go to the police station and when he returned along with police to his village, occurrence had already taken place. The prosecution claimed that in presence of P.W.6 and P.W.7 blood stained lathi, sword etc. were recovered from the house of Mithilesh and seizure list was prepared in their presence. Further, both the aforesaid prosecution witnesses put their respective signatures on the seizure list. However, when the aforesaid P.W.6 and P.W.7 were put on test in cross examination, P.W.6 admitted that he had not entered into the house of Mithilesh at the time of the alleged recovery. This witness further admitted at paragraph-7 of his cross-examination that he had seen the blood stained lathi and sword, kept outside the house of Mithilesh. Similarly, P.W.7 at paragraph-3 of his cross-examination frankly admitted that the house from which the recovery was made had not been searched in his presence. Therefore, the above stated fact goes to show that the blood stained lathi and sword had not been recovered in the presence of P.W.6 and P.W.7.

14. P.W.8 Raj Kumar Sinha and P.W.9 Inderjeet Kumar Sinha are formal witnesses. P.W.8 has proved the signature on the



formal F.I.R. and he had stated nothing in respect of the occurrence. Similarly, P.W.9 proved the formal F.I.R., post-mortem report, seizure list, inquest report as well as the police case diary but he admitted that the aforesaid documents had not been prepared in his presence.

15. After careful perusal of the entire evidences, available on the record, we find that except P.W.3, not a single prosecution witness claimed to have seen the alleged occurrence. Moreover, P.W.3, who happens to be the wife of the deceased, claims that at the time of the alleged occurrence, she was standing near the Imli tree along with her daughter and daughter-in-law and from that place, she as well as her daughter and daughter-in-law witnessed the alleged occurrence. She stated that the appellants and others assaulted her husband. She also stated about the specific role played by the appellants, however, she admitted in her cross-examination that there was land dispute between the F.I.R. named accused as well as her husband in respect of the disputed land and the lis was pending regarding the aforesaid land. She also admitted that her house was at the distance of 300 yards from the place of the occurrence. She admitted that the occurrence took place over the disputed land. She further admitted that the field over which the occurrence took place was in a ditch. She further admitted that Churku Singh had also participated in the alleged crime. Therefore, at least, P.W.3 admitted this fact that Churku Singh had participated in the alleged crime but the prosecution could not succeed to explain the fact



as to how Churku Singh sustained injuries, which is evident from perusal of Ext.D.

16. It is also pertinent to note here that Ext.D reflects that the injuries of Churku Singh were visible and serious in nature and, therefore, it appears that the prosecution has not come with clean hands and tried to suppress the real fact.

17. It has come in the statements of P.W.3 and P.W.5 that there was serious land dispute between the parties and the occurrence had taken place over the disputed field. It is further case of the prosecution that the female members of the appellants' side were cutting the paddy crops and it was deceased, who went there to stop and, thereafter, the alleged occurrence had taken place. Furthermore, it has come in the evidence that the lis pending in respect of the disputed land was decided by the Circle Officer in favour of Barku Manjhi from whom the deceased had purchased the disputed land but the order of the Circle Officer was challenged and the same was pending before the Commissioner, who, subsequently, passed the order in favour of the opponents of Barku Manjhi. Therefore, the aforesaid fact goes to show that there was strongly contested lis between the parties and both parties were claiming their possession over the disputed land. However, not a single prosecution witness claimed that the paddy crops was harvested by the deceased rather the defence witness no.1 very clearly stated that the paddy crops was harvested by the accused persons and, therefore, the aforesaid circumstance also creates doubt about the genuineness of



the prosecution story and, in our view, the appellants are entitled to get the benefit of doubt.

18. On the basis of the aforesaid discussions, both the above stated criminal appeals are allowed and the impugned Judgment of conviction and sentence order are, hereby, set aside. The appellants are acquitted of the charges giving the benefit of doubt to them. The appellants are on bail. They are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	AFR
CAV DATE	NA
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