

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.888 of 2016

Arising Out of PS. Case No.-114 Year-2010 Thana- SHAHKUND District- Bhagalpur

1. Poonam Devi, W/o Ashok Bhandari
2. Ashok Bhandari, S/o late Damodar Bhandari, Both resident of Village-Tetariya, P.S.- Sajour, District- Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 845 of 2016

Arising Out of PS. Case No.-114 Year-2010 Thana- SHAHKUND District- Bhagalpur

1. Debandra Bhandari,
2. Sikandra Bhandari, Both are Son of Mukdev Bhandari, Resident of Village-Tetariya, P.S Sajour, SakhundDistrict Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 863 of 2016

Arising Out of PS. Case No.-114 Year-2010 Thana- SHAHKUND District- Bhagalpur

1. Rekha Devi, Wife of Rajendra Bhandari.
2. Sobha Devi, Wife of Surendra Bhandari, Both residents of Village- Tetaria, P.S. Sajour Sakhund, District- Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s



with
CRIMINAL APPEAL (DB) No. 870 of 2016

Arising Out of PS. Case No.-114 Year-2010 Thana- SHAHKUND District- Bhagalpur

Ram Chandra Bhandari, Son of Late Damodar Bhandari, resident of Village- Tetaria, P.S.- Sajour Sahkund, District- Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 898 of 2016

Arising Out of PS. Case No.-114 Year-2010 Thana- SHAHKUND District- Bhagalpur

Anju Devi, Wife of Jawahar Bhandari, Resident of village - Tetarya, P.S. Sajour, District - Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 948 of 2016

Arising Out of PS. Case No.-114 Year-2010 Thana- SHAHKUND District- Bhagalpur

- 1. Jawahar Bhandari, Son of Baldeo Bhandari
- 2. Sanjiv Bhandari, Son of Bijay Bhandari, Resident of village - Tetarya, P.S. Sajour, District - Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 888 of 2016)
For the Appellant/s : Mr. Subodh Kumar Jha, Advocate.



Mr. Pramod Kumar Singh, Advocate.
Mr. Chandra Mohan Jha, Advocate.
For the Respondent/s : Mr. Ajay Mishra, APP.
(In CRIMINAL APPEAL (DB) No. 845 of 2016)
For the Appellant/s : Mr. Manohar Prasad Singh, Advocate.
Mr. Sameer Kumar Sinha, Advocate.
For the Respondent/s : Mr. Ajay Kumar Mishra, APP.
(In CRIMINAL APPEAL (DB) No. 863 of 2016)
For the Appellant/s : Mr. Indeshwari Prasad Mandal, Advocate.
Mr. Binit Kumar, Advocate.
For the Respondent/s : Mr. Ajay Kumar Mishra, APP.
(In CRIMINAL APPEAL (DB) No. 870 of 2016)
For the Appellant/s : Mr. Indeshwari Prasad Mandal, Advocate.
Mr. Binit Kumar, Advocate.
For the Respondent/s : Mr. Ajay Kumar Mishra, APP.
(In CRIMINAL APPEAL (DB) No. 898 of 2016)
For the Appellant/s : Mr. Pranav Kumar Jha, Advocate.
For the Respondent/s : Mr. Ajay Kumar Mishra, APP.
(In CRIMINAL APPEAL (DB) No. 948 of 2016)
For the Appellant/s : Mr. Pranav Kumar Jha, Advocate.
For the Respondent/s : Mr. Ajay Kumar Mishra, APP.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 26-02-2024

All the six appeals (ten appellants in all) have been taken up together as all of them arise from the common judgment and order of conviction by the Trial court and are being disposed of by this common judgment.



2. We have heard Mr. Subodh Kumar Jha the learned Advocate for the appellants/Poonam Devi and Ashok Bhandari in Cr. APP. (DB) No. 888 of 2016; Mr. Manohar Prasad Singh, the learned Advocate for the appellants/ Debandra Bhandari and Sikandra Bhandari in Cr. APP. (DB) No. 845 of 2016; Mr. Indeshwari Prasad Mandal, the learned Advocate for the appellants/Rekha Devi, Sobha Devi and Ram Chandra Bhandari in Cr. APP. (DB) Nos. 863 of 2016 and 870 of 2016 respectively.

3. The Advocate on record on behalf of the appellants/Anju Devi, Jawahar Bhandari and Sanjiv Bhandari in Cr. APP. (DB) Nos. 898 of 2016 and 948 of 2016 respectively has left for their heavenly abode. In the circumstances, we have requested Mr. Pranav Kumar Jha, the learned Advocate to assist this Court on their behalf.

4. The State has been represented by Mr. Ajay Kumar Mishra, the learned APP in all the appeals.



5. All the appellants stand convicted under Sections 147, 148, 342/149, 323/149, 302/149 of the Indian Penal Code, *vide* judgment dated 25.07.2016 passed by the learned Additional District & Sessions Judge-I, Bhagalpur in Sessions Trial No. 918 of 2012 arising out of Shahkund (Sajour) P.S. Case No. 114 of 2010. By order dated 02.08.2016, they have been sentenced to undergo R.I. for three months each for the offences under Sections 147 and 342/149 of IPC; to undergo R.I. for six months each for the offences under Sections 148 and 323/149 of IPC. Further they have sentenced to undergo R.I. for life, to pay a fine of Rs.10,000/- each and in default of payment of fine, to further suffer imprisonment for one year each for the offences under Sections 302/149 of IPC.

6. The sentences have been ordered to run concurrently.

7. A case was lodged vide Shahkund (Sajour) P.S. Case No. 114 of 2010, dated 05.07.2010 on the



fardebayan of Kanti Devi (P.W. 5). The *fardebayan* was recorded by Mr. Rabindra Deo Singh, who is the Investigator of this case and at that relevant time was Sub-Inspector of Police posted at Sajour O.P. It was recorded on 05.07.2010 at 09:45 AM at Mayaganj Hospital, Bhagalpur in the emergency ward.

8. She has alleged that while she along with her husband and children was at home on 04.07.2010, the appellants, who are the co-villagers, came to her house at about 08:00 AM in the morning and started assaulting her and her husband. She and her husband were dragged to the underground house of appellant/Jawahar Bhandari, where both of them were tied by a plastic rope. Thereafter, appellant/Jawahar Bhandari assaulted them by means of an iron rod. Appellant/Sanjeev Bhandari is said to have hit both of them by means of a hammer.

9. She had further alleged that appellant/Ashok Bhandari was also armed with a weapon. The female



folks were armed with *lathi*, *danda* etc. All of them assaulted her and her husband by whichever weapon they were carrying. They were threatened for compounding the case which was lodged earlier. Both, she and her husband were administered some poisonous liquid, as a result of which she vomited. Both of them were made to regain their consciousness by sprinkling water on their bodies, where after they were again assaulted. At about 05:00 PM in the evening, police party arrived at the underground house of appellant/Jawahar Bhandari and at their instance, P.W. 5 and her husband (deceased) were untied and were sent on a three wheeler to Mayaganj Hospital, Bhagalpur. On way to the hospital, her husband/Yogendra Narayan Singh died. She was admitted at Mayaganj Hosptial in an injured condition and at the time of lodging her *fardebayan*, she was undergoing treatment.

10. She was badly assaulted as a result of



which her hands, legs and back bone were damaged.

11. The dead body of her husband was lying in the hospital. She, therefore, alleged that all the accused persons/appellants with ulterior motive had entered her house; dragged her and her husband away and thereafter confined them in a underground room; assaulted them, as a result of which her husband died.

12. On the basis of the aforenoted *fardbeyan*/statement of P.W. 5, the afore-noted case was registered for investigation for the offences under Sections 147, 148, 149, 302, 307, 323, 342, 328 of the IPC.

13. The police after investigation submitted charge-sheet against the appellants in different phases and the case was committed to the Court of Sessions for Trial.

14. The learned Trial Court, after having examined eight witnesses on behalf of the prosecution



and two on behalf of the defence, convicted and sentenced the appellants as aforesaid.

15. The Trial Court appears to have relied upon the deposition of all the witnesses including the children of the deceased and P.W. 5 (P.Ws. 1, 2 and 3) for convicting the appellants for the offences for which they were charged.

16. Dr. Binod Kumar Jaiswal (P.W. 6) had conducted the post-mortem examination on the dead body on 05.07.2010 at about 03:00 PM. He had found three lacerated wounds on the right knee joint, left leg and over the right elbow joint. An abrasion of size 2" x 2" were also found on the right side of the back below scapula. The deceased had also suffered wounds over the right temporal region. On opening the skull cavity, blood and blood clots were seen. The right temporal lobe of brain was also found to be lacerated. All the injuries were found to be ante-mortem in nature. However, the wound on the temporal region was found



to be grievous and dangerous to life in ordinary course of nature. In fact, the death was opined to have been caused because of hemorrhage and shock due to the injuries on the temporal region.

17. The deceased had died a homicidal death, which has got established with the post-mortem and the evidence of Dr. Binod Kumar Jaiswal (P.W. 6).

18. Dr. Manoj Kumar Jha (P.W. 7) had examined P.W. 5/informant on 04.07.2010 only but in the night of the occurrence. She had suffered compound fracture in her right arm. That injury was found to be grievous in nature. There was a supplementary injury report which was submitted on 23.05.2014 (Ext. 3). P.W. 7 certified that it was the primary injury report of P.W. 5.

19. From the records of this case as also from the deposition of P.W. 7, it further appears that P.W. 5 was conscious when she was treated. He was, however, not very sure about the cause of injury. He



could not even specifically assign any weapon with which such injury could have been caused.

20. In this context, it would be only apposite to refer to the deposition of P.W. 5 (informant) as also the Investigator of this case, namely, P.W. 8.

21. At the Trial, P.W. 5 repeated the story which she had narrated in the *fardebayan* that the appellants came to her house and tied her and her husband with a plastic rope and dragged them to the nearby house of appellant/Jawahar Bhandari, where both of them were assaulted by all the appellants.

22. What is noticeable in her deposition is that the police party had arrived at the house where she and her husband (deceased) had been kept captive. The police party obtained the keys of the room from appellant/Poonam Devi and untied them. Initially, P.W. 5 had asserted that she and her husband were taken to hospital by a police jeep but later corrected herself and



stated that they were sent to the hospital on a three wheeler.

23. Her statement was recorded in the hospital (Ext. 1/1). During the course of assaults, her and her husband's clothes were completely torn. Her husband was still in his police uniform. Since 8 O'clock in the morning of 04.07.2010 till about 5 O'clock, when the police party had arrived both she and her husband were kept tied in the room.

24. A suggestion was given to her that the deceased misused his position as a constable and thereafter had incurred the wrath of many people who might have assaulted him and she because of the dispute with her own agnates and near family members, framed them in the criminal case, which suggestion was vehemently denied by her.

25. Her attention was drawn to some parts of her statement, especially with respect to her having become unconscious after the assault or that the



appellant had obtained keys of the room from appellant/Poonam Devi or with appellant/Ashok Bhandari had assaulted with the butt of the revolver. On being specifically questioned on behalf of the appellants, she narrated about the family tree, which has made it very obvious that the appellants are none else but her agnates and co-sharers of the family property. When both she and her husband were being dragged to the house of appellant/Jawahar Bhandari, she had screamed and shouted for help but she did not notice whether any person staying in her neighbourhood had come out of the house.

26. She was firstly interrogated by the police party which had come to her rescue and thereafter by the Dy.S.P and then the S.S.P. All such interrogations had taken place within a span of 10 to 15 days. Her attention was also drawn to some parts of the statement which she had made during the course of investigation, namely, of the appellants abusing her and



her husband and each of the appellants having assaulted both of them by their respective weapons.

27. In this context, we have examined the deposition of Investigator (PW8), who firstly stated that he had gone to Mayaganj hospital to record the *fardbeyan* of PW5 on the asking of one Viswajeet Kumar Singh (not examined), who headed the Sajour outpost of Shahkund police station. PW5 was found in the female ward on bed no. 7. He had obtained the injury report of PW5 on 10.10.2010. The investigation with respect to appellants/Devendra Bhandari and Sikander Bhandari was kept pending for some time whereas against others, chargesheet was submitted. A chowkidar was posted in the village at the time of occurrence. He was under an obligation to inform about any such happening / mishap in the village to the police station. No information was received by him on 04.07.2010. He had denied the suggestion of the defense that the entries in paragraphs 1 to 16 of the case diary had not been done by him.



However, from his cross-examination, it appears that the fact is otherwise. In paragraph -4 of the case diary, P.W. 8 has admitted that it was recorded that a telephonic information came from Barari police station about the occurrence. Based on such information, Station Diary Entry No. 64 was entered. There was further information from Barari police station that Yogendra Narayan Singh had died during the course of treatment and that P.W. 5/ Kanti Devi had regained her consciousness and was in a position to make her statement. This was recorded in the case diary on 05.07.2010 at 7.00 A.M.

28. The Station Diary Entry No. 64 has not been brought on record.

29. The reason for Barari police to obtain the first information about the death of the deceased and PW5 regaining consciousness thus remains inexplicable. There is no medico-legal certificate on record or any document which would clearly demonstrate as to how PW5 and the deceased arrived at the hospital.



30. At this point, it is very difficult to accept the part of the statement of PW5 that the police party had arrived at the house of Jawahar Bhandari whereafter she and her husband were untied and then sent to the hospital. Had that been true, the accused persons or at least the persons who were present in the house would have been arrested. If PW5 had not become unconscious by then, her statement would have been recorded. In the absence of any such document suggesting all this, the story spun by PW5 becomes untrustworthy.

31. Seen in this context, it further appears that the prosecution version is incorrect especially when one of the daughters of the deceased, namely, PW1 claims to have seen her father dead in the house of Jawahar Bhandari only.

32. We would refer to her deposition a bit later.

33. There is nothing on record to indicate that the deceased had died on way to the hospital. The



inquest on the dead body was performed in Jawahar Lal Nehru Hospital on 05.07.2010 at 10.15 P.M. Did he reach the hospital dead ? Did he die at the place of occurrence ? These two questions beg an answer and a supplementary question whether the deceased died because of the assault perpetrated by the appellants.

34. In the event of the major part of the prosecution story being rendered doubtful, especially that PW5 and deceased were sent to the hospital at the instance of the police and there being no record of the same, there could be a possibility of the deceased having died in some other transaction or at least not in the manner in which the prosecution case has been narrated. That nobody from the neighbourhood deposed against the appellants, is a further ground to doubt the correctness of the prosecution version.

35. No doubt, it is not always necessary to have independent witnesses to prove the prosecution case but against the backdrop of the allegation of the deceased



and PW5 being dragged and then confined in an underground room, thus, covering a distance of about a kilometer with dense habitation, absence of any independent witness to certify the same at least the makes the prosecution case doubtful. That apart, PW5 has been completely unspecific with respect to the assault. If her deposition is to be believed, the deceased would have received many more injuries on his body and PW5 would not only have been injured in her arms. At the time when PW5 was treated, she was absolutely conscious. There is nothing on record to indicate that she regained consciousness only in the morning of 05.07.2010, which information allegedly was provided to the Investigator by Barari police. If the informant had not lost her consciousness and was brought to the hospital while she was still conscious, there is a definitely a delay in lodging the First Information Report. Had the deceased died in the house of appellant /Jawahar Bhandari, the entire village would have been agog with the news and the Chowkidar would surely have informed



about the occurrence to the local police. If there are enemies in the family, there would be supporters as well. Even otherwise, if any crime is committed in the neighbourhood, even for the sake of saving their own skins, the neighbours report about such occurrence, without, at times, disclosing their identity. Here the occurrence has taken place, if PW5 is to be believed, at a place where most of the appellants have their houses and they are all related to each other.

36. The evidence of Soni Kumari (PW1)/the daughter of the deceased further gives a jolt to the prosecution version. She followed the deceased and PW5 and saw both of them being assaulted. She was also assaulted by accused persons. However, according to her, she could escape after crossing the river. She boarded a bus and came to a particular place, where she met her cousin and aunt and thereafter all of them went to the SSP's office. A telephone call was made from there to the concerned police station (Sajour) when the police force



came to the rescue of PW5 and the deceased.

37. None of those persons, who accompanied PW1 (Soni Kumari) have been examined at the Trial. It appears that only in order to lend credence to the prosecution version, the afore-noted statement has been made, namely, to bring home the charge that the deceased and PW5 were confined in the underground house of Jawahar Bhandari, from where they were extricated by the police only.

38. Similarly, Bibhishan Kumar @ Subhash Kumar Singh (PW2), who is the son of PW5 and the deceased, claims to have stayed back at home when his elder sister /Soni Kumari had gone out of the house looking for support.

39. Suraj Kumar (PW3) has also narrated the same story but from the evidence of Investigator, it clearly appears that none of the statements which he made before the Trial Court was spoken by him before the Investigator.



40. Thus, the only evidence against the appellants is through the mouth of PW5, who had suffered a compound fracture injury in her arm. Whether the deceased and PW5 received those injuries at the hands of the appellants or in some other transaction, therefore, remains unknown. Had the occurrence really taken place, there would have been witnesses to the same. The deceased and PW5 were dragged out of their house through the main road at about 8 'O' clock in the morning of 04.07.2010. Nobody had stayed back in the home of PW5 to keep any vigil. There was plenty of time thereafter for the inmates of the house to have gone out to seek help. They all appear to have waited till the police party arrived.

41. Whether the police party arrived at the place of occurrence, we repeat, has also not been proved. If these were the facts, the F.I.R. would have been registered at that time only. PW5 was absolutely conscious and she remained conscious till the time she



was treated by PW7.

42. The learned Advocates appearing for the appellants have, therefore, rightly suggested that the delay in lodging the F.I.R, thus becomes inexplicable.

43. To tie the strings together, no case having been registered on 04.07.2010 when PW5 and the deceased were kept in confinement in the house of one of the appellants; no evidence of police party having come to their rescue and sending them to the hospital by a private three-wheeler; no report from the hospital about the arrival of PW5 along with the deceased; the injuries suffered by PW5 and the deceased not being in total sync with the ocular version; Pws 1, 2 and 3, children of PW5 and the deceased having narrated a somewhat weird story; and no witness who could be called independent by any standard having come to the witness stand to support the prosecution case, the accusation against the appellants becomes very doubtful. Even the female members of the family have not been spared and against



them, PW5 has raised allegations of assaulting her and her husband/deceased by fists and slaps and by *lathi*.

44. On these set of facts, we are not in agreement with the opinion rendered by the Trial Court convicting and sentencing the appellants.

45. Perforce, we set aside the judgment and order of conviction by granting benefit of doubt to the appellants. They are acquitted of the charges levelled against them.

46. All the appeals stand allowed.

47. All the appellants except appellant /Jawhar Bhandari in Cr. Appeal (DB) No. 948 of 2016 and appellant/Ashok Bhandari in Cr. Appeal (DB) No. 888 of 2016 are on bail. They are discharged from the liabilities of their bail bonds

48. The appellants/Jawahar Bhandari and Ashok Bhandari are directed to be released from jail forthwith, if not required in any other case.

49. Let a copy of this judgment be sent to



the Superintendent of concerned Jail for required and compliance.

50. Let the records of this case be also returned to the learned Trial Court.

51. Interlocutory application/s, if any, also stands disposed of.

(Ashutosh Kumar, J)

(A. Abhishek Reddy, J)

Sunil Kumar
manoj/-

AFR/NAFR	NAFR
CAV DATE	NA
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