

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.674 of 2015

Arising Out of PS. Case No.-247 Year-2011 Thana- BIHPUR District- Bhagalpur

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Lali Chaudhary son of Dinesh Chaudhary resident of Village - Gonoul, P.S. -
Bihpur Bhawanipur District - Bhagalpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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with
CRIMINAL APPEAL (DB) No. 690 of 2015

Arising Out of PS. Case No.-247 Year-2011 Thana- BIHPUR District- Bhagalpur

1. Bambam Chaudhary and Anr. son of Dinesh Chaudhary.
2. Shankar Chaudhary, son of Yadu Nandan Chaudhary. Both are resident of
Village- Ganoul, P.S. Bihpur Bhawanipur District Bhagalpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 674 of 2015)

For the Appellant/s : Mr.Manoj K. Srivastava, Adv.
Mr. Sanjeev Kumar, Adv.

For the Respondent/s : Mr.Ajay Mishraapp

(In CRIMINAL APPEAL (DB) No. 690 of 2015)

For the Appellant/s : Mr. Manoj K. Srivastava

For the Respondent/s : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 18-09-2023

1. We have heard Shri Manoj K. Srivastava assisted
by Mr. Sanjeev Kumar, the learned Advocates for



appellant/ Lali Chaudhary in Criminal Appeal (DB) No. 674 of 2015.

2. There is no appearance on behalf of the appellants / Bambam Chaudhary and Shankar Chaudhary, the appellants in Criminal Appeal (DB) No. 690/2015, who have only been convicted and sentenced for two years for the offence under Sections 323 and 341 of the IPC. However, their appeal has been placed before the Division Bench because in the same transaction, appellant/Lali Chaudhary has been convicted and sentenced for life.

3. On our request, Mr. Manoj K. Srivastava, the learned Advocate for the appellant / Lali Chaudhary has assisted us for Bambam Chaudhary and Shankar Chaudhary, appellants in Criminal Appeal (DB) No. 690/2015 also.

4. We have also heard Mr. Ajay Mishra, the learned APP for the State in both the appeals.

5. The appellant/Lali Chaudhary has been



convicted under Section 323, 341, 302 of the I.P.C and 27 of the Arms Act and has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 10,000 and in default of fine further imprisonment of three months for the offence under Section 302 IPC; imprisonment for six months under Section 323 of the IPC; S.I. for one month for the offence under Section 341 IPC and S.I. for three years for the offence under Section 27 of the Arms Act *vide* judgment of conviction and order of sentence dated 31.07.2015 and 07.08.2015 respectively passed by the learned 2nd Additional Sessions Judge, Naugachia in Sessions Trial No. 1288 of 2012, arising out of Bihpur P.S Case No. 247 of 2011.

6. By the same judgment, the appellants/Bambam Chaudhary and Sankar Chaudhary have been convicted under Sections 323 and 341 of I.P.C and have been sentenced to undergo S.I. for six months for the offence under Section 323 IPC and S.I.



for one month for the offence under Section 341 IPC. The sentences with respect to all the appellants have been directed to run concurrently.

7. The deceased of this case is one Mantu Yadav whose wife is the informant of the case and has been examined as P.W-4. She has alleged in her *fardebayan*, which was recorded by the Sub-Inspector of police of Bhawanipur O.P, namely, Sudin Ram (P.W. 6) on 03.08.2011, alleging that the deceased had come back from Delhi about 3 to 4 days ago and on the same day, he went to his aunt's house for demanding Rs. 10,000, which he had given as an accomodation loan to her. On 03.08.2011 at about 1 'O' clock in the day, she was informed on her mobile telephone by Ranvijay Kumar Yadav (P.W. 3) that the appellants have assaulted the deceased as a result of which he has been seriously injured. The occurrence according to her information, was witnessed by Arjun Chaudhary, Mato Chaudhary and Mintu Chaudhary,



none of whom have been examined at the Trial.

8. On the basis of aforementioned *fardbeyan* statement of P.W. 4 (wife of the deceased), a case vide Bihpur P.S Case No. 247 of 2011 dated 03.08.2011 was registered initially for investigation for offences under Sections 147, 148, 149, 323, 341 and 307 of the I.P.C. However, later, with the death of the deceased, Section 302 was added on 04.08.2011.

9. The police after investigation submitted chargesheet against the appellants and four others, namely, Yadunandan Chaudhary, Manish Chaudhary, Dinesh Chaudhary and Bulu Chaudhary, who have since been acquitted.

10. The Trial Court after examining seven witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

11. Assailing the judgment and order of conviction and sentence, Mr. Srivastava, the learned Advocate for the appellants has submitted that four of



the witnesses examined at the trial are relatives of the deceased and have spoken complete lie before the Court, which stands demonstrated from a bare reading of their deposition. He has further submitted that the Trial Court completely misdirected himself in not taking into account the developments which led to the lodging of the Bihpur P.S case No. 246 of 2011 before the subject F.I.R, in which conviction has been recorded and in which case, the deceased also was one of the accused persons who was caught hold of by the accused persons of the present case and had been handed over to the police as also the judgment and order of conviction in the aforementioned case from the Court of S.D.J.M, Naugachia, Bhagalpur holding two of the cousins of the deceased of the present case to be guilty under the offences for Sections 447/34 of the I.P.C and Section 25 (1)(b)a read with 35 of the Arms Act.

12. It has also been argued that the



occurrence had taken place on 03.08.2011 at the house of co-accused Yadunandan Chaudhari (since acquitted) where the deceased along with his two cousins had come and all of them were variously armed. They were chased away but Mantu (Deceased) was overpowered. He received some injuries in the process. Mr. Srivastava has further pointed out that had it not been for the deceased and his two cousins being the aggressors, the accused persons of the present case would not have called the police at their own house to turn him in.

13. Lastly, it has been submitted that even though P.W. 5/the Doctor, who conducted the postmortem on the dead body of the deceased found one of the injuries, namely, a stitched wound to have been caused because of gun shot but that injury was found on the left cheek of the deceased and it appeared that the bullet went through the cheek and got stuck up in the maxilla. Taking clue from the



nature of gun shot injury suffered by the deceased, Mr. Srivastava has argued that the eye-witness account of P.Ws. 1, 2 and 3 has been rendered completely untrustworthy. Three minor injuries on the body of the deceased which was admitted by the accused persons in F.I.R No. 246 of 2011 and one accidental gun shot injury in the cheek clearly reflects that such injury must have caused while the deceased made attempts to extricate himself and run away from the house of co-accused Yadunandan Chaudhary.

14. In this context, Mr. Srivastav has drawn the attention of this Court to the deposition of the related witnesses, namely, P.W's 1 to 4.

15. We have examined the evidence of all the witnesses in detail.

16. Fekni Devi (P.W. 1) is the aunt of the deceased who has narrated a weird and a lopsided story which from the start of it, appears to be wholly unreliable. She has admitted during trial that she had



dispute with the accused persons with respect to ten kathas of land, the details of which, though, she could not provide. She has further admitted that the deceased had come to her house for recovering Rs. 10,000/- which was given by him as loan amount. While she was bathing in river *Ganges*, the deceased had come with fish. It was at that time, P.W. 1 has alleged, that the accused persons, namely, the appellants caught hold of him and brought him to the house of Yadunandan Chaudhary, where he was assaulted and later, on the orders of appellant/Sankar Chaudhary, appellant/Lali Chaudhary fired from his weapon, hitting in his left eye. The occurrence was witnessed by P.W-1 while she was still bathing in the river. The topography of the houses and the place where the occurrence according to her had taken place, makes her evidence absolutely untrustworthy. The falsity of the claim appears from two circumstances. She has admitted that many persons were bathing in



the river at that time and when the deceased was overpowered, she called for help, attracting many of the villagers. Had it been true, some of them would have been brought to the witness stand to support the prosecution case. Secondly, the house of Yadunandan Chaudhary, where the appellant was fired at, is at some distance which may not be in the line of vision of any person bathing in the river.

17. The motive suggested by the P.W. 1 was that since she and her family had dispute over 10 Kathas of land with the accused persons, the accused persons perhaps were of impression that since the appellant was related to the family, he had come to their aid and, therefore, harming him would have really troubled the family.

18. In this context, we have examined the deposition of the father of the deceased, namely, Jang Bahadur Yadav (P.W. 2). He has made even more weird claim of being a witness to the occurrence of



firing while he was tending his buffaloes near the other bank of the river. He has admitted that his son (deceased) had gone to his aunt's place about three days ago for recovering Rs. 10,000/- but on 03.08.2011, while tending buffaloes, he saw that the appellants killed the deceased. Same reason has been given as has been narrated by P.W. 1 about the motive for killing his son. What is important to note is that he, at least, admitted that he did not tell the police, a day after the occurrence when his statement was recorded, that when he had met the deceased in the hospital, he was still in a position to talk and that he spilled out the names of the appellants and others as his assailants.

19. The wife of the deceased, namely, Baby Devi (P.W. 4) though has supported the prosecution case as narrated by her in her *fardbeyan*, but few of her statements before the Trial Court make her deposition absolutely unbelievable. She claims to have



learnt on mobile telephone that the appellants and others had assaulted the deceased. When she received such information, her father-in-law (P.W. 2) at his house only who was informed by her only about the occurrence. On the same day, she reached the village of occurrence and first saw the deceased having fallen on the *darwaza* of the accused persons. At that time, Ranvijay (PW3), who had given her the information about the occurrence was not present. Her husband (deceased) was conscious at that time and whatever he stated in such injured condition, was narrated by her in the *fardebayan*. She has though expressed her ignorance about any case lodged against the deceased and his cousins but she admitted of having accompanied her father-in-law to the place of occurrence.

20. We have already noted that the father-in-law of PW4, does not claim to have gone to the village but had witnessed the occurrence from the other side



of the bank of the river.

21. Both of them, therefore, had given complete lie to the Court.

22. In order to test the correctness of the deposition of Ranvijay Kumar Yadav (PW3) who has wholly been relied upon by the Trial Court for convicting the appellants, we have found that he too has not made a correct statement before the Trial Court. However, his admission of the fact that the deceased was handed over in an injured condition to the police by the accused persons of this case completely confirms that the deceased along with his two cousins had gone to the house of the appellants for threatening them against their opposition to the claim of the land by the family of the aunt of the deceased. During the trial, he has stated in his examination-in-chief that the accused persons had called the police and after putting a weapon in the hands of the deceased, he was given to the police for



being prosecuted.

23. The deceased was first treated in Govt Hospital whereafter he was sent to Mayaganj Hospital from where he was referred to Patna but on way he died. The dead body was brought to Mayaganj Hospital again, where the postmortem was conducted. The inquest also was held there.

24. According to this witness, the cause of occurrence was the dispute over the land in question but two days prior to the occurrence i.e. on 01.08.2011, Mithilesh Yadav, a cousin of the deceased had fought with Yadunandan Chaudhary (one of the accused persons of this case, who has been acquitted). Since the deceased was a cousin of aforesaid Mithilesh Yadav, he was killed by the accused persons. He claims to have seen the occurrence from a near distance and has also lamented that on his call for help, nobody had arrived. He went to the place where the deceased had fallen down as the first visitor and only thereafter,



others had come. If he is to be believed, then the wife of the deceased (PW4) cannot even be said to have visited the house of the accused persons, which she claims to have done when she had heard her husband speak in an injured condition.

25. The reason for our saying so is that PW4 was very particular in telling the Court that when she saw her husband in front of house of one of the accused persons, PW3 was not present there. He came only an hour later.

26. This takes us to the deposition of the Doctor (PW5), who has found three lacerated injuries; one being on the vital occipital region of the deceased but the injuries are not of such dimensions as to reflect any intention of killing the deceased. The fourth of the wound found by PW5 was a stitched wound, suggesting surgical interference which on opening was found to be of the dimension $\frac{1}{4} \times \frac{1}{4}$ on the left cheek. As noted above, the projectile had entered and had



broken the right maxilla, which had also pierced the brain tissue and the bullet was found embedded in the cerebellum. One metal bullet was recovered, which was handed over to the police in sealed cover.

27. This definitely was the cause of death of the deceased.

28. That we have disbelieved PWs 1 to 4 not only for the reason that they have talked about the deceased having been hit in his left eye instead of his cheek but primarily for the reason that none of them have seen the occurrence, which appears clearly from their deposition.

29. The investigator of this case (PW6) has said nothing which can convince us that he had investigated the case properly. He was handed over the investigation of the case on 03.08.2011 after lodging of the First Information Report. He had sent the deceased for treatment to the Primary Hospital, Narayanpur through a Chowkidar, namely, Kurban Ali



(not examined at the trial), who had telephonically informed him that for better treatment, the deceased was taken to Mayaganj Hospital at Bhagalpur and from there to Patna for higher treatment but on way the deceased died. The place of occurrence was inspected by him, which was in front of the house of Yadunandan Chaudhary (one of the accused) in an open field which was used for tying cattle also. He had received the injury report of the deceased from the Primary Health Centre, Narayanpur and had also obtained the referral slip issued by Mayaganj Hospital, referring the deceased to Patna.

30. Surprisingly, PW6 has stated before the Court that he did not mention about any firearm injury in the diary but has only referred to a bleeding injury. What is regrettable is that he is the same Investigator, who had investigated Bihpur P.S. Case No. 246/2011, which has been taken to its logical conclusion of conviction of the cousin of the deceased, in which case,



the deceased was handed over an injured condition to the police with the allegation of his having accompanied his cousins to the house of the accused persons with firearm weapons.

31. He ought to have been truthful before the Trial Court. We have no hesitation in commenting adversely upon the slipshod investigation which he conducted in this case reflecting an unprofessional approach towards resolving cases.

32. We have also examined Exhibits 'B' and 'C', namely, the F.I.R. of Bihpur P.S. Case No. 246/2011 and the judgment of the S.D.J.M. Naugachia in T.R. 2097/2013 dated 26.06.2013 in which two of the cousins of the deceased, namely, Mithilesh Yadav and Sanjeev Yadav have been convicted.

33. Thus we have come to the conclusion that the deceased died of gun shot injury but the accusation against the appellant / Lali Chaudhary of having fired the fatal shot is rendered very doubtful.



34. The accusation against the other appellants also with respect to offences under Sections 323 and 341 of the IPC, has not been proved at all.

35. We thus have no option but to set aside the judgment and order of conviction and acquit the appellants.

36. All the three appellants in two appeals stand acquitted of all charges.

37. Appellant / Lali Chaudhary in Criminal Appeal (DB) No. 674/2015 is in custody. He is directed to be released from jail forthwith, if not required or detained in any other case.

38. The appellants / Bambam Chaudhary and Shankar Chaudhary are on bail. Their liabilities under the bail bonds are cancelled.

39. Both the appeals are allowed.

40. Let a copy of this judgment be communicated to the Superintendent of concerned jail for record and compliance.



41. The records of this case be also returned to
the concerned Trial Court forthwith

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

sunilkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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