

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 556 of 1994

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1. Kherodher Choudhary, son of Sukhlal Chowdhary
 2. Ram Lekha Mahto @ Ram Rekha Mahto, son of Chandradhan Mahto
Both residents of Village-Intwan, P.S.-Hassanpura, District-Augangabad

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Aminesh Kumar Mishra (Amicus Curiae)

For the State : Mr. Abhimanu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

And

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

ORAL JUDGMENT

Date: 13-01-2018

Since nobody has appeared on behalf of the appellants and this case being of the year 1994, we deem it appropriate to appoint Mr. Aminesh Kumar Mishra as Amicus Curiae to assist this Court.

2. Heard.

3. The appellant No. 1, Kherodher Choudhary has been convicted under Section 302 of the Indian Penal Code and appellant No. 2 Ram Lekha Mahto @ Ram Rekha Mahto has been convicted under Section 302 with the aid of Section 34 of the Indian Penal Code and both of them have been sentenced to undergo RI for



life for the aforesaid offence by judgment of conviction dated 14th of September, 1994 and order of sentence dated 16th of September, 1994, passed in Sessions Trial No. 448/90/7/94 by the learned 3rd Additional Sessions Judge, Aurangabad.

4. Both the appellants are said to have killed Sheodahin Ram @ Bahira by means of a sharp cutting weapon called *fasuli*. The brother of the deceased is Surendra Ram, on whose statement, the subject F.I.R. was lodged. He has been examined as P.W. 7 in this case.

5. In the F.I.R, it has been alleged by P.W. 7 that at about 8:30 P.M. to 9:00 P.M. on 05.04.1990, while he was at his house, he heard somebody crying for his life and the aforesaid voice seemed to be coming from the house of appellant No. 1. Many persons of the neighbourhood, including P.W. 7, went near the house of appellant No. 1 and found the deceased Sheodahin Ram @ Bahira lying dead on the ground. From looking at the dead body, it appeared that his neck had been slit. Some persons were seen running towards the northern direction. At that place where the dead body was found to be lying, one Janeshwar Chaudhary, who has been examined as P.W. 6 informed him that the appellants have killed the deceased by means of a sharp cutting weapon viz. *fasuli*. At that time, one Kishori Thakur also came from the eastern side



and the informant expressed hope that he also might have seen the occurrence. The reason for the murder was not known to P.W. 7. On the basis of the aforesaid statement of P.W.7, Haspura P.S. Case No. 25 of 1990 dated 05.04.1990 was registered for investigation for the offence under Sections 302/34 of the Indian Penal Code against the appellants.

6. At the trial, but for the informant (P.W. 7) and Janeshwar Chaudhary (P.W.6), nobody claims to have seen even the appellants running away from the place of occurrence. Thus, for all practical purposes, only the aforesaid two witnesses are the witnesses who have claimed that the appellants have killed the deceased.

7. We propose to examine firstly the deposition of P.W. 7. At the trial, P.W. 7 has stated that the occurrence had taken place in the summer month. From the house of appellant No. 1, somebody's voice for help was coming. On this, P.W. 7 claims to have gone to the house of appellant No. 1, where he saw that the appellants, after cutting the neck of the deceased were running away. Seeing this, P.W. 7 claims to have become unconscious. However, there only, he met Janeshwar Chaudhary (P.W.6) who was one of the workers of appellant No. 1. At the house of appellant No. 1 only, police arrived after about one hour of



the occurrence.

8. P.W. 7 has further stated before the Trial Court that the place from where the voice of his brother (deceased) was coming, there was no other person. He has categorically stated that the accused persons had run away. He could not raise any alarm because seeing his brother dead with his slit throat, he had become unconscious. He regained his consciousness only after the arrival of the police at the house of appellant No. 1. He has also stated that P.W. 6 was not arrested by the police and was present at the house of appellant No. 1 when the police had come. He has even denied that local villagers had caught P.W. 6. In the last part of his deposition, P.W. 7 has stated that he had stated before the police that when he reached the house of the appellant No. 1, he saw that the appellants, after killing the deceased, were running away.

9. Janeshwar Chaudhary (P.W.6) has affirmed and admitted that he worked for appellant No. 1. What is relevant for us to see in his deposition is that he claims to have gone to the house of appellant No. 1 at about 9:00 P.M. after tapping toddy from the tree. He claims to have seen the appellants sitting at the house of appellant No. 1 and drinking toddy. At that time, the deceased also came there and asked for toddy which was refused by the appellants. When the deceased protested, appellant No. 2 is said



to have caught hold of the deceased whereafter appellant No. 1 cut the neck of the deceased by a sharp cutting weapon, *fasuli*. At that time, when other people had arrived, the aforesaid prosecution witness No. 6 was caught by the local persons and villagers who had assembled at the house of appellant No. 1. This was, according to the P.W. 6, perhaps because of the knowledge of those persons that the aforesaid witness was a worker of appellant No. 1. He has stated about his having been assaulted and thereafter only he disclosed what he had seen. In his deposition, he has clearly stated that after receiving beatings from the villagers and police, he narrated the actual occurrence of the appellants having killed the deceased and thereafter running away from the place of occurrence. He has also stated that he had seen the appellants running away towards north-east direction and there was nobody of the village on the way. He had seen them running away at the distance of about 15-20 feet.

10. From an analysis of the deposition of the aforesaid two witnesses, it becomes clear that none of them have seen the occurrence. We say so for the reason that P.W. 7 has not stated to have seen the appellants killing the deceased or even running away from the place of occurrence in his F.I.R. However, during the trial, he has dramatically improved upon his version and



has stated that on seeing the dead body of his brother, he became unconscious and regained his consciousness only on the arrival of the police. If this statement is correct, then the later part of his statement that he saw the appellants running away from the place of occurrence and of having been informed by P.W. 6 about the occurrence cannot be accepted as true. He has himself stated before the Trial Court that after one hour of his reaching the house of appellant No. 1, the police had arrived. By that time, the appellants must have run away. It also appears from the records that on the arrival of P.W. 6 (Janeshwar Chaudhary), the villagers had caught hold of him for the reason that he was one of the workers of appellant No. 1. Because of the P.W. 7 having made such improvement in his version before the Trial Court, it would be difficult to rely upon him.

11. Similarly, P.W. 6 also cannot be believed for two reasons. One, he did not state in the beginning as to what he had seen. Only when he was assaulted by the villagers who had assembled at the place of occurrence, did he talk about the appellants having killed the deceased and run away towards north-east direction. It appears that without even knowing as to what had happened, under pressure of local people, he has made some statement and such statement has been repeated by him at the trial.



It also appears to be rather strange that at about 9 O'clock in the night, he was coming to the house of the appellants and that also after tapping toddy from the tree.

12. From the mouth of other witnesses, it has come on record that appellant No. 1 used to sell toddy in his house in which his wife also resided. The witnesses have also stated that at that place, after the customers drank toddy, they always created ruckus. It has been argued that the deceased might have been killed by some of the customers in the shop of appellant No. 1.

13. However, what actually happened is not known and the evidence with respect to the act of killing of the deceased is absolutely blurred. Even if the deposition of the aforesaid two witnesses are taken into account, the appellants are only seen to have running away. Since many persons had assembled at the place of occurrence, it is simply impossible that two persons after killing somebody would be allowed to run away. P.W. 6 claims to have seen the appellants running away at a distance of 15-20 feet. This also makes his statement unfit for any reliance because if he only saw the appellants running away at that distance, his statement that the appellants had killed the deceased by means of *fasuli* is also without any basis and is only his guess-work.

14. There is no other witness on the point of



assault apart from the above two witnesses whose deposition has been discussed above.

15. Though the postmortem report speaks of the neck of the deceased having been cut by a sharp cutting weapon leading to the only inference that the deceased died a homicidal death, but who had committed the crime is not known nor could it be ascertained.

16. After going through the records, we also feel that the investigation of this case was conducted in a most shoddy manner. The police though found the blood stains on the weapon of assault (*fasuli*) but no attempt was made to send the sample of blood for any chemical examination. In the absence of a report about whose blood was found on the weapon of assault which was found in the house of appellant No. 1, it would be difficult to saddle the appellants with the charge of murder of the deceased.

17. For the reasons aforesaid, we are not inclined to accept the verdict returned by the Trial Court.

18. As such, the judgment of conviction dated 14th of September, 1994 and order of sentence dated 16th of September, 1994 passed by learned 3rd Additional Sessions Judge, Aurangabad in connection with Sessions Trial No. 448/90/7/94,



arising out of Haspura P.S. Case No. 25 of 1990 are set aside.

19. The appellants, during the pendency of the appeal were released on bail by this Court. Hence, they are discharged from the liabilities of their bail bonds.

20. The appeal stands allowed.

(Dinesh Kumar Singh, J)

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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