

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.975 of 2019

Arising Out of PS. Case No.-499 Year-2016 Thana- MOTIHARI MUFASIL District- East
Champaran

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Rambalak Bhagat Son of Late Khedu Bhagat Resident of Village- Basmatpur,
P.S.- Muffasil, District- East Champaran.

... .. Appellant/s

Versus

1. The State of Bihar
2. Rajesh Kumar S/o Ramdayal Bhagat Resident of Village- Basmatpur, P.S.-
Muffasil, District- East Champaran.
3. Krishna Bhagat S/o Ramdayal Bhagat Resident of Village- Basmatpur, P.S.-
Muffasil, District- East Champaran.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Sangeet Deokuliar, Adv.
For the Respondent/s	:	Mr.Dilip Kumar Sinha, Adv.
		Mr. Ajay Mishra, Adv.
		Mr.Kumar Ravish, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 28-01-2020

The instant appeal has been preferred by the appellant against the judgment dated 31.05.2019 passed in Sessions Trial No. 37 of 2018 (arising out of Motihari Mufassil P.S Case No. 499 of 2016) whereby the learned Additional Sessions Judge-13, East Champaran, Motihari was pleased to acquit the respondent nos. 2 and 3.

The prosecution case as per the written statement filed by the informant (appellant herein) on 28.12.2016, is that on



27.12.2016 at about 7 am as a result of the damage caused to the pole at the old house of the informant, there was altercation between the informant's son Pramod Kumar and his neighbour Krishna Bhagat. It is stated that at this time the brother of Krishna Bhagat, namely, Rajesh Kumar struck the informant's elder son Shiv Chaurasiya with a bamboo stick on his head as a result of which he sustained injuries and fell down on the ground. In the occurrence Sandeep Kumar son of Krishna Bhagat was also involved and had also abused and assaulted. It is stated that thereafter they took the injured Shiv Chaurasiya to Sadar Hospital, Motihari where he was seen by the doctor who seeing the condition to be serious referred him. Thereafter it is stated that the injured was treated at Rahmania Hospital in Motihari but as his condition did not improve, he was referred to Patna on 28.12.2016. It is further stated that in course of treatment at Tara Nursing Home in Patna at 3.10 pm, Shiv Chaurasiya son of the informant died. Thereafter his dead body was brought to the Mufassil Police Station. On the written statement of the informant- appellant, Mufassil P.S Case No. 499 of 2016 (District East Champaran) was registered on 28.12.2016 for offences under sections 341, 342, 323, 307, 302, 504 and 34 of the Indian Penal Code.



Based on the materials available on record, cognizance of the offence was taken on 10.05.2017 and by order dated 29.11.2017 the case was committed to the Court of Sessions. By order dated 20.02.2018 charge was framed against both respondent nos. 2 and 3 under sections 307/34, 504/34, 302/34 and 341 of the Indian Penal Code. Nine witnesses were examined on behalf of the prosecution while the defence examined two witnesses in support of their case.

By judgment and order dated 31.05.2019 in Sessions Trial No. 37 of 2018 the learned Additional Sessions Judge-13, East Champaran, Motihari was pleased to acquit respondent nos. 2 and 3. It is against this order of acquittal that the instant appeal has been preferred by the appellant who is the informant of Mufassil P.S case no. 499 of 2016 and father of the deceased Shiv Chaurasiya.

Heard learned counsel for the appellant and learned Additional Public Prosecutor for the State.

It is the submission on behalf of the appellant that the learned Court below in its judgment dated 31.05.2019 has not considered the deposition of the prosecution witnesses in their right perspective or else it would not have erred in giving benefit of doubt to the respondent nos. 2 and 3 and thus acquitting them.



It has further been submitted that besides the informant P.W. 5 Rambalak Bhagat who is the father of the deceased, P.W. 2, P.W. 3, P.W. 4, P.W. 6 as also P.W. 1 who is independent witness have supported the prosecution case in their depositions specifically stating that it was Rajesh Kumar who gave blow with a broken bamboo stick on the head of the son of the appellant/informant, thus causing serious injuries on his head and leading to his death in course of treatment. It is thus submitted that in view of the consistent evidence of the respondent no. 3 entering into altercation and abusing the deceased and the respondent no. 2 having given the blow which later proved fatal, the prosecution had proved their case beyond all reasonable doubts. It is further submitted that P.W. 7 Dr. Asad Kamal who conducted the post-mortem examination on the body of the deceased found injuries on the head consistent with the case of the prosecution. It was thus submitted that the trial Court had committed serious error in appreciation of the evidence led by the prosecution witnesses and thus the judgment of acquittal dated 31.05.2019 be set aside.

The prosecution in support of its case examined nine witnesses namely P.W. 1 Ramadhar Prasad Bhagat @ Ramadhar Bhagat, P.W. 2 Sri Devi @ Baby Devi (wife of deceased), P.W. 3 Amod Kumar (brother of deceased), P.W. 4 Jaleshwari Devi



(mother of deceased), P.W. 5 Rambalak Bhagat (informant and father of deceased), P.W. 6 Pramod Chaurasiya (brother of deceased), P.W. 7 Dr. Asad Kamal (conducted post-mortem examination on deceased), P.W. 8 Manoj Kumar (Investigating Officer) and P.W. 9 Arun Kumar Chaurasiya (nephew of informant and formal witness). In addition to the prosecution witnesses, two witnesses were examined on behalf of the defence namely D.W. 1 Daroga Bhagat and D.W. 2 Amit Kumar.

P.W. 5 Rambalak Bhagat who is the informant of the case and the appellant herein states that at about 7 am on the date of occurrence on hearing sound of abuse and hulla, he reached the place of occurrence where he was pushed to the ground by the Krishna Bhagat and thereafter he caught hold of his elder son and called his brother Rajesh. It is stated that Rajesh struck his son Shiv Chaurasiya on the head causing injury which was seen by the villagers. His son was taken to Sadar Hospital, Motihari where after giving first aid he was referred to Patna but seeing his serious condition he was taken to Rahmania Hospital. He remained whole day in Rahmania Hospital and the next morning was once again referred to Patna. It was in course of treatment at Patna that his son died at 10 pm. He received information at 10 pm on telephone about the death of his son on which he came to



the Police Station and gave a written statement which was written by Arun Kumar Chaurasiya(P.W. 9). In his cross examination he states that his new house is at a distance of about 2 laggis from his old house and for the last 4 months he along with his family has been living in his new house. It is further submitted that none of the assailants were armed and only one of the accused had hurled a broken bamboo stick. He further states that the dispute with respect to the 'Rasta' has been going on between the parties since 3 years prior to this case and measurements have been carried out on 5-6 occasions.

As stated above, P.W. 2, P.W. 3, P.W. 4 and P.W. 6 happen to be family members of the deceased and the informant. P.W. 2 Sri Devi happens to be the wife of the deceased, P.W. 4 Jaleshwari Devi is the mother of the deceased and P.W. 3 Amod Kumar and P.W. 6 Pramod Chaurasiya are both the brothers of the deceased.

P.W. 2 Sri Devi in her deposition has stated that while she was cooking food in her house she heard hulla and came out and claims to have seen the occurrence of Rajesh Kumar having struck her husband with a bamboo stick on his head. In her cross examination she states that the occurrence had taken place as a result of the damage having been caused by the tractor of P.W. 1



Ramadhar Prasad Bhagat. She further states that the distance between the old house and the new house is of almost half a kilometer and that they reside in the new house. Admittedly the occurrence took place near the old house.

P.W. 4 Jaleshwari Devi who is the mother of the deceased states that the occurrence had taken place at the old house and that the case had taken place because the accused persons had been asking for 'Rasta' which they were not ready to give and as a result there was enmity between the parties. The dispute with respect to 'Rasta' had been taking place and was going on for the last 5 years and the accused persons used to forcibly use their land for 'Rasta'. She further states that they had shifted in new house almost a year before the occurrence and that with respect to the tractor there were no dispute on the date of occurrence.

P.W. 3 Amod Kumar who is the brother of the deceased after narrating about the assault by Rajesh Bhagat on his brother Shiv Chaurasiya and his treatment in Sadar Hospital in Motihari, Rahmani Hospital in Motihari and finally death in course of treatment at Patna, states that the occurrence took place near the old house while they have been living in the new house for the last 1.6 years. In his cross examination he further states that his



brother who subsequently died had sustained injuries at 3 places. Besides the head injury, he was bleeding from his right eye and had sustained injuries at 3 places. He further states that he did not get injured.

P.W. 6 Pramod Chaurasiya who is also the brother of the deceased states about the occurrence and the subsequent treatment at hospital in Motihari and death in course of treatment at Patna. In his cross examination he states that for the last 4-5 years they have been living in the new house which is at a distance of about half a kilometer from the old house. He states about the dispute going on between the parties with respect to 'Rasta'. He further states that his 'Marari' had broken from the tractor of P.W. 1 Ramadhar Bhagat for which no case was lodged by his father. Instead it was Ramadhar Bhagat who got them to lodge a case. He thereafter states about his brother being taken on a 'tempo' vehicle to Motihari Hospital and his death two days later in course of treatment at Patna. It is stated that P.W. Ramadhar Bhagat who got them to lodge the case is one of the witnesses herein.

P.W. 1 Ramadhar Bhagat has stated that on 27.12.2016 at 7 am while he was getting sand on his tractor, 'tati ka khamba' of Rambalak Bhagat broke as a result of being crushed by his



vehicle. It is stated that on assurance given by him that he would get the same repaired, Amod (P.W. 3) and Pramod (P.W. 6) agreed and started to leave but at this time Sandeep Kumar and Pankaj Kumar both sons of Krishna Bhagat came there and altercation started between them in which Rajesh Bhagat struck Shiv Prasad Chaurasiya on his head as a result of which he fell down. The injured was taken for treatment to Sadar Hospital, Motihari from where he was taken to Rahmania Hospital, Motihari but he ultimately died in course of treat at Patna. In course of his cross examination he states that the son of the informant was first treated at Sadar Hospital, Motihari where the police had also reached. They remained there for 1-2 hours from where they referred him because of the emergent condition but they did not go out of town and took him to Rahmania Hospital in Motihari itself where treatment went on for one day. The police did not reach there. It was after the death in Patna that when he was brought back, the F.I.R was lodged.

P.W. 7 is Dr. Asad Kamal who conducted the post-mortum examination on Shiv Chaurasiya. He found the following anti-mortem injuries;

(1) Sticked wound in the right parietal region of about 6 centimeter in length over head.



(II) Sticked wound in the mid line over the vertex of head of about 2.5 centimeter in length.

Although the doctor in his examination states that cause of death is the head injury due to hard and blunt substance, however, in his cross examination he states that he found injury at two places on the head. He further states that in the post-mortem, as a result of the stitched wound it could not be ascertained as to from which object the injuries had been sustained. He states that both the injuries could be possible from the deceased banging against hard and blunt substance or even from fall of any hard and blunt substance on his head. He further states that in case the deceased had been treated, he could have been saved. He did not find any other injury on the body of the deceased nor any external injury.

Having heard learned counsel for the appellant/informant and having gone through the deposition of the witnesses and the other materials on record, it transpires that while the occurrence is said to have taken place at 7 am on 27.12.2016, after an inordinate and unexplained delay the information by way of written statement of the informant was given to the police only at 10.30 pm on 28.12.2016. Soon after the occurrence as per the prosecution case, the injured son of the informant had been



taken to the Sadar Hospital, Motihari where he received treatment for about 4 hours and where the police is also set to have reached, however, for no explanation whatsoever, F.I.R was not registered. It is stated that on seeing the serious condition of the injured he was referred from Sadar Hospital, Motihari to Patna but was taken to Rahmania Hospital, Motihari where his treatment continued for the next 20 hours. In spite of this long period, neither any information was given to the police nor any F.I.R was registered. It was only after the death of injured on 28.12.2016 at Tara Hospital in Patna that the dead body was again brought back to the Mufassil police station and the F.I.R was registered only on 28.12.2016 at 10.30 pm.

P.W. 2, P.W. 3, P.W. 4, P.W. 5 and P.W. 6 all happen to be closely related to the deceased and interested witnesses. In their deposition, although making allegations of assault by Rajesh Kumar on the deceased, they admit that while the occurrence is said to have taken place at the old house, for the last considerable period ranging from few months to a few years they have not been residing in the old house but are residing in their new house which is at the distance of about half a kilometer from where the occurrence is said to have taken place. All the witnesses also consistently agree to an ongoing land



dispute with respect to 'Rasta' between the prosecution and the defence parties. While the consistent case of the prosecution from the very beginning is of one blow from a broken bamboo stick having been given by Rajesh Kumar on the head of the deceased, the post-mortem report which has come in the evidence of the doctor (P.W. 7) mentions about two distinct stitched wounds, one on the right parietal side while the other on the centre of the head. Thus the medical report also does not support the case as made out by the prosecution.

From the facts stated herein above it transpires that there are large number of lacunae and inconsistencies in the case of the prosecution in so far as they have not been able to satisfactorily explained the delay in lodging of the F.I.R, non-production of the documents/prescriptions of treatment of the deceased in the three hospitals and presence of prosecution witnesses in the old house when they have been living in their new house for the last several months prior to the occurrence. In addition what is admitted is that there had been land dispute between the parties and even as per case of the prosecution the accused persons are said to have come unarmed.

Taking into consideration the facts and circumstances of the case as also the deposition of the prosecution witnesses



together with the post-mortem report, in our opinion the learned trial court rightly came to the conclusion that the prosecution had not been able to prove their case against the accused persons and thus giving them the benefit of doubt, correctly passed the judgment of acquittal.

Not finding any merit, the instant appeal is dismissed.

(Ashwani Kumar Singh, J)

(Partha Sarthy, J)

Bibhash/-

AFR/NAFR	
CAV DATE	
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