

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.350 of 1994

Arising Out of PS.Case No. -null Year- null Thana -null District- SAHARSA

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1. Heera Kant Jha @ Heera Jha son of Sri Mahabir Jha
2. Anil Thakur son of Sri Shashi Kant Thakur both are resident of village Bargao n
P.S Basnahi , Dist- Saharsa

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.Amish Kumar
Mr. Shankar Kumar Choudhary
Mr. K.C.Jha

For the Respondent/s : Mr. Shivesh Chandra Mishra

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 15-02-2018

1. The appellants have challenged their conviction and sentence order dated 28.06.1994 passed by learned 3rd Additional Sessions Judge, Saharsa in Session Trial no. 136 of 1992. The appellants have been found guilty for the offences punishable under section 302/149 and 201 of the Indian Penal Code and, accordingly, they have been sentenced to undergo rigorous imprisonment for life for the offence punishable under sections 302/149 of the Indian Penal Code and undergo rigorous imprisonment for three



years for the offence punishable under section 201 of the Indian Penal Code. However, both the sentences were ordered to run concurrently.

2. It is pertinent to note here that by the impugned judgment dated 28.06.1994, the other co-accused namely, Lal Jha, Mahabir Jha, Sunil Thakur, Ram Chandra Jha and Jawahar Jha were not found guilty of any offence and, accordingly, they were acquitted of the charges.

3. One Bipin Kumar Jha was murdered on 06.07.1991 and his mother namely, Chandra Kala Devi (informant) PW-8 set the criminal law in motion by got recording her fardbeyan to A.S.I, Basnahi Police Station on the same day at about 2 p.m. The fardbeyan of PW-8 was recorded at her door and in her fardbeyan, she stated that on the same day at about 7.30.p.m her son namely, Bipin Kumar Jha had gone to his field after taking breakfast but after one hour, PW-2 Shibo Mandal came running and disclosed that the deceased Bipin Kumar Jha was being chased by the appellants assaulting him with Arrow and Fatha. Having got



the aforesaid information, PW-8 along with her son Binay Jha (PW-6) her co-villagers Anirudh Mukhiya(PW-5) Bijoy Krishna Jha, (not examined) Munna Jha(not examined) and Bachan Jha, (PW-7) went running towards river (dhar) and when she along with above stated person reached near the Dhar, Jagarnath Thakur, (PW-3) met them and disclosed that the appellants threw the dead body of Bipin Kumar Jha into river(dhar). PW-8 further claimed that she saw other F.I.R named accused standing on the other side of the river and at that time the aforesaid person were armed with arrow and Fatha. She further claimed that the aforesaid persons fled away towards northen side and after that she as well as others crossed the river (dhar) by boat and tried to trace the dead body of Bipin Kumar Jha but she as well as others failed to trace the dead body of Bipin Kumar Jha, though they found mark of dragging near the river (dhar). She disclosed that prior to the alleged occurrence, 25 persons had taken attempt to take auction of canal and only 10 persons including F.I.R named accused Mahavir Jha and Ramchandra Jha succeeded



in the aforesaid auction whereas her deceased son namely, Bipin Kumar Jha and others could not succeed in the aforesaid auction. Furthermore, she disclosed that prior to the alleged occurrence, the cattle's of villagers had grazed the grass of canal, as a result of which, hot exchange of words had taken place between the appellants and the deceased but due to intervention of villagers the matter was pacified.

4. On the basis of fardbeyan of PW-8 Basnahi P.S.Case no. 24 of 1991 was registered for the offence under section 302 and other minor sections of the Indian Penal Code. PW-9 took charge of investigation and after completion of the investigation, submitted charge sheet against the appellants whereas other F.I.R named accused were not sent up for trial. However, the cognizance of the offence was taken not only the appellants but also against the above stated F.I.R named accused persons. It is pertinent to note here, that on the very next day of registration of the F.I.R, the dead body of the deceased was recovered from northen bank of Jhitkiya Dhar. The dead body of the



deceased was identified by PW-6 and PW-8 and the dead body was sent for post mortem examination. The appellants were put on trial after commitment of the case. Accordingly, appellants along with other F.I.R named accused persons were charged for the offences punishable under sections 147, 148, 149, 302, 201 of the Indian Penal Code and they were again charged along with F.I.R named accused persons for the offences punishable under section 149, 201 and 147 of the Indian Penal Code.

5. In course of trial, prosecution examined altogether, nine witnesses and also got exhibited post mortem report as Exhibit-1, signature of informant (PW-8) on fardbeyan as Exhibit-2, signature of informant of (PW-8) and on protest petition as Exhibit 2/1, the signature of PW-7 Buchan Sah on the fardbeyan as Exhibit 2/2 , Fardbeyan as Exhibit-3, inquest report as Exhibit-4 and formal F.I.R as Exhibit-5.

6. The statements of appellants and other accused were recorded under section 313 of the Cr.P.C, in which they



denied the prosecution story. The appellants and other accused have also got examined three witnesses and got exhibited some documents in support of their defence. The statements of defence witnesses as well as documents exhibited on behalf of the defence go to show that the defence of appellants and other accused was stated that the deceased was killed somewhere else by some other persons but due to political rivalry and groupism of the villagers, the appellants and other accused were implicated in this case.

7. The learned court below having scrutinized the evidences on the record and having relied upon prosecution witnesses passed the impugned judgment of conviction and sentence order convicting and sentencing the appellants and acquitting the other accused in the manner as earlier stated

8. Learned counsel appearing for the appellants submits that the learned trial court has not properly appreciated the evidences available on the record and wrongly placed reliance upon testimonies of the prosecution witnesses, particularly, in the circumstance, when the



prosecution witnesses had made contradictory statements and also improved their statements in course of trial. Learned counsel appearing for the appellants also submitted that PW-6 is brother of the deceased and so far as remaining witnesses are concerned, they had inimical terms but, even then, the learned trial court relied upon the deposition of aforesaid witnesses.

9. On the other hand, learned Additional Public Prosecutor appearing for the State refuted the above stated submissions arguing that in course of trial , the prosecution witnesses very clearly stated that it were appellants, who assaulted and dragged the deceased and subsequently, threw his dead body into river. He further submitted that the defence could not succeed to shake the credibility of the prosecution witnesses and the learned court below has rightly relied upon testimonies of prosecution witnesses.

10. Having heard the contentions of both the parties, we went through the record.

11. The death and recovery of dead body of the



deceased Bipin Kumar Jha is not in dispute because the defence has, nowhere, challenged the identity of the dead body of the deceased Bipin Kumar Jha. It is also an admitted position that deceased died of injuries sustained by him.

12. PW-1 is Dr. Arun Kumar Singh, who had conducted post mortem examination on the corpus of the deceased on 8.07.1991. PW-1 has proved the post mortem report as Exhibit-1. The evidence of PW-1 as Exhibit-4 go to show that altogether six injuries were found on the person of the deceased Bipin Kumar Jha and according to PW-1 the cause of death of the deceased was due to haemorrhage and shock due to the anti-mortem injuries caused by sharp edged weapons. P.W -1 states that incised wound found on the person of the deceased could be caused by straight sharp cutting weapons. However, PW-1 admitted that transverse incised wound was also possible by Farsa and Sword. From perusal of exhibit-1 the post mortem report, it is obvious that on the back of deceased no injury was found by the doctor though one injury was found on the back of neck of the



deceased. The evidence of PW-1 is very important to decide this case because the witnesses claimed to have seen the deceased running towards the river having stuck an arrow on his back at the time of alleged occurrence.

13. PW-8, admittedly, got information about the alleged occurrence from PW-2 and, therefore, it is obvious that PW-8 had not seen the incident of actual killing of the deceased. In her fardbeyan, PW-8 claimed that when she reached near the river, PW-3 informed her that the dead body of the deceased Bipin Kumar Jha was thrown into the river by the appellants. However, in course of trial, she improved her statement stating that when she reached near the river, she saw the appellants dragging the deceased and throwing of his dead body into the river. However, I.O, PW-9 is accepted that PW-8 had not made statement before him that she had seen the appellants dragging and throwing the dead body of the deceased. Therefore, in our view, it is difficult to place reliance on the evidence of PW-8 and it further appears to us that neither she had seen the actual assault of deceased nor



had seen throwing of his dead body into the river by any of the appellants rather she came to know about the above stated incident from PW-2 and PW-3.

14. Similarly, PW-6 and PW-7 are also not an eye witness of the assault as well as throwing of the dead body of the deceased because admittedly, when they had gone near the river along with PW-8, they got information from PW-2 about the assault of the deceased. PW-6 and PW-7 too improved their statements in course of trial as admitted by but PW-9. Therefore, it is well proved that PW-6 and PW-7 had also neither seen the actual assault of the deceased nor throwing of his dead body into the river by the appellants.

15. The most important witnesses are PW-2, PW-3, PW-4, PW-5 and PW-6. PW-5 Anirudh Mukhiya has only stated that he had found sign of dragging near the place of occurrence and, therefore, it is obvious that PW-5 had also not seen the dragging of the deceased and throwing of his dead body into the river. PW-2 Shibo Mandal has been declared hostile though in his examination-in-chief this



witness stated that on the alleged date of occurrence while he was ploughing his field, he noticed that deceased Bipin Kumar Jha was fleeing towards river having an arrow stuck on his back, where the appellants Hira Jha and Anil Thakur were chasing him. PW-4, Arhul Devi stated that on the alleged date of occurrence, she was at her home and saw the deceased Bipin Kumar Jha was being chased by the appellants and at that time an arrow had stuck on the back of the deceased Bipin Kumar Jha. She further stated that the deceased Bipin Kumar Jha was being chased by Hira Jha and Anil Thakur and other F.I.R named accused. She further stated that he fell down on the road and, thereafter, the appellants started assaulting him by means of knife whereas other persons also assaulted him. As a result whereof, Bipin Kumar Jha died then and there. However, the aforesaid persons took the dead body of the deceased towards river (dhar). In cross-examination, the defence gave suggestion to this witness that prior to the alleged occurrence, the accused had lodged the case of theft against her husband but she



denied the aforesaid suggestion. She further admitted that she had disclosed the manner of occurrence before PW-8 just after the alleged occurrence in presence of several persons but surprisingly enough, PW-8 has not named PW-4 in her fardbeyan nor disclosed the manner of occurrence as disclosed by PW-4. Moreover, PW-4 stated that appellant Anil Thakur gave knife blow to the deceased but PW-2 has not stated this fact that when the deceased was being chased by the appellants, Anil Thakur was carrying knife. It appears that PW-4 was tutored by someone after preparation of post mortem examination of the deceased. Moreover, in view of the aforesaid contradictions, in our view, it is unsafe to place reliance on the evidence of PW-4. PW-3 has stated that he had gone towards canal on the call of nature and saw the appellants throwing of the dead body of the deceased Bipin Kumar Jha. This witness admitted in his cross-examination that while the appellants were throwing the dead body of the deceased, he noticed that PW-8 and others were coming towards river and seeing them, he fled away from there.



Later on, PW-8 and others inquired from him and then he disclosed the above stated facts. However, in the cross-examination, this witness admitted that when he along with PW-8 and others returned at the Ghat, none was present on both sides of bank of the river. The statement of this witness also goes to show that PW-8 as well as her companion had not seen throwing of the dead body of the deceased into the river. PW-8 has claimed in her fardbeyan that it was PW-3, who disclosed that the appellants had thrown the dead body of the deceased into the river. This witness admitted that he had inimical terms with appellants. In our view, it is unsafe to place reliance on the statement of this witness.

16. No doubt, the investigating officer has mentioned in the inquest report that injury was found on the back of the deceased but the post mortem report (exhibit-1) does not corroborate inquest report as well as the statement of prosecution witnesses because in post mortem report no injury on the back of the deceased was found except one injury that was found on the back neck of the deceased.



17. The defence came with specific case that the appellants and other accused were implicated due to village politics and previous enmity. It is admitted case of PW-8 that prior to the alleged occurrence, two groups had made attempt to take canal in auction and in the aforesaid auction, the appellant's party succeeded whereas the deceased and his supporters failed to take auction of the aforesaid canal. Therefore, it is obvious that there was two groups in the village and the possibility of false implication of the appellants cannot be ruled out due to the aforesaid groupism. Moreover, the so called eye witnesses are of doubtful in nature and in our view, it is unsafe to rely upon the testimonies of the prosecution witnesses and in our view, the learned trial court committed error in relying upon the testimonies of the prosecution witnesses.

18. On the basis of aforesaid discussion, we have no hesitation to say that this appeal is liable to be allowed. Accordingly, this appeal is allowed and the impugned judgment of conviction and sentence order are, hereby, set



aside and appellants are acquitted of the charges giving 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)

N.K/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.03.2018
Transmission Date	

