

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.289 of 1994

(Against the Judgment of conviction and order of sentence dated 26.05.1994 passed by the Additional Sessions Judge-III, Saharsa in Sessions Trial No. 142 of 1993)

1. Yogendra Sharna, son of Manjuri Das,
 2. Dukhi Sharma, son of Manjuri Das,
 3. Chandeshwari @ Chano Sharma, son of Manjuri Das,
- All are resident of village-Kabir Nagar, P.S. Saharsa, District-Saharsa.

... .. Appellants

Versus

The State of Bihar.

... .. Respondent

Appearance :

For the Appellants	:	Mr. Kaushal Kumar Jha, Advocate Mr. Amish Kumar, Advocate Mr. Krishna Chandra Jha, Advocate Mr. Shankar Kumar Chaudhary, Advocate
For the Respondent	:	Mr. Shivesh Chandra Mishra, APP

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 06-12-2018

This appeal has been preferred against the Judgment of conviction and sentence order dated 26.05.1994 passed by learned 3rd Additional Sessions Judge, Saharsa, in Sessions Trial No. 142 of 1993, by which and whereunder, he convicted the appellants for the offences punishable under Sections 302/149 and 307/149 of the Indian Penal Code and, accordingly, sentenced them to undergo Rigorous Imprisonment for life for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code and further they were sentenced



to undergo Rigorous Imprisonment for three years for the offences punishable under Section 307 read with Section 149 of the Indian Penal Code. However, both the above stated sentences were ordered to run concurrently.

2. It is pertinent to note here that during the pendency of this appeal appellant no. 3, namely, Jagdish Sharma died and, accordingly, his appeal stood abated vide order dated 06.11.2018.

3. Briefly stated the prosecution case is that P.W.11 Garib Das, gave his fardbeyan to the Officer-in-charge of Saharsa (town) police station, namely, Nagendra Prasad Singh (P.W.14) on 08.06.1992 at about 8:15 A.M. at Sadar Hospital Saharsa to this effect that on the same day at about 6.00 A.M., while his father was going to Chowk to take tea, he was following him. He further claimed that as soon as his father reached near the house of Raghuni Das (P.W.1), all of a sudden, all the appellants and other F.I.R. named accused Shivji Sharma, Shankar Sharma and Manjuri Das encircled him. Deceased appellant Jagdish Sharma was carrying Khokhri, appellant Dukhi Sharma was carrying Kudal, appellant Yogendra Sharma was carrying Farsa, appellant Chano Sharma was carrying Kudali, accused Shankar and accused Shivji were



carrying Farsa whereas accused Manjuri Das was carrying Dabiya. P.W.11 further claimed that in the meantime, his younger brother, namely, Shyam Sundar Das (P.W.9), who was returning to his home after taking tea, also reached there and he was, too, encircled by the appellants and above stated accused persons. P.W.11 further claimed that appellant Jagdish Sharma (since deceased) ordered the others to kill his father and younger brother and gave Khukhri blow on the head of his father whereas appellant Dukhi gave Kudali blow, appellant Yogendra gave farsa blow whereas accused Shivji gave farsa blow to his father. Similarly, accused Shankar gave Farsa blow, accused Chano gave Kudali blow and accused Manjuri Das gave Dabiya blow to his younger brother, namely, Shyam Sundar Das. Both the above stated persons having sustained injuries fell down on the ground. P.W.11 further claimed that he raised alarm which attracted his neighbours Raghuni Das (P.W.1), Laxmi Das (P.W.4), Ram Swaroop Mistri (P.W.6), Hafzul Mian (P.W.7), Md. Mazloom (P.W.8) etc. The aforesaid witnesses and several others witnessed the aforesaid occurrence and having seen the aforesaid persons, the appellants and others fled away from there, but while fleeing from the place of occurrence they made firing twice. P.W.11, further, claimed that he took



his injured father and brother in Sadar Hospital on a Rickshaw. His father breathed his last on the way, whereas, his younger brother got admitted at Sadar Hospital in injured condition. The P.W.11 claimed that his father was Ward Commissioner of Ward No. 17 and appellant Jagdish Sharma (since deceased) and appellant Dukhi Sharma used to commit crime and his father used to make protest against the criminal activities of the aforesaid persons and that was the reason, the appellants and others committed the alleged crime.

4. On the basis of Fardbeyan of P.W.11, Saharsa P.S. Case No. 303 of 1992 for the offences punishable under Sections 147, 148, 149, 341, 342, 302, 307, 324 and 323 of the Indian Penal Code was registered on 01.06.1992 and on the same day, formal F.I.R. was prepared against the appellants and others at about 9:45 A.M. The formal F.I.R. and Fardbeyan of P.W. 11 were put up before Learned CJM on 02.06.1992.

5. P.W.14 took the charge of investigation. He inspected the place of occurrence, recorded the statement of witnesses and having completed all legal formalities submitted Chargesheet against the appellants and three others. The cognizance of the offence was taken and the case was committed to the Court of Session in usual manner.



6. It is pertinent to note here that F.I.R. named accused Shivji Sharma and Shankar Sharma were declared juvenile and, accordingly, their trial was sent to concerned Juvenile Justice Board. The appellants and F.I.R. named accused Manjuri Das were put on trial and, accordingly, appellants and above stated accused Manjuri Das stood charged for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code and Section 307 read with Section 149 of the Indian Penal Code. However, appellants Jagdish Sharma (since deceased), Dukhi Sharma and Yogendra Sharma stood, separately, charged for the offences punishable under Section 302 of the Indian Penal Code. It is pertinent to note here that during the pendency of the trial, F.I.R. named accused Majuri Das died and, accordingly, proceeding against him was dropped by the learned trial court.

7. In course of trial, prosecution examined, altogether, 16 witnesses and also got exhibited certain documents to prove its case. The defence also got examined three witnesses. The statement of appellants was recorded under Section 313 of the Code of Criminal Procedure in which they denied the prosecution story and appellant Jagdish Sharma (since deceased) and appellant Chandeshwari alias



Chano Sharma, specifically, stated that they were falsely implicated on account of land dispute. Appellant Jagdish Sharma stated in his statement recorded under Section 313 of the Cr.P.C. that the Jugal Das had got executed sale deed in respect of lands of wife of accused Manjuri Das after alluring the wife of accused Manjuri Das, but deceased Jugal Das did not get possession of the aforesaid lands and a proceeding under Section 145 of the Cr.P.C. was going on in respect of the aforesaid lands. However, appellant Chandeshwari alias Chano Sharma claimed in his statement recorded under Section 313 of the Cr.P.C. that on the alleged date of occurrence at about 5.00 A.M., he was ploughing his field and in the meantime, deceased and his family members and others being armed with deadly weapons came there and asked him not to plough the lands and when he did not buckle upon the above stated pressure, deceased assaulted him by means of sword as a result whereof, he fell down then and there. He further stated that his mother came to his rescue, but she was, too, assaulted by deceased Jugal Das and others by means of back portion of Kudal and Sword. However, villagers came there and saved them from the clutches of deceased and others. The appellant Chano also claimed that he had lodged the case in respect of



the aforesaid occurrence. He also claimed that the lands, in question, had never been attached in the proceeding of Section 145 of the Cr.P.C.

8. Very elaborate arguments have been advanced on behalf of the appellants, but gist of the argument is that prosecution has not come with clean hands and certain material facts were suppressed by the prosecution. Learned counsel of the appellants claims that prosecution has placed distorted version of manner of occurrence and as a result whereof, prosecution failed to prove the place of occurrence, because in course of evidence, it came to light that occurrence took place in a field and the aforesaid fact corroborates the version of the defence. Learned counsel of the appellants, further, claims that the defence examined D.W.1, who proved the injury reports of Sudama Devi and appellant Chano Sharma and the aforesaid evidence clearly goes to show that appellant Chano Sharma and his mother Sudama Devi had sustained injury on the alleged date of occurrence, but prosecution failed to explain the injuries found on the person of appellant Chano Sharma and Sudama Devi and tried to suppress the aforesaid injuries. He further submitted that the injuries found on the person of appellant Chano Sharma and Sudama Devi go to



corroborate the defence version and clearly proves that prosecution party was aggressor and made attempt to take forceful possession of disputed land and in that course, deceased sustained injury, which became fatal to him. The aforesaid fact also goes to show that the appellants had no intention to commit the murder of deceased. He further submitted that, admittedly, there was long standing enmity between the parties and the materials available on the record go to show that prosecution party including the deceased made attempt to take forceful possession of the disputed land and in that course, deceased sustained injury and died.

9. He, next, submitted that almost all the so called eye witnesses including the so called injured are interested witness and not a single independent witness came forward to support the prosecution story. He submitted that no doubt, the statement of prosecution witnesses cannot be discarded only on this ground that the witnesses are interested witnesses but in the back drop of long standing enmity and land dispute, the scrutiny of statements of interested witnesses should be done with care and caution and in the present case, if the scrutiny of statements of so called eye witnesses is done minutely, then it would reflect that they



are telling a lie with an object to implicate the appellants on account of previous enmity and land dispute. Learned counsel of the appellants further submits that prosecution not only failed to prove the manner of occurrence, but also place of occurrence beyond all shadow of reasonable doubts and, therefore, in the aforesaid circumstances, the appellants are entitled to get the benefit of doubt.

10. He, next, submitted that the learned trial court negated the aforesaid facts on unsound reasoning, which are against the settled principle of law and, therefore, in the aforesaid circumstance, the findings of the learned trial court cannot sustain.

11. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that all the eye witnesses are consistent on the point of manner of occurrence as well as place of occurrence. He further submitted that several injuries were found on the persons of the deceased and the aforesaid injuries clearly go to show that the deceased was, mercilessly, assaulted by the appellants and others. He further submitted that, no doubt, there was long standing enmity between the parties but enmity cuts in both ways and in the



present case, the eye witnesses have specifically stated that it were appellants and others who assaulted the deceased and, therefore, it cannot be said that the appellants and others have been falsely implicated on account of previous enmity. Learned Additional Public Prosecutor further submitted that appellant Chano Sharma and Sudma Devi sustained simple injury, which is evident from the testimony of D.W.1 and, therefore, even if, the prosecution witnesses failed to explain the injuries found on the person of appellant Chano Sharma and Sudama Devi, then also, it cannot be said that the aforesaid lacuna was fatal to the prosecution case. He further submitted that mere filing of counter case is not sufficient to disbelieve the prosecution case, because it is general tendency to file counter case by the accused with an object to save his skin. Therefore, even if, in the present case this court finds that the appellant had filed counter case against the prosecution party, then also, it is not correct to say that the learned trial court committed error in not acquitting the appellants on account of filing a counter case. On the basis of above stated submissions the learned Additional Public Prosecutor submitted that the conviction and sentence of the appellants should be confirmed.



12. Having heard the rival contentions of the parties, we went through the record and Lower Court Record. P.W.11, in his Fardbeyan (Ext.4), claimed that the alleged occurrence took place near the house of P.W.1, Raghuni Das and P.W. 4, P.W.9 as well as P.W.11, who have claimed themselves to be eye witness of the alleged occurrence, also stated in their respective statements that the alleged occurrence took place near the house of P.W.1 Raghuni Das. P.W.4, Laxmi Das states that at the time of alleged occurrence, he was at his door and saw that the appellants and others were assaulting deceased Jugal Das. This witness, further, states that the appellants and others were assaulting the deceased in front of his house by the side of the road. This witness further states, in his cross examination, that in front of his house, towards east side, there is a bricks soiling road, which runs south to north and adjacent to his house there is house of Raghuni Das (P.W.1). This witness also admits that the above stated soiling road goes to the house of Raghuni Das and towards east side of the aforesaid soiling road, there is a field of accused Manjuri Das and there is a mango tree at north-east corner of the aforesaid field as well as one Palm tree. P.W.9 Shyam Sundar Das, who claims himself to be injured of the



present case, says that he was returning to his home and his father (deceased) was going to take tea, but in front of house of Raghuni Das (P.W.1), the appellants and others assaulted the deceased. As we have already stated that P.W.11 claimed in his Fardbeyan that the alleged occurrence took place near the house of P.W.1 Raghuni Das and almost similar statement has been made by him before the court when he said that his father was assaulted by the appellants and others near the house of Raghuni Das (P.W.1). Therefore, it is obvious from the above stated evidence that according to the aforesaid witnesses, the deceased was assaulted by the appellants and others on pitch road situated in front of house of P.W.1 Rahuni Das. P.W.1 Rahuni Das has been declared hostile and stated that he had not seen the occurrence, but on being cross examined by the defence this witness admitted that there is soiling road in front of his house and the aforesaid road runs north to south and towards east of the aforesaid road, there was a field and in the said field there is a mango tree and palm tree towards north-east corner of the aforesaid field.

13. P.W.14 Nagendra Prasad Singh is the investigating officer and this witness states that he inspected the place of occurrence and according to this witness, the



place of occurrence was a field situated adjacent to the soiling road. This witness stated that he had found one mango and palm trees in the aforesaid field. This witness stated that he found huge blood in between the aforesaid mango tree and soiling road. This witness further admitted that towards west side of the place of occurrence, there was soiling road, which runs north to south. This witness stated that he seized blood stained earth from the place of occurrence, therefore, according to this witness, the alleged occurrence took place in a field as he found blood in a field. The testimony of P.W.14 goes to show that no occurrence had taken place on the pitch road and, therefore, it is obvious that there is contradiction in the statement of prosecution witnesses in respect of place of occurrence. Therefore, in our view, prosecution could not succeed to prove the place of occurrence beyond all shadow of reasonable doubts.

14. The defence got exhibited the certified copy of Fardbeyan of Saharasa (town) P.S. Case No. 304 of 1992 and the aforesaid exhibit goes to show that on 01.06.1992 appellant Chandreshwari Sharma gave his Fardbeyan to this effect that while he was ploughing his field at about 5 A.M., the deceased came there and forbade him to plough the field and when he



refused to obey the command of the deceased, deceased gave sword blow to him and after that his other family members assaulted him as well his mother. Admittedly, on the basis of Fardbeyan of appellant Chandeshwari Sharma above stated Saharsa (town) P.S. Case No. 304 of 1992 was registered under Sections 147, 148, 149, 324, 323 of the Indian Penal Code against the deceased and others. Therefore, it is obvious from the aforesaid document that from the very inception, the defence claimed that occurrence took place in the field of appellant Chandeshwari Sharma. P.W.9 at paragraph 5 of his cross examination has admitted that adjacent east to the house of P.W.1 Raghuni Das, there is a soiling road and adjacent east to the aforesaid soiling road, there is a filed and north-west corner of the aforesaid filed, there are mango tree and palm tree. This witness expressed his inability to say as to whether any proceeding under section 145 of the Cr.P.C. was fought between the accused Manjuri Das and the deceased. Further, this witness admitted at para 6 of his cross-examination that appellant Chandeshwari Sharma had lodged a case against his father (deceased and others) for the occurrence of the same day. P.W.11 Garib Das admitted at para 5 of his cross-examination that wife of Manjuri Das had transferred 2.5 katha



land to his mother and there was a dispute between Manjuri Das and his father in respect of the aforesaid lands. This witness, further, admitted at the same paragraph that the aforesaid land is situated towards east side of the soiling road in front of house of P.W.1 Raghuni Das and in the aforesaid land, there is mango and palm tree towards north-west corner of the aforesaid filed. This witness also admitted that a proceeding under Section 145 of the Cr.P.C. was going on between the accused Manjuri Das and his family members. This witness also admitted that the aforesaid proceeding of Section 145 of the Cr.P.C. was initiated in the year 1987 and the aforesaid proceeding was still going on. P.W.1 Raghuni Das has admitted in his cross-examination that at the time of alleged occurrence, the aforesaid land was in possession of accused Manjuri Das. Therefore, the aforesaid evidence, clearly, goes to show that there was a proceeding under Section 145 of the Cr.P.C. in respect of a piece of land, which was in possession of accused Manjuri Das at the time of alleged occurrence and there was dispute between the deceased and aforesaid accused Manjuri Das in respect of the aforesaid land. Furthermore, the above stated evidence also goes to show that the above stated piece of land was the place of occurrence of the present case.



As we have already stated that the prosecution failed to prove the place of occurrence beyond all shadow of reasonable doubts, whereas the defence, at least, has brought evidence on record to show this fact that the alleged occurrence had taken place on the land, which was in possession of the accused Manjuri Das and the appellant Chandeshwari Sharma had lodged a case against deceased and others for the occurrence of the same day. The fardbeyan of Saharsa (T) P.S. Case No. 304 of 1992 goes to show that the deceased and others came on the field of appellant Chandeshwari Sharma and assaulted him and his mother. The above stated admission of the prosecution witnesses as well as the evidence adduced on behalf of the defence go to show that the prosecution has not come with clean hands and the prosecution tried to suppress something, while lodging the case.

15. The defence got exhibited injury reports of Sudama Devi and appellant Chandeshwari Sharma as Ext. D series and, furthermore, got exhibited injury slips as Ext. C series. P.W.14 the Investigating Officer has admitted, in his deposition, that he had issued injury slips of injured Chandeshwari Sharma and Sudama Devi on the alleged date of occurrence and both the injured got treated by the Doctor. The



aforesaid evidence, clearly, establishes that on the alleged date of occurrence, appellant Chandeshwari Sharma and injured Sudama Devi had sustained injuries. Although, P.W.11 Garib Das has stated nothing in his Fardbeyan in respect of injuries sustained by injured Sudama Devi and appellant Chandeshwari Sharma, but in course of trial, almost all the material witnesses tried to show their ignorance about the injuries sustained by Sudama Devi and appellant Chandeshwari Sharma. However, Ext.C series and Ext.D series as well as admission of P.W.14, clearly, establishes this fact that the material prosecution witnesses intentionally and knowingly tried to suppress the above stated facts. In the present case, the prosecution has not explained the injuries sustained by Sudama Devi and appellant Chandeshwari Sharma. No doubt, in each and every case, it is not necessary for the prosecution to explain the injuries sustained by the accused but in the present case, admittedly, prosecution could not succeed to prove the place of occurrence as the material prosecution witnesses claimed that the occurrence took place on a pitch road situated in front of Raghuni Das house whereas, P.W.14 found that the place of occurrence was a field. Furthermore, Ext. D series goes to show that injured Sudama Devi sustained (1). *Incised wound 3"x1"x1"*



posterior aspect of left arm. (2) incised wound 4"x1"x1" posterior aspect of right arm. (3) 4"x 1/2"x abrasion back and similarly, injured Chandeshwari Sharma sustained (1) lacerated wound 4"x 1/2"x 1/2" parietal area of left side of scalp (2) bruise and defuse swelling 2"x2" right forearm (3) 4"x 1/4" abrasion right leg (4) multiple bruise at left side of back scapular area.

16. The aforesaid injuries shown in Ext.D series are appear to be visible and it cannot be said that the prosecution party had no occasion to see the aforesaid injuries. It is true that if the injuries are not visible in nature, the prosecution is not bound to explain the injuries, but if the injuries are visible and prosecution failed to give explanation regarding injuries found on the person of the accused, then in that circumstance, a serious doubt arises about the genuineness and claim of prosecution case. In the present case, the injuries found on the person of the appellant Chandeshwari Sharma and injured Sudama Devi were visible in nature and, admittedly, the prosecution party has not explained the aforesaid injuries and, therefore, in our view, a serious doubt arises about the manner of occurrence as alleged by the prosecution and therefore, in the aforesaid circumstances, we have no hesitation to hold that the



prosecution could not succeed to prove the manner of occurrence beyond all shadow of reasonable doubts.

17. Admittedly, P.W.4, P.W.9 and P.W.11 claimed themselves to be eye witnesses of the alleged occurrence and all the aforesaid witnesses are related with each others and came under the category of interested witnesses. The statement of an interested witness cannot be thrown at the very threshold, rather, the statement of an interested witness requires minute scrutiny with care and caution. In the present case, as we have already stated that prosecution could not succeed to prove place of occurrence as well as manner of occurrence beyond all shadow of reasonable doubts and, therefore, in the aforesaid circumstance, we are of the view that no reliance can safely be placed upon the testimony of P.W.4, P.W.9 and P.W.11 and, therefore, in our view, the prosecution failed to prove its case beyond all shadow of reasonable doubts and the appellants are entitled to get the benefit of doubt.

18. On the basis of the aforesaid discussions, this Criminal Appeal is allowed and the impugned Judgment of conviction and sentence order dated 26.05.1994 passed by learned 3rd Additional Sessions Judge, Saharsa passed in



Sessions Trial No. 142 of 1993 are, hereby, set aside. The above stated appellants are acquitted of the charges giving benefit of doubt. The appellants are on bail, they are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

manish/Rahul

AFR/NAFR	N.A.F.R
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