

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.658 of 2012

Arising Out of PS. Case No.-146 Year-1995 Thana- GARKHA District- Saran

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VIJAY BHARTI S/O LATE DEONATH BHARTI RESIDENT OF
VILLAGE- AKHTIYARPUR, P.O. & P.S.- GARKHA, DISTRICT-
CHAPRA, SARAN , BIHAR

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

with

Criminal Appeal (DB) No. 766 of 2012

Arising Out of PS. Case No.-146 Year-1995 Thana- GARKHA District- Saran

- =====
1. Mangal Bharti S/O Late Jagrashan Bharti Resident Of Village-
Akhhiarpur, P.S.- Garkha, District- Saran
 2. Shila Barti S/O Mangal Bharti Resident Of Village- Akhhiarpur,
P.S.- Garkha, District- Saran

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

(In Criminal Appeal (DB) No. 658 of 2012)

For the Appellant/s : Mr. S.K. Thakur, Adv

For the Respondent/s : Mr. A.K. Sinha (App)

(In Criminal Appeal (DB) No. 766 of 2012)

For the Appellant/s : Mr. Md. Anisur Rahman, Adv

For the Respondent/s : Mr. D.K. Sinha (App)

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 26-09-2018

Heard parties.

2. This Criminal Appeal has been filed against the
judgment of conviction dated 23.06.2012 and order of sentence



dated 25.06.2012 passed by the 4th Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 110 of 1997 arising out of Garkha P.S. Case No. 146 of 1995, by which appellants have been convicted for the offence punishable under Section 302/149 and 447 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life and fine of Rs. 10000/- each.

3. Prosecution case is based upon the fardbeyan of informant stating therein that 8 Kathas of land of his family was under mortgage since long which was redeemed by the husband of the Informant Late Satya Deo Bharti about ten years ago. Some dispute had arisen among the co-sharers of the family namely Mangal Bharti and Chandradeep Bharti regarding share in the property and for which a Panchayati was held on 26.11.1995 at about 8:00 am before four Panches and the husband of the Informant had agreed that he will give share in the mortgaged property if he gets the share in other properties and as a result Panchayati failed.

4. It has further been alleged that on the date of occurrence at about 26.11.1995 at about 2:00 pm while husband of the Informant was tying the Buffalo at his door in the meantime Vijay Bharti and Sheela Bharti with Chura in their



hand and Mangal Bharti with Musal in his hand and other accused variously armed came and Vijay Bharti told Sheela Bharti that husband of Informant is not giving their share in property as such eliminate him upon which appellant-Vijay Bharti assaulted by Chura on the Stomach and Sheela Bharti also assaulted by Chura on the Rib Cage (Panjra) and arm and other parts of the body as a result of which her husband fell down and was carried to Garkha Hospital but he died in the way to Hospital. The fardbeyan was recorded at 3:15 pm in the Hospital by Ram Ayodhya Singh Officer-in-charge of Garkha Police Station on the basis of which Garkha P.S. Case No. 146 of 1995 was instituted under Section 302, 324, 307, 323, 379, 447 read with 34 of IPC and he took the investigation himself.

5. After completion of investigation, police submitted chargesheet against the appellants and case was committed to the court of Sessions and charges were framed against appellants under Section 302, 447 r/w Section 34 of IPC and appellants pleaded not guilty and claimed to be tried.

6. Prosecution has examined four witnesses in support of charge. PW-1 Raj Kumari Devi is daughter of deceased. PW-2 Pawan Kumar Bharti is son of deceased. PW-3 Girija Devi is widow of deceased and Informant and PW-4 Dr. Sanath Kumar



Singh is Doctor who conducted the post mortem on the dead body of deceased Sahdeo Bharti.

7. PW-1 Raj Kumari Devi daughter of the deceased, in her examination-in-chief stated that on the date of occurrence at about 2:00 pm she was in her parental house and his father was tying Buffalo near his door at that time appellant Sheela Bharti and Vijay Bharti came there with a Dagger in their hand and appellant-Mangal Bharti came with a Musal in his hand and other accused also armed with weapons came there and Vijay Bharti ordered to kill his father as he was not giving their share in the land and thereafter Vijay Bharti inflicted a Dagger blow in his Stomach and Sheela Bharti also inflicted Dagger blow in the Stomach and right hand of his father and also inflicted Chura blow on other parts of body of his father. When her mother went to save her father Vijay Bharti inflicted Chura blow on the right hand of her mother and Mangal Bharti assaulted by Musal on the head of her mother. She was also assaulted by the accused by lathi and slaps. She was carrying her injured father and mother to the Garkha Hospital for treatment along with co-villager Shiv Kumar Pandey but he died in the way to the Hospital.

In her cross-examination she has stated that occurrence



took place at the door of her house, the house of accused is at a distance of four laggi. She has given the boundary of house of her father. She was also assaulted by the accused persons by slaps and lathi. Her mother was in Garkha Hospital till 11:00 pm and thereafter she was shifted to Sadar Hospital Chapra and she remained admitted there. There was injury on stomach, head, chest and arm of her father. After suffering injury, his father was not in a condition to speak. Her statement was recorded by the police on the date of occurrence.

8. She has been cross-examined by the defence at length but there is nothing to disbelieve her deposition.

9. PW-2 Pawan Kumar Bharti, son of the deceased in his examination-in-chief has stated that on 26.11.1995 at about 2:00 pm he was in his house and his father was tying Buffalo in the meantime accused Mangal Bharti, Sheela Bharti and Vijay Bharti along with other accused also armed came there and Vijay Bharti told to kill his father as he is not compromising the old case and thereafter inflicted a Chura blow in the stomach of his father and Sheela Bharti also inflicted Chura blow on his Rib Cage (Panjra), arm and other parts of the body and when his mother went to save his father Mangal Bharti assaulted him on his head and Vijay Bharti inflicted a Chura blow on her right



arm. His sister Raj Kumari Devi PW-1, went there to save his mother and father, she was also assaulted by fist and slaps. He carried his injured father on Jeep to Garkha Hospital but he died in the way to the Hospital.

In his cross-examination he has stated that his statement was recorded by the police in Garkha Hospital and Daroga had gone to the village during investigation. The accused in this case are his uncle and cousin brother. The land upon which his father was tying the Buffalo, was his own land and not a joint land and same was ancestral land. He did not sustain any injury as he fled away but thereafter returned after five minutes. He saw his father mother and sister in injured condition. His father was not conscious. Blood was spread at the place of occurrence. He carried his injured father to Garkha Govt. Hospital on Jeep. Primary treatment was done in Garkha Hospital and wound were stitched and thereafter they were referred to Sadar Hospital Chapra. He returned to his house after one day. The police had seized the blood stained clothes. His statement was recorded in the Garkha Hospital. He had stated that Sheela Bharati had inflicted Chura blow on his father on Panjra, arm and other parts of the body. His mother was assaulted by Musal by Mangal Bharti on her head. Mangal Bharti also assaulted his sister Raj



Kumari Devi by slaps.

10. PW-3 Girija Devi is widow of late Sahdeo Bharati and Informant of this case. She has stated that on 26.11.1995 at 2:00 pm she was with her husband who was tying Buffalo, in the meanwhile Vijay Bharti, Mangal Bharti, Sheela Bharti and other accused variously armed came there and Mangal Bharti was having Musal in his hand whereas Vijay Bharti and Sheela Bharti had Chura in their hand. Vijay Bharti told Sheela Bharti that today her husband has to be eliminated as he is not giving their share in the land. Vijay Bharti and Sheela Bharti inflicted repeated Chura blow upon her husband and when she went to save her husband Mangal Bharti assaulted her by Musal on her head. Her husband sustained Chura injuries on hand, chest, abdomen and arm. His intestine came out. Vijay Bharti inflicted Chura blow on her arm. Her daughter Raj Kumari was also assaulted by the accused. She took away her injured husband to Garkha Hospital with the help of co-villager Shiv Kumar Pandey but her husband died on his way to Hospital. Her statement was recorded by Darogaji in an injured condition upon which she put her signature which has been marked as Exhibit-1 due to grievous nature of injury she was referred to Sadar Hospital, Chapra, where she was being treated. Vijay



Bharti earlier had abducted her daughter and also raped her for which her husband had instituted a case against him in which Vijay Bharti was convicted. There is land dispute between her husband and Mangal Bharti who is own brother of his husband. Vijay Bharti has no concern with their property. Panchayati was held at her door on the same day. First of all Vijay Bharti reached the place of occurrence and thereafter Mangal Bharti and other accused came, scuffle started when all accused had come and at that time none of the witness were present except her. Incident happened for 20 minutes. Much blood had fallen at the place of occurrence. Villagers did not come at the place of occurrence they went back from the other side of the road. On the date of occurrence 5 family members were present apart from her and her husband, her son Pawan Kumar Bharti and Suman Kumar Bharti and her daughter Raj Kumari and Sarita Kumari were present. Daroga had taken away the blood stained soil from the place of occurrence. She remained in Hospital for 10 to 11 days. Police had come in the Hospital.

11. PW-4 is Dr. Sanat Kumar Singh, who performed post mortem of the dead body of deceased on 27.11.1995 at 9:45 am and found:-

- (i) One penetrating wound on the abdomen size 2'x1^{1/2}'x abdominal cavity



deep cut

(ii) One penetrating wound on left Iliac Fossa size 2'x1^{1/2}'x abdominal cavity deep.

(iii) One incised wound on the right arm size 1^{1/2}'x1'x bone deep.

(iv) One incised wound on the medial side 1'x 1/2'x muscle deep.

(v) One abrasion on right chest.

(vi) One abrasion on left chest.”

12. After hearing the parties and considering the materials available on record and evidence adduced before the trial court, there is consistent evidence of PW-1, PW-2 and PW-3 against appellants Sheela Bharti and Vijay Bharti of inflicting Chura blow on the abdomen of deceased and there is further allegation against Sheela Bharti of inflicting Chura blow on the Panjra and arm of the deceased. The ocular evidence of PW-1, PW-2 and PW-3 is corroborated by medical evidence as per post mortem report in which also two penetrating wounds have been found on the Stomach and one incised wound on the arm of deceased and one incised wound on the medial side and two abrasion on the chest and according to the Doctor those injuries were sufficient to cause death in ordinary course. The trial court after analyzing the evidence laid before it and after its due consideration and appreciation has found the charges under Section 302 and 447 r/w section 149 of IPC to be proved



beyond reasonable doubt and this Court does not find any error in the finding recorded by the trial court, as such the judgment of conviction and order of sentence as far as same relates to Vijay Bharti and Sheela Bharti is concerned, requires no interference. However, the trial court has also convicted Mangal Bharti under Section 302, 447 read with 149 of IPC but this Court finds that there is no allegation against appellant Mangal Bharti of causing any injury to the deceased although he was present at the place of occurrence throughout with Musal in his hand but he did not inflicted any Musal blow on deceased. There is nothing on record to suggest that appellant Mangal Bharti had come there with a common intention and common object along with two other appellants of causing murder of deceased. From the conduct of appellant-Mangal Bharti, it cannot be inferred that he had come at the place of occurrence with premeditated mind and with an intention to kill the deceased with other accused as such his judgment of conviction by the trial court under Section 302 and 447 read with 149 of the IPC is not sustainable and set aside.

13. Appellants Vijay Bharti and Sheela Bharti who are on bail their bail bonds are cancelled and they are directed to be taken into judicial custody to serve the remaining part of their



sentence. Appellant-Mangal Bharti is acquitted of charge and he is on bail, as such he is discharged from the liability of his bail bond, as a result Criminal Appeal (D.B) NO. 658 of 2012 is dismissed and Criminal Appeal (D.B) NO. 766 of 2012 is partly allowed.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

ranjan/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

