

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 285 of 2014

Arising Out of PS. Case No.-12 Year-2010 Thana- Srinagar District- Madhepura

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1. Ashok Mukhia,
 2. Prabhash Mukhia

Both sons of Koili Mukhia, resident of Mauza- Ram Nagar
Mahesh, P.S.- Srinagar, District- Madhepura.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 245 of 2014

Arising Out of PS. Case No.-12 Year-2010 Thana- Srinagar District- Madhepura

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1. Chhotelal Mukhia S/o Batohi Mukhia
 2. Pramod Mukhia S/o Fatohi Mukhia
 3. Amirchand @ Amirchand Mukhia S/o Late Firoj Mukhia
 4. Horil @ Horilal Mukhia S/o Late Ranjit Mukhia
 5. Arbind Mukhia S/o Maheshwari Mukhia
 6. Uttimlal Mukhia S/o Batohi Mukhia
 7. Deepo Mukhia S/o Batohi Mukhia
 8. Kritya Nand Mukhia S/o Fatohi Mukhia @ Firoji Mukhia
 9. Birendra Mukhia S/o Firoji Mukhia

All resident of Mauza - Ram Nagar - Mahesh, P.S. Srinagar,
District Madhepura.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 262 of 2014

Arising Out of PS. Case No.-12 Year-2010 Thana- Srinagar District- Madhepura

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1. Batohi Mukhia son of late Raudi Mukhia
 2. Fatoho Mukhia son of late Raudi Mukhia
 3. Koili Mukhia son of late Raudi Mukhia
 4. Maheshwari Mukhia son of late Ranjit Mukhia

All resident of Mauza - Ram Nagar - Mahesh, P.S. Srinagar,
District - Madhepura.

... .. Appellants



Versus

The State of Bihar

... .. Respondent

Appearance :

(In Criminal Appeal (DB) No. 285 of 2014)

(In Criminal Appeal (DB) No. 245 of 2014)

(In Criminal Appeal (DB) No. 262 of 2014)

For the Appellants : Mr. Vikram Deo Singh (Adv)
Mr. Rudal Singh (Adv)

For the Respondent/s : Mr. Ajay Mishra (A.P.P.)
Mr. A.Sharma (A.P.P.)

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date: 05-02-2018

Since all appellants in aforesaid three appeals were convicted and sentenced in Sessions Trial No. 104 of 2010 and 104-A of 2010 (arising out of Srinagar P.S. Case No. 12 of 2010), all the aforesaid three appeals were heard together and are being disposed of by this common judgment.

2. All the appellants were convicted on 23-01-2014 by Dr. Ram Lakhan Yadav, learned Addl. Sessions Judge Ist, Madhepura (hereinafter referred to as the 'Trial Judge') for commission of offences under Sections 148, 323, 302/149 of the Indian Penal Code, 1860 (for short "I.P.C.") and by order of sentence dated 28-01-2014, all the appellants were



sentenced to undergo rigorous imprisonment for three years under Section 148 of the I.P.C. Further, they were sentenced to undergo rigorous imprisonment for life under Section 302 of the I.P.C. and fine of Rs. 10,000/- (ten thousand) each and in default of payment of fine, additional rigorous imprisonment for one year was directed. No separate sentence under Section 323 of the I.P.C. was passed, however; all the sentences were directed to run concurrently.

3. Short fact of the case is that on 17-03-2010 at 19.45 hrs. (7:45 PM), Sub-Inspector of Police, Sri K.B. Singh (P.W.9) of Srinagar Police Station recorded *fardbeyan* of Suryamani Devi, widow of deceased Kari Mukhiya. The *fardbeyan* was shown to be recorded at Ram Nagar Godhiyari Chowk, Police Station – Srinagar, District – Madhepura. The informant disclosed in her *fardbeyan* that on the same date i.e. 17-03-2010 at about 6:30 PM (evening), she with her husband (deceased), son Lal Mukhiya (P.W.10) and daughter Anokha Kumari (P.W.8) were sitting near the door step, in the meanwhile, accused persons (appellants) reached there. In the *fardbeyan*, in following way, the informant had described



regarding arrival of the accused/appellants with carrying different weapons in their hands:

Sl.	Name of the appellant	Appellant in Cr. Appeal DB No.	Carrying in hand
1.	Batohi Mukhiya	appellant no. 1 in 262 of 2014	Dabiya
2.	Koili Mukhiya	Appellant no.3 in 262 of 2014	Farsa
3.	Fatohi Mukhiya	Appellant no.2 in 262 of 2014	Lathi
4.	Uttimlal Mukhiya	Appellant no.6 in 245 of 2014	Bhala
5.	Dhirendra Mukhiya	Died during trial	Spade
6.	Deepo Mukhiya	appellant no.7 in 245 of 2014	Lathi
7.	Chhotelal Mukhiya, all Sl. 2 to 7 sons of Batohi Mukhiya	appellant no.1 in 245 of 2014	Lathi
8.	Krityanand Mukhiya	appellant no.8 in 245 of 2014	Lathi
9.	Pramod Mukhiya, both Sl. 8 & 9 sons of Fatohi Mukhiya	appellant no.2 in 245 of 2014	Lathi
10.	Ashok Mukhiya	appellant no.1 in 285 of 2014	Axe
11.	Prabhash Mukhiya, both Sl.10 & 11 sons of Koili Mukhiya	appellant no.2 in 285 of 2014	Axe
12.	Amirchand Mukhiya	appellant no.3 in 245 of 2014	Lathi
13.	Birendra Mukhiya, both Sl.12 & 13 sons of late Firoj Mukhia	appellant no.9 in 245 of 2014	Lathi
14.	Maheshwari Mukhiya	appellant no.4 in 262 of 2014	Lathi
15.	Horilal Mukhiya, both Sl.14 & 15 sons of Ranjit Mukhiya	appellant no.4 in 245 of 2014	Lathi
16.	Arbind Mukhiya S/o Maheshwari Mukhiya	appellant no.5 in 245 of 2014	Lathi

Thereafter, in the *fardbeyan*, the informant disclosed that in the meanwhile, Bahoti Mukhiya (appellant no.1 in Cr. Appeal DB No. 262/14) by using filthy language exhorted to kill him (deceased) and all the accused persons surrounded them. On the order of Batohi Mukhiya (appellant no. 1 in Cr. Appeal DB No. 262/14), Ashok Mukhiya (appellant no. 1 in Cr.



Appeal DB No. 285/14) gave axe blow on the neck of her husband and Prabhash Mukhiya (appellant no. 2 in Cr. Appeal DB No. 285/14) gave axe blow on the forehead of her husband. Thereafter, blood started oozing. Other accused persons repeatedly assaulted the injured. In the meanwhile, Sanjay Mukhiya (absconder) started giving fist blow on elder brother of husband of the informant, who tried to save his brother. The informant requested the accused persons not to do so, thereafter, on the alarm, villagers assembled there. The accused persons, suspecting that the husband of the informant and his brother had died, fled away. Thereafter, the informant, with the help of her family members and villagers, loaded her injured husband on *thela* and proceeded for medical treatment, however; on way, he died. The reason for the occurrence was explained by the informant that there was dispute in respect of land adjacent to the house, which was of one Shivnandan Yadav of Mohania. It was also disclosed that before the alleged date of occurrence, elder brother of her husband had asked Shivnandan Yadav to show the papers and in respect of those matters, altercation had taken place and



this was the reason that all the accused persons, in a pre-planned manner, had committed the occurrence.

4. After recording *fardbeyan*, on the same date i.e. 17-03-2010 at 11:00 PM, a formal F.I.R., vide Srinagar P.S. Case No. 12 of 2010, was registered for offence under Sections 147, 148, 149, 341, 323, 324, 307, 302 of the I.P.C. against 17 accused persons. However, one of the accused namely Sanjay Mukhiya remained absconder and one of the accused Dhirendra Mukhiya died during trial. Thereafter, firstly chargesheet was submitted on 11-06-2010 against 13 accused persons keeping investigation open against remaining four accused persons and finally, supplementary chargesheet was also submitted. Thereafter, the learned Magistrate took cognizance of offence on 28-06-2010 and the case of 13 accused persons was committed to the court of sessions on 20-07-2010. Accordingly, it was numbered as Sessions Trial No. 104 of 2010. In respect of accused persons, against whom supplementary chargesheet was submitted, the case was committed on 11-01-2011 and the case was numbered as Sessions Trial No. 104-A of 2010. Against 13 accused persons, charge under Sections 148, 302/149, 307/149 of the



I.P.C. was framed on 29.1.2011, whereas charge against remaining four accused was framed on 7.5.2011 and on the same date, both the trials were amalgamated and proceeded jointly.

5. To prove its case on behalf of the prosecution, altogether 11 witnesses were examined, out of them, P.W.1 Suryamani Devi (widow of deceased and informant of the present case), P.W.2 Bhupi Mukhiya (elder brother of the deceased), P.W.3 Nandan Mukhiya @ Deonandan Mukhiya (neighbour), P.W.4 Raghuni Mukhiya (neighbour), P.W.8 Anokha Kumari (daughter of the deceased) and P.W.10 Lal Mukhiya (son of the deceased) were examined as eye-witness to the occurrence. P.W.5 Manoj Mukhiya was examined as inquest witness and P.W.7 Sanjay Kumar Jha, since did not support the prosecution case, was declared hostile. P.W.11 Dr. Shekhar Prasad Vishwas had conducted *post-mortem* examination and P.W.9 Sri Krishna Bali Singh was the investigating officer of the case.

6. After closure of the prosecution evidence, evidences and circumstances brought during the trial against accused persons (appellants) were explained to the accused



and their statement under Section 313 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) was recorded, in which the appellants claimed to be innocent and a plea was taken regarding false implication. From the defence side, to disapprove the case, a plea was taken that the deceased was a veteran criminal and was accused in number of cases and certified copy of F.I.Rs. and chargesheets were got exhibited under Section 294 of the Cr.P.C. Those are:

- “1. F.I.R. in Kumarkhand P.S. Case No. 28/99 (Ext.A) and its chargesheet (Ext.A/1),**
- 2. F.I.R. in Kumarkhand P.S. Case No. 43/03 (Ext.B) and its chargesheet (Ext.B/1),**
- 3. F.I.R. in Kumarkhand P.S. Case No. 44/03 (Ext.C) and its chargesheet (Ext.C/1), and**
- 4. F.I.R. in Kumarkhand P.S. Case No. 113/94 (Ext.D).”**

7. Sri Vikram Deo Singh, learned counsel assisted by Sri Rudal Singh, learned counsel for appellants in all the three aforesaid appeals, after placing entire evidences, has argued that prosecution had miserably failed to even establish place of occurrence. He submits that it was case of prosecution that the deceased was given number of injuries, particularly; by sharp cutting weapons on neck and forehead, at the place of occurrence, nothing was found and this was the reason that in the case diary, it was not at all indicated as to whether



investigating officer had noticed any blood mark or not. He further submits that the informant, who is none else but the widow of the deceased in her evidence, had categorically stated that after the occurrence, the injured was loaded on *thela* and the informant, with the help of family members and villagers, while were proceeding for the treatment of injured, her husband died and thereafter, she carried the dead body to the police station itself, however; the investigating officer in his evidence has stated that while he was on patrolling duty, he received a call on his mobile regarding the occurrence and thereafter, he proceeded towards the place of occurrence and inspected the place of occurrence and thereafter, prepared inquest report. It has been argued that ofcourse, in a criminal trial, production of inquest report may not be treated as mandatory, but in view of the peculiar facts and circumstances of the case, it appears that purposely prosecution had withheld the inquest report. The reason for withholding the inquest report was explained by learned counsel for the appellants that it appears that the dead body was found somewhere else and thereafter, a story was built up, as if, the occurrence had taken place near the door step of



the informant. He submits that the deceased was a veteran criminal and he was accused in number of cases relating to serious offences. The deceased was one of the chargesheeted accused in a case relating to committing *dacoity* and murder in the house of one advocate. Sri Vikram Deo Singh, learned counsel for appellants has further argued that from the bare perusal of the F.I.R. itself, it appears to be not believable, in view of the fact that the informant in her *fardbeyan* had disclosed, as if, she had identified all the 17 accused persons with name and parentage as well as weapon they were carrying. In normal course, according to learned counsel for appellants, once the occurrence had taken place in the evening and in such situation, in which, 17 persons were named as accused, it was not possible for the informant to specifically say as to which accused was carrying which weapon. Similarly, by way of referring to evidence of P.W.2 Bhupi Mukhiya, elder brother of the deceased, it has been argued that this witness had stated that while accused persons arrived he was the first person, who was assaulted by the accused persons. He deposed that he was given indiscriminate *lathi* blow on the person, however; it is evident that he had stated



that he was examined near the house of “Sarpanch” and this was the reason that the injury report was not properly brought on record and said injury report was marked as Ext. 3 with objection. He further submits that even the said injury report does not corroborate the prosecution story, but in the said injury report, only one minor injury was noticed and thereafter, it was noticed that injured was complaining about headache. Besides this, it has been argued that though the prosecution had tried to establish its case by support of so called other eye-witnesses namely P.W.3, 4, 5, 6, 8 and 10, on examination of their evidences, it is evident that there were number of contradictions in their statement. They deposed during the trial, which they had not stated in their statement recorded under Section 161 of the Cr.P.C. and this was the reason that attention of investigating officer was drawn in respect of the previous statement of witnesses as well as witnesses were also asked as to whether during investigation they had stated such fact or not. By way of referring to evidence of Dr. Shekhar Prasad Vishwas (P.W.11), who had conducted *post-mortem* examination on the dead body of the deceased, it has been argued that the *post-mortem*



examination report only suggests that deceased had got two *ante-mortem* injuries, which were caused by sharp cutting weapon. Besides two incised injury on the person of the deceased, the doctor had not noticed any injury. This fact was also corroborated from paragraph 5 of the cross-examination of P.W.11. Sri Vikram Deo Singh, learned counsel for appellants has rightly argued that the investigating officer, in his evidence during investigation, had not noticed any injury on the person of P.W.2 (Bhupi Mukhiya), but to the reasons best known to the investigating officer, he had prepared a requisition slip for examination of the injury of P.W.2 and thereafter, injury report was got prepared and this was the reason that doctor, who had been shown to examine the injuries of P.W.2, was not examined as prosecution witness. On aforesaid ground, it has been argued that prosecution though had not proved its case beyond all reasonable doubt, the learned Trial Judge has passed the order of conviction and sentence.

8. Sri Ajay Mishra, learned Addl. Public Prosecutor has opposed the appeal and tried to persuade the court that the evidences of eye-witnesses are truthful and this was the



reason that the learned Trial Judge has passed the impugned judgment.

9. Besides hearing learned counsel for the parties, we have also examined entire evidences i.e. oral and documentary and after going through the same, we are of the opinion that prosecution has not proved its case beyond all reasonable doubt. Before proceeding, it would be appropriate to cursorily discuss the evidences of some of the important prosecution witnesses.

10. In the evidence of informant (widow of deceased) i.e. P.W.1 namely Suryamani Devi in paragraph – 5, it has come that her *fardbeyan* was recorded in the police station. In paragraph – 21, she stated that she had carried the dead body on *thela* to the police station and gave her statement. On examination of her evidence in paragraph 24 of her cross-examination, it is evident that land dispute in between the parties was accepted. Ofcourse, in her evidence, she tried to develop the case that she was the eye-witness, but on examination of the evidence of P.W.9 (investigating officer), it appears that the evidence of P.W.1 may not be treated as truthful. The prosecution was not in a position to



establish the place of occurrence in the case. The investigating officer, who stated that after getting information on mobile phone, reached to the place of occurrence, but he did not prepare any seizure list regarding blood soaked soil or he had not at all mentioned in the case diary as to whether he had noticed any blood mark at the place of occurrence. In the evidence of P.W.1, it has come that the dead body was brought to the police station, where her statement was recorded, but surprisingly, in the evidence of investigating officer, it has come that inquest report on the dead body was prepared near the chowk.

11. P.W.3 Nandan Mukhiya @ Deonandan Mukhiya had claimed to be independent witness, but in paragraph – 10 of his cross-examination, it has come that one of the appellant of the present case i.e. Uttimlal Mukhiya (appellant no. 6 in Cr.Appeal DB No. 245/14) had lodged a case against him and in the said case, he had also gone to jail. Regarding Batohi Mukhiya (appellant no. 1 in Cr.Appeal DB No. 262/14) in paragraph – 5 of his cross-examination, he accepted that he was made accused, but took the plea that false case was instituted by Batohi Mukhiya (appellant no. 1 in Cr.Appeal



DB No. 262/14) against him. Accordingly, his evidence may not be treated as evidence of independent witness.

12. P.W.4 Raghuni Mukhiya though had claimed to be co-villager, in his evidence, it has come that he was closely related with the informant side.

13. P.W.6 Pankaj Mukhiya is none else but nephew of the deceased, however; he has been examined as hearsay witness and he was told by someone near the chowk regarding the murder of Kari Mukhiya.

14. P.W.8 Anokha Kumari is the daughter of the deceased and she also had stated in similar manner like P.W.1 (informant) and same is the evidence of P.W.10 Lal Mukhiya, son of the deceased.

15. P.W.11 Dr. Shekhar Prasad Vishwas on 18-03-2010 was posted as medical officer in Sadar Hospital, Madhepura and on the said date, he conducted *post-mortem* examination at 8:45 AM on the dead body of the deceased Kari Mukhiya and found following ante-mortem injuries:-

“(i) Incised wound on the left side of the neck – dimension was – 3 ½ ” long x 2” breadth x 2” depth including great vessel of the neck.



(ii) Incised wound of 1 ½ ” long x ½ ” breadth x ¼” depth on the forehead with fracture of the underlying frontal bone.”

He proved the *post-mortem* report, which was marked as **Ext.2**. On his cross-examination, in paragraph – 5, he deposed specifically as follows:-

“I have found only two exposes and specific injuries on the person of the deceased; no others.”

Ofcourse, injury report in respect of injuries found on the person of P.W.2 Bhupi Mukhiya was got exhibited through this doctor i.e. P.W.11, but it was exhibited with objection. In paragraph – 11 of his cross-examination, it has come as follows:-

“Neither the injured – Bhupi Mukhiya was examined before me nor the said report was prepared before me nor I am familiar to the contents thereof personally. Bhupi Mukhiya was not familiar to me from before. Dr. R. Ahmand was not on letters terms to me nor I have ever worked with him in service.”

16. We have also examined the documents, which were got exhibited on behalf of the defence side i.e. certified copy of F.I.Rs. as also chargesheets, in which, deceased was one of the charge-sheeted accused. Those are:-



<u>Sl.</u>	<u>Number of F.I.R. with exhibit number</u>	<u>Charge-sheet</u>
1.	Kumarkhand P.S. Case No. 28/99 u/s 395/396 IPC (Ext.A)	Ext. A/1
2.	Kumarkhand P.S. Case No. 43/03 u/s 461/379 IPC (Ext.B)	Ext. B/1
3.	Kumarkhand P.S. Case No. 44/03 u/s 395 IPC (Ext.C)	Ext. C/1
4.	Kumarkhand P.S. Case No. 113/94 u/s 341/323/504/426 IPC (Ext.D)	

In the evidence, it has come that the deceased was also sent to jail. During evidence, the fact has come that in relation to a land, dispute in between the parties was going on.

17. Accordingly, considering the glaring inconsistencies in the evidences, claimed by eye-witnesses and other witnesses, as well as on examination of the evidence of the investigating officer (P.W.9), we are of the opinion that the prosecution has not proved its case beyond all reasonable doubt and as such, all the appellants deserve benefit of doubt.

18. Accordingly, by way of extending benefit of doubt to all the appellants, their conviction and sentence is required to be interfered with and as such, the judgment of conviction and sentence dated 23-01-2014 and 28-01-2014 respectively passed in Sessions Trial No. 104 of 2010 and



104-A of 2010 (arising out of Srinagar P.S. Case No. 12 of 2010) by Dr. Ram Lakhan Yadav, learned Additional Sessions Judge, Ist, Madhepura is, hereby, set aside and all the aforesaid three appeals are allowed.

19. Since two appellants namely Ashok Mukhia and Prabhash Mukhia in Cr. Appeal (DB) No. 285 of 2014 are in custody and their conviction and sentence has been set aside, it is, hereby, directed to release them forthwith, if not required in any other case.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

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