

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.106 of 1995

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1. Jullu Rahman, son of Haji Zarif
 2. Md. Kabil @ Md. Kabil Hussain, son of Haji Zarif
 3. A. Habib @ Abdul Habib, son of Zarif
 4. Md. Lokman @ Abdul Lokman, son of Jullu Rahman
 5. Abdul Juran @ Subhan, son of Jullu Rahman
 6. Abdul Rauf @ Rauf Ali, son of Jullu Rahman
 7. Md. Kalu, son of Jullu Rahman
 8. Md. Maniruddin, son of Jullu Rahman
 9. A. Sattar @ Abdul Sattar, son of Md. Fariz Uddin
 10. Jabbar, son of Md. Fariz Uddin
 11. A. Muslim @ Abdul Muslim, son of Imtiyaz Ali.
 12. Islam, son of Imtiyaz Ali.
 13. Islam, son of Alimuddin
 14. Suleman, son of Alimuddin

All of residents of Village Rautara, P.S. Rautara, District Katihar.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants	:	Mr.Pankaj Kumar Sinha, Adv. Mr. Diwakar Sinha, Adv. Mr. Kamal Kishore Jha, Adv.
For the State	:	Mr. Dilip Kumar Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 20-06-2019

1. Heard learned counsel appearing for the appellants as well as learned Additional Public Prosecutor for the State.

2. Altogether 18 persons faced trial before the learned 1st Additional Sessions Judge, Katihar in Sessions Trial No. 266 of 1988 and the learned 1st Additional Sessions Judge, Katihar vide impugned judgment of conviction dated 16.05.1995 and sentence order dated 22.05.1995 convicted 14 persons for the offences



punishable under various heads of Indian Penal Code and accordingly, sentenced them thereunder. However, four persons were acquitted by the learned trial court by the same impugned judgment.

3. All the above convicted 14 persons preferred the instant criminal appeal against the impugned judgment of conviction and sentence order but during pendency of this appeal, appellant no. 1, namely, Jullu Rahman, appellant no. 11, namely, A. Muslim @ Abdul Muslim, appellant no. 13, namely, Islam and appellant no. 6, namely, Abdul Rauf @ Rauf Ali died and their appeal stood abated.

4. Learned trial court convicted the appellant Md. Lokman for the offence punishable under Sections 302, 148 and 323 of the I.P.C. and accordingly, sentenced him to undergo life imprisonment for the offence punishable under Section 302 of the I.P.C. and to undergo six months rigorous imprisonment for the offence punishable under Section 323 of the I.P.C. and no separate sentence for the offence punishable under Section 148 of the I.P.C. or fine was awarded to him. Furthermore, the remaining appellants were convicted for the offence punishable under Section 302 read with Section 149 of the I.P.C. and they were also convicted for the offence punishable under Section 147 of the I.P.C. except appellant



Jullu Rahman (since deceased) who was convicted for the offence punishable under Section 148 of the I.P.C. and accordingly, they were sentenced to undergo life imprisonment for the offence punishable under Section 302 read with Section 149 of the I.P.C. but no separate sentence under Section 147 of the I.P.C. or fine was awarded to them. Furthermore, appellants Suleman, Md. Kabil and Jullu Rahman (since deceased) were convicted for the offence punishable under Section 323 of the I.P.C. and were sentenced to undergo six months rigorous imprisonment for the offence punishable under Section 323 of the I.P.C. However, all the sentences were ordered to run concurrently. All the appellants were acquitted of the charge framed under Section 379/34 of the I.P.C. and four persons were acquitted of all the charges framed against them.

5. Briefly stated the prosecution case is that PW-8 Budh Ram Oraon gave his ferdbeyan to S.I. of Katihar police station on 19.09.1987 at about 11:30 A.M. at Sadar Hospital, Katihar to this effect that on the same day at about 6:00 A.M. Mangru Oraon was ploughing his field which was situated towards south of his house. In the meantime, Jullu Rahman (since deceased) armed with sword, Md. Kabil armed with bhala, Abdul Habib armed with farsa, Abdul Lokman armed with bhala, Abdul



Juran armed with sword, Abdul Sattar armed with bhala, Jabbar armed with bhala, Abdul armed with hasula, Islam Ali armed with sword (since deceased), Suleman armed with lathi, Gudar Haji armed with lathi, Islam Ali armed with lathi, Abdul Muslim armed with lathi (since deceased), Humer Ali armed with hasua total 14 in numbers came there and Lokman Ali gave sword blow to Mangru Oraon as a result whereof he fell down on the ground and after that remaining persons started assaulting him by means of lathi and danda. The above stated persons started taking away oxen and other equipments. However, PW-2 Dukha Oraon, Ramnath Oraon, Janglu Oraon (PW-6), Paro Devi (PW-5), Kailu Oraon (not examined), Paharani Devi (PW-4) and several other villagers came there and ran to save Mangru Oraon but Lokman Ali gave sword blow to PW-2 Dukha Oraon causing injury on his hand whereas remaining persons assaulted him by means of lathi. Similarly, Lokman and others assaulted Ramnath Oraon, Janglu Oraon, Paro Devi and Paharani Devi. The aforesaid persons tried to commit the murder of Mangru Oraon and others but due to timely intervention of co-villagers, they could not succeed in their attempt. The reason behind the alleged occurrence, as stated in ferdbeyan of PW-8, is land dispute and according to ferdbeyan of PW-8, the lands of Arjun Sah was being cultivated by Mangru Oraon and others since



long but aforesaid Arjun Sah sold the aforesaid lands to Jarib Haji five years ago and a case under B.T. Act was fought between Mangru Oraon and others as well as Arjun Sah. The aforesaid Jarib Haji and others forcibly wanted to take possession of the aforesaid lands and on the alleged date of occurrence, being armed with deadly weapons they came on the aforesaid land and assaulted Mangru Oraon and others and also took away oxen and other equipments.

6. On the basis of aforesaid ferdbeyan of PW-8, Korha P.S. Case No. 157 of 1987 was registered on 19.09.1987 against the FIR named accused persons for the offences punishable under Sections 147, 148, 149, 323, 324, 307 and 379 of the I.P.C. However, subsequently, after death of Mangru Oraon Section 302 of the I.P.C. was also added.

7. PW-10 Mahesh Prasad was posted as A.S.I. of Korha police station on 19.09.1987 and after institution of Korha P.S. Case No. 157 of 1987, he took charge of investigation of the aforesaid case. He recorded the statements of prosecution witnesses, inspected the place of occurrence, recovered the stolen oxen and after completion of investigation, submitted charge sheet against 18 persons including the appellants for the offences



punishable under Section 302 and other minor sections of the I.P.C.

8. The cognizance of the offences was taken and the case was committed to the court of sessions, in usual way.

9. The appellants and others stood charged for the offences punishable under Sections 302/149, 302, 379/34, 147, 323, 148 and 324 of the I.P.C. The charges were read over and explained to the appellants and others but they denied the charges and claimed to be tried.

10. In course of trial, prosecution examined, altogether, 12 prosecution witnesses and also got exhibited certain documents including postmortem report as documentary evidence. The statements of appellants and others were recorded under Section 313 of the Cr.P.C. in which they reiterated their innocence and claimed their false implication. The defence also got examined three witnesses and also got exhibited certain documents as documentary evidence.

11. The learned trial court after evaluating the evidences of the parties convicted and sentenced the appellants in the manner as we have already stated.

12. Learned counsel appearing for the appellants challenged the impugned judgment of conviction and sentence



order arguing that the learned trial court failed to take note of contradictions occurred in the statements of prosecution witnesses. He submitted that prosecution witnesses have not only made contradictory statements in respect of manner of occurrence but also made contradictory statements regarding the place of occurrence. He, further, submitted that prosecution witnesses admitted in course of trial that some of the appellants had sustained injuries and criminal case was lodged against them for the occurrence of same day and in that case, some of the witnesses of the present case were convicted. He submitted that aforesaid admission of the prosecution witnesses clearly suggest that the prosecution has not come before the court with clean hands and real fact was suppressed by the prosecution. He submitted that it is the prosecution case that the deceased Mangru Oraon was ploughing his field when the occurrence took place whereas the defence case is that deceased Mangru Oraon and others forcibly wanted to take possession of the land which was purchased by the family members of the appellants and when appellants forbade them, deceased Mangru Oraon and others assaulted the family members of the appellants for which Korha P.S. Case No. 156 of 1987 was lodged against Mangru Oraon and others in which they were convicted by a competent court. He submitted that aforesaid



facts clearly go to show that prosecution party was aggressor and as a matter of fact, when prosecution party came at the house of the appellants for committing offence of Korha P.S. Case No. 156 of 1987, unfortunately deceased sustained injury at the hands of prosecution party itself and subsequently, he died but taking advantage of the aforesaid situation, the prosecution party lodged this false case against the appellants and others. He, further, submits that the prosecution is duty bound to prove its case beyond all shadow of reasonable doubts and even slightest doubt in prosecution case is sufficient to give benefit of doubt to the appellants.

13. On the other hand, learned Additional Public Prosecutor refuted the above stated submissions arguing that several eye witnesses claimed to have seen the occurrence and moreover, some prosecution witnesses sustained injury in the aforesaid occurrence and, therefore, the presence of aforesaid injured witnesses on the place of occurrence cannot be doubted. He, further, submits that post mortem report of the deceased also corroborates the prosecution case and so far as place of occurrence is concerned, the investigating officer has proved the place of occurrence and, therefore, it cannot be said that prosecution could not succeed to prove the place of occurrence. He, further, submits



that the statements of all the eye witnesses are consistent on the point of manner of occurrence and, therefore, it cannot be said that there is contradictory statements of prosecution witnesses in respect of manner of occurrence. He submits that even if some minor contradictions are found in the statements of prosecution witnesses, then also, the said minor contradictions do not make any difference because minor contradictions do not go to the root of the prosecution case.

14. Having heard the rival contentions of both the parties, we went through the record as well as lower court records. The only question arises for determination as to whether the impugned judgment of conviction and sentence order is liable to be sustained or not and as to whether the learned trial court has properly appreciated the evidences available on the record or not.

15. As we have already stated that prosecution examined, altogether, 12 prosecution witnesses and out of aforesaid 12 prosecution witnesses, PW-2 Dukha Oraon, PW-3 Sauna Oraon, PW-4 Paharani Devi, PW-6 Janglu Oraon, PW-8 (informant) Budh Ram Oraon and PW-9 Rauna Oraon claimed themselves to be eye witnesses of the alleged occurrence whereas PW-1 is a formal witness, PW-5 and PW-7 are tendered witnesses, PW-10 is investigating officer, PW-11 is doctor who claimed that



on 19.09.1987 he had examined three injureds, namely, PW-2 Dukha Oraon, PW-5 Paro Devi and one Ramnandan Oraon who was not examined before the trial court. PW-12 is also a doctor who did postmortem examination on the dead body of the deceased.

16. From the evidence of PW-11, it would appear that PW-11 had examined PW-2, PW-5 and one Ramnandan Oraon on 19.09.1987 at 10:35 A.M. PW-11 has proved the injury reports of above stated so-called injured persons but it is surprising enough that PW-2 Dukha Oraon has, nowhere, claimed that he had sustained injury in the alleged occurrence. Similarly, PW-5 Paro Devi was tendered by the prosecution and she was cross-examined by the defence but in her deposition there is nothing to show that she had sustained injury in the alleged occurrence. Admittedly, so-called injured Ramnandan Oraon was not examined by the prosecution in course of trial.

17. PW-2 Dukha Oraon states in his examination in chief that at the time of alleged occurrence, he was ploughing his field and in the meantime, Jullu Rahman, Lokman Ali, Rauf, Jarib Haji, Habib, Kabil, Islam son of Alimuddin Haji, Suleman, Sattar, Jabbar, Abdul Muslim, Islam son of Imtiyaz Ali and others came there. The aforesaid persons were armed with deadly weapons



such as sword, farsa, bhala, lathi etc. This witness, further, claims that the aforesaid persons started assaulting Mangru Oraon and in that course, Jullu Rahman gave sword blow on the head of Mangru Oraon as a result whereof Mangru Oraon fell down on the ground and after that the remaining persons assaulted him by means of Lathi as a result of which Mangru died then and there. Perusal of examination in chief of this witness goes to show that only Mangru Oraon had sustained injury in the alleged occurrence as this witness has, nowhere, stated that the appellants had also assaulted him as well as other persons. Furthermore, the statement of this witness reflects that it was accused Jullu Rahman (since deceased) who gave sword blow causing head injury to deceased Mangru Oraon. Furthermore, this witness states that at the time of occurrence, deceased Mangru was ploughing his field but on being cross examined by the defence, he expressed his inability to disclose khata and khesra number of the aforesaid land and furthermore, this witness admitted that at the time of alleged occurrence, the above stated land was parti land. This witness also admits that litigation was going on between Mangru Oraon and Jullu Rahman in the court of S.D.O. in respect of above stated land. This witness also admits in his cross examination that in the aforesaid litigation PW-8 (informant) was also a party. This



witness, further, admits that adjacent west to the aforesaid land, there was house of accused Jullu. This witness also admits that for the occurrence of the same day, accused Jullu had lodged a criminal case against him as well as others. This witness discloses the boundary of place of occurrence stating that in north and south, there were parti lands. In west of place of occurrence, there was land of Amjad Ali and in east, there was house of Kailu Oraon. The attention of this witness was drawn towards his previous statement recorded under Section 161 of the Cr.P.C. and this witness states that he had made statement before the police that at the time of alleged occurrence, the accused persons were carrying sword and accused Jullu had given sword blow. This witness denied the suggestion of the defence that before police he had claimed that it was accused Lokman who had given bhala blow to deceased Mangru Oraon.

18. PW-3 Sauna Oraon states that at the time of alleged occurrence Rauna Oraon (PW-9) was ploughing his field and by the side of his field deceased Mangru was also ploughing his field and in the meantime, Jullu Rahman along with 2 to 3 persons came there and after that 10 to 15 persons being armed with lathi, sword, farsa etc. came there. He, further, claims that aforesaid persons started untying oxen and in that course, accused



Lokman gave sword blow on the head of the deceased Mangru Oraon and also assaulted Rauna Oraon whereas others assaulted them by lathi. He, further, claims that deceased Mangru was taken to hospital where he died in course of his treatment. He, further, claims that Paharni Devi (PW-4) and Rauna Oraon (PW-9) had also sustained injury in the occurrence. This witness, further, claims that on his identification the police inspected the place of occurrence. This witness, further, states that the occurrence took place on the land which was being ploughed by the deceased. This witness, further, admits that at the time of alleged occurrence, the aforesaid land had not been cultivated. This witness describes the boundaries of place of occurrence and states that in north of the place of occurrence, there was house of deceased Mangru Oraon. In south of place of occurrence, there was land of Amjad Ali. In east of place of occurrence, there was his house and in west of the aforesaid land, there was land of Amjad Ali. This witness, further, admits that there was proceeding under Section 145 of the Cr.P.C. in respect of place of occurrence between Oraon community and Jullu Rahman. This witness further states that he had not seen any injury on the person of appellants. However, this witness admits that Jullu Rahman had lodged a criminal case against the prosecution party for the occurrence of the same day and in that



case, he was an accused. This witness, further, stated that he had stated before the police that Lokman had assaulted deceased Mangru by sword but he had not made statement before the police that Lokman had assaulted the deceased Mangru by means of bhala. This witness, further, admitted that the lands over which the occurrence took place was taken by Charu Oraon from Arjun Sah and others but he denied the suggestion of the defence that Jullu and others had purchased the aforesaid land. This witness also denied that in the proceeding of 145 of the Cr.P.C. he as well as others had admitted before the court that land of place of occurrence belonged to Jullu Rahman. This witness also denied the suggestion of the defence that he as well as others assaulted Jullu and others at the door of Jullu Rahman. The statement of this witness goes to show that for the occurrence of the same day, appellant Jullu Rahman had lodged a criminal case against the prosecution party and in that case, this witness was an accused. Furthermore, the statement of this witness goes to show that there was land dispute between the prosecution party as well as appellants and a proceeding under Section 145 of the Cr.P.C. was fought between prosecution party and appellants in respect of the aforesaid land. Moreover, this witness has, nowhere, claimed to have sustained injury in the alleged occurrence and according to



this witness, only deceased Mangru Oraon, Paharni Devi (PW-4) and Rauna Oraon (PW-9) had sustained injury in the aforesaid occurrence. This witness has, nowhere, stated that PW-2 Dukha Oraon, PW-5 Paro Devi and Ramnandan Oraon had also sustained injury in the alleged occurrence. Furthermore, this witness contradicts the claim of PW-2 who stated that Jullu Rahman had given sword blow causing head injury to deceased Mangru Oraon whereas this witness claims that it was appellant Lokman who gave sword blow to deceased Mangru. Therefore, it is apparent that there is vital contradiction between the claim of PW-2 and PW-3 on the point of assault on the deceased Mangru Oraon. Furthermore, there is also contradiction in the statement of this witness as well as in the statement of PW-2 on the point of place of occurrence because the boundaries of place of occurrence as disclosed by both the above stated witnesses are quite different. Therefore, it is apparent that on the point of place of occurrence also, the statements of PW-2 and PW-3 are not consistent.

19. PW-4 Paharani Devi is wife of deceased Mangru Oraon. This witness also claims herself to be eye witness as well as injured. This witness says that her husband Mangru had gone to plough his field and while his husband was ploughing the field, appellant and others forbade him and when her husband did not



buckle upon the pressure of appellants and others, they assaulted him and in that course, appellant Lokman assaulted her husband by means of sword and thereafter, others also assaulted him. This witness further claims that when she tried to save her husband, she was assaulted by the appellants Jullu, Kabla, Lokman and Suleman. This witness, further, claims that land of place of occurrence was in possession of her husband since long. This witness admitted in her cross examination that appellant Jullu and his son had gone to stop her husband from cultivating the land of place of occurrence and they asked her husband not to plough the disputed land as the aforesaid land was under litigation. This witness further admitted in her cross examination that her statement was not recorded by the police nor police made any enquiry from her about the alleged occurrence. She also admitted that she had not stated before the police that her husband had sustained injury of bhala. She further admitted that her husband had sustained 4 to 5 injuries on his person and all the injuries were caused by sword. She, further, admitted in her cross examination that appellant Jullu and his brother and son had also gone to hospital for taking treatment. She also admitted that PW-7 and PW-8 were accused in counter case and in that case, they were convicted. The statement of this witness goes to show that in



course of investigation, she never made any statement before the police and for the first time, she made statement before the trial court that, too, after three and half years of the alleged occurrence and, therefore, it is very difficult to rely upon the statement of this witness. Furthermore, the statement of this witness goes to show that appellant Jullu and his other family members had sustained injury on the same day and they were admitted in the hospital for getting treatment. Although, this witness claimed that she had sustained injury in the occurrence and she admitted that she had gone to hospital along with her husband but there is nothing on the record to show that she was examined by any doctor after the alleged occurrence as no injury report of this witness was produced by the prosecution in course of trial and, therefore, the presence of this witness over the place of occurrence when occurrence took place appears to be doubtful.

20. PW-6 Janglu Oraon narrates a different story. This witness states that at the time of alleged occurrence, he was at his house and on cry, he went to the field of Rauna Oraon where Rauna Oraon was ploughing his field. This witness, further, claims that Lokman, Loka, Jullu, Habibur Rahman, Abdul Sattar etc. assaulted Rauna Oraon (PW-9) and when he went there he was also assaulted by the aforesaid persons. This witness claims that



Mangru Oraon died having sustained injury. This witness has, nowhere, stated as to who had assaulted the deceased Mangru Oraon. Moreover, PW-8 in his ferdbeyan has, nowhere, stated that PW-9 Rauna Oraon had also sustained injury in the alleged occurrence. Therefore, it is apparent that PW-6 has completely changed the manner of occurrence. This witness on being cross examined by the defence admitted that the lands over which alleged occurrence took place belonged to Arjun Sah and Ajodhi Sah but he as well as others were sikmi of the aforesaid land. This witness further admitted that at the time of alleged occurrence, the aforesaid land was parti land and litigation was going on between Jullu and Oraon community. Furthermore, on being cross examined by the defence this witness claimed that in the alleged occurrence, deceased Mangru first received farsa injury and after that he received lathi injury. He further claimed that appellant Lokman had assaulted deceased Mangru by means of farsa. This statement of PW-6 contradicts the statement of PW-3 and PW-4 who claimed that deceased had sustained injury by means of sword. This witness further claimed that he had also sustained injury on his right shoulder as well as on his neck and having sustained injury he fell down on the ground and became unconscious but it is surprising enough that injury report of this



witness has not been brought on record and, therefore, it is very difficult to believe that this witness had sustained injury in the alleged occurrence as his statement is not corroborated by the injury report. This witness also admitted that appellant Jullu Rahman and others got treatment at Sadar Hospital, Katihar. This witness further admitted that he was also accused and convicted in the case which had been filed by the appellant Jullu. Therefore, it is obvious that this witness also admitted this fact that appellant Jullu Rahman had lodged a case against the prosecution party for the occurrence of the same day and in the said occurrence appellant Jullu and others had sustained injury.

21. PW-8 Budh Ram Oraon is informant of the present case. This witness claims that appellants and others total 25/30 in numbers went at the field of Mangru who was ploughing his field and assaulted deceased Mangru as well as Dukha Oraon (PW-2), Janglu Oraon (PW-6). This witness further claims that deceased Mangru was taken to police station from where he was referred to hospital where he died. This witness disclosed the boundaries of place of occurrence stating that in north of place of occurrence, there was house of deceased Mangru. In south, there was his sikmi land, in west, there was land of Amjad and in east, there was house of Kailu. It is obvious that boundary of place of



occurrence as disclosed by this witness does not tally with the boundary of place of occurrence as disclosed by the PW-2 and PW-3. This witness has, nowhere, stated in his examination in chief that PW-4, PW-6 and PW-9 had sustained injury at the time of alleged occurrence. This witness also admitted that a proceeding under Section 145 of the Cr.P.C. was going on in respect of the lands on which the alleged occurrence took place and due to above stated proceeding of Section 145 of the Cr.P.C., the aforesaid land was lying parti. This witness further admitted that he was party to the aforesaid proceeding of 145 of the Cr.P.C. This witness also admitted that Arjun Sah and Ayodhi Sah were landlord of the lands in question but he expressed his inability to say that aforesaid land was purchased by Jullu and others. This witness further admitted that he as well as others had compromised the proceeding of 145 of the Cr.P.C. before the court of S.D.O. and the aforesaid proceeding of 145 of the Cr.P.C. came to an end on the basis of compromise. This witness also admitted that persons from both the sides had assembled over the place of occurrence and this witness also admitted that Jullu, Lokman and some others were taken to hospital on the alleged date of occurrence. The deposition of this witness goes to show that there was land dispute between the prosecution party as well as appellants and earlier a



proceeding under Section 145 of Cr.P.C. was fought between the parties which was ended on the basis of compromise and furthermore, PW-8 and some others accepted the claim of appellant Jullu and others in respect of the aforesaid land by signing a deed of relinquishment dated 21.10.1974. Furthermore, the statement of this witness goes to show that several persons from both the sides had assembled over the place of occurrence and not only prosecution party but some of the appellants had also sustained injury on the alleged date of occurrence.

22. PW-9 Rauna Oraon claims that on the alleged dated of occurrence, he was ploughing his land. In the meantime, Jullu Rahman, Habir, Kabir and Lokman came there and Lokman gave danda blow as a result whereof he sustained injury and became unconscious. This witness states that he could not see who assaulted to whom and when he regained his consciousness he came to know that Mangru died in the occurrence. This witness admits that the land which was being ploughed by him at the time of alleged occurrence was under litigation between him and Jullu and on the alleged date of occurrence while he went to plough his land, son of Jullu forbade him which resulted into scuffle. This witness further admitted that after the occurrence, he was brought to Katihar Hospital where he saw Jullu, Lokman and others in the



same hospital as Jullu had sustained injury by arrow. This witness also admitted that he met deceased Mangru at hospital. This witness also admitted that he was accused in counter case lodged by Jullu and in that case he was convicted. The perusal of statement of this witness goes to show that at the time of alleged occurrence, only this witness was ploughing his land as this witness has, nowhere, stated that deceased Mangru was also ploughing land with him. Although, this witness states that in the occurrence Mangru died but similarly, this witness admitted that appellant Jullu and others had also sustained injury. This witness also admitted that Jullu had lodged case against him and others for the occurrence of the same day and in that case, he was convicted.

23. PW-5 and PW-7 have stated nothing in support of prosecution case. However, PW-7 admitted that proceeding under Section 145 of the Cr.P.C. was pending between the parties and in the alleged occurrence Jullu, Lokman and others had also sustained injury.

24. Perusal of statements of above stated prosecution witnesses goes to show that there was land dispute between the parties but prosecution party did not come with clean hands and certain facts were concealed and suppressed by the prosecution with mala fide intention. Furthermore, it is also apparent from the



statements of aforesaid witnesses that some of the appellants including Jullu and others had sustained injury in the alleged occurrence but the prosecution could not succeed to explain the injuries sustained by above stated appellants and furthermore, we find that there are several contradictions in the statements of prosecution witnesses on the point of manner of occurrence as well as place of occurrence and, therefore, in our view, the prosecution could not succeed to prove the place of occurrence as well as manner of occurrence beyond all shadow of reasonable doubts.

25. The defence of the appellants is that it was prosecution party who came at the door of appellant Jullu Rahman and assaulted him and others for which Jullu Rahman lodged case. The defence has brought certain documents to prove the aforesaid fact. Moreover, the institution of counter case as well as injuries of some of the appellants have been admitted by the prosecution witnesses.

26. No doubt, the status of injured witnesses is on high pedestal in comparison to ordinary eye witnesses but in the present case as we have already discussed that PW-2 and PW-5 have, nowhere, stated that they had also sustained injury in the alleged occurrence. Although, PW-11 proved the injury reports of PW-2, PW-5 and one Ramnandan Oraon but in absence of



statement of PW-2 and PW-5 in respect of their respective injuries, it is very difficult to believe that PW-2 and PW-5 had sustained injury in the alleged occurrence. Furthermore, PW-11 claimed that he had examined the injury of one Ramnandan Oraon but the aforesaid Rajnandan was not examined by the prosecution in course of trial. So far as some other so-called injured witnesses are concerned, their injury reports have not been brought on the record and, therefore, the prosecution could not succeed to prove that above stated prosecution witnesses had sustained injury in the alleged occurrence and they come under the category of injured witnesses and, therefore, in our view, the above stated witnesses could not be treated as injured witnesses.

27. PW-12 is doctor who had conducted postmortem examination on the dead body of the deceased. This witness found crush injury on the head of the deceased. This witness did not find any incised wound or penetrating wound on the person of the deceased. The claim of the prosecution witnesses is that deceased sustained sword injury and one witness stated that deceased sustained farsa injury on his head but it is surprising enough that the doctor, who did postmortem examination on the person of the deceased, did not find any incised wound on the head of the deceased and the postmortem report of the deceased also does not



corroborate the claim of so-called eye witnesses and, therefore, in our view, in the aforesaid circumstances, we have no option except to disbelieve the testimonies of so-called eye witnesses and furthermore, we are of the view that the appellants are entitled to get benefit of doubt.

28. On the basis of aforesaid discussions, this criminal appeal is allowed and impugned judgment of conviction and sentence order are, hereby, set aside. The appellants are acquitted of the charges. The appellants are on bail. They are discharged from the liabilities of their respective bail bonds.

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

shahzad/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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