

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.784 of 2016

Arising Out of PS. Case No.-150 Year-2010 Thana- PATEPUR District- Vaishali

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1. Shivnath Ray and Ors Son of Lakhan Deo Ray
 2. Lakhan Deo Ray, son of Late Sujhawan Ray
 3. Manoj Ray, Son of Lakhan Deo Ray
 4. Ram Pukar Ray, Son of Lakhan Deo Ray All are resident of Village- Maura Bujurg P.S.- Patepur, District- Vaishali.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Thakur, Adv.
For the Informant	:	Mr. Akash Raj, Adv.
For the Respondent/s	:	Mr.Sri Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 09-12-2024

1. This appeal was initially filed by four of the appellants, namely, Shivnath Ray, Lakhan Deo Ray, Manoj Ray and Ram Pukar Ray but during the pendency of the appeal, one of the appellants, namely, Lakhan Deo Ray (appellant no. 2) died.
2. The appeal with respect to appellant no. 2/Lakhan Deo Ray, therefore, abates.
3. We have heard Shri Ajay Thakur, the learned



Advocate for the appellants and Mr. Akash Raj, the learned Advocate for the informant. The state is represented by Mr. Dilip Kumar Sinha, the learned APP.

4. The three appellants have been convicted for the offences under Sections 302/34 of the Indian Penal code vide judgment dated 01.07.2016 passed by the learned Additional District & Sessions Judge -IV, Vaishali at Hajipur in Sessions Trial No. 326/2011 arising out of Patepur P.S. Case No. 150/2010. By order dated 12.07.2016, they have been sentenced to undergo imprisonment for life along with a fine of Rs. 10,000/- and in default of payment of fine, to further suffer simple imprisonment for six months for the offence under Sections 302/34 IPC.
5. One Mahendra Ray is said to have been killed at the hands of the appellants and others.
6. However, the Trial Court has acquitted the other accused persons for paucity of evidence.



7. The F.I.R. was lodged by Ganeeta Ray (PW7), one of the daughters of the deceased on 19.11.2010 at about 12 o' clock in the day in PMCH. According to her, about five months ago, her father (deceased) had given a loan of Rs. 10,000/- to his brother Lakhan Deo Ray (since dead) for purchase of a buffalo. At about 5 o' clock on 18.11.2010, when the said money was demanded back, the deceased and aforenoted late Lakhan Deo Ray started fighting amongst themselves. At about the same time, the appellants and others belonging to the same family arrived at the house of PW7 and started assaulting her father. Both his legs were fractured and he received severe injuries on his head. Many persons of the village started assembling at the P.O. Her father was then taken to the private clinic of one Dr. R.P. Mishra (not examined) from where he was referred to PMCH. During the course of treatment, her father died on 19.11.2010 in the morning.

8. Based on the afore-noted fardbeyan statement



of PW7, Patepur P.S. Case No. 150/10 dated 25.11.2010 was registered for investigation under Sections 147, 149, 341, 323, 325 and 302 of the Indian Penal Code.

9. Be it noted that the fardbeyan was recorded by ASI M.M. Ram of Pirbahore Police Station in the district of Patna, the reason being the death of the deceased taking place at PMCH. The fardbeyan was then forwarded to the SHO of Patepur Police Station for registration of a regular case.

10. The postmortem examination was conducted on the deceased at 1.10 P.M. on 19.11.2010 by Doctor Arvind Kumar (PW10). Ante-mortem injuries were found on the parietal region of the deceased. As an impact of the assault on head, there were swelling, abrasions and contusions over the upper part of the body. The lips had gone inside the denture. There was fracture of tibia and other bones. On further dissection, the scalp was found to be completely macerated. The temporal, parietal and occipital bones



were fractured. There was extradural and subdural haematoma found all over. The injuries were opined to be ante-mortem and caused by hard and blunt substance. The time of death was fixed at 3 to 18 hours approximately, reckoning from the time of the postmortem examination.

11. From the narration of events by PW7 in her fardbeyan, two things become very clear ; one that PW7 is an eye witness to the occurrence and that the entire occurrence of assault and the deceased having become injured, took place at the time when the aforesaid loan amount was demanded back by the deceased. The occurrence, according to the fardbeyan, had taken place in front of the house of convict/Lakhan Deo Ray (since dead). However, during the trial, PW7 came up with an entirely different version, specially with respect to the time of the assault and the place where the occurrence had taken place.

12. Going by her deposition before the Trial Court,



the two brothers (the deceased and late Lakhan Deo Ray) had fought over the issue of return of the accommodation loan, whereafter nothing had happened. It was only at 9 o' clock in the night that the appellants and other accused persons including the female inmates of the house came to the house of the deceased and assaulted him. Her father was first taken to the clinic of Doctor R.P. Mishra and from there to Samastipur Hospital. Ultimately, the deceased was referred to PMCH. He was being administered treatment at PMCH but he died in the morning of 19.11.2010. The fardbeyan of PW7, according to her, was recorded at PMCH at 12 O' clock in the day (Ext.-3).

13. In her cross -examination, however, changing the actual place of assault, it has been alleged that the entire occurrence took place inside the house of the deceased. Another contradictory statement was made by PW7 that her father had fallen down on road in front of the house of one Dhanesh Ray. She



admitted that no effort was made by her or others to even prevent female members of the mob who had come to assault the deceased, from perpetrating the assault. It is rather unintelligible as to what she meant when she stated before the Trial Court that while her father (deceased) was being brought back home, she was having her dinner. Though she has denied the suggestion that the occurrence or for that matter the accusations against the appellants are the fall out of family dispute but the overall scenario of the case indicates that perhaps the genesis and the manner of the occurrence are not the same as claimed by PW7.

14. We have noted that the fardbeyan lodged by PW7 was countersigned by one Kapindra Ray, who has been examined as PW2 at the trial. In his examination in chief, he has asserted that the occurrence had taken place at about 5 o'clock in the evening of 18.11.2010 and not at 9.00 P.M. as suggested by PW7. His house is situated ten yards



away from the house of the deceased. Even the house of the appellants is located contiguously. It would also be relevant to state here that the three appellants before us are own brothers amongst themselves and are the nephews of the deceased.

15. The deceased was taken to hospital on the vehicle belonging to a co-villager.

16. A very startling revelation was made by PW2 that earlier he had filed a case against the deceased as also his brother/late Lakhan Deo Ray, the main accused of the case. When the deceased had fallen down on the ground after assault, Upendra Ray (PW3) and one of the sons of the deceased along with Mahavir Ray (PW1) had lifted him from the road for the injured /deceased to be taken to hospital.

17. Mahavir Ray (PW-1), surprisingly, again has a different story to narrate. He is a co-villager of the deceased as also the appellants. According to him, the occurrence took place at 09:00 PM only. In fact, PW-1 claimed to have been called by the deceased



and while both of them were proceeding towards the home of the deceased, late Lakhan Deo Rai assaulted the deceased on his head. The deceased fell down and thereafter the appellants also assaulted him. The deceased was not admitted in Samastipur hospital and was sent to PMCH. According to him, the occurrence had taken place in front of the house of one Brahmadeo Rai. At the time of occurrence, many other persons were present namely, Bhola Ray, Sagar Ray, Mithilesh Ray and others, none of whom have been examined at the trial. He had tried to intervene in the fight, but was not hurt in any manner.

18. Likewise, one of the sons of the deceased namely, Upendra Rai (PW-3) has also made a complete departure from the original prosecution version. He claims to be studying in his house when the appellants and others entered his house with *lathi*, rod, axe etc. When he tried to stop the appellants, then he too was assaulted with fists and slaps. All the appellants and their associates entered the house and



started assaulting his father.

19. If this were true, then perhaps, what PW-3 said later would not be correct. With respect to the assault on the deceased, he has asserted that while his father was coming back home along with Mahavir Ray (PW-1) and had reached near the house of Rameshwar Ray, late Lakhan Deo Ray ordered for assaulting him. Lakhan Deo Ray himself assaulted the deceased first.

20. Even the evidence of PW-3 as an eyewitness to the occurrence is rendered absolutely doubtful for the reason that he has very specifically stated in his cross-examination that he reached the P.O. within a minute of the occurrence and found his father lying injured on the road. He in fact had reached the P.O. first and upon seeing him, the appellants ran away. If this is accepted to be the correct account, then perhaps neither he (PW-3) nor others would have seen the occurrence.

21. PW-7, the informant has not spoken about her having come out of the house on *hulla*, and having



witnessed the assault in front of the house of a co-villager, though situated nearby. She admittedly was having her dinner in her home. If PW-3 was the first person to arrive at the P.O., and he also did not see the actual part of the assault, then it would be difficult to believe the statements of others, including PW-7, that they were the eyewitnesses to the occurrence.

22. One of the family members of the deceased namely, Rajmuni Devi (PW-4), also claims to have been assaulted by appellant /Manoj on her head. She has not spoken about any injury to her, nor is there on record any evidence of any assault on her. She has also denied the suggestion that the main reason for dispute was the unhappy allocation of land shares in the family property.

23. After all the afore-noted witnesses were examined, Bindu Devi (PW5), the widow of the deceased came to the witness-stand and disclosed that there was a verbal squabble at about 5'o clock in the evening and the assault took place at around



09:00 PM. She was present in the house when her son (PW-3) was assaulted with fists and slaps. At that time, her daughter (PW-7) had gone inside the house to have her dinner.

24. What do all these versions denote?
25. The only safe conclusion would be that on such material particulars, all the witnesses have lied or have made statements which are not in consonance with the main prosecution version.
26. Had it only been for discrepancies in the narration regarding the time, manner and place of assault, it would not have raised any eyebrows. The fact scenario is that the deceased and Lakhan Deo Ray (since dead) are own brothers. Their houses are situated nearby and there had been a partition in the family, but the allocation of shares had pleased none.
27. It has also come on record through the mouth of witness, though defence witness, but consistently, that the sons of the deceased had unauthorizedly occupied about ten *kathas* of land, which ought to



have been in the possession of Lakhan Deo Ray.

28. In this background, the stories spun by the witnesses give an impression that after the death of the deceased and in between the time that the assault had taken place and the deceased was declared dead, it was agreed upon that the family of Lakhan Deo Ray be made accused in this case. In fact, there was a minor contretemps between Lakhan Deo Ray and the deceased.

29. Whether, the attempt of the deceased to claw back the money which he had given on loan to Lakhan Deo Ray, could be the reason strong enough for the entire family of Lakhan Deo Ray to come and kill the deceased? The differences must have been deeper than this. In this background, circumspection and caution would be necessary while evaluating the deposition of witnesses.

30. The witnesses referred to above have unwittingly become a prey to the defence questions and all of them have talked about having shown the



place of occurrence, the blood stained earth and other evidence of the assault to the police officer, who had come to the village for investigation. All this is rendered untrue, if the evidence of investigator / Jai Prakash Narayan (PW-8) is examined. He took up the investigation only on 25.11.2010 i.e. after six days of the recording of the *fardbayan*. It was only thereafter that he visited the P.O. Nothing would have remained intact at the place of occurrence by that time.

31. According to the prosecution case, the deceased was first taken to the clinic of Dr. R.P. Mishra, who has not been examined. The investigator could not lay his hands upon any evidence regarding the deceased having first been taken to Dr. R.P. Mishra. There is no evidence of the hospital at Samastipur refusing to admit the deceased while he was still alive and similarly, there is no evidence of any treatment to the deceased at the PMCH. The inquest report also is not on record. In fact, the investigator could not get the inquest report. Was he brought to PMCH when he was



already dead ? If that is so, then perhaps, most of the witnesses have lied that during the course of treatment at PMCH, the deceased died.

32. That apart, the police officer at Pirbahore Police Station, where the *fardbayan* was recorded has also not been examined. What happened in the interregnum remains only to the imagination of others and what stories could be spun by the witnesses.

33. The dispute between the two brothers (deceased and Lakhan Deo Ray); the parties staying next doors and the brazen attempt of the witnesses to attribute specific assault to each one of the appellants, have all made us entertain doubts that whether the entire story is concocted.

34. Testing the case further, we have very critically examined the *post-mortem* report. Though, the upper part of the body was bruised and injured but the nature of injury on the temporal and parietal regions with the concomitant impact on the front lips of the deceased gives an impression that perhaps the



deceased died or received those injuries in some other transaction.

35. The defence witnesses, four in number, have in unison stated that they know the families and that they are aware of the differences amongst them. They had heard that an irked cattle had attacked the deceased, as a result of which he had fallen on the vessel meant for feeding the cattle. Such injuries are possible in such a circumstance. True it is that an opinion of the doctor has more weight so far as the cause of the injuries are concerned, but in the background of what we have noticed, it cannot be said that the proposition of the deceased having been hurt by a buffalo would be an impossibility.

36. The major thrust of argument on behalf of the appellants by Mr. Thakur, the learned Advocate is that with such different versions of the members of the family of the deceased, the P.O. does not get established and that there is a lurking doubt that for avenging the enmity, the appellants have been made



accused in this case.

37. Countervailing arguments have been made by Mr. Akash Raj, the learned Advocate for the informant and Mr. Dilip Kumar Sinha, the learned Additional Public Prosecutor for the State, that in view of the consistent statement of prosecution witnesses of the deceased having been assaulted at the hands of the appellants and the post-mortem report being more or less in sync with the afore-noted accusation, it would only be in the realm of imagination that any parallel story could be thought of.

38. Consistency of the version of prosecution witnesses though is an important factor in the evaluation of their deposition and appreciation of the evidence, but that cannot be the be-all and end- all of the method of analyzing the evidence. If consistency were to be relied upon, then there appears to be no explanation for the acquittal of the other accused persons, even though they are the female members of the house. They too had been attributed with



specific acts of assault on the deceased.

39. A question might crop up that if the families were at loggerheads, why was the deceased chosen as the sole target? Was it because he was the head of the family or that he had demanded that the loan be repaid.

40. Both the alternatives do not appear to be convincing.

41. Eight persons including the appellants had come inside the house of the deceased. It is difficult to conceive that all of them including the female members had one person in the target. The other members of the family of the deceased were also present in the house. None of them had been hurt. The claim of few of them to have been hurt could not be proved during trial as there is no injury report on record. Neither is there any reference of their getting any treatment of any kind.

42. In this background, our doubts have further increased, whether PW-7, as the daughter of the



house, thought it fit to implicate the appellants, her own cousins.

43. There are many a missing links in the story. The chinks have been left very wide open, fostering doubts.

44. All these aspects including the discrepancies in the prosecution case have made the prosecution story doubtful.

45. The prosecution has not been able to prove the case beyond all reasonable doubts. Benefit of doubt would thus be required to be given to the appellants.

46. We, therefore, set aside the judgment and order of conviction of the appellants and acquit them of the charges.

47. All the appellants are on bail. They are discharged from the liabilities of the bail bonds.

48. The appeal stands allowed.

49. The interlocutory application/s, if any, also stand disposed off accordingly.

50. Let the records of this appeal be returned to



the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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