

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.620 of 2014

Arising Out of PS. Case No.-186 Year-1991 Thana- KHAGARIA District- Khagaria

Ajit Singh @ Ajit Kumar Singh, S/o Late Nagehwar Singh, R/o Village-Kashimpur, P.S.-Muffasil, District-Khagaria.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Satya Narain Mahto, Son of Late Uchit Mahto, R/o Village-Rahua, P.S.-Gangaur, District-Khagaria.

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 586 of 2014

Arising Out of PS. Case No.-186 Year-1991 Thana- KHAGARIA District- Khagaria

1. Manti Devi, Wife of Jai Kant Mahto;
2. Jai Kant Mahto, Son of Late Chandra Shekhar Mahto;
Both are R/o Village-Rahua, P.S.-Gangaur, District-Khagaria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 656 of 2014

Arising Out of PS. Case No.-186 Year-1991 Thana- KHAGARIA District- Khagaria

1. Ashok Singh, Son of Late Asarfi Singh;
2. Yogi Singh, Son of Late Asarfi Singh;
Both are R/o Village-Kasimpur, P.S.-Khagaria (Muffasil), District-Khagaria.
3. Maheshwar Singh @ Mahesh Singh, S/o Late Anandi Singh, R/o Village-Kasimpur, P.S.-Khagaria (Muffasil), District-Khagaria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s



Appearance :

(In CRIMINAL APPEAL (DB) No. 620 of 2014)

For the Appellant/s : Mr. Ansul, Adv.
For the State : Mr. Ajay Mishra, APP
For the Informant : Mr. Sanoj Kumar, Adv.

(In CRIMINAL APPEAL (DB) No. 586 of 2014)

For the Appellant/s : Mr. Ravindra Kumar, Adv.
For the State : Mr. Dilip Kumar Sinha, APP
For the Informant : Mr. Sanoj Kumar, Adv.

(In CRIMINAL APPEAL (DB) No. 656 of 2014)

For the Appellant/s : Mr. Ravindra Kumar, Adv.
For the State : Mr. Dilip Kumar Sinha, APP
For the Informant : Mr. Sanoj Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 16-10-2023

We have heard Mr. Ansul, the learned Advocate for the appellant/Ajit Singh @ Ajit Kumar Singh [*Cr. Appeal (DB) No. 620 of 2014*] and Mr. Ravindra Kumar, the learned Advocate for the appellants in other two appeals, *viz.*, Cr. Appeal (DB) Nos. 586 and 656 of 2014 respectively.

2. The State is represented by Mr. Ajay Mishra and Mr. Dilip Kumar Sinha, the learned APPs., respectively.

3. Mr. Sanoj Kumar, the learned Advocate has appeared for the informant in all the three appeals.



4. One of the appellants in Cr. Appeal (DB) No. 656 of 2014, namely, Maheshwar Singh @ Mahesh Singh, had died during the pendency of the appeal and, therefore, the appeal as against him stood abated by this Court *vide* order dated 21.09.2023.

5. The appellant/Ajit Singh @ Ajit Kumar Singh (hereinafter called Ajit Singh) has been convicted under Sections 302 and 364/34 of the Indian Penal Code (*in short the I.P.C.*), whereas the rest of the appellants in Cr. Appeal (DB) Nos. 586 and 656 of 2014 have been convicted under Sections 302/34 and 364/34 of the I.P.C. *vide* judgment dated 04.07.2014 passed by the learned *Adhoc* Additional District and Sessions Judge-II, Khagaria in Sessions Case No. 322 of 1995, arising out of Khagaria P.S. Case No. 186 of 1991, and by order dated 08.07.2014, all of them have been sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- each for the offence under Section 302/34 of the I.P.C. and to undergo rigorous



imprisonment for ten years and to pay a fine of Rs. 10,000/- each for the offence under Section 364/34 of the I.P.C.

6. A default clause has also been provided in the sentence and it has been directed that the sentences shall run concurrently.

7. One Satyanarayan Mahto (informant/P.W. 3), who is the father of the deceased/Nand Kishore Mahto, has lodged the F.I.R. alleging that his son (deceased) was shot dead by appellant/Ajit Singh. He has further stated that about fifteen days prior to the occurrence, because of the dispute between Dev Narayan Mahto (the cousin of the informant) and appellant/Jai Kant Mahto, Dev Narayan Mahto along with his family members had left the village after uprooting his hut which was erected on the land which was the bone of contention between Dev Narayan Mahto and Jai Kant Mahto. Dev Narayan Mahto, according to P.W. 3, had learnt that Jai Kant Mahto had called his relatives at



his house for taking punitive action against the family members of Dev Narayan Mahto. This was also one of the reasons for Dev Narayan Mahto to have run away from his village home.

8. On 28.05.1991, it has been alleged that when no member of the family of Dev Narayan Mahto could be found by the miscreants/appellants, they came to the house of the informant (P.W. 3) and took away his son/Nand Kishore Mahto (deceased). One of the miscreants, namely, Nageshwar Mahto (since dead) had caught him and had taken him to the house of appellant/Jai Kant Mahto. P.W. 2 (Daresh Devi, the mother of the deceased and the wife of the informant) along with his family members followed the miscreants, but they were threatened of being shot dead in case they pursued them. The deceased was taken inside the house of appellant/Jai Kant Mahto, where on the orders of aforesaid Nageshwar Mahto, appellant/Ajit Singh fired from his weapon, which hit the deceased in his right eye



and he died instantaneously. The blood which had spilled at the place of occurrence, was removed by appellant/Manti Devi.

9. On the sound of firing, it has been alleged, many persons of the village had arrived and were successful in apprehending the accused persons, namely, Nageshwar Mahto, Ajit Singh, Jai Kant Mahto and Manti Devi. All of them were assaulted by the members of the public. The reason for the occurrence, according to P.W. 3, was the old land dispute.

10. The Officer-in-Charge of the concerned Police Station came to the P.O. where the *fardebayan* of P.W. 3 was recorded, which was attested by one Lakshmi Mahto (not examined) and Bhola Sada (P.W. 4), who has been declared hostile at the Trial.

11. During the proceedings, accused/ Nageshwar Mahto, who is said to have ordered appellant/Ajit Singh to kill the deceased, died on 17.01.2008 and, therefore, the case against him got



terminated.

12. On the basis of the afore-noted *fardbeyan* statement, a case *vide* Khagaria P.S. Case No. 186 of 1991, dated 28.05.1991, was registered for investigation for the offences punishable under Sections 302/34 of the I.P.C. and Section 27 of the Arms Act, 1959.

13. The police, after investigation, submitted charge-sheet against the appellants, whereupon cognizance was taken and the case was committed to the Court of *Sessions* for the Trial.

14. The Trial Court, after having examined eight (8) witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

15. It must be stated at the outset that appellant/Ajit Singh [*Cr. Appeal (DB) No. 620 of 2014*], instead of challenging the merits of his conviction, has submitted that he ought to have been given the privilege of juvenile as he was less than 18 years of age on the



date of occurrence, which fact stands established today. He was made accused in the case when he was less than 18 years of age. His age was assessed to be between 15 – 16 years by the Civil Assistant Surgeon, Khagaria, which assessment was made in compliance of the order dated 05.10.1991 of the Chief Judicial Magistrate, Khagaria. The assessment was made by a Board of Doctors, which gave its report on 16.12.1991.

16. Mr. Ansul, the learned Advocate representing appellant/Ajit Singh has submitted that even according to the provisions contained in Juvenile Justice Act, 1986, wherein the age of juvenility was 16 years for male, appellant/Ajit Singh was a juvenile.

17. However, the assessment of the age of appellant/Ajit Singh was not accepted by a Bench of this Court while hearing the bail application (Cr. Misc. No. 686 of 1992) on his behalf, who *vide* his order dated 05.02.1992, directed the Civil Surgeon, Khagaria to constitute a fresh Medical Board which would assess the



age of appellant/Ajit Singh *qua* the date of occurrence after holding the ossification test. Since this Court was not at all satisfied with the assessment of the age of the appellant/Ajit Singh, a further direction was given to the Medical Board to give reasons for coming to any conclusion regarding his age.

18. In compliance of this Court's order, referred to above, a fresh Medical Board was constituted, which, on conducting the ossification test of the appellant/Ajit Singh, found his age to be about 15 years.

19. The aforesaid assessment of the age of appellant/Ajit Singh led to his release on bail, but for reasons which are not explicable to us, he faced the Trial along with the other appellants.

20. However, during the Trial, a petition was filed on his behalf some times in the year 2000, seeking a separate Trial for him, but to no avail. Again, an attempt was made by him to seek separation of his Trial



from others, but the Trial Court rejected his prayer on 14.02.2004.

21. This order of the Trial Court was challenged before the High Court in Cr. Revision No. 215 of 2004, which also was rejected on a queer ground that since the Trial at that time was almost at the point of completion, therefore such plea could not be raised by the juvenile. Appellant/Ajit Singh could however obtain an observation from the Court that if the Trial ended in conviction, he would have the liberty to raise such issue in appeal.

22. In the criminal appeal preferred by him, he was directed to raise the plea of his juvenility before the Juvenile Justice Board, Khagaria. The Juvenile Justice Board, Khagaria found him to be a major on the date of occurrence.

23. The Appellate Court, at the time of admission and while dealing with the request for suspension of his sentence found that unless the report



of the Juvenile Justice Board, Khagaria was challenged by him, no relief would be forthcoming from the Courts.

24. Challenging the afore-noted assessment of age holding the appellant/Ajit Singh to be a major on the date of occurrence, he preferred a criminal writ petition *vide* Cr.W.J. No. 286 of 2018, when he was advised to prefer an appeal under Section 101 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2015, which had come into operation by then.

25. As directed, appellant/Ajit Singh preferred an appeal *vide* Cr. Appeal No. 14 of 2022 before the learned 1st Addl. Sessions Judge, Khagaria, who did not find the report of the Juvenile Justice Board, Khagaria to be acceptable, especially on the ground that the Board had only relied on the ossification test and also on such documents which are not listed under Section 94 of the J.J. Act, 2015. The report of the Juvenile Justice Board, Khagaria thus was set aside and the Board was directed to pass a fresh order in



accordance with law within a specified period of time.

26. The Juvenile Justice Board, Khagaria, in this instance, *vide* its order dated 07.01.2023, came to a finding that the appellant/Ajit Singh was 16 years and 5 months old on the date of occurrence.

27. It is the contention of Mr. Ansul, representing appellant/Ajit Singh, that even if he was found to be guilty on the assessment of the merits of the case, he could, at best, be given the maximum punishment of three years and not more and since he has already remained in jail for about ten (10) years by now, he ought to be released from custody with the proceedings terminated in his favour.

28. The occurrence, as noted above, had taken place in the year 1991 when the Juvenile Justice Act of 1986 was in currency, in which the age of juvenility was 16 years for boys and 18 years for girls. The Juvenile Justice Act underwent a change and the Juvenile Justice Act, 2000 provided a common age of 18



years to be the age for both, boys and girls, to cross over to majority.

29. It may be noted here that under the Juvenile Justice Act, 2015, the age of juvenility is 18 years, which is common for boys and girls, but any person charged with heinous offence while he/she was in the age group of 16 to 18 years, he/she would be subjected to a Trial procedure in which no death sentence or life imprisonment, without remission, could be awarded to him/her.

30. With the last of the assessment of the age of the appellant/Ajit Singh (16.5 to 17 years), he may not have been treated as a child under the 1986 Act during the currency of which, the offence had been committed.

31. Mr. Ansul submits that actually the Juvenile Justice Act, 2000 would apply to the appellant/Ajit Singh, where a boy or a girl would be a child if less than 18 years of age on the date of



occurrence and he/she would not be subjected either to the 1986 Act or the Act of 2015.

32. The Constitution Bench of the Supreme Court in ***Pratap Singh vs. State of Jharkhand and Another; (2005) 3 SCC 551***, has categorically held that the date of occurrence will be the reckoning date for determining the age of the alleged offender as a juvenile offender and that the Act of 2000 would be applicable in a pending proceeding, instituted under the 1986 Act in any Court or Authority, if the person had not completed 18 years of age as on 01.04.2001, when the Act of 2000 had came into force.

33. Subsequent to the Constitution Bench judgment in ***Pratap Singh*** (supra), the Juvenile Justice Act, 2000 was amended in the year 2006.

34. Section 20 of the 2000 Act provided a special provision in respect of pending cases, post the amendment in the Act of 2000 in the year 2006. Section 20, referred to above, provided that



notwithstanding anything contained in the Act of 2000, all proceedings in respect of a juvenile, pending in any Court in any area on the date on which the Act came into force in that area, would be continued in that Court as if the Act of 2000 had not been passed and if the Court found that the juvenile had committed an offence, it would record such finding and instead of passing a sentence in respect to the juvenile, forward him to the Board, which shall pass orders in respect of that juvenile in accordance with the provisions of the Act of 2000, as if it had been satisfied, on inquiry under the Act, that a juvenile had committed the offence.

35. From this provisions of the Act of 2000 (amended in 2006), the legislative intent is absolutely clear that all proceedings in respect of a juvenile, pending before any Court on the date when the 2000 Act came into force, would continue in that Court as if the Act of 2000 had not been passed.

36. There is no confusion with respect to the



stage at which such an issue of juvenility could be raised. It could be raised not only at the Trial, but in all other subsequent proceedings by way of appeal and revision. The Juvenile Justice Act, 2000 applied even to cases where the accused was not a juvenile on the date of commission of the offence, but had been assessed to be a juvenile on or before the date of commencement of the Act of 2000. Even in those cases, the provisions of the Act of 2000 were to apply as if the provisions in this Act were in force for all purposes and at all material time when the offence was committed.

37. In ***Dharambir vs. State (NCT of Delhi) and Another; (2010) 5 SCC 344***, the entire scheme and application of the Act of 2000 was analyzed by the Supreme Court *qua* an accused who would be below the age of 18 years on the date of commission of offence, which was committed prior to the enactment of the Act of 2000. It was conclusively held that all persons who were below the age of 18 years on the date



of commission of the offence, even prior to 01.04.2001, would be treated as juvenile even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act of 2000.

38. The inter-play and effect of Section 20 of the Act of 2000, referred to above, and the 1986 Act was also clearly elucidated by the Supreme Court in ***Mumtaz @ Muntyaz vs State of Uttar Pradesh (2016) 11 SCC 786***. Referring to the judgment in ***Pratap Singh*** (supra), it has been held that any proceeding in respect of a juvenile, pending in any Court would be relatable to proceedings initiated before the Act of 2000 came into force and which were pending before the Act of 2000 came into force.

39. A person above the age of 16 years in terms of 1986 Act may not have been a juvenile, but by virtue of Section 20 of the Act of 2000, the provisions of that Act will take care and for any person said to be an



offender, who would be below the age of 18 years as on the date of promulgation of the 2000 Act, would be treated as a juvenile against whom the Act of 2000 would be applicable. This is by reason of a legal fiction that even though a person was not a juvenile, had to be treated as one for the purposes of dealing with him either by the Board or by the Court for sentencing him.

[Also refer to ***Bijender Singh vs. State of Haryana and Another; (2005) 3 SCC 685, Kalu Alias Amit vs. State of Haryana; (2012) 8 SCC 34 and Satya Deo Alias Bhoorey vs. State of Uttar Pradesh; (2020) 10 SCC 555.***]

40. It would also be necessary here to clarify as to why the Juvenile Justice Act, 2015, which is in currency now, when this appeal is being decided, would not be applicable against the appellant/Ajit Singh even though by Section 111 (1) of the Act of 2015, the Act of 2000 stands repealed.

41. Section 111 (2) of the Act of 2015 states that notwithstanding the repeal, anything done or any action taken under the Act of 2000 shall be deemed



to have been done or taken under the corresponding provisions of the Act of 2015. This provision is exactly similar to Section 69 (*the repeal in saving clause*) of the Act of 2000 by which the Act of 1986 had been repealed and it was clarified that notwithstanding such repeal, anything done or any action taken under the 1986 Act would be deemed to have been done or taken under the corresponding provisions of the Act of 2000.

42. Section 25 of the Act of 2015 is also required to be referred to, which is being extracted hereinbelow:

Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted.

43. This non-obstante clause applies to all proceedings in respect of a child in conflict with law, pending before any Board or Court, on the day of



commencement of 2015 Act, *i.e.*, 31.12.2015. The pending proceedings would be continued in that Board or Court as if the Act of 2015 had not been passed.

44. In ***Akhtari Bi vs. State of M. P. (2001) 4 SCC 355***, it has been observed that a right to appeal is a statutory right. The Trial Court's verdict does not attain finality during the pendency of the appeal and, therefore, a Trial is deemed to be a continuation of Trial despite conviction.

45. But what does repeal mean?

46. We would be required to refer to the provisions contained in Section 6 of the General Clauses Act, 1897 to answer this poser.

47. Section 6 of the General Clauses Act, 1897 provides that where any Act is repealed, such repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed. Thus, in the light of Section 6 of the General Clauses Act, 1897 read with Section 25 of the Act of



2015, no accused would be denied of his right to be treated as a juvenile when he was less than 18 years of age at the time of the commission of an offence, a right which he acquired and which right had fructified under the Act of 2000, even if the offence was committed prior to the enforcement of the Act of 2000 on 01.04.2001. Thus, the provisions of the Act of 2000 would continue to apply and govern the proceedings which were pending when the Act of 2015 was in force.

48. In the case at hand, the offence was committed when the 1986 Act was in operation when only a person less than 18 years was treated to be a child. The appellant, according to the latest assessment, was 16½ to 17 years. The age of majority was raised to 18 years under the Act of 2000. By virtue of the repealing provision in the Act of 2000 and the interpretation thereof, especially of Section 20 of the Act of 2000, notwithstanding the fact that the offender had committed an act when the 1986 Act was in operation



where he was not a juvenile, he would acquire the status of a juvenile under the Act of 2000, which benefit shall accrue to him even later when the Act of 2015 has come into play.

49. Thus, Mr. Ansul is right in his contention that the appellant/Ajit Singh ought to have been treated as a juvenile and should have been dealt with in the manner as has been provided under the Act of 2000. Even if that has not been done, the appellant/Ajit Singh has remained in jail for 10 years and, therefore, the proceedings against him ought to be terminated.

50. This takes us to another issue as to the course to be adopted by us, now, when appellant/Ajit Singh [*Cr. Appeal (DB) No. 620 of 2014*] is held to be a juvenile at the time of the occurrence.

51. In ***Jitendra Singh Alias Babboo Singh and Another vs. State of Uttar Pradesh; (2013) 11 SCC 193***, the Supreme Court dealt with the issue whether the conviction of a juvenile should be



sustained by the Court but he be sentenced according to the provisions of the Juvenile Justice Act, 2000. A series of fact-situations were taken into account by the Bench and the cases relating to juveniles were classified into three or four categories. The first category comprised cases where conviction was upheld but the sentence was quashed. The second category was where conviction was upheld but the sentence was modified to the period already undergone. The third category encompassed cases where conviction and sentence, both, were set aside. And the fourth category was where the conviction was upheld and the matter was referred to the Juvenile Justice Board for awarding a suitable sentence. The Bench also found that there was no provision suggesting or making it obligatory for the Courts before which claim of juvenility is made to set aside the conviction of the appellant on the ground that on the date of the commission of the offence, he was a juvenile and hence, not triable by an ordinary criminal



Court.

52. Applying the *maxim expressio unius est exclusio alterius*, it was held that it would be reasonable to hold that the law in so far as it requires a reference to be made to the Board, excludes any necessary implication of any intention on the part of the legislature requiring the Courts to set aside the conviction recorded by the Lower Courts.

53. Similar view was taken by the Supreme Court in ***Mahesh vs. State of Rajasthan; (2021) 18 SCC 582***, wherein the Supreme Court confirmed the conviction, but the sentence imposed was modified to the period already undergone. In ***Raju vs. State of Haryana; (2019) 14 SCC 401***, the Supreme Court but set aside the conviction and sentence, both, as the appellant had already undergone six years incarceration and directed for termination of the entire proceedings against him. Following the judgment in ***Raju*** (supra), the Supreme Court in ***Ashok Kumar Mehra and***



Another vs. State of Punjab and Others; (2019) 6 SCC 132, set aside the judgment of conviction and sentence awarded to an accused, who claimed to be a juvenile.

54. We notice that in all the cases, referred to above, the intention of the legislature is to give benefit to a person who is declared to be a child on the date of the offence only with respect to its sentence and not conviction simpliciter.

55. However, in the present case, since we have not found good and convincing grounds for convicting the other appellants, which we shall be discussing later, we only deem it appropriate to set aside the conviction and sentence, both, of appellant/Ajit Singh @ Ajit Kumar Singh [*Cr. Appeal (DB) No. 620 of 2014*] but solely on the ground of his juvenility.

56. Mr. Ravindra Kumar, the learned Advocate for the appellants/Manti Devi, Jai Kant Mahto, Ashok Singh and Yogi Singh has submitted that the



prosecution has miserably failed to prove the case beyond all reasonable doubts. The reasons for Mr. Kumar to say so is that the FIR was lodged by P.W. 3 with whom, neither Jai Kant Mahto nor his family members had any enmity. Evidence suggest that P.W. 3 is the cousin of Dev Narayan Mahto with whom Jai Kant Mahto and his family members were at loggerheads. That apart, according to the accusation against the appellants, the deceased, who is the son of P.W. 3, was picked up from the house of P.W. 3 and taken inside the courtyard of appellant/Jai Kant Mahto, where he was murdered. Only one person, viz., appellant/Ajit is said to have fired at him.

57. Assuming this accusation to be true, the dead body, which remained where the deceased had fallen on the ground, dying instantaneously, should have been found inside the courtyard of appellant/Jai Kant Mahto. On the contrary, the dead body was found near a river bank. P.W. 1 and P.W. 3 have tried to cover it up



by stating that the river bank is very close to the house of appellant/Jai Kant Mahto and that after receiving the gunshot, the deceased walked for a while and came out of the courtyard of appellant/Jai Kant Mahto. This does not appear to be believable, not only for the same not being possible physically, but also for the lack of any evidence supporting such explanation of the dead body having been found outside the courtyard of appellant/Jai Kant Mahto.

58. The second aspect of the matter which renders the opinion of the Trial Court to be unacceptable is that P.W. 1, while deposing before the Trial Court in the year 2000, is stated to be 16 years of age. The occurrence had taken place nine years ago when she would not have been about seven years of age. Would she have been allowed by the family members to pursue the marauders to the house of appellant/Jai Kant Mahto? Even if she was, would she remember the facts with such precision as to make a statement before the Trial



Court regarding every event in a logical sequence? It is very difficult to fathom that a girl of seven years would have such an eidetic memory who would not forget anything, let alone, not understand as to what had been happening. Even otherwise, the deposition of P.Ws. 1, 2 and 3 are full of inconsistencies with respect to their having seen the occurrence; though all of them have claimed to be the eyewitnesses of the occurrence. The tenor of their statements reflect that they went to the house of the appellant/Jai Kant Mahto only on hearing the sound of firing. The dead body was found lying near the bank of a river, which further confirms that none of them (P.Ws. 1, 2 and 3) had seen the occurrence. Even with respect to the motive, it could not be proved beyond all reasonable doubts by the prosecution. That the accused persons would pick up a student of 9th standard from the house of P.W. 3 and would kill him for avenging enmity with a total outsider to the family of the deceased, is not explicable.



59. Motive may not play any relevant role in a criminal case, especially, in view of the eyewitness account, but at the same time the law does not expect the Courts to accept absurdities.

60. If at all, any pressure was to be exerted on Dev Narayan Mahto, P.W. 3 was the surest bait, who is the cousin of Dev Narayan Mahto.

61. There is yet another aspect of the matter which has been pointed out by Mr. Ravindra Kumar that the miscreants had been called from outside who would not have allowed the eye-witnesses to remain alive, for all of them to be sent to gallows later.

62. The appellants were arrested by the villagers. Where and when is not known.

63. According to the deposition of the witnesses, it appears that there were injuries on the side of the defence as well, but because of the non-examination of the I.O., nothing could be proved. P.Ws. 1, 2 and 3 could not have been contradicted in the



absence of the examination of the I.O. of this case. There is no explanation whatsoever for his non-examination.

64. The three other witnesses, who could be called impartial as they are villagers who are not likely to show any affinity to either of the parties, have not supported the prosecution case and have been declared hostile. This includes even the person, viz., Bhola Sada (P.W. 4), who had attested to the FIR.

65. It has also to be remembered that the occurrence is of the year 1991.

66. Taking into account all these factors, it is difficult for us to accept the opinion of the Trial Court holding the appellants to be guilty of the charge of murder.

67. Per force, we set aside the judgment of conviction and order of sentence, referred to above, and acquit the appellants, above-named, from the charges levelled against them.



68. Since appellants Manti Devi and Jai Kant Mahto [*Cr. Appeal (DB) No. 586 of 2014*]; Ashok Singh and Yogi Singh [*Cr. Appeal (DB) No. 656 of 2014*] are on bail, their liabilities under their bail-bonds are cancelled.

69. The appellant/Ajit Singh @ Ajit Kumar Singh [*Cr. Appeal (DB) No. 620 of 2014*], who has been given the benefit of juvenility, is still in Jail.

70. He is directed to be set at liberty forthwith unless his detention is required in any other case.

71. All the three appeals stand allowed accordingly.

72. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

73. The records of these appeals be returned to the Trial Court forthwith.

74. Interlocutory application/s, if any, also



stand disposed off accordingly.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

Praveen-II/Saurav

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18-10-2023
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