

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1094 of 2019**

Arising Out of PS. Case No.-79 Year-2010 Thana- MAHNAR District- Vaishali

SURENDRA CHAUDHARY Son of Late Dulla Chaudhary Resident of
Village - Rupnarayanpur, Karnauti, P.S.- Mahnar, Distt - Vaishali.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Jamun Chaudhary Son of Late Dahaur Chaudhary Bihar.
3. Mantu Chaudhary Son of Jamun Chaudhary Bihar.
4. Urmila Devi Wife of Sanjay Chaudhary Bihar.
5. Rinku Devi Wife of Shushil Chaudhary Bihar.
6. Shushil Chaudhary Son of Jamun Chaudhary Bihar.
7. Palaki Devi Wife of Jamun Chaudhary Bihar.
8. Sanjay Chaudhary Son of Jamun Chaudhary Bihar.

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Manoj Kumar with Mr. Mazharul Hassan, Advocates
For the State	:	Mr. Satya Narayan Prasad, A.P.P.
For the Respondents	:	Mr. Ramesh Kumar Choudhary, Advocate

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER**

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

4 05-07-2022 Heard Mr. Manoj Kumar, learned counsel for the

appellant, Mr. Satya Narayan Prasad, learned Additional Public

Prosecutor (hereinafter referred to as the 'A.P.P.') for the State

and Mr. Ramesh Kumar Choudhary, learned counsel for the

respondents no. 2 to 8.

2. The present appeal is directed against the judgment

and order of acquittal of respondents no. 2 to 8 in Sessions Trial



No. 223 of 2013 and 125 of 2013, arising out of Vaishali District Mahnar Police Station Case No. 79 of 2010 by the learned Additional District and Sessions Judge, VIIIth, Vaishali at Hajipur.

3. Learned counsel for the appellant, who is the informant of Mahnar Police Station Case No. 79 of 2010 dated 15.07.2010 submits that in the F.I.R. there is specific allegation of brutal assault by all the respondents no. 2 to 8 and specific against the respondent no. 8 i.e., Sanjay Chaudhary of inflicting spade blow on the head and the postmortem report corroborates the same as lacerated cut wound has been found on the parietal region and there is fracture of left half of parietal and occipital bone. It was submitted that the prosecution witnesses have been consistent in their deposition that there was repeated assault and further with regard to the accused inflicting spade blow on the head and thus, acquitting them is perverse. It was submitted that the reason given by the trial court for acquitting the accused is that there were discrepancies with regard to who had inflicted the spade blow, but the same is also erroneous since three prosecution witnesses had taken the name of respondent no. 8 as the perpetrator of such blow which proved to be fatal.

4. Learned A.P.P. submitted that the postmortem



report raises doubt about the prosecution story and there is no error in the judgment.

5. Learned counsel for the respondents no. 2 to 8, who has filed counter affidavit, also supported the judgment and submitted that out of five witnesses, two have taken the name of different persons as the one who had inflicted spade blow on the head of the deceased and three persons have stated that it was respondent no. 8. It was submitted that PW 1 who is the first person to arrive at the scene specifically stated that it was respondent no. 2 who had inflicted the spade blow on the head whereas respondent no. 5 stated that it was respondent no. 6 and PWs 3, 4 and 5 have stated that it was respondent no. 8. It was further contended that the postmortem report does not corroborate the allegation as blow by spade would have resulted in clear cut injury by a sharp edged weapon and not lacerated cut. However, it was submitted that this is enough to raise bonafide doubt and obviously law requires that in case of genuine doubt, the benefit has to go to the accused which has been done by the court below and, thus, there is no error in the said judgment.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, we



do not find any merit in the present appeal. It is obvious that the deceased was about 85 years old and the story that he was repairing the mud partition itself may not be very convincing. Further, out of five witnesses, the very first person PW 1 who is said to be watching the whole incident from his field which was near by, stating about one particular accused, the PW 5 taking the name of another co-accused whereas three other PWs taking the name of a third co-accused also is a pointer, specially in light of the postmortem report in which only one lacerated cut would has been found on the head. Thus, on an overall circumspection of the evidence and materials on record, it cannot be said that the judgment of acquittal requires interference.

7. Accordingly, the appeal stands dismissed.

(Ahsanuddin Amanullah, J)

(Purnendu Singh, J)

Ranjeet/-

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