

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.140 of 1994

1. Sheonandan Rao Son of Indal Rao
2. Indal Rao Son of Nathuni Rao
3. Barister Raut @ Balister Raut S/o Ganesh Raut.

All resident of Village Jaisinghpur, Mishir Tola, P.S. Sikta, Distt. West
Champaran.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Deepak Kumar Singh
For the Respondent/s	:	Mr. Milind Kumar Mishra

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA
ORAL JUDGMENT.
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 22-01-2019

1. Originally, this appeal was filed by five appellants, namely, Ranjit Rao, Sheonandan Rao, Indal Rao, Ratneshwar Tiwari and Barister Raut @ Balister Raut but during pendency of this appeal, appellants, namely, Ranjit Rao and Ratneshwar Tiwari died and their appeal stood abated vide order dated 06.12.2018 and accordingly, this appeal was heard only in respect of remaining three appellants i.e. Sheonandan Rao (appellant no. 1), Indal Rao (appellant no. 2) and Barister Raut @ Balister Raut (appellant no.3).



2. This criminal appeal has been preferred against the impugned judgment of conviction dated 10.02.1994 and sentence order dated 11.02.1994 passed by learned 2nd Additional Sessions Judge, West Champaran, Bettiah in Sessions Trial No. 205 of 1990 by which and whereunder he convicted the deceased-appellant Ranjit Rao for the offence punishable under Sections 302, 302/149 of the I.P.C. and the remaining appellants were convicted for the offence punishable under Section 302/149 of the I.P.C. and furthermore, appellant no. 2, namely, Indal Rao was convicted for the offence punishable under Section 323 of the I.P.C. and accordingly, all the appellants were sentenced to undergo rigorous imprisonment for life but no separate sentence was awarded to appellant no. 2 for the offence punishable under Section 323 of the I.P.C.

3. Briefly stated the prosecution case is that PW-6 gave written report to Officer in charge of Sikta police station on 17.05.1990 mentioning therein that land dispute was going on since long between appellant Indal Rao, deceased-appellant Ranjit Rao and with her family and on the alleged date of occurrence her husband and father in law, namely, Shakti Mishra had gone Bettiah to attend a case. Further she alleged in her written report that the above stated appellants were also making claim on her residential



lands. She further alleged that some portion of her residential house got damaged and she had invited her father to help her in the construction work of damaged house. She alleged that on 17.05.1990 at about 7 A.M., labourers were digging land for giving foundation and in the meantime, the appellants including deceased-appellants being armed with lathi went there and forbade the labourers to dig the land. Furthermore, they made attempt to take her father and her cousin father in law, namely, Parbhu Mishra to their doors with an object to assault them but out of fear her father and her cousin father in law ran towards her home but unfortunately, both were caught by the above stated appellants and they took both the persons at their home where they made attempt to tie them but seeing the aforesaid occurrence, she went at their door raising alarm. She was followed by her Nanad, namely, Manbhawati Kumari (PW-4). She requested the appellants to release her father as well as her cousin father in law but all the appellants including deceased-appellants started hurling lathies and appellant Ranjit Singh (since deceased) gave lathi blow on the head of her father in law Parbhu Tiwari. Her father in law Parbhu Tiwari having sustained lathi injury fell down there and became unconscious. Appellant Sheonandan and Indal assaulted her as well as her father. Her Nanad (PW-4) tried to save her as well as



her father but she also got injury on her finger. On hue and cry, Triloki Mishra, Sadhu Mishra (PW-1), Satya Narayan Singh (PW-2) etc. came there and witnessed the occurrence. The PW-6 mentioned in her written report that at the time of giving the written report, her injured cousin father in law was lying in unconscious state at her village.

4. On the basis of aforesaid written report, Sikta P.S. Case No. 24 of 1990 for the offences punishable under Sections 147, 323, 342, 307 of the I.P.C. was registered on 17.05.1990 and on the same day, formal FIR was drawn up. The formal FIR and ferdbeyan were put up before the learned Magistrate on 18.05.1990. The distance between the place of occurrence as well as police station was shown in formal FIR as eight kilometres.

5. PW-9 Raghunath Jha claimed that on 17.05.1990 he was posted as S.I. at Sikta police station and on the same day at about 9:00 A.M. he got information about the alleged occurrence when PW-6 gave written report to him and on that basis he instituted the case and drawn up formal FIR. This witness claimed that he took charge of investigation and on the same day he visited the place of occurrence. He further stated that he reached at the place of occurrence at 10:15 A.M. This witness stated that he found Parbhu Mishra in injured condition lying on a cot and he



managed tire cart and got sent injured Parbhu Mishra to hospital. He also found a bloodstained stone on the place of occurrence and seized the said bloodstained stone. He recorded the statements of witnesses and after completion of investigation submitted charge sheet against the appellants including deceased-appellants.

6. The cognizance of the offence was taken and the case was committed to the court of sessions in usual way. Accordingly, Ranjit Rao (since deceased) stood charged separately for the offence punishable under Section 302 of the I.P.C. for committing the murder of deceased Parbhu Mishra whereas other appellants including deceased-appellants Ranjit Rao and Ratneshwar Tiwari stood charged for the offences punishable under Sections 147, 342, 307 read with Section 149 of the I.P.C. However, all the aforesaid appellants, subsequently, stood charged for the offence punishable under Section 302 read with Section 149 of the I.P.C. Appellant Indal Rao and appellant Sheonandan Rao were, separately, charged for the offence punishable under Section 323 of the I.P.C. for assaulting PW-6 Malti Mishra and Manbhawati Kumari. The appellant Sheonandan Rao was also, separately, charged for the offence punishable under Section 148 of the I.P.C. The appellants denied the charges and claimed to be tried.



7. In course of trial, prosecution examined, altogether, ten prosecution witnesses and also got exhibited some documents to prove the guilt of the appellants. The statements of appellants were recorded under Section 313 of the Cr.P.C. in which they reiterated their innocence. The defence also examined some witnesses and got exhibited some documents.

8. The learned trial court after evaluating the evidences available on the record, convicted and sentenced the appellants in the manner as we have already stated.

9. Learned counsel appearing for the appellants challenged the impugned judgment of conviction and sentence order arguing that the learned trial court failed to appreciate the evidences available on the record in right perspective as a result whereof, learned trial court came to wrong conclusion. He, further, submitted that learned trial court completely ignored that the prosecution knowingly and intentionally suppressed the factum of counter case as well as receipt of injury to accused. He, further, submits that learned trial court failed to appreciate this fact that it was duty of the prosecution to explain the injuries found on the person of accused and the failure of the prosecution to explain the injuries found on the person of the accused suggests that alleged occurrence took place in a different manner but not in the manner



as suggested by the prosecution. He submits that if the prosecution fails to prove the manner of occurrence beyond all shadow of reasonable doubts, the benefit of doubt shall go to the accused and in the present case, suppression of factum of counter case and non-explanation of injuries found on the person of the accused clearly suggest that prosecution could not succeed to prove the manner of occurrence beyond all shadow of reasonable doubts but in spite of that the learned trial court did not give the benefit of doubt to the appellants which is not in accordance with law.

10. Learned counsel appearing for the appellants, next, submits that according to prosecution case, deceased was taken to P.H.C, Sikta on 17.05.1990 where he was examined by the PW-5 Dr. Rameshwar Pd. Singh and PW-5 found only one injury that is lacerated injury ½” x ½” x muscle deep on left temporal region of head and admittedly, deceased Prabhu Mishra died on 05.06.1990 and PW-10 did post mortem on the corpus of deceased Prabhu Mishra but it is surprising enough that PW-10 found, altogether, seven injuries on the person of the deceased. He submits that learned trial court though noted the aforesaid contradiction in the testimony of PW-5 and PW-10 but gave benefit to the prosecution on the ground that statements of eye-witnesses shall prevail over the above stated contradiction and on that basis convicted the



appellants for the offence punishable under Section 302 read with Section 149 of the IPC. He submits that as a matter of fact, when the deceased was initially examined by a competent doctor, only one injury was found on the person of the deceased and the aforesaid fact completely negates the manner of occurrence as alleged by the prosecution. He further submits that moreover, even if PW-10 found bruises and swellings during course of post mortem examination on the corpus of dead body of the deceased, then also, it cannot be said that the deceased was assaulted by the appellants except deceased-appellant Ranjeet Rao and the bruises and swellings might had occurred during treatment as well as in course of post mortem examination.

11. Learned counsel appearing for the appellants, next, submits that as a matter of fact, it was prosecution party who was got constructing forcibly their house on a disputed land and when the appellants raised objection in respect of the above stated construction work, the prosecution party chased the appellants and came at their door where they assaulted the appellants and in that course, appellant Sheonandan Rao sustained *gadasa* injury on his left hand. He submits that appellants brought the certified copy of FIR of Sikta P.S. Case No. 25 of 1990 as Exhibit C and also got examined DW-5, who proved the injury report of injured



Sheonandan Singh. He submits that even if it assumed that deceased sustained head injury by the lathi said to be assaulted by deceased-appellant Ranjeet Rao, then also, Exhibit C and other circumstances go to show that prosecution party was aggressor and the deceased-appellant Ranjeet Rao exceeded the limit while exercising his right of private defence and, therefore, in the aforesaid circumstance, the learned trial court committed error in convicting deceased-appellant Ranjeet Rao for the offence punishable under Section 302 as well as remaining appellants for the offence punishable under Section 302/149 of the IPC. He further submits that as a matter of fact, the prosecution could not succeed to prove its case beyond all shadow of reasonable doubts and, therefore, the appellants are entitled to get the benefit of doubt.

12. On the other hand, learned counsel appearing for the informant as well as learned Additional Public Prosecutor supported the impugned judgment of conviction arguing that all the eye witnesses including injured supported the prosecution case and, specifically, stated that all the appellants participated in committing the murder of the deceased and, therefore, the learned trial court rightly passed the impugned judgment of conviction and sentence order.



13. Learned counsel appearing for the informant, further, submits that in course of trial, it has come in evidence that PW-6 was got constructing her damaged house which was not in litigation but even then the appellants made attempt to stop the construction work and assaulted the deceased and others.

14. Learned counsel appearing for the informant further submits that no doubt, in ferdbeyan the injury of appellants Sheonandan Rao has not been explained but according to prosecution case, PW-6 immediately after the occurrence went to police station and gave written report and that is why she could not gave any explanation regarding the injury of Sheonandan as well as institution of case by the Sheonandan in her ferdbeyan. Moreover, the injury found on the person of appellant Sheonandan Rao was not visible and was not of much importance and, therefore, even if the injury found on the person of appellant Sheonandan Rao has not been explained by the prosecution, then also, only on the aforesaid ground the prosecution case could not be doubted. He, further, submits that learned trial court has rightly observed in the impugned judgment that when there are two contradictory medical reports, the statements of eye witnesses shall prevail over the contradictory reports and, therefore, there is



no need to interfere into the impugned judgment of conviction and sentence order.

15. Having heard the rival contentions of the parties, we went through the record along with the lower courts record. We have already stated that prosecution examined, altogether, ten prosecution witnesses to prove the guilt of the appellants. Out of the aforesaid ten prosecution witnesses, PW-1 Sadhu Mishra, PW-2 Satyanarain Mishra, PW-3 Braj Mohan Mishra, PW-4 Manbhawati Kumari, PW-6 Malti Mishra and PW-8 Ramashish Pandey claimed themselves to be eye witness of the alleged occurrence. Furthermore, PW-4, PW-6 and PW-8 also claimed themselves to be injureds of the present case. PW-7 Vyash Mishra is not an eye witness and he claims that he learnt about the alleged occurrence from PW-4.

16. PW-5 Dr. Rameshwar Pd. Singh claimed that on 17.05.1990 he examined deceased Prabhu Mishra at 11:30 A.M. and found lacerated injury $\frac{1}{2}$ " x $\frac{1}{2}$ " x muscle deep on left temporal region of head. This witness further claimed that above stated injury was simple in nature caused by hard and blunt substance but may be brain haemorrhage. This witness further stated that he referred the deceased Prabhu Mishra to higher institution for better treatment. This witness proved the injury report of deceased



Prabhu Mishra as Ext. 2. This witness also claimed that on the same day he examined PW-6 Malti Mishra and found swelling 2" x 2" on her right cheek and the aforesaid injury was simple in nature caused by hard and blunt substance. Furthermore, this witness claimed that on the same day he examined PW-8 Ram Ashish Pandey and found abrasions about 4" x 1/4" below right elbow joint, bruise 3" x 1/2" on right thigh and bruise 3" x 1" and 4" x 1/4" below right lower joint. This witness opined that all the aforesaid injuries were simple in nature and caused by hard and blunt substance. Furthermore, this witness claimed that on the same day he examined PW-4 Manbhawati Kumari and found swelling 1" x 1/2" on right index finger. He opined that aforesaid injury was simple in nature caused by hard and blunt substance. He proved the injury reports of the injureds.

17. PW-10 Dr. Birendra Kumar Agarwal claimed that on 05.06.1990 he did post mortem examination on the dead body of Prabhu Mishra at 2:20 P.M. and found following ante mortem injuries:-

1. One lacerated wound 2" x 1/2" x scalp deep over left side of skull in front-half.
2. Swelling 3" x 2" over right elbow.
3. Bruise 4" x 3/4" over right side of back of chest in its lower part
4. Swelling over eyelid of left eye.
5. Bruises 4" x 3/4" and 3" x 3/4" over back.
6. Swelling over right wrist.
7. Bruises 3" x 1" and 3 1/2" x 1" over buttock.



This witness opined that for causing the above stated ante mortem injuries, hard and blunt substance was used and time elapsed since death was about 48 hours. He further opined that death was due to shock and haemorrhage due to brain injury as result of injury no. 1. He further stated that on dissection of head, he found that there was extravagation of blood underneath skull bone and underlying skull bone was found fractured. He also opined that blood was present over brain and brain matter was found lacerated. He proved the post mortem report as Ext. 8.

18. From combined perusal of testimony of PW-5, PW-10, Ext. 2 series and Ext. 8, it is obvious that on 17.05.1990 injury was found on the head of the deceased and similarly, the injuries were found on the person of PW-4, PW-6 and PW-8. However, it is also obvious that on 17.05.1990 deceased was alive and he was in sense and subsequently, he was referred to higher institution for better treatment. Furthermore, it is obvious that deceased Prabhu Mishra died on or before 05.06.1990 and post mortem on his dead body was done on the above stated date. However, it is also obvious that when the deceased was first examined, only one injury was found on his head whereas when the post mortem examination of dead body of the deceased was done, the PW-10 found altogether seven injuries. However, except injury no. 1, all



the remaining injuries were either swelling or bruises and so far as injury no. 1 is concerned, the same was found on the scalp of the deceased.

19. The deposition of PW-5 and PW-10, at least, establishes this fact that deceased Prabhu Mishra had sustained injury and subsequently, he died. However, PW-10 has, nowhere, stated in his deposition that the injuries found on the person of the deceased were sufficient to cause his death.

20. PW-6 Malti Mishra is informant of the present case. She claims that on 17.05.1990 at about 7:00 A.M. she was at her home whereas her father Ramashish Pandey (PW-8) and one labour were digging foundation of her home and in the meantime, the appellants came there and forbade the PW-8 and the said labour to dig the foundation of the house and became ready to assault PW-8 and the said labour. She further claimed that her father (PW-8) ran towards her home but he was encircled by all the appellants and thereafter, they started taking him but her father in law (deceased) and her nanad (PW-4) went there raising alarm and deceased forbade the appellants to do so but appellant Ranjit Rao (since deceased) forcibly gave lathi blow causing head injury to the deceased and having received the head injury, deceased immediately fell down there and after that all the appellants started



raining lathies on him. She, further, claimed that all the appellants also started assaulting PW-8 by means of lathi and she, specifically, claimed that appellant Indal Rao and Sheonandan Rao assaulted Ramashish Pandey causing injury on his waist and mouth. She, further, claimed that all the appellants assaulted to her also as well as her nanad (PW-4). She, further, claimed that after the occurrence she, herself, went to police station and gave information regarding the aforesaid occurrence. She, further, stated that her statement was recorded by the police and her statement was read over to her by the police and having understood the statement she put her thumb impression on her statement. She admitted at para 6 of her examination in chief that deceased was taken to Sikta hospital from where he was referred to Dunkan Hospital and deceased died at Dunkan Hospital in course of his treatment.

21. PW-4 Manbhawati Kumari claimed that on 17.05.1990 at about 7:00 A.M., she was at her home and the appellants came near her home and stopped the construction work of her home. She, further, claimed that the appellants started assaulting PW-8 Ramashish Pandey and one labour. Furthermore, she claimed that appellants took away PW-8 and she as well as PW-6 and deceased went raising alarm and deceased raised



objection upon which Ranjit Rao (deceased-appellant) gave lathi blow causing head injury to him and after that all the appellants assaulted the deceased Prabhu Mishra by means of lathi. She, further, claimed that appellant Indal Rao assaulted her by means of lathi as a result of which her finger was broken. She also claimed that all the appellants assaulted PW-6 also. She also admitted that deceased and injured were sent to hospital where doctor referred the deceased to Dunkan Hospital and deceased died at Dunkan Hospital in course of his treatment.

22. PW-1 Sadhu Mishra claimed that on 17.05.1990 at about 7:00 P.M. he having heard noise went at the place of occurrence where he saw all the appellants being armed with lathi. This witness, further, claimed that deceased Prabhu Mishra, Ramashish Pandey and one labour were digging earth for fixing a pole but the appellants chased them and the deceased and two others started fleeing from there. PW-1 claimed that the appellants wanted to take the aforesaid three persons to their home. However, this witness, further, claimed that the appellants caught all the aforesaid three persons and took them to their door and thereafter appellant Indal Rao and Ranjit Rao ordered the others to tie and assault them. He, further, claimed that in the meantime, PW-4 and PW-6 also came running there and tried to get the aforesaid



persons released but deceased-appellant Ranjit Rao ordered to assault and thereafter Ranjit gave one lathi blow on the head of the deceased Prabhu Mishra. Thereafter, Ramashish Pandey, Malti Mishra and Manbhawati Kumari were also received injury by the assault of the appellants. This witness further, claimed that the deceased Prabhu Mishra was not only assaulted by the appellant Ranjit Rao (since deceased) but other appellants also assaulted him. This witness claimed that deceased Prabhu Mishra died in the hospital.

23. PW-2 Satyanarain Mishra also claimed that having heard the noise he went at the door of Shaktinath Mishra where he saw that PW-8 and one labour were digging earth for fixing a pole but the appellants came there and stopped them from digging the land and chased them upon which PW-8 and his labour started fleeing. This witness, further, claimed that Ranjit Singh gave lathi blow on the head of the deceased Prabhu Mishra and after that other appellants also assaulted him by means of lathi. This witness also claimed that in the aforesaid occurrence, PW-4, PW-6 and PW-8, too, sustained injury.

24. PW-3 Braj Mohan Mishra claimed that having heard the cry of PW-6, he reached near the place of occurrence and saw the appellants who were dragging the PW-8 towards the bungalow



of appellant Indal Rao with an object to tie him upon which deceased Prabhu Nath Mishra, PW-4 and PW-6 tried to save PW-8 but Ranjit Rao (deceased-appellant) gave lathi blow causing head injury to deceased Prabhu Mishra and after that other appellants also assaulted him by means of lathi. This witness also claimed that in the aforesaid occurrence, PW-4, PW-6 and PW-8, too, sustained injury. This witness further claimed that PW-6 gave information to police and after that police came at the place of occurrence. This witness also claimed that a stone was seized and the seizure list of the aforesaid stone was prepared in his presence and he witnessed the aforesaid seizure list. This witness also admitted that the deceased Prabhu Mishra was sent to hospital but he died at Dunkan Hospital during his treatment.

25. PW-8 Ramashish Pandey claimed that on the alleged date of occurrence he had gone to the house of PW-6 on her invitation. This witness, further, claimed that he along with a labour was got digging a land and in the meantime, appellants being armed with lathi came there and forbade him from digging the land and someone asked to assault him and, thereafter, appellant Indal Singh by means of lathi and appellant Sheonandan Rao by means of back portion of gadasa assaulted him. He, further, claimed that in the meantime, deceased Prabhu Mishra



also came there and forbade the appellants to do so but Ranjit Rao (deceased-appellant) gave lathi blow to the deceased Prabhu Mishra as a result whereof deceased Prabhu Mishra fell down on the earth and thereafter all the appellants assaulted him by means of lathi and fists. This witness, further, claimed that appellants made attempt to tie him. He also claimed that PW-4 and PW-6, too, made protest but they were assaulted by the appellants. He, further, claimed that PW-6 went to police station and gave information about the alleged occurrence and on her information police came at the village and sent Prabhu Mishra and others to hospital. This witness, further, admitted that all the injureds got treatment at Sikta hospital and thereafter, deceased Prabhu Mishra was referred to Dunkan Hospital where he died in course of his treatment.

26. From bare perusal of statements of aforesaid witnesses, it is obvious that the alleged occurrence took place near the house of PW-6 because almost all the witnesses claimed that while PW-8 along with one labour was digging earth, the appellants came there and assaulted him and others and also tried to take away PW-8 as well as deceased Prabhu Mishra and in that course deceased sustained injury. Therefore, the place of



occurrence of the present case appears to be in between bungalow of appellant Indal Rao and the house of PW-6.

27. PW-9 Raghunath Jha is the investigating officer. This witness claimed that on the same day at about 10:15 A.M. he reached at the place of occurrence and inspected the place of occurrence. This witness stated that the place of occurrence of the present case was the door of appellant Ranjit Rao (since deceased) as well as a passage situated west side of the aforesaid door. He further, claimed that the aforesaid door was facing towards the east side and in front of the aforesaid door, there was a small verandah and towards south side of the verandah, there was an exit. He further stated that the aforesaid door was surrounded by the bricks-wall towards north, east and south. He also found two Bhakhari in front of the door and the paddy, wheat, etc. were found scattered. He also found the aforesaid Bhakhari damaged. He, further, stated that there was a passage towards south side of the aforesaid door which connects the passage of west side and towards west side of the aforesaid passage, there was house of Indradeo Kurmi and towards south and east corner of house of Indradeo Kurmi, he found bloodstained stone. He also found some bloodstained on the southern door of appellant Ranjit Rao (since deceased). This witness further stated that towards north side of above stated door,



there was house of Ram Mishra and after that there was a well and towards west side of the aforesaid well, there was a passage which goes to disputed land. This witness, further, states that towards north side of the aforesaid well, there was disputed land and on southern side of the aforesaid land, bricks were found. He further, states that he found the house of PW-6 partially damaged and towards north side of the aforesaid house, he found some soil. He, further, states that he found deceased Prabhu Mishra lying on a cot in the above stated damaged house. This witness, further, states that he seized bloodstained stone.

28. Perusal of statement of this witness goes to show that he found the place of occurrence near the door of appellants but as we have already discussed that almost all the so-called eye witnesses claimed that the alleged occurrence had taken place near the house of PW-6 and not a single so-called eye witness claimed that the deceased as well as other injureds were taken at the door of appellants though the aforesaid witnesses claimed that the appellants made attempt to take the deceased and other injureds at the door of appellants but prior to taking away the deceased and injureds at the door of the appellants, the alleged occurrence took place. Therefore, there appears to be contradiction in the statements of so-called eye witnesses as well as PW-9 in respect of



place of occurrence and in our view, the prosecution could not succeed to prove the place of occurrence beyond all shadow of reasonable doubts.

29. As we have already stated that the defence also examined some witnesses and got exhibited certain documents. DW-1 Shiv Kumar Chaubey has proved Ext. A. DW-2 Sunil Kumar Singh proved written report dated 17.05.1990 said to be given by appellant Ranjit Rao (since deceased) to Officer in charge of Sikta police station as Ext. B. DW-2 states that on the basis of above stated written report, Sikta P.S. Case No. 25 of 1990 was registered and formal F.I.R. of Sikta P.S. Case No. 25 of 1990 was prepared by the PW-9. This witness proves the formal F.I.R. of Sikta P.S. Case No. 25 of 1990 as Ext. C. DW-3 Birendra Kumar Singh proved certain rent receipts which have been marked as Ext. I series. DW-4 Md. Aftab Alam is also a formal witness. He has proved an attendance application which is in the handwriting of Jagarnath Babu.

30. DW-5 Rameshwar Pd. Singh is a doctor who was earlier examined on behalf of the prosecution as PW-5. This witness when examined on behalf of the defence claimed that on 17.05.1990 he examined Sheonandan Singh at 11:30 A.M. and found sharp cut injury 2" x ½" x muscle deep below left elbow



joint. He opined that the aforesaid injury was simple in nature and caused by sharp cut instrument. He, further, opined that age of the aforesaid injury was within four hours from the time of examination of the aforesaid injury. This witness proved the injury report of Sheonandan Singh as Ext. K.

31. DW-6 Brij Narain Kunwar claims that on the alleged date of occurrence at about 5:30 A.M. he had gone to Mishra Tola to call some labourers and reached near the house of Chandira which is situated near the house and bungalow of Indradeo Raut and Ranjit Singh. This witness, further, claimed that he saw deceased Prabhu Mishra running towards the house of Indradeo Raut (Kurmi) but due to disbalance he fell on a stone as a result whereof Prabhu Mishra sustained head injury and became unconscious. He claimed that he went running near the deceased Prabhu Mishra and tied his injury by the gamcha of deceased Prabhu Mishra. He, further, claimed that subsequently, people assembled there and deceased Prabhu Mishra was taken from there. He claimed that subsequently, he heard that Prabhu Mishra died in course of his treatment.

32. DW-7 Chitranjan Raut claimed that on the alleged date of occurrence at about 5:30 A.M. he was at his home and heard noise coming from the east side. He further claimed that he



saw that Prabhu Mishra was running from east to west side but he fell on a stone and sustained injury on his head.

33. DW-8 Dr. G. Anand Rao is Superintendent of Dunkan Hospital, Raxaul. This witness claimed that on 17.05.1990 deceased Prabhu Mishra was admitted in Dunkan Hospital for treatment of close head injury. This witness admits that he had not personally examined the deceased Prabhu Mishra and Prabhu Mishra was examined by the Medical Officer who was on duty at the time of admission of Prabhu Mishra. He, further, admits that he learnt that Prabhu Mishra admitted in Dunkan Hospital for treatment of close head injury on the basis of perusal of records available in the hospital. He, further, admits that Prabhu Mishra was treated up till 03.06.1990 and after that he died. The aforesaid fact was disclosed by him on the basis of documents of the hospital. This witness also suggests that Prabhu Mishra developed bedsores on account of constantly being in bed.

34. Certified copy of written report and formal F.I.R. of Sikta P.S. Case No. 25 of 1990 have been brought on record by the defence as Ext. B and Ext. C respectively and from perusal of Ext. B, the written report of Sikta P.S. Case No. 25 of 1990, it is obvious that Ranjit Rao (deceased appellant) gave written report on 17.05.1990 to Officer in Charge of Sikta police station to this



effect that on 17.05.1990 at about 5:45 A.M. while he was sitting at his door, Shaktinath Mishra and Satyanarain Mishra (PW-2) came and started digging a land which was in dispute between him and aforesaid persons and when he forbade them to do so, the aforesaid persons called Parbhunath Mishra, Vyas Mishra, Braj Mohan Mishra and father in law of Vyas Mishra and some others who came there being armed with lathi and gadasa. The aforesaid persons reached at his door and started using filthy language upon which his nephew Sheonandan objected but the wife of Vyas Mishra hurled gadasa as a result whereof his nephew (Sheonandan) sustained injury on his left hand. However, on hue and cry, several persons assembled there and after that the above stated persons fled away from there. He further claimed that there was litigation between him and the aforesaid persons in respect of a land but he got the aforesaid land when the suit was decreed in his favour.

35. Although, the time of occurrence of Sikta P.S. Case No. 25 of 1990 as well as time of occurrence of the present case are quite different but genesis of both the occurrence appears to be same and similarly, the place of occurrence of both the cases also appears to be same. There is dispute between the parties regarding the manner of occurrence. The prosecution witnesses claimed that



it were appellants who assaulted the deceased and others whereas defence claimed that it was prosecution party who assaulted the appellant Sheonandan Rao. Admittedly, the prosecution has not explained the injury found on the person of the appellant Sheonandan but due to non explanation of injury of appellant Sheonandan it cannot be said that the prosecution has suppressed the real fact. No doubt, the injury of Sheonandan appears to be visible in nature but since there is difference between timing of both the occurrence, it cannot be said with surety that appellant Sheonandan got injury at the same time when the injured and deceased of the present case had sustained injury and, therefore, in the aforesaid circumstance, in our view, even if the prosecution could not succeed to explain the injury of appellant Sheonandan, the entire prosecution case cannot be thrown out.

36. So far as manner of occurrence of the present case is concerned, the prosecution witnesses admitted that while PW-8 and one labour was digging land near the house of PW-6, the occurrence took place and the appellants attempted to take away the deceased and others to their house but before reaching at the house of the appellants, the occurrence took place. Therefore, it is obvious that the occurrence of the present case did not take place at the door of appellants. It is pertinent to note here that PW-9 the



investigating officer found bloodstained at the door of appellants and also found grains scattered there. The aforesaid objective findings of PW-9, prima facie, support the defence case and creates doubt about the manner of occurrence as alleged by the prosecution.

37. The prosecution witnesses claimed that appellant Ranjit Rao (since deceased) gave lathi blow on the head of the deceased Prabhu Mishra and subsequently, all the appellants assaulted the deceased Prabhu Mishra by means of lathi but when the deceased Prabhu Mishra was examined first time by the PW-5, only one injury on his head was found. It is admitted case of the prosecution that deceased died on 03.06.1990 and subsequently the post mortem examination on the dead body of the deceased Prabhu Mishra was done on 05.06.1990. DW-8 on the basis of documents available in Dunkan Hospital stated before the court that deceased died on 03.06.1990 at about 6:15 P.M. Furthermore, DW-8 admitted that documents of the hospital related to deceased revealed that deceased had developed bed sore on account of constantly being in bed. Furthermore, we find that at the time of post mortem examination the doctor found swelling on the person of the deceased. According to prosecution case, deceased sustained injury on 17.05.1990 and he survived till 03.06.1990 and,



therefore, it is obvious that the deceased was alive near about 16 days after sustaining the injuries and even after 16 days the survival of swelling on the person of the deceased due to assault said to be made by the appellants appears to be doubtful. No doubt, if there is contradiction in two medical reports, the testimony of eye witnesses shall prevail over the medical reports, if the testimony of eye witnesses inspires confidence to the court but in the present case, it is obvious that the testimony of prosecution witnesses does not inspire confidence in respect of manner of occurrence beyond all shadow of reasonable doubts and, therefore, the testimony of prosecution witnesses in respect of manner of occurrence cannot be believed in totality. Since there are contradictory reports in respect of injuries of the deceased, in our view, the prosecution failed to prove this fact that deceased had sustained more than one injuries on his person. It is obvious from the testimony of the prosecution witnesses that it was Ranjit Rao (deceased appellant) who had given single lathi blow on the head of the deceased which became fatal and the injuries said to be caused by other appellants are doubtful in nature.

38. Since there is sufficient evidence to show that it was Ranjit Rao (deceased-appellant) who gave single lathi blow on the head of the deceased and there is also evidence that appellant



Sheonandan sustained injury, in our view, conviction of Ranjit Rao (deceased-appellant) for the offence punishable under Section 302 of the I.P.C. was not proper and at best, Ranjit Rao (deceased appellant) could have been convicted for the offence punishable under Section 304 Part I of the I.P.C.

39. Since there are materials to show that appellant Indal Rao assaulted the injureds, in our view, the learned trial court rightly convicted him for the offence punishable under Section 323 of the I.P.C. and accordingly, his conviction for the offence punishable under Section 323 of the I.P.C. is, hereby, confirmed.

40. So far as conviction of appellants for the offence punishable under Section 302 read with Section 149 of the I.P.C. is concerned, according to prosecution case itself, the alleged occurrence took place on account of digging of a land and furthermore, the defence has also brought evidence on record to show that it was prosecution party who assaulted the appellants and, therefore, it is obvious that sudden fight took place between the parties and there was no common object of appellants to commit the murder of deceased. Therefore, in our view, conviction of the appellants for the offence punishable under Section 302 read with Section 149 of the I.P.C. was not proper and accordingly, the conviction of appellants for the offence punishable under Section



302 read with Section 149 of the I.P.C. is, hereby, set aside and they are acquitted from the charge framed under Section 302 read with Section 149 of the I.P.C.

41. Since the conviction of appellant Indal Rao for the offence under Section 323 of the I.P.C. has been confirmed but no separate sentence has been awarded to him for the offence punishable under Section 323 of the I.P.C, therefore, he is sentenced for the aforesaid offence to the period already undergone by him during pendency of the trial as well as during pendency of this appeal. All the appellants are on bail and, accordingly, they are discharged from the liabilities of their bail bonds.

42. In the aforesaid manner, this criminal appeal is partly allowed and is disposed of.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

shahzad/-

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