

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.595 of 2016

Arising Out of PS.Case No. -18 Year- 2012 Thana -AADAPUR District-
EASTCHAMPARAN(MOTIHARI)

=====

Bhulan Sah Son of Ramashish Sah resident of Village- Katkehura, P.S.- Adapur,
District- East Champaran

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant : Mr. Anshuman Singh, Advocate.

For the Informant : Mr. Madhurendra Kumar, Advocate.

For the Respondent : Mr. Z. Hoda, APP.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

CAV JUDGMENT

Date: 15-01-2018

Heard the learned counsels for the appellant, the
informant and the State.

2. Bhulan Sah/appellant has been convicted under
Section 304 Part-II of the Indian Penal Code vide judgment dated 2nd
of July, 2016 passed by the learned Additional Sessions Judge VI,
Motihari, East Champaran in Sessions Trial No. 516 of 2012 and he
has been directed to pay a fine of Rs. 1 lakh to the next kith and kin of
the deceased as compensation to them. By order dated 12th July, 2016,
the appellant has been sentenced to undergo R.I. for seven years and
to pay a fine of Rs. 10,000/- and in default of payment of aforesaid
fine, to further undergo S.I. for three months for the offence under
Section 304 Part-II of the Indian Penal Code.

3. The appellant is said to have given a spade blow on
the head of the deceased viz. Suresh Sah leading to his death.



4. Prasad Sah (P.W. 7) who is the brother of the deceased has lodged the FIR on 07.03.2012 alleging that on the same day, there was a dispute between his brother Suresh Sah (deceased) and the appellant with respect to the boundary of the field and the appellant thereafter gave a spade blow on the head of the deceased, as a result of which he became injured. The deceased was taken to the local hospital by Balli Yadav (P.W. 3) and Faujdar Rai (not examined), where he was declared dead. The cause of occurrence has been stated in the FIR to be land dispute.

5. However, during the trial the appellant narrated a different story and has deposed that at 10 O' clock in the day on 07.03.2012, he along with the deceased, his father (P.W. 2), son of the deceased (P.W. 1) and mother (P.W. 4) were at the maize field when, because of dispute with the appellant, Gulten Sah, Sikandar Sah and Nihora Sah exhorted the appellant to kill the deceased. On such exhortation, the appellant is alleged to have given a spade blow on the head of the deceased as a result of which he fell down injured on the ground. It has further been stated by P.W. 7 that the deceased thereafter was taken to the village on a tyre cart whereas the other accused persons including the appellant left the field. The deceased was carried on a motorcycle to the Government Hospital, Adapur, where he was declared dead. The aforesaid witness, during the course of trial has stated that the FIR was written by one Sohan Singh and



was given to the police. Though, he along with Bhola Sah had signed on the aforesaid complaint but the contents of the complaint were not read out to him. He therefore again got a complaint written by the same person viz. Sohan Singh in which he has stated in detail as to the sequence of events and gave an application to the local police on 08.03.2012. The second application which was given to the police on 08.03.2012 has been signed by Rajeshwar Giri (P.W. 8), a co-villager. In cross-examination, P.W. 7 has categorically stated that the FIR which was lodged on the basis of the first statement was written by Sohan Singh on his own and without taking any instructions from him. It was only on the same day that the aforesaid witness could realize that a wrong statement was made by Sohan Singh in the FIR. The officer-in-charge of the police station, according to the aforesaid witness had not come to the place of occurrence in his presence and had visited the place of occurrence only after four days.

6. Explaining about the sequence of events, P.W. 7 has further stated before the trial court that when the occurrence of assault took place, nobody of the village was present and only in the northern side of the field, some people were digging mud. When the accused persons including the appellant left the place of occurrence, then those persons who were digging earth came. It has specifically been stated by the aforesaid witness that neither he nor anyone of his family members chased the accused persons. At the time of the assault, P.W.



7 claims to be at a distance of 50 ft. along with his parents. For about 5 – 7 minutes, the deceased remained in the field and then he was taken on a tyre cart to the village. No first aid was given to the deceased at his home and thereafter the deceased was taken on a motorcycle to the hospital which took around half an hour. The doctor at the hospital declared him dead.

7. From the deposition of P.W. 7, two things emerge. In the FIR which has been signed by him, he does not refer to the presence of his parents (P.Ws. 2 and 4) or the son of the deceased (P.W. 1) as being present in the field. He has also not stated about the presence of any other co-villager at the time of the occurrence. However, during the deposition before the trial court, a completely different story has been introduced by P.W. 7 inasmuch as he has stated that P.Ws. 1, 2 and 4 were present in the field and along with the appellant there were three others also viz. Gulten Sah, Sikandar Sah and Nihora Sah, who had exhorted the appellant to kill the deceased. From the records, it appears that the investigation against the aforesaid three persons remained pending and charge sheet was submitted against the appellant only. During his deposition, the other relevant fact which was stated by him was that nobody of the village was present; thus making the presence of Balli Yadav (P.W. 3), Rajeshwar Giri (P.W. 6) and Krishna Giri (P.W. 8) as well as Faujdar Rai (who has not been examined) at the place of occurrence doubtful.



8. From the deposition of P.W. 7, it further appears that after about 5 – 7 minutes, the deceased was taken to the village and thereafter on a motorcycle was taken to Government Hospital, Adapur where he was declared dead. P.W. 7 has not stated as to whose tyre cart was used for taking the deceased to his village home. He also has clearly stated that after the accused persons left, people who were digging the earth came and then they were told about the occurrence.

9. Shabind Kumar (P.W. 1) who is the son of the deceased, though has supported the prosecution version but has stated that he did not accompany the deceased to the hospital. He has reiterated the version of P.W. 7 that on the exhortation of Gulden Sah, Sikandar Sah and Nihora Sah, the appellant assaulted the deceased by means of a spade leading to injuries on his person. He has also stated that the wound on the person of the deceased was tied with a loongi and thereafter the deceased was taken to hospital on a motorcycle. He has stated that on the day of the occurrence, the deceased was brought home on the tyre cart of Dinanath Prasad Yadav (P.W. 5). He has further stated that apart from the accused persons Dinanath Prasad Yadav (P.W. 5) and Krishna Giri (P.W. 8) were also working in their fields which was situated two plots away. However on further probe, P.W. 1 has stated that there was no standing crops in the field of P.W. 5 and P.W. 8. No sooner had the deceased fallen down on the ground, all the family members came



near him but no hulla was raised. It was only thereafter that other witnesses came and the deceased was taken on the tyre cart of Dinanath Prasad Yadav (P.W. 5) to the village home. Upendra Kumar and P.W. 7 took the deceased to the hospital on one motorcycle.

10. From the statement of P.W. 1 it becomes very clear that the deceased was taken to the village home on the tyre cart of Dinanath Prasad Yadav (P.W. 5) who according to P.W. 7 was not present at the place of occurrence.

11. Daroga Sah (P.W. 2) who is the father of the deceased as well as Phoolwati Devi (P.W. 4) who is the mother of the deceased have stated that the appellant assaulted the deceased with a spade on his head on the exhortation of Gulden Sah, Sikandar Sah and Nihora Sah. They have stated that P.Ws. 5 and 8 had come with their tyre carts for loading earth and they were requested for taking the deceased to his village home on their tyre cart. The grand-father of the appellant and the deceased were brothers and therefore the appellant and the deceased stood in the relationship of agnates.

12. From the conspectus of the depositions of the aforesaid witnesses, it appears that an attempt has been made by all the witnesses to improve upon the original prosecution version. In the FIR as well as in the deposition of P.W. 7, it is quite clear that apart from the aforesaid witnesses and the appellant, there was no other



person available on the field. Even the presence of P.Ws. 1, 2 and 4 becomes doubtful as they were not named as the persons present on the spot, in the FIR. The other reason to doubt their presence in the field is that apart from the appellant, if there was nobody present at the place of occurrence, they ought to have made some attempts to prevent the assault or to catch hold of the appellant. The appellant left the field un-protested. The other reason for doubting the presence of the aforesaid persons is the fact that the deceased was first taken to village home and thereafter to Adapur Hospital. There was no reason for the deceased to have been taken to his village home when he was so seriously injured.

13. For the sake of completeness, it would be necessary to examine the deposition of P.W. 3, P.W. 5 and P.W. 8 who apparently have no axe to grind against the appellant and who have supported the prosecution version.

14. Balli Yadav (P.W. 3) has deposed that on 07.03.2012, at about 10:00 a.m., he was coming back to his home and when he reached near the field of the deceased, he saw that the deceased and the appellant were engaged in a verbal squabble. At that time, he saw the appellant hitting the deceased by means of a spade on his head. The appellant is thereafter stated to have run away from the field. The wound over the body of the deceased was tied by a loongi and he was brought to his village home on a tyre cart and from there



he was taken to Adapur Hospital by him and Upendra Kumar. The statement of P.W. 3 was recorded by the police after four days of the occurrence. He has also specifically stated that when the deceased and the appellant were engaged in a verbal spat, there was no other person present. However, in the next breath, he has stated that the family members of the deceased started crying. He has also referred to the presence of the wife of the deceased. Nobody, according to the P.W. 3, chased the appellant. He has also clarified that Dinanath Prasad Yadav (P.W. 5) and Krishna Giri (P.W. 8) came after the occurrence.

15. Dinanath Prasad Yadav (P.W. 5) in his deposition before the trial court has deposed that he came to the place of occurrence after the deceased had been hit. He was informed by one Bajar Sah (not examined) that the appellant had given a spade blow to the deceased.

16. Rajeshwar Giri (P.W. 6), though has supported the prosecution version but he has also stated that he did not see the appellant hitting the deceased and only saw him running away from the field. He has stated that the appellant and the deceased had land dispute which was continuing for about a year.

17. Thus, from the deposition of the aforesaid witnesses, it becomes very clear that none of the witnesses have seen the occurrence, though most of them have claimed to have seen the assault.



18. Rajeev Ranjan Prasad Singh (P.W. 9), who is the I.O. of the case has stated that he did not seize the blood stained earth and therefore, nothing was sent for forensic examination. In front of him, neither the tyre cart nor the motorcycle which was used for bringing the deceased to the village home and to the hospital were produced. He had also not investigated about the correctness of the assertion that there was a land dispute between the parties. He has also stated that apart from the appellant, none of the witnesses examined by him spoke about any other accused person. Thus, the assertion of P.W. 7 and 1, 2 and 4 that the deceased was assaulted on the exhortation of three other accused persons is rendered absolutely incorrect. The informant (P.W. 7) had also not told him as to which witness was present at the place of occurrence and what was he doing at that time. The informant (P.W. 7) had also not told him that at the time of occurrence P.Ws. 1, 2 and 4 were present on the field.

19. Though, the doctor (P.W. 10) has found ante-mortem incised wound on the occipital region of the deceased but from the deposition of the witnesses, it could not be ascertained beyond reasonable doubts, as to who assaulted the deceased.

20. Thus, to tie the strings together, the grounds on which the judgment of conviction has been assailed are as follows: (I) the P.W. 7, the brother of the deceased who is the informant of this case has himself doubted the contents of the FIR and has claimed that



Sohan Singh who had scribed the FIR had written it of his own and without the instructions of P.W. 7; (II) in the second statement before the police and in his deposition before the trial court, though he has spoken about the presence of P.Ws. 1, 2 and 4 but has not stated anything about the presence of P.Ws. 3, 5 and 6; (III) P.W. 9 (I.O. of the case) has clearly stated that the informant did not speak about the presence of P.Ws. 1, 2 and 4 before him; (IV) though P.W. 3 claimed to have seen the occurrence but his presence at the spot becomes doubtful in view of the statement made by P.W. 7; (V) there was no occasion for the deceased to be taken to the village home and from there to hospital where he declared dead; (VI) non-seizure of the blood stained earth and non-production of the tyre cart or the motorcycle which was used for carrying the deceased to village home and thereafter to hospital.

21. All the above grounds taken together create serious doubts about the correctness of the prosecution version. This Court is also at a loss to understand as to why when nobody else was found armed with any lethal weapon/firearm weapon, no effort was made to prevent the attack or to catch hold of the appellant. These facts, seen in the background of enmity between the parties, render the version of all the prosecution witnesses not fit for any reliance.

22. Thus, in the absence of the proof of the manner of assault and the place of occurrence as well as inconsistent statement



of the witnesses which creates a doubt about their presence at the place of occurrence, it would be highly unsafe to affirm the conviction and sentence of the appellant.

23. For the aforesaid reasons, the judgment and order of conviction and sentence of the appellant are hereby set aside and the appellant is acquitted of all charges. The appeal is accordingly allowed.

24. The appellant is directed to be released from jail if not wanted in any other case. The trial court records be returned forthwith.

25. A copy of the judgment be communicated to the superintendent of the concerned jail for information, compliance and record.

(Ashutosh Kumar, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	10.01.2018
Uploading Date	15.01.2018
Transmission Date	15.01.2018

