

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.399 of 1994

Sessions trial no. 149/1985 arising Out of Udwant Nagar P.S. case no.
122/1981 District- BHOJPUR

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1. Raghunath Yadav
2. Ram Dev Yadav both sons of Rambhaj Yadav
3. Jangbahadur Yadav son of Magan Yadav
4. Baleshwar Yadav son of Kishun Yadav
5. Chandrama Yadav son of Laldhar Yadav
All resident of village Taintrian P.S. Udwanat Nagar Dist Bhojpur
..... Appellant/s

Versus

State of Bihar
..... Respondent/s

with

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Criminal Appeal (DB) No. 444 of 1994

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1. Ramadhar Ahir @ Ramadhar Yadav son of Bunnu Ahir
2. Jiut Ahir @ Jiut Yadav son of Vansropan Ahir
All resident of village Taintrian P.S. Udwanat Nagar Dist Bhojpur
..... Appellant/s

Versus

State of Bihar
..... Respondent/s

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Appearance:
For the Appellant/s : Mr.Baxi S.R.P.Sinha
Mr. Sunil Kumar
For the State : Mr. Dilip Kumar Sinha, APP
Mr. S.C. Mishra, APP

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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: 06-03-2018

1. Both the above stated criminal appeals arise out of
common judgment of conviction and sentence order dated
11.8.1994 passed by the learned Addl. Sessions Judge II, Ara



in Sessions trial no. 149/1985 and accordingly, above stated criminal appeals are being disposed of by this common judgment.

2. Udwant Nagar P.S. case no. 122/1981 was registered on the basis of fardbeyan of PW6, namely, Sheo Mohan Ram who gave his statement to SI Devendra Prasad Sharma (PW8) on 15.11.1981 at about 7.30 a.m. at his home to this effect that on the same day at about 6 a.m., he was tying his cattle in front of his house, all of a sudden, appellants and other FIR named accused total 15 in number being armed with lethal weapons came there and encircled him. The aforesaid persons asked him not to go to Mukhiya otherwise, he would be killed. He made protest but appellant Jiut Ahir gave order to kill him and thereafter Khelari Ahir @ Raghunath Ahir hurled bhala blow causing injury on his left thigh and similarly, Mannu Ahir gave **Danda** blow causing injury on his head. The aforesaid persons after assaulting him proceeded towards the house of Mukhiya and reached near his house. The wife of FIR named accused Khelari Ahir called Mukhiya upon which he came out from his house and thereafter, appellant Ramadhar Ahir opened fire twice on him but Mukhiya fell down on the ground and thereafter,



appellant Jiut Ahir gave farsa blow on his head and right hand. The above named persons assaulted Mukhiya with fists and slaps. Appellant Ramadhar Ahir took out match box from his pocket. The FIR named accused Daulatiya Devi was carrying kerosene oil in a **Tina** and she handed over the aforesaid tina to Ramadhar Ahir who climbed on the **Chapar** of Mukhiya and set his Chapar on fire. The aforesaid persons, while returning after committing the aforesaid occurrence, set the house of PW6 on fire. PW7, namely, Hazari Ram was also assaulted by Ramdev Ahir by means of bhal. The injured Mukhiya was being taken to hospital but when PW6 and others reached near **Goriya Asthan**, FIR named accused Chandrama Ahir and Baleshwar Ahir stopped them and Khalifa Ahir assaulted Gangu Ram by means of **lathi** as a result of which PW6 and others fled away from there out of fear leaving behind Mukhiya there. However, one Bharat Ram took Mukhiya to Ara hospital. The reason behind the alleged occurrence was the previous land dispute.

3. PW8, Devendra Prasad Sharma, recorded the above stated fardbeyan of PW6 and took charge of investigation. In course of investigation, he inspected the place of occurrence, recorded the statements of witnesses and



seized burn articles but before completion of investigation, he handed over investigation to PW10, Rama Shankar Singh who submitted charge sheet against the appellants. Cognizance of the offences was taken and case was committed to the court of sessions, in usual way.

4. Appellants and others stood charged for the offences punishable under sections 302, 302/149, 436, 436/34, 307, 307/149, 324,323 of the Indian Penal Code and 27 of the Arms Act under separate and different heads. Appellants and others denied the charges and claimed to be tried. The prosecution examined, altogether, 12 witnesses to substantiate charges levelled against the appellants and other accused. The prosecution got exhibited some documents. Appellants and others got examined two witnesses and also got exhibited some documents in support of their defence.

5. The statements of the appellants and other accused were recorded under section 313 of the Code of Criminal Procedure in which they denied the prosecution story and claimed their false implication and also claimed that it was the prosecution party who assaulted them on the alleged date of occurrence. However, from perusal of trend of cross-examination of the prosecution witnesses as well as



statements made under section 313 Cr.P.C, we find that defence of appellants and other accused was that it was the prosecution party who forcibly wanted to take illegal possession of the lands of the appellants and other accused and when appellants and other accused made protest, they were assaulted by the prosecution party and for which FIR named accused Khalifa Ahir lodged Udwant Nagar P.S. case no. 123/1981 against PW6 and others on 15.11.1981.

6. The trial court, having relied upon evidences available on record, convicted the appellants Ramadhar Ahir and Jiut Ahir for the offences punishable under sections 302, 436 of the Indian Penal Code and furthermore, appellant Ramadhar Ahir was convicted under section 27 of the Arms Act also. Learned trial court by the impugned judgment convicted remaining appellants for the offence punishable under section 324 of the Indian Penal Code whereas acquitted of the charges framed against them for the offences punishable under sections 307/149, 307, 302/149 of the Indian Penal Code and accordingly, FIR named accused Balkishun Ahir, Kuar Ahir, Ramjas Ahir and Kesho Ahir were acquitted giving benefit of doubt. Learned trial court passing the impugned judgment of conviction and sentence



order, sentenced Ramadhar Ahir and Jiut Ahir to undergo rigorous imprisonment for life for the offence punishable under section 302 IPC and to undergo rigorous imprisonment for life for the offence punishable under section 436 IPC. Furthermore, appellant Ramadhar Ahir was further sentenced to undergo rigorous imprisonment for five years for the offence punishable under section 27 of the Arms Act whereas remaining appellants were sentenced to undergo rigorous imprisonment for two years each with a fine of Rs 200/- each and in default of payment of fine, further to undergo rigorous imprisonment for one month each under section 324 IPC.

7. Learned counsel appearing for the appellants assailed the impugned judgment and sentence order arguing that only PW6 and PW7 claimed themselves to be eye-witnesses of the alleged occurrence and both the aforesaid witnesses in their cross-examination admitted that they had been made accused for the occurrence of the same day but the aforesaid witnesses tried to conceal this fact that on the alleged date of the occurrence, one of the accused of the present case, namely, Rambhajan Singh @ Mannu as well as two others had sustained injuries and Rambhajan Singh @ Mannu died subsequently, in course of his treatment. He,



further, submitted that DW1 very clearly stated in his deposition that he had recorded the statement of injured Rambhajan Singh @ Mannu on 18.11.1981 at PMCH. This witness proved fardbeyan of Rambhajan Singh @ Mannu as exhibit A and apart from this, PW9, Dr. Ravindra Kumar Singh also admitted this fact that on 15.11.1981 he had examined Rambhajan Singh @ Mannu and Raghunath son of Rambhajan Singh. He, further, submitted that the above stated facts clearly go to show that Rambhajan Singh @ Mannu and Raghunath had sustained injury on 15.11.1981 and Udwant Nagar P.S. case no. 123/1981 had been lodged against the prosecution party including the informant and injured of the present case but the prosecution party very cunningly and cleverly concealed the aforesaid fact and failed to explain the injuries found on the persons of Rambhajan Singh @ Mannu and Raghunath. He, further, submitted that failure on the part of the prosecution to explain the injuries found on the persons of Rambhajan Singh @ Mannu and Raghunath was fatal to the prosecution case because injuries of Rambhajan Singh @ Mannu were noticeable and visible but even then prosecution witnesses tried to conceal the aforesaid fact and, therefore, in the aforesaid circumstances,



the above stated circumstance creates doubt about genuiness of the prosecution case and it appears that the prosecution has not come with correct and real story.

8. Learned counsel for the appellants highlighted the deposition of PW7 arguing that PW7 narrated different story before the trial court and stated that accused persons were assaulting him and others by throwing their respective weapons. He, further, submitted that PW6, nowhere, stated that accused persons had thrown their respective weapons at the time of assaulting him and others. Learned counsel further submitted that PW7 tried to explain the injuries of the deceased Rambhajan Singh @ Mannu but the aforesaid statement of PW7 is an embellishment during course of trial. He, further, submitted that PW9 Dr. Kedar Nath Gupta (wrongly numbered as PW9, it ought to be PW11) had conducted autopsy on the corpus of the deceased Radha Ram Dusadh and the aforesaid witness clearly stated that he did post mortem examination on the dead body of Radha Ram Dusadh on 28.12.1981 and found old healed scar mark 1½” x 1/6” at forehead, old healed scar mark 1”x ¼ in the middle of skull, two old healed scar marks on the right side of the skull. The aforesaid witness stated that on dissection, he found that



one branch of left middle cerebral artery was found ruptured and blood clot was present near tear. The aforesaid witness stated that cause of death was brain haemorrhage as a result of the above stated injury. The aforesaid witness also admitted that Radha Ram died on 27.12.1981. Learned counsel for the appellants drew our attention towards deposition of DW2 Dr. Akhilesh Sharma who stated in his deposition that on 25.12.1981 Radha Ram was admitted at Sadar hospital, Ara in unconscious state for his treatment and he was found old case of diabetic and hyper tension. DW2 proved entry no. 6065 dated 25.12.1981 made in admission register as exhibit D to show that on 25.12.1981 deceased Radha Ram had been admitted at Sadar hospital, Ara for his treatment. In the backdrop of the aforesaid evidences, learned counsel for the appellants argued that the above stated facts go to show that the deceased was a patient of diabetes and hyper tension and the injuries said to have been received by him in course of the occurrence had already been healed up and, therefore, the above stated evidences reveal that the deceased might have died of his disease but learned court below failed to take note of the aforesaid fact and wrongly convicted appellant Ramadhar Ahir and Jiut Ahir for the



offence punishable under section 302 of the Indian Penal Code. He, further, submitted that moreover, so-called injured and eye-witnesses have made contradictory statements which are not believable and liable to be rejected.

9. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that PW6 and PW7 are injured and they supported the prosecution case. He, further, submitted that presence of PW6 and PW7 on the place of the occurrence can not be denied and their depositions can not be rejected outrightly. He, further, submitted that PW8, Investigating officer very clearly stated that on the alleged date of the occurrence, he, having got information, went to the village of the informant (PW6) and recorded his statement within one and half hour of the alleged occurrence and also found injuries on his person. He, further, submitted that PW9 examined injured persons including the deceased of the present case and found several injuries on their persons and, therefore, the aforesaid facts clearly go to show that the appellants and other FIR named accused persons had assaulted the deceased and injured. He, further, submitted that there is no scope to interfere into the impugned judgment of



conviction and sentence order.

10. Having heard rival contentions of both parties, we went through the record. PW1, PW2 and PW5 are admittedly, not eye-witnesses of the alleged occurrence. PW1 stated that he had seen the deceased Radha Ram in injured condition lying in front of his door and had also seen that house of Radha Ram was burning. He also claimed that he had seen appellants and others present there. Similarly, PW2 Bharat Ram stated that he had seen the deceased Radha Ram lying in unconscious state at Goriya Asthan and had also seen Hazari Ram (PW7), Sheo Mohan Ram (PW6), Gangu and Chabila running away. This witness further stated that some persons took the deceased Radha Ram to hospital by rickshaw. PW5 has also made similar statement that he had seen Radha Ram lying in unconscious state at his door. He also saw PW6 in injured condition. This witness claimed that PW6 disclosed the manner in which he as well as Radha Ram and others had sustained injuries. PW3 is a formal witness whereas PW4 has been declared hostile.

11. PW 6 is the informant of the present case. He supported the prosecution story in his examination-in-chief but in his cross-examination, he admitted that towards



western side of his house, there was public road and towards western side of the above stated public road, there was land of appellant Jiut Ahir who had sold the aforesaid land to Raghunath prior to the alleged occurrence. He also admitted that a proceeding under section 144 Cr.P.C had been fought between him and appellant Raghunath. He also admitted that Khalifa Ahir had lodged a criminal case against him and others for the occurrence of the same day. He stated that he had not seen any injury on the persons of Raghunath Ahir, Chandrama and Rambhajan Singh @ Mannu but he learnt that Rambhajan Singh @ Mannu died at Patna. He also admitted that witnesses of the present case had been made accused in the case which had been lodged by Khalifa Ahir against him and others. The defence gave suggestion to the witness that he as well as his associates were digging field of Raghunath and when Raghunath and his associates forbade to do, so the occurrence took place.

12. PW7, Hazari Ram is said to be injured witness and claimed that he had sustained injury in the alleged occurrence. This witness in his cross-examination admitted that Sarpanch of the village had gone to the police station for giving information in respect of the occurrence but this



witness further stated that Sarpanch went to the police station prior to the alleged occurrence. This witness further stated that police reached in his village on the basis of information given by Sarpanch. This witness further stated that the police recorded his statement first and he put his thumb impression on the aforesaid statement and after that statements of other persons were recorded by the police. This witness admitted that there was enmity between the prosecution party and the appellants. This witness also stated that he had not seen any injury on the person of Mannu. Further, this witness stated that the appellants and others accused were assaulting by throwing bhala and Mannu might have received injury by bhala. This witness further stated that he had sustained bhala injury when accused had thrown bhala on him. This witness stated that Radha Ram Mukhiya had sustained farsa injury before firing was made by other accused. This witness also stated that due to firing cloths of Mukhiya got several holes.

13. From perusal of the testimony of PW7, we find that, no doubt, this witness is said to be an injured witness but he has made contradictory statement and improved his statement during course of trial and also contradicted the statement of PW6 as PW6 claimed that first firing was made



by Ramadhar and thereafter, Radha Ram got farsa injury but PW7 stated that Radha Ram Mukhiya first got farsa injury and after that firing was made. However, it is obvious from the testimonies of PW6 and PW7 that both the above stated witnesses tried to conceal injuries sustained by Rambhajan Singh @ Mannu and others and failed to explain as to how Rambhajan Singh @ Mannu and others got injuries. It is well settled principle of law that if the defence comes with specific plea that in the occurrence some accused got noticeable and visible injury, then it would be incumbent duty of the prosecution to explain as to how accused got injury, if the injury is noticeable and visible. In the present case, prosecution failed to prove as to how Rambhajan Singh @ Mannu got injury, particularly, in the circumstance when his injury was noticeable and visible.

14. In view of the aforesaid principle, it is evident that in the present case, prosecution could not succeed to explain the injuries found on the persons of Rambhajan Singh @ Mannu and others and it appears to us that the prosecution has not come with correct and true story rather some important facts have been suppressed by the prosecution and, therefore, in view of the aforesaid facts, appellants are



entitled to get benefit of doubt.

15. Furthermore, we find that the deceased Radha Ram Mukhiya died of brain haemorrhage and post mortem report as well as deposition of doctor go to show that the injuries sustained by him in course of the occurrence had already been healed up because old healed scar marks were found on the person of the deceased Radha Ram Mukhiya and moreover, he died after one and half month of the alleged occurrence when he was getting treatment at Sadar hospital, Ara as he was suffering from diabetes and hyper tension which is evident from the testimony of DW2. Therefore, in our view, learned trial court committed error in convicting the appellants in Cr. Appeal (DB) no. 444/1994 for the offence punishable under section 302 of the Indian Penal Code.

16. Since prosecution failed to explain injuries found on the person of the deceased Rambhajan Singh @ Mannu and as we have already held that the prosecution has not come with correct and true story and apart from this, prosecution could not succeed to prove that the deceased Radha Ram Mukhiya died of the injury sustained by him in course of the alleged occurrence, therefore, in the aforesaid circumstances, we have no option except to set aside the



impugned judgment of conviction and sentence order.

17. Accordingly, on the basis of the aforesaid discussions, both appeals are allowed and the impugned judgment and sentence order dated 11.8.1994 passed by the learned Addl. Sessions Judge II, Ara in Sessions trial no. 149/1985 are, hereby, set aside. All the appellants are on bail. They are discharged from the liability of their bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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