

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.29 of 1995

Against the judgment and order dated 24th June, 1995 passed by Sri M.M. Chouhdary, 1st Addl. Sessions Judge, Madhubani in Sessions Trial No. 83/1985 / 43/1988 arising out of Pandaul P.S. Case No. 180 of 1983, District – Madhubani.

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State of Bihar

.... Appellant

Versus

1. Sita Ram Jha, son of Raghu Nandan Jha,
2. Mahendra Jha, son of Narayan Dutta Jha,
3. Bachakun Jha, son of Gangadhar Jha
4. Mantun Jha, son of Gangadhar Jha,
5. Tara Kant Jha, son of Subansh Jha,
6. Bhullur Jha, son of Rajendra Jha,
7. Vidyanand Jha, son of Sunder Lal Jha,
8. Shyamanand Jha @ Shyam Jha, son of Tanuklal Jha

All residents of Village Gangapur, P.S. Pandaul, District Madhubani.

.... Respondents

With

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Criminal Revision No. 416 of 1995

Against the judgment and order dated 24th June, 1995 passed by Sri Madan Mohan Chouhdary, 1st Addl. Sessions Judge, Madhubani in Sessions Trial No. 83/1985 / 43/1988 arising out of Pandaul P.S. Case No. 180 of 1983, District – Madhubani.

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Kameshwar Mandal, son of Ganshi Mandal of Village Gangapur, P.S. Pandaul, District – Madhubani.

.... Petitioner

Versus

1. Sita Ram Jha, son of Raghu Nandan Jha,
2. Mahendra Jha, son of Narain Jha,
3. Bachkun Jha, son Gangadhar Jha,
4. Mantun Jha, both sons of Gangadhar Jha,
5. Tarakant Jha, son of Subans Jha,
6. Bhukur Jha, son of Rajendra Jha,
7. Bidya Nand Jha, son of Sunder Lal Jha,



8. Shyama Nand Jha, son of Tanuk Lal Jha

.... Opposite Parties.

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Appearance:

(In G. APP. (DB) No. 29 of 1995)

For the Appellant/s : Ms. Shashi Bala Verma, A.P.P. &
Mr. Shiv Shankar Sharma, A.P.P.

For the Respondent/s :

(In CR. REV. No. 416 of 1995)

For the Petitioner/s :

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 22-02-2018

By this common judgment we propose to dispose of the Government Appeal as well as the Criminal Revision preferred by the informant for setting aside the judgment dated 24.06.1995 passed by learned 1st Additional Sessions Judge, Madhubani (hereinafter referred to as the 'trial court') whereby the trial court has been pleased to conclude that the prosecution case is not true, the prosecution witnesses are not reliable and that the accused persons have proved the defence version and, therefore, all the accused persons have been held not guilty to the charges framed against them and they have been acquitted accordingly.

2. The brief facts which may be culled out from the trial court records are as follows:-

3. The prosecution case as disclosed by the informant



(PW2) is that on 21.10.1983 all the accused persons along with one Radhey Shyam Jha came to the 'BADI' (backyard garden of a farmer). They were armed with various kinds of weapons. They started ploughing the 'BADI' of Ganeshi Mandal in which Ganeshi Mandal had sowed Rainchi crop. The accused persons cut the bamboos of Ganeshi Mandal from his bamboo clumps and fenced the field. The informant Ganeshi Mandal came to his plot along with his son (PW-2) and grand-son (PW1) and resisted the accused persons in doing so, on which, it is alleged that in his 'BADI' the accused persons assaulted the informant Kameshwar Mandal (P.W.2) and grand-son (P.W.1), causing head injury to the informant. He claimed that the occurrence has been seen by his son Kameshwar Mandal (P.W.2) and grand-son Shubhlal Mandal (P.W.1) as also by several villagers.

4. At this stage, the informant also alleged in his Fardbeyan that the litigation is going on between the accused persons and the informant.

5. After investigation, police submitted a charge-sheet against the accused persons U/S 302/323/325 I.P.C. After taking cognizance of the offences, the learned Magistrate committed the case to the court of sessions. On 21.10.1983, charges were framed giving rise to the Sessions Trial for the offences punishable U/S 302/149,



323 & 426 IPC against eight accused persons, namely, Radhey Shyam Jha, Mahendra Jha, Buchkun Jha, Mantun Jha, Tara Kant Jha, Bhullur Jha, Bidyanand Jha and Shyamanand Jha. Accused Sitaram Jha (Appellant No. 1) was charged for the offences alleged U/S 302, 324, 426 & 148 IPC. The accused persons pleaded not guilty and claimed trial. During pendency of the trial, on 19.12.1990 the trial court dropped the proceedings against the accused Radhey Shyam Jha because of his death.

EVIDENCES DISCUSSED

6. In course of trial, prosecution examined as many as 11 witnesses. PW1, who is the grandson of the deceased Ganeshi Mandal, has supported the prosecution stating that he was, at the relevant time, in his house and could see the alleged occurrence. He has stated that Sitaram Jha assaulted his Baba (deceased) on his head and Bidyanand Jha, Tara Kant Jha and Mahendra Jha assaulted his Baba by lathi. This witness, who happened to be the grand-son of the deceased, further stated that his grand-father had fallen down and the accused assaulted on his head by Khanti. He has further claimed that when he went there to save his grand-father, Sitaram Jha assaulted him also on his head by Khanti. He has stated about the place of occurrence being the 'BADI' of his house. PW2 is Kameshwar Mandal, S/o Ganeshi Mandal, who is the son of Ganeshi Mandal and



is the informant of the case. This witness has narrated the same story. PW3 is Gulab Devi, who is wife of Kameshwar Mandal, and as such the daughter-in-law of the deceased. She has stated that when her father-in-law Ganeshi Mandal went to stop the accused persons from putting 'DARH' (a kind of partition made of wood) in the 'BADI' the accused Sita Ram assaulted Ganeshi Mandal by Khanti on his head and other accused assaulted him by lathi. PW4 is Geeta Devi, wife of Sanichar Mandal, who also happened to be the daughter-in-law of the deceased Ganeshi Mandal. She has also supported the prosecution. PW5 is Uttim Mandal, another son of Kameshwar Mandal (informant). He has also reiterated the prosecution case. PW6 is Sushil Chaudhary, who is said to have gone on the place of occurrence after hearing Hulla and there he saw the occurrence in which Sitaram Jha is said to have assaulted by Khanti on the head of the deceased Ganeshi and other accused had assaulted the deceased, his son and grand-son.

7. PW7 is one Kailu Ram, who claimed that he reached the 'BADI' of Ganeshi Mandal on Hulla and there he saw the alleged occurrence. PW8 is Rameshwar Mandal, who has also claimed that he had gone there on hearing Hulla and could see the occurrence in which the accused Sitaram had assaulted the deceased on his head by Khanti and other accused, namely, Shyamanand Jha assaulted him by



lathi and when the son and grand-son of the deceased came to save him, this accused Shyamanand Jha assaulted Kameshwar (informant) by lathi and Mantun and Bachkun also assaulted him. Sitaram Jha had also given a Khanti blow to Subelal.

8. PW9 is Bharat Singh, who happened to be the Investigating Officer as he was posted during the period 1983 to 1986 in Pandaul Police Station as Sub Inspector of Police. He has proved the Fardbeyan of deceased Ganeshi Mandal said to have been recorded on 21.10.1983 marked as Ext. '1'. He has also proved the fardbeyan of Kameshwar Mandal recorded by S.I. of Madhubani Police Station on 23.10.1983 as Ext.1/1. The formal F.I.R. dated 21.10.1983 has been proved as Ext. '2'. The Investigating Officer has stated that Kameshwar Mandal had got his statements recorded on 23.10.1983 before the Officer-in-charge of Madhubani Police Station because the deceased Ganeshi Mandal died in Sadar Hospital, Madhubani on 23.10.1983. The Investigating Officer had received the Fardbeyan from Madhubani Police Station which fact has been recorded by him in Paragraph 46 of the Case Diary. In his cross-examination, the Investigating Officer has stated that Ganeshi Mandal, in his statement, had not disclosed the date of occurrence or time of occurrence. He has accepted that there was no basis for recording of the date of occurrence and time in the F.I.R. (Ext. '2').



He has further stated in Paragraph 6 that the prosecution did not produce any paper before him relating to a dispute over Plot No. 4830, 4831 & 4832. He has, however, stated that he was told about the dispute going on with respect to the lands in question between the prosecution and the accused. In Paragraph 7, he has further stated that he had gone to the village on 22.10.1983, at about 5 PM, and had found Ganeshi Mandal present at his house. The Investigating Officer is said to have told the informant Kameshwar Mandal to take Ganeshi Mandal to Madhubani Hospital. In Paragraph 8, he has stated that he had gone to the office of accused Shyamanand Jha on 09.11.1983 and had seen the Attendance Register where he was shown present on 21.10.1983 between 10 AM to 5 PM. In Paragraph 11 of his cross-examination, the I.O. has stated that the witness Subelal (P.W.1) had not stated before him that accused Sitaram was lashed with Khanti and other accused were lashed with Lathi had come to the place of occurrence. He has further stated that Subelal (PW1) had not told him that Tara Kant, Bidyanand and Mahendra had assaulted his grand-father by lathi. The I.O., however, stated that PW1 had stated before him that he, his grand-father and his father were assaulted by Sitaram Jha by Khanti.

9. PW10 is Dr. M.N. Gani, who has proved the post-mortem report of the dead body, which has been marked as Ext.4. The



doctor has opined that there was a surgically dressed wound over scalp, on removal of the dressed wound, surgically stitched wound size was 2½” x ¼ ” x ¼” over the left side of the scalp. He has opined that the death was due to injury to the brain tissues, hemorrhage and shock as a result of injury caused by hard blunt substance, such as, Khanti.

10. PW11 is Madan Kumar Chaudhary, who is a formal witness and has proved the Indoor Patient Register, Page 26, Sl. No. 87 dated 21.10.83 in the handwriting of Dr. B.K. Mishra which has been marked as Ext.5.

11. On behalf of defence, altogether 8 witnesses have been examined. DW1 Ramesh Chandra Jha has proved a sale deed said to have been executed by Maheshi Mandal in favour of Sitaram Jha and Radhey Shyam Jha. This has been marked as Ext.A. DW2 Shardanand Thakur, who happened to be a Clerk in the Court, proved two receipts issued by the Karamchari Laxmi Kant Das of Pandaul Circle Office. DW3 Vimal Jha claims that he had gone to the place of occurrence on hearing Hulla and there he found that Kameshwar, Rameshwar, Subelal Mandal, Ganeshi Mandal and Sushil Kamat were pulling out the bamboos from the ‘BADI’ situated in the backside of the house of Sitaram Jha. According to this witness, when Radhey Shyam Jha tried to stop Kameshwar Mandal assaulted Radhey Shyam Jha by Farsha



on his head and Ganeshi Mandal assaulted Radhey Shyam Jha by lathi. It is also stated that when Sitaram Jha came to save Radhey Shyam Jha then Rameshwar Mandal assaulted Sitaram Jha by lathi. This witness has stated that the BADI of Sitaram Jha is about 1¼ Katha. This is said to be in possession of Sitaram Jha and the prosecution party had nothing to do with the same. He has denied the suggestion that Ganeshi Mandal was assaulted by Khanti by the accused and was killed. This witness has stated that Ganeshi Mandal died due to his old age and illness.

12. DW4 is Rakesh Kumar Das, who is a Typist and has proved the protest petition bearing the signature of Sitaram Jha, which has been marked as Ext.C. DW5 is Bhawnath Jha, who is also a Court Clerk and has proved the Fardbeyan of Sitaram Jha, which has been marked as Ext.D. He has also proved the formal F.I.R. and Paragraphs 30 and 31 of the Case Diary of Pandaul Police Station Case No. 181/1983 recorded in the handwriting of Bharath Singh, Sub Inspector of Police, which has been marked as Ext.F. This witness has also proved the Outdoor Register, Page 128, Sl. No. 8230 & 8234 of Pandaul State Dispensary recorded in the name of Dr. Vinod Kumar Mishra, which has been marked as Ext.G.

13. DW6 is Dr. Tara Kant Lal. He has stated that one of the accused Indra Kant Jha was his driver on the departmental vehicle



and on 21.10.83 he was driving the vehicle when this Dr. had gone to Imampatti Khaira and had stayed there till 10 PM. He has proved the Log Book of the vehicle, which bears the signature of the witness as well as accused Indra Kant Jha, and has been marked as Ext.H.

14. DW7 is Chandra Kant Thakur, who is a Store Assistant in the Electricity Department where accused Shyamanand Jha was posted as Accounts Assistant at Madhubani. He has deposed that Shyamanand Jha was on duty on 21.10.83 from 10 AM to 5 PM.

FINDINGS OF TRIAL COURT

15. The learned trial court having examined the materials available on record and upon taking note of the allegations and counter-allegations came to a conclusion that on perusal of the Ext.6, which is the plaint filed by Kameshwar Mandal (PW2), his brother Sanichar Mandal, his mother and Ganeshi Mandal against Sitaram Jha and his brother Rameshwar Jha it appears that the suit was filed for declaration of right, title and interest over the land of several plots viz- 4836, 4832, 4833, 4834, 4829, 4828, total area 1 Katha 9½ Dhurs and also for confirmation of their possession over the same, it would appear that even PW2 has admitted that these land belonged to Maheshi Mandal, the uncle of PW2. The plaintiffs (Prosecution) claim that Maheshi Mandal had orally sold it to PW2. and in proof of the fact, a memorandum was written by him but no such memorandum



was filed before the trial court. No recent rent receipt was filed on behalf of the prosecution. There was only oral evidence of PWs 1, 2, 3, 4, 5, 6, 7 & 8. PWs 1, 2, 3, 4 & 5 have also stated that the disputed land originally belonged to Maheshi Mandal.

16. The trial court found that on behalf of the accused Sitaram Jha, a sale deed (Ext.A) and rent receipts (Ext.B series) have been pressed into service. Ext.A shows that Maheshi Mandal executed the sale deed in favour of Sitaram Jha and Radhey Shyam Jha in consideration of Rs. 1000/- in respect of the entire land mentioned in Ext.6 on 24.10.80. The rent receipts reveal that Sitaram Jha was paying the rent of 1 Katha 5 Dhurs of Plot Nos. 4830 & 4832. It is the case of Sitaram Jha that he had purchased the 'BADI' land measuring an area of 1 Katha 5 Dhurs from Maheshi Mandal and, prior to Sitaram Jha, Maheshi Mandal was in possession over the same.

17. The trial court has also found that the I.O. had visited the BADI but the prosecution party could not show any paper in support of the title and possession over this land. In Paragraph 9 of his cross-examination, the I.O. has stated that the PO land was fenced with old bamboo, he did not find the PO land recently ploughed. In Ext.2, Ganeshi Mandal had stated that he had sowed Rainchi in the disputed land which was re-ploughed by the accused persons. The I.O. (PW9) has not supported this fact in his evidence.



18. The learned trial court having discussed the materials, particularly the evidence of I.O., PW1 and PW2, held that the prosecution has not proved the genesis and origin of the occurrence, rather the genesis and origin of the occurrence given by Sitaram Jha in the counter-case has been proved. As regards the issue as to whether the accused persons have assaulted Ganeshi Mandal, the trial court has disbelieved the evidence of PWs 1, 2, 3, 4, 5, 6 & 8 as those are found to be inimical to the accused persons from before and they are closely related to each other and PW7 is not a reliable witness. It has been held that the evidences of these witnesses are contradictory and the I.O. has also contradicted their statements and, therefore, these witnesses are not trustworthy.

19. The trial court also found that PW1 & PW2 had stated in their evidence that blood had fallen on the place of occurrence and blood was also stained in the clothes of the deceased Ganeshi Mandal and PW1 & PW2 and they had shown the clothes to the I.O. but there is no seizure list in respect of the blood-stained-soil as well as blood-soaked-clothes. The I.O. has stated in his evidence that he has not seen any blood mark on the place of occurrence. According to the evidence of the I.O., he had visited the place of occurrence on 22.10.83 and had found the deceased Ganeshi Mandal at his residence, then he instructed PW2 for taking Ganeshi Mandal to



Madhubani Hospital. The learned trial court was, therefore, of the view that when Ganeshi Mandal was referred by the doctor of Pandaul to Madhubani Sadar Hospital he did not go to Sadar Hospital, rather he went to his house. This creates doubts in the prosecution version. The I.O. had visited the place of occurrence on 22.10.83, just after the next day of the alleged occurrence but did not find any blood mark on the place of occurrence. This also created doubts in the prosecution version regarding the place of occurrence. The trial court found that the prosecution case appears to be highly doubtful, the genesis and origin of the occurrence has not been proved and the place of occurrence is also highly doubtful.

20. Taking note of the depositions of the defence witnesses, the trial court examined the various defence exhibits and found that the Outdoor Register of the State Dispensary, Pandaul clearly showed Entry No. 82-83 wherein Radhey Shyam Jha had been shown injured. Police was also informed for institution of police case. On 21.10.83 itself, Dr. V.K. Mishra had examined Radhey Shyam Jha and from Ext.F it was found that there were injuries on the body of the accused Radhey Shyam Jha. Injuries were also found on the body of Sita Ram Jha and from this the trial court concluded that Radhey Shyam Jha and Sitaram Jha had been assaulted at the time and place of occurrence as alleged by the prosecution.



21. According to the evidence of the I.O. Bamboo Khutta and Bamboo Fence had been broken and demolished at 9 places at the place of occurrence. The prosecution case is not that the accused persons had fixed Khutta and Fence after the occurrence, so in the light of these circumstances, the defence version has been believed by the learned trial court. In the given facts of the case, the trial court took a view that even if it is assumed that the accused persons had assaulted the prosecution then the law of private defence of the persons protects them. It has been held that the accused Radhey Shyam Jha was assaulted with Farsa on his head, therefore, the accused persons had right to cause grievous hurt and hurt on their adversary and, according to the evidence available on record, Ganeshi Mandal had received grievous injuries only, so the accused persons had not exceeded their right to private defence. It was also found that the prosecution has not been able to explain the injuries of Radhey Shyam Jha and Sitaram Jha at the time of occurrence. The prosecution version had willfully and deliberately suppressed and denied about the injuries of Radhey Shyam Jha and Sitaram Jha.

22. Having examined the entire evidence, the trial court held that the accused persons are not guilty of the charges framed against them, so they have been acquitted from the charges and have been set free from the liability of bail bond.



SUBMISSIONS IN APPEAL AND REVISION

23. While assailing the findings of the learned trial court, learned counsel representing the State as well as the informant have argued that the learned court below has wrongly held that the defence party was in possession over the disputed land on the ground that no paper was filed on behalf of the prosecution with regard to the land in question. According to them, the learned trial court should have appreciated the oral evidence of the prosecution witnesses who categorically stated that the opposite parties had no concern with the land in question, rather the prosecution party was in actual physical possession over the land in question. It has been further argued that the criminal court has to see as to who is in actual possession over the land in question on the date of occurrence. PW2 to PW4 proved that the plaint of Title Suit has been filed on behalf of the prosecution related to Title Suit No. 1581/1983. Since the prosecution party sought relief for declaration of right, title and interest and confirmation of possession, therefore, the Title Suit indicates that the prosecution party had been in possession over the land Plot nos. 4832, 4836 as also other plots.

24. Learned counsel has also assailed the view taken by the learned trial court that the prosecution story cannot be believed because the prosecution party did not explain the injuries found on the



person of one of the accused, namely, Rahdey Shyam Jha. Submission is that the minor injury on the accused cannot be taken to draw an adverse inference. It is submitted that the prosecution witnesses were trustworthy and there was no reason to reject their testimonies.

CONSIDERATION

25. We have examined the grounds taken in the appeal as also the trial court records including the depositions of the witnesses. In our considered opinion, the trial court has rightly taken note of the fact that from Ext.6, which is the plaint filed by Kameshwar Mandal (PW2), his brother, his mother and Ganeshi Mandal (deceased), it appears that they have been claiming the disputed land by virtue of an oral sale stating that a memorandum was written by Maheshi Mandal, the uncle of PW2. In proof of such an oral sale, the prosecution did not bring any memorandum to show even *prima facie* that the story of oral sale is worth believable. The defence brought on record the registered sale deed (Ext.A) showing that the said Maheshi Mandal executed the sale deed in favour of accused Sitaram Jha on 24.10.1980, the rent receipts (Ext.B series) were also brought on record on behalf of the defence to prove that accused Sitaram Jha was paying the rent of 1 Katha 5 Dhurs of land of Plot No. 4830 and 4832. On the face of these documentary evidences brought on record by the defence, the contention of the appellant and the revisionist that the



trial court should have accepted oral evidences of the prosecution witnesses on factum of possession would not appeal us. The prosecution has failed to bring on record any memorandum signed by Mahesi Mandal and all the P.Ws. on this point were directly related and interested witnesses so trial court has rightly rejected their evidence on this point.

26. The trial court having examined the depositions of the prosecution witnesses has rightly taken note of the contradictions which were found in the statements of the prosecution witnesses when compared with the statements of the I.O. The very genesis and origin of the alleged occurrence has not been proved in the manner stated by the prosecution. The alleged occurrence is said to have taken place on 21.10.1983, at about 2 PM; the F.I.R. has been recorded showing the date thereon as 21.10.1983, time at 4:30 PM, but the I.O. states that he had put the date and time on the F.I.R. without any basis. Ext.1 is the Fardbeyan of Ganeshi Mandal. A perusal of the fardbeyan of Ganeshi Mandal shows that in his fardbeyan (Exhibit-1) Ganeshi has not disclosed the date and time of occurrence. Further in his fardbeyan (Exhibit-1) he had not stated as to who among the accused was holding Khanti or Lathi and who had assaulted him on his head. There are general allegations of assault against all the accused persons. The I.O., when visited the house of Ganeshi Mandal on 22.10.1983, he



found him at his house and then he advised Kameshwar Mandal (P.W.2) to take Ganeshi Mandal to Madhubani Hospital. This shows that after being referred by Pandaul Hospital to Sadar Hospital, Madhubani, Ganeshi mandal did not go there and came back to his house and, only on 23.10.1983, he could visit Madhubani Hospital where he died. After his death on 23.10.1983 Kameshwar (P.W.2) got recorded his fardbeyan by Officer in Charge of Madhubani Police Station and this fardbeyan of P.W.2 (Exhibit 1/1) was sent to Pandaul Police Station. In Exhibit – 1/1, P.W.2 made a specific allegation that when all the accused persons reached at the ‘BADI’ and started fencing and cutting down the bamboos then Ganeshi Mandal went there to stop them on which Sitaram Jha started assaulting by Khanti, thereafter, when he and his son Subelal went there to save Ganeshi then all the accused persons assaulted them. A comparison of the two fardbeyans (Exhibit-1) and (Exhibit-1/1) would show that there are sharp contradictions in the two exhibits. According to Exhibit 1 the deceased along with his son and grand son had gone to stop the accused persons whereupon they were assaulted by Khanti and Lathi. Who assaulted by Khanti is not disclosed whereas in Exhibit – 1/1, the P.W.2 and P.W.1 went after Ganeshi was assaulted to save him. This time specific allegations are against Sitaram Jha of assaulting the deceased by Khanti. This makes the whole manner of occurrence



doubtful.

27. The trial court has rightly doubted the very genesis of the occurrence in view of the fact that neither blood-stained-soil was found on the alleged place of occurrence nor any blood-soaked-clothes could be seized by the police. We agree with the trial court that the prosecution has also failed to explain the injuries found on the head of accused Radhey Shyam Jha and on the body of Sitaram Jha; the prosecution witnesses did not utter about the injuries caused to defence rather they suppressed this fact in course of their depositions which also cast doubt on the whole prosecution story. The submissions of the learned counsel representing the State and revisionist that minor injuries found on the body of Radheysyam need not be explained by prosecution would not appeal us in the facts of this case and the evidences suggesting suppression as to manner of whole occurrence.

28. The trial court has relied upon the judgment of the Hon'ble Supreme Court reported in **1977 PWR 219** (Lakshmi Singh & Ors. Vs. State of Bihar) wherein it has been held as under:-

“It is well settled that fouler the crime, higher the proof and hence in a murder case where one of the accused is proved to have sustained injuries in the course of some occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution case



and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence.....”

29. The trial court has also relied upon the judgment of the Hon’ble Apex Court in **the State of Gujarat Vs. Bibi Fatima**, reported in 1975 SCC (CrL.) 384, and has also quoted the relevant part of the said judgment as under:-

“In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may fall :-

1. That the accused has inflicted injuries on the members of the prosecution party in exercise of the right of his self defence.
2. It makes the prosecution version of the occurrence doubtful and the charge against the accused can not be held to have been proved beyond reasonable doubt.
3. It does not affect the prosecution case at all.”

30. We are of the view that the learned trial court has examined all aspects of the matter and has rightly reached to the conclusion holding that the prosecution has failed to prove the charges beyond reasonable doubt. The grounds raised in appeal and revision are not good grounds to disturb the findings of the learned trial court.



From the records it appears that in this case the alleged occurrence had taken place about 36 years ago and in view of the materials available on the record it would not be just and proper to take any other view of the matter in appeal and revision preferred before this Court.

31. Since we do not find any illegality or infirmity in the impugned judgment, the Govt. Appeal as well as the Criminal Revision are hereby dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.03.2018
Transmission Date	N/A

