

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.373 of 1995

Arising out of Judgment and order passed by learned 1st Additional Sessions Judge, Darbhanga dated 21.11.1995 in Sessions Trial No. 109/85/44/86

- =====
1. Suryakant Choudhary @ Surya Narain Chaudhary son of Late Ramchandra Choudhary
 2. Kamlesh Choudhary, son of Surya Narayan Choudhry
 3. Dharya Narayan Choudhry, son of Late Kishore Choudhry
 4. Pramod Choudhry, son of Dharya Narayan Choudhry
 5. Parmanand Choudhry, son of Late Kishore Choudhry
 6. Anil Kumar Choudhry, son of Thakan Choudhry
 7. Subodh Jha
 8. Amar Jha
- Both sons of Late Chiranjiv Jha.
All resident of village Pindaruch Baluchi, P.S. – Kamtaul, District – Darbhanga.

.... Appellants

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 386 of 1995

Arising out of Judgment and order passed by learned 1st Additional Sessions Judge, Darbhanga dated 21.11.1995 in Sessions Trial No. 109/85/44/86

- =====
1. Nathun Chaudhary, son of Shri Dhairya Narayan Choudhry
 2. Umapati Jha, son of Shri Tripit Narayan Jha
- Both resident of village Pindaruch, P.S. – Kaoti (Now Kamtaul) District – Darbhanga.

.... Appellants

Versus

The State of Bihar

.... Respondent

=====

Appearance :

For the Appellant/s : Mr. Dharendra Kumar Singh, Advocate
Mr. Yashpal Yadav, Advocate

For the State : Ms. S.B. Verma, A.P.P.

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 05-04-2018

These two criminal appeals have been preferred by



two set of convicts who faced the session trial no. 109/85/44/86 arising out of G.R. No. 2632/84, Tr. No. 1403/85 in connection with Keoti P.S. Case No. 140/1984 under Sections 147, 148, 149, 379, 302/34 of the Indian Penal Code.

2. By the judgment dated 21st day of November, 1995 the First Additional Sessions Judge, Darbhanga (hereinafter referred to as the “Learned Trial Court”) in the aforesaid Session Trial convicted the accused Nathuni Choudhary and Umapati Jha (appellant in Cr. Appeal (DB) No. 386/1995) for the offences under Section 302 of the I.P.C., whereas the other accused persons have been convicted for the offences under Sections 302 read with 149 of the I.P.C. Apart from that it has been found that the offences under Section 148 of the I.P.C. has been proved against accused Nathuni Choudhary and Umapati Jha and offence under Section 147 of the I.P.C. has been proved against the rest of the accused who are the appellants in Cr. Appeal (DB) No. 373/95. One of the appellants Anil Kumar Choudhary in Cr. Appeal No. 373/95(DB) has also been found guilty for the offences under section 379 of the I.P.C. The appellants Nathuni Choudhary and Umapati Jha have been sentenced to undergo rigorous imprisonment for life for the offences under Section 302 of the



I.P.C. the rest convicts are also sentenced to undergo rigorous imprisonment for life for the offence under Section 302/149 of the I.P.C. The appellant Nathuni Choudhary and Umapati Jha (Cr. App. (DB) No. 386/95) have been further sentenced to undergo rigorous imprisonment for two years for the offence under Section 148 of the I.P.C. and the rest convicts have been sentenced to undergo rigorous imprisonment for one year for the offence under Section 147 of the I.P.C. Anil Kumar Choudhary in Cr. App. (DB) No. 373/95 has been further sentenced to undergo rigorous imprisonment of six months for the offence under Section 379 of the I.P.C. All the sentences will run concurrently.

3. The prosecution case as appearing from the fardbeyan of Md. Gulab (Exhibit-1) dated 27.10.1984 would show that the informant (P.W.7) made a statement that on 26.10.1984 at about 4.00 p.m., his father was going to attend his duty at Pindrouch Post Office as Night Guard, he arrived near the temple which was situated in village Pindrouch, where accused Surajkant (Surya Narayan Choudhary), Dharya Narayan Choudhary, Kamlesh Choudhary, Takhan Choudhary, Nathuni Choudhary, Pramod Choudhary, Umapati Choudhary, Anil Kumar Choudhary, Amar Jha, Subodh Jha and Parma



Choudhary along with 15-16 unknown persons being armed with Bhala, Farsa and Lathi surrounded him. It is said that the informant who happens to be the son of deceased was also going on bicycle behind the deceased in connection with some bazaar work. It is alleged that Surya Kant Choudhary asked the members of the mob to kill his father and to throw the dead body, on this the members of the mob allegedly attacked the deceased. Umapati Jha who is said to be armed with Bhala assaulted his father by means of Bhala on his head and Nathuni Choudhary who was armed with Farsa began to assault by means of Farsa on the head portion of the father of the informant with intention to cause his death. The informant further alleged that due to injuries caused on the head portion blood was oozing out and the whole body of his father got wetted with the blood, his father fell down on the ground and thereafter other members of the mob assaulted him mercilessly while he was lying on the ground. The informant raised alarm on which his villagers Md. Suleman (P.W.1), Md. Isa @ Khabri (P.W.4), Md. Zakir (P.W.5), Md. Inamul Haque, Md. Iliyas (P.W.3), and Md. Alam (P.W.2) and others came running there and they all have seen the occurrence. Informant further alleged that accused Takhan Choudhary took bicycle of his father and



Anil Kumar Choudhary removed the wrist watch from possession of his father. The members of the mob allegedly made attempt to take away his injured father in order to throw him in a river but because of the timely arrival of the witnesses the accused persons fled away leaving the injured there and took away the bicycle and wrist watch.

The motive behind the alleged occurrence is that there were trees standing in the orchard of his father, the orchard of the accused Suraj Narayan Choudhary (Surya Kant Choudhary) was also situated in the vicinity. Father of the informant had sold the trees of Seesam and Chauh tree but one tree of Chauh and other trees were still standing in the orchard of his father which the accused Suraj Narayan Choudhary and others wanted to cut away forcibly. This was being protested by his father and due to this a panchayati was also held in which the panchas had restrained both the parties from cutting the Chauh trees till the measurement of land and ascertainment of the fact as to on whose land Chauh trees was standing. The informant got his father admitted in Darbhanga Medical College Hospital where treatment of his father was going on.

4. On the basis of the aforesaid fardbeyan of the informant a first information report (Exhibit -4) was registered



on 27.10.1984 at 10.00 p.m. In course of treatment, father of informant died, thereafter Section 302 was also added in the F.I.R. vide order dated 05.11.1984. A charge-sheet was submitted against the accused persons under Sections 147, 148, 149, 302/79, 341 of the Indian Penal Code. After taking cognizance of the offence the case was committed to the court of sessions on 09.02.1985.

5. The defence denied the prosecution case and their version was that the orchard of Suraj Narayan Choudhary was situated adjacent to the orchard of the deceased and some trees were standing on the ridge which was situated between the orchard between both the sides and there was dispute between the parties with respect to the claim over the trees standing on the ridge portion for which panchayat was held and panchas had restrained the parties to cut and remove the trees till the measurement of the land, but on 26.10.1984 deceased and informant engaged two labourers and were present in the orchard to cut chough trees which was prevented by accused Suraj Kant Choudhary on which the deceased and the informant assaulted him with fists and slaps and thereafter accused Pramod Kumar Choudhary came to caught hold of deceased Jainul Haque but Jainul Haque gave knife blow to



him as a result of which he sustained injury and on hearing the alarm Anil Kumar Chaudhary came there but Jainul Haque gave him also a knife blow, when Subodh @ Choudhary came there and wanted to catch hold of Md. Gulab but Jainul Haque assaulted him by means of knife causing injury to him. In the meantime several persons came there and saved the accused persons.

6. It is the case of the defence that all those injured persons were also admitted in the DMCH and the doctor found injuries on their person. Fardbeyan of Pramod Kumar Choudhary was recorded by A.S.I. on 27.10.1984 at 12.00 hours at DMCH, on which formal F.I.R. was drawn up giving rise to Kaoti P.S. Case No. 141/1984 under Section 323, 324, 447 of the Indian Penal Code, in which Jainul Haque (deceased) and Md. Gulab (informant) and two others were accused.

7. In course of trial, the prosecution examined altogether eight witnesses. Out of the eight prosecution witnesses, P.W.7, Dr. Akhauri Ravindra Kishore is the doctor who had performed the post mortem examination on the dead body of Jainul Haque. He has proved the post mortem report (Exhibit-2). The another witness is Tarkeshwar Saran (P.W.8)



who is the Investigating Officer of this case. He has proved the F.I.R. as Exhibit-‘1’ and also proved his own signature on the fardbeyan of the informant which has been marked as Exhibit-3. The informant Md. Gulab has been examined as P.W.6 who has identified his fardbeyan (Exhibit-1). P.W.4, Md. Isa was tendered for cross examination. P.W.1, Md. Suleman, P.W.2, Md. Alam, P.W.3, Md. Iliyas and P.W.5, Zakir have been examined in support of the prosecution case. These witnesses are named in the F.I.R. connected to the judgment dated 23.02.1993 passed in G.R. Case No. 2633/84, Tr. No. 6/93, the certified copy of the judgment has been marked as Exhibit-5. This was filed to show that the informant was made accused in the counter case but he was acquitted of the charges of the counter case. The inquest report has been proved as Exhibit-6.

8. On behalf of the defence Kali Kant Choudhary and Sobha Kant Jha have been examined as DW.1 and DW.2 respectively. The I.O. (P.W.8) also proved the fardbeyan of Pramod Kumar Choudhary which has been marked as Exhibit-B. The I.O. has admitted that the fardbeyan of Pramod Kumar Choudhary was written and signed by Uma Shankar Prasad Incharge of Benta O.P. which has been marked as Exhibit-B. Thus Exhibit-A & B are the fardbeyan and formal F.I.R. of the



counter case. Dr. Uday Shankar Sahay (P.W.3) had examined Subodh Kant Jha on 26.10.1984 at 5.00 p.m. at village Mohammadpur and had granted injury certificate which has been marked Exhibit-C. DW.4 Dr. Ravindra Kumar had examined Subodh Kant Jha, Pramod Kumar Choudhary and Anil Kumar Chaudhary and had granted injury reports which have been marked as Exhibit-D to D/2 respectively. DW.4 had also examined Hawildar Jainul Haque on 26.10.1984 and finding injuries on his person he had granted injury certificate. Suraj Kant Choudhary who is the accused himself has come in the dock as DW.5 in support of his case. He has filed certified copy of order-sheet dated 14.05.1987 of G.R. Case No. 1290/87 which is Exhibit-E. This document was brought to show that cognizance was taken in the counter case. Exhibit-E/1 was the certified copy of the order passed in Cr. Revision No. 301/1987/12/89 which was filed to show that the revision which was filed against the order taking cognizance had been dismissed.

9. The case of the prosecution was that Nathuni had given Farsa blow and Umapati hurled Bhala blow, thereafter when the victim fell down all the accused persons except Nathuni and Umapati assaulted him by means of Lathi.



Umapati hurled Bhala blow at him which was prevented by Jainul Haque by his hand and thereafter Jainul Haque fell to the ground in the west side of the temple where he was assaulted by Lathi. P.W.1 named Kamlesh, one of the accused, who alleged assaulted Jainul Haque at his head by means of Watt of 1 k.g. weight. This witness however was unable to say the number of Farsa and Lathi blow on Jainul Haque. His attention was also drawn towards his statement made before the police in para 9 of his evidence where he had stated that he did not give statement to the police that Suraj Narayan Chaudhary gave the order of assault to Jainul Haque and also did not give statement to the police that Umapati Jha hurled Bhala blow which was prevented by Jainul by hand. He had also not stated before police that Anil and Subodh wanted to throw Jainul in the river. He admitted that he did not say the names of the witness to the police and that the witnesses arrived at the place of occurrence. He admitted that he had not disclosed the name of Kamleh before the police.

10. The Investigating Officer (P.W.8) in his evidence stated that Md. Suleman did not give statement before him that Kamlesh, Paarmanand Jha, Suraj Narayan and Umapati had surrounded Jainul Haque. He also stated that Md.



Suleman did not give the statement before him that he was returning back after purchase of articles from the shop of Laxmi. The I.O. further admitted that Suleman did not give the name of the person who assaulted Jainul Haque by means of Iron rod.

11. The trial court having examined the prosecution and defence evidences on the record held that almost all the prosecution witnesses have stated that the deceased was proceeding on Bandh at 4.00 p.m. on the day of occurrence. The defence version was that occurrence took place at 3.00 p.m. at the orchard. The time of occurrence of the counter case, according to the learned trial court is not probable since evening hour was the time to join duty at Pindrauch Post Office by the deceased and therefore the trial court held that the time of occurrence of prosecution case is probable since the deceased was going to join the duty at Pindrauch Post Office at the evening time. The trial court held that Nathuni Chaudhary assaulted the deceased Jainul by means of Farsa at his head and accused Umapati assaulted the deceased by means of Bhala at his head and three accused persons had assaulted by Lathi.

12. In course of trial, the injury reports of the defence side were brought to the notice of the learned trial



court which have been taken note of in paragraph 21 of the impugned judgment of the learned trial court. Dr. Uday Shankar Sahay (DW.3) has proved the injury on the body of Subodh Kant Jha. He had found incised wound with sharp cut margin 2 ½” long into bone deep on the left lower back of the chest and incised wound with sharp cut margin 1 ½” long into skin deep on the posterio medial aspect of upper one third of left four-arm. Both the injuries were simple in nature and caused by sharp cutting weapon such as knife. Injury no. 1 was bleeding profusely. DW.3 had stitched the wound and referred the injured to DMCH for medico legal investigation.

DW.4, Dr. Ravindra Kumar, had also examined Subodh Kant Jha and had found the injuries which were stitched. On the same day he had also examined Pramod Kumar Chaudhary and found incised wound which were caused by sharp cutting weapon such as knife. Injury no. 2 on the body of Pramod Kumar Chaudhary was found which was caused by hard and blunt substance. Similarly, Anil Kumar Chaudhary was also examined by the doctor, he had also received injury by sharp cutting weapon such as knife and injury no. 2 was caused by hard and blunt substance. The three injuries reports were proved by the doctor.



13. In course of trial, I.O. had not examined Laxmi, Sobha and son of Laxmi who are said to be the shop owners and whose shop is said to be situated adjacent to the place of occurrence set up by the prosecution. P.W.2 Md. Alam had given the account of the place of occurrence and situation of the shop of Laxmi Chaudhary. This witness was unable to say as to when his statement was recorded by police. Similarly P.Ws. 4 & 5 also did not remember as to when their statement were recorded by the I.O. It was the case of the defence that the statement of the witnesses was recorded by the police at a very late stage and there is no proper explanation of such delay in recording statement of the P.Ws. The I.O. in his statement has stated that in course of inspection of the place of occurrence of the counter case he had found cut mark on Chauh Tree which was standing on the ridge, but he did not mention the dimension of the cut mark and he also did not mention whether the cut mark was old or fresh.

The trial court has questioned the conduct of the I.O. in the matter of late recording of statement of P.Ws. The trial court also recorded that there were some contradictions in the statement of P.Ws. with their statement before the police which according to the trial court has got little importance. The



prosecution witnesses particularly P.W.2, P.W.5 and P.W.6 had stated that cloths of Jainul Haques (deceased) were stained with blood but in course of trial the cloth found on the deceased were not produced.

14. While assailing the impugned judgment of the learned Trial Court, learned counsel representing the appellants in both the appeals has a submission firstly with respect to the conflicting claims as to the place of occurrence and the belief of the learned Trial Court that the place of occurrence is as stated by the prosecution because at the time of occurrence the deceased was going to attend his duty. Learned counsel submits that no evidence at all was produced before the learned Trial Court to prove the fact that at the time of alleged occurrence the deceased was going to attend his duty rather it has come in the evidence of the I.O. that he had found cut mark on the Chauh tree and even though the dimension of the cut was not mentioned, the fact that the I.O. had found cut mark on the Chauh tree is one step forward to believe the defence case that the occurrence had taken place when the prosecution had gone to cut the Chauh tree with the help of two labourers.

15. Learned counsel further submits that the prosecution is totally unable to explain the injuries found on the



body of Subodh Jha, Pramod Kumar Chaudhary and Anil Kumar Chaudhary. All these persons had got incised wound and the injuries even though were said to be simple in nature but those were caused by sharp cutting weapon such as knife. These persons had also received injuries by hard and blunt substance which again go a long way to show that the defence story about the place and manner of occurrence and the fact that Jainul Haque had been giving knife blow on the person of the defence side have been corroborated by the injuries reports Exhibit-C and Exhibit-D to D/2 which have been proved by DW.3 and DW4 respectively.

It is his further submission that the manner of occurrence as alleged by the prosecution stands falsified from the post mortem report proved by P.W.4, Dr. Ravindra Kumar who was reexamined on recall. The injury report shows that altogether three injuries were found on the body of the deceased. Out of the three injuries, injury no. 1 & 2 were simple in nature and were caused by hard and blunt substance. Injury no. 3 was over head which was not opened in emergency outdoor patient department and was advised to open it and deal with the wound in casualty operation theatre.

16. It is further submission of learned counsel



representing the appellants that the doctor who conducted the post mortem (P.W.7) Dr. Akhauri Ravindra Kishore has found five injuries on the body of the deceased, out of which injury no.1, 2 and 4 appear to be simple and individually caused by some hard and blunt substance. Injury no. 3 was simple and appeared to have been caused by some sharp cutting weapon. In course of his evidence the A.P.P. suggested the nature of weapon might be a Farsa. The fifth injury was found to be grievous and dangerous to life in the ordinary course of nature and appeared to have been caused by some hard and blunt object. The doctor was asked specific question as to whether injury no. 5 is possible by edge of a Bhala, the doctor answered that “the injury was possible by the blunt portion of Bhala” provided if the surface of the blade had elevators on both sides.

17. Referring to the post mortem report which has been proved by P.W.7, learned counsel representing the appellants submits that no Farsa or Bhala injury have been found on the head and the only injury found on the head which was grievous and dangerous of life, in the opinion of the doctor has been caused by hard and blunt substance. Learned counsel submits that it is not the case of the prosecution suggested at any stage that Umapati had given a blow from the blunt side of



the Bhala and therefore injury no. 5 cannot be attributed to Umapati.

18. It is further submitted that the injury found on the posterior part of left four-arm near wrist joint was said to have been caused by some sharp cutting weapon but it was simple in nature and could not have caused death in ordinary course, moreover, P.W.7 did not opine that injury no. 1 was caused by a Farsa, but it was the suggestion of the A.P.P. to the witness that it may be a Farsa.

19. Learned counsel submits that if the prosecution story is taken into consideration several Lathi blows were given on the body of the deceased Jainul Haque but this manner of occurrence is not supported from the medical evidence such as injury reports or post mortem reports which have been proved by P.W.7.

20. In the aforesaid view of the matter, learned counsel submits that the conviction of the appellants are without any reliable evidence and the learned trial court has not considered the case of the defence on the issue of place of occurrence, and manner of occurrence. The learned Trial Court has failed to appreciate that the prosecution has failed to explain rather suppressed the injuries of the defence side



caused on three persons which were caused by a weapon such as knife.

21. On the other hand, learned A.P.P. representing the State submits that there is no fault in the appreciation of evidence by the learned Trial Court. The prosecution has been able to prove the guilt of the accused beyond all reasonable doubts and hence both the appeals are liable to be dismissed.

22. Having heard learned counsel representing the appellants and learned A.P.P. for the State as also upon appreciation of the material available on the record, we are of the considered opinion that in the present case the trial court has committed error in appreciation of the evidences which were brought before the learned Trial Court on behalf of the prosecution as well as the defence.

23. The first aspect which has impressed upon us to take a view differently from the view taken by the learned Trial Court is the evidence on the point of place of occurrence. The learned Trial Court has believed that the place of occurrence is the place shown by the prosecution particularly as it is the case of the informant that while his father was going on the duty he was also coming from behind on bicycle to do some bazaar work. In course of his evidence the investigating officer has



stated that the informant never told him that he was returning after doing bazaar work. The defence has stated that the place of occurrence was the orchard and the reason for occurrence was the fact that the deceased and the informant along with two labourers had gone to cut the Chauh tree disobeying the decision of the panchayat. Both the parties admit that there was a panchayat on this point and they have been asked not to cut the Chauh tree until the issue of possession is decided. The I.O. in course of his inspection in connection with the counter case had gone to the place of occurrence suggested by the defence and there he had found cut mark on the Chauh tree. Further evidence in the form of injury reports (Exhibit-C and Exhibit-D & D/2) showing that the three defence sides persons namely, Subodh Jha, Pramod Kumar Chaudhary and Anil Kumar Chaudhary were injured by knife blow and had received incised wounds also go to show that the manner of occurrence stated by the defence has got force, the prosecution is unable to explain the injuries found on the body of three persons rather we find that this fact was suppressed by the prosecution. Even though the injuries on the body of the three persons on the defence side are said to be simple but the fact that those injuries are in consonance with the ocular evidence of the defence side



is able to create a doubt on the manner of occurrence as alleged by the prosecution side.

One more reason which prevails upon us is that the entire prosecution story stands falsified the moment injury report and the post mortem report of the deceased are taken together for consideration. Both the injury report as well as post mortem report shows that there was only one injury on the head which was grievous and dangerous to the life in ordinary course. This grievous injury has been suggested to have been caused by some hard and blunt object which according to us cannot be said to be Farsa or Bhala. When the doctor was confronted as to whether the injury no. 5 was possible by edge of a Bhala, he has clearly stated that the injury was possible by the blunt portion of the Bhala, but here we find the prosecution case right from beginning is that Umapati had given a Bhala blow on the head of the deceased, whereas Nathuni Chaudhary had given a Farsa blow. It is further case of the prosecution that after Bhala blow the deceased fell down on the ground and thereafter he was assaulted by all other accused persons by Lathi one after another, but this story by giving Lathi blow stands totally falsified from the medical evidence available on the record. Neither the injury report nor the post mortem report



suggest any injury showing repeated and multiple Lathi blow on the body of the deceased.

24. We also find that there are material contradictions in the statement of the prosecution witnesses which fact has been noticed by the learned Trial Court in the impugned judgment, but the learned Trial Court despite having noticed that several prosecution witnesses were brought to support the case of the prosecution belatedly did not examine the evidentiary value of those prosecution witnesses such as P.W.2. P.W.4 and P.W.5. The Trial Court found that according to P.W.3 Md. Iliyas while he had gone to the shop of Laxmi at Baluahi for purchasing articles he found accused Suraj and others sitting at Baluahi in front of a tea shop and at that time Jainul was going on southern direction on a bicycle. If this is the place where P.W.3 had seen the alleged occurrence, it was quite possible that some independent witnesses who could have been present in the tea shop at about 4.00 p.m. would have come forward to support the prosecution case, but the I.O. did not examine Laxmi or the tea shop owner or any other independent person who could have claimed that he was present at the tea shop and had seen the alleged occurrence.

25. Apparently, the ocular evidences and the



prosecution story as alleged in the fardbeyan when compared with the injury report and the post mortem report of the deceased, material contradictions are found and the prosecution story gets falsified as regard the place of occurrence and manner of occurrence both. Since we find that the prosecution has failed to prove the place of occurrence and manner of occurrence as alleged by them, the entire prosecution of the appellants fails and appellants become entitled to get the benefit of doubt. The impugned judgment convicting the appellants is hereby set aside and the appellants are acquitted from all the charges. They are discharged from the liability of their bail bonds, accordingly.

26. Both these appeals are allowed.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.04.2018
Transmission Date	17.04.2018

