

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.170 of 2018

Arising Out of PS. Case No.-58 Year-2002 Thana- HALSI District- Lakhisarai

Chhotka @ Gonga Paswan son of Late Prayag Paswan, resident of Village-
Surari, Police Station- Halsi, District- Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1512 of 2017

Arising Out of PS. Case No.-58 Year-2002 Thana- HALSI District- Lakhisarai

Mantu Paswan @ Mithun Paswan @ Mintu Paswan son of Shankar Paswan,
resident of Village- Surari, Police Station- Halsi, District- Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 100 of 2018

Arising Out of PS. Case No.-58 Year-2002 Thana- HALSI District- Lakhisarai

Bhushan Paswan son of Late Budhan Paswan, resident of Village- Surari,
Police- Station- Halsi, District- Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 152 of 2018

Arising Out of PS. Case No.-58 Year-2002 Thana- HALSI District- Lakhisarai

Shankar Paswan son of Late Kashi Paswan, resident of Village- Surari, Police
Station- Halsi, District- Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar



... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 170 of 2018)

For the Appellant : Mr. Sudhanshu Kumar Lal, Advocate
Mr. Rabi Bhushan, Advocate
Ms. Rakhi Kumari, Advocate
Mr. Ankit Kumar Jha, Advocate

For the State : Mr. Ajay Mishra, APP

(In CRIMINAL APPEAL (DB) No. 1512 of 2017)

For the Appellant : Mr. Sudhanshu Kumar Lal, Advocate
Mr. Rabi Bhushan, Advocate
Ms. Rakhi Kumari, Advocate
Mr. Ankit Kumar Jha, Advocate

For the State : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 100 of 2018)

For the Appellant : Mr. Sudhanshu Kumar Lal, Advocate
Mr. Rabi Bhushan, Advocate
Ms. Rakhi Kumari, Advocate
Mr. Ankit Kumar Jha, Advocate

For the State : Mr. Ajay Mishra, APP

(In CRIMINAL APPEAL (DB) No. 152 of 2018)

For the Appellant : Mr. Sudhanshu Kumar Lal, Advocate
Mr. Rabi Bhushan, Advocate
Ms. Rakhi Kumari, Advocate
Mr. Ankit Kumar Jha, Advocate

For the State : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 07-05-2024

The present appeals are filed under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') against the judgment of conviction dated 06.12.2017 and the order of sentence dated 08.12.2017, rendered by learned Additional Sessions Judge-cum-F.T.C.-I, Lakhisarai in Sessions Trial No.309 of 2003, arising out of Halsi P.S. Case No.58 of 2002, whereby the Trial Court has convicted all the appellants



herein for the offences punishable under Sections 302/34 of the Indian Penal Code and they have been sentenced to suffer RI for life and to pay a fine of Rs.5000/- (Rupees Five Thousand) each and in default of payment of fine, all the appellants have to undergo RI for three months.

2. The factual matrix of the present case is as under:-

2.1. Fardbeyan of Shambhu Dharhi came to be recorded on 04.09.2002 at about 11.30 hours. The informant, who is brother of the deceased, has stated in his *fardbeyan* that in the night of Tuesday (date not disclosed) at about 08:00 p.m., he and his elder brother were going towards their *Bathan* near Bakia *Pain* (water body) to reach tiffin to his father. The moment they reached near the field of Jageshwar Mahto, four persons surrounded them coming from the eastern side. When he and his brother lighted the torch, they saw that they are Shankar Paswan, Bhushan Paswan, Mantu Paswan and Gongga Paswan of his village. Before they could speak anything to them, Bhushan Paswan and Mantu Paswan started inflicting blows with farsa on his brother and they also chased him but he anyhow managed to flee away for some distance and started to watch the occurrence. Since the torch of his brother was still



switched on, he saw in the torch light that Gonga Paswan assaulted his brother on his buttock with farsa causing cut injury. Whereafter Mantu Paswan with a view to kill him, inflicted farsa blow which hit his brother near his neck and left jaw and his brother fell down at the place. In the meantime, Dinesh Paswan of his village came at the scene and started assaulting his brother with lathi. At this when his brother started raising alarm to save him, Shankar Paswan with a view to kill him assaulted his brother behind his neck with farsa causing grave cut on his neck. The accused persons, under the impression that he is dead, left the place and sat at some distance from the place towards village Bakiya. After 1½ – 2 hours, the accused persons went towards the village. Then the informant went to his brother and saw him lying dead with several cut injuries. The neck was badly injured due to cut and whole body was soaked in blood. It being a night and due to the fear of accused persons, he could not report to the police at night. The reason behind the occurrence is that the accused persons forbade the villagers to take the cattle at the Bathan situated at Bakiya *Pain* and the informant had taken his cattle to that place.

2.2. On the basis of the aforesaid fardbeyan, formal FIR came to be registered for the offences punishable under



Sections 302, 341, 326 and 34 of the Indian Penal Code.

2.3. The Investigating Officer thereafter carried out the investigation and during the course of investigation, he had recorded the statements of the witnesses and also collected documentary evidence. Thereafter he filed the charge-sheet against all the four accused before the concerned Magistrate Court. As the case was exclusively triable by court of sessions, the learned Magistrate committed the same to the concerned sessions court where the same was registered as Sessions Trial No.309 of 2003.

2.4. Before the Trial Court, the prosecution had examined eight witnesses, namely, P.W.-1, Nandlal Paswan, P.W.-2, Dasrath Ram, P.W.-3, Mahendra Ram, P.W.-4, Sahdev Dharhi, P.W.-5, Botal Ram, P.W.-6, Shambhu Dharhi, P.W.-7, Rajo Ram and P.W.-8, Ramchandar Dhadhi. Thereafter the statement of the accused under Section 313 of the Code came to be recorded.

2.5. After conclusion of the Trial, the Trial Court passed the impugned judgment of conviction and order of sentence whereby all the present appellants have been convicted as observed hereinabove. The appellants have, therefore, filed the respective appeals before this Court.



3. Heard Mr. Sudhanshu Kumar Lal, learned counsel for the appellants and Mr. Ajay Mishra, Mr. Sujit Kumar Singh and Mr. Abhimanyu Sharma, learned Additional Public Prosecutors for the State.

4. Learned Advocate appearing on behalf of the appellants has mainly contended that out of eight witnesses examined by the prosecution, five witnesses have turned hostile and they have not supported the case of the prosecution, therefore, the case of the prosecution rests on the deposition given by P.W.-4, who is father of the deceased, P.W.-6, who is brother of the deceased and the informant of the case and P.W.-8, who is a hearsay witness. At this stage, learned counsel for the appellants submits that the prosecution did not examine the doctor who had conducted the postmortem on the dead body of the deceased nor the Investigating Officer was examined by the prosecution and thereby the prosecution has failed to prove the case against the appellants beyond reasonable doubt despite which the Trial Court has recorded the judgment of conviction against all the four appellants. Learned counsel further contends that even from the deposition given by P.W.-4 and P.W.-6, who are near relatives of the deceased, it is revealed that they are in fact not the eye witnesses to the occurrence in question however,



the prosecution has projected them as eye witnesses. Learned counsel has referred the deposition given by the aforesaid two witnesses and thereafter pointed out the major contradictions in the deposition of the said witnesses. It is also submitted that it was a dark night when the occurrence took place and it is the case of the so called eye witnesses that in the torch light, P.W.-6 had identified all the four assailants however, the said torch was not produced before the Court.

4.1. Learned counsel for the appellants further submits that in absence of examination of the Investigating Officer, the defence has lost opportunity to cross-examine the said witness and thereby prejudice has been caused to the defence. It is also submitted that inquest report is also not produced before the Court and though the postmortem report was produced, the same was not duly exhibited. Thus, the prosecution has even failed to prove that the death of the deceased was homicidal death and learned counsel for the appellants, therefore, urged that the Trial Court has committed grave error while passing the judgment of conviction and order of sentence and the same be quashed and set aside.

4.2. On the other hand, learned Additional Public Prosecutors appearing on behalf of the State have opposed the



present appeals. It is submitted that there are two eye witnesses to the occurrence in question and their presence at the place of occurrence was natural. When both the eye witnesses have supported the case of the prosecution, merely because they are relatives of the deceased, their version may not be discarded. Learned Additional Public Prosecutors, therefore, urged that the Trial Court has not committed any error while passing the impugned judgment and conviction and order of sentence and, therefore, the present appeals be dismissed.

5. We have considered the submissions canvassed by leaned counsel appearing for the parties. We have also perused the materials placed on record and the deposition of the prosecution witnesses as well as other evidence led by the prosecution before the Trial Court. At the outset, it is pertinent to note that P.W.-1, P.W.-2, P.W.-3, P.W.-5 and P.W.-7 have not supported the case of the prosecution and, therefore, they were declared hostile. P.W.-8, Ramchandar Dhadhi is admittedly a hearsay witness and, therefore, we would like to scrutinize the evidence of P.W.-4 and P.W.-6.

6. P.W.-4, Sahdev Dharhi is the father of the deceased. The said witness in his examination-in-chief has deposed that the incident took place three years and a half ago.



He was at the Bathan (cattle shed) when he heard the commotion. He came running and switched on the light. The accused Shankar Paswan, Bhushan Paswan, Dinesh Paswan, Mantu Paswan and Gongu Paswan all together were beating his son Bhaso Dhadhi. The accused persons ran after the witness also. This witness ran away from there. The accused persons killed his son at the place of occurrence with farsa. All the accused were armed with farsa. He identifies all the accused persons by their names and faces.

6.1. P.W.-4 has given the description of place of occurrence in his cross-examination and stated that the police has taken his statement at the place of occurrence itself. Police has taken his statement on Wednesday while the occurrence took place on Tuesday itself. He has further stated that he has three sons, namely, Bhaso Dhadhi, Rampreet Dhadhi and Shambhu Dhadhi. He has further stated that he does not know the father's name of Mantu Paswan and Dinesh Paswan. He only knows Mantu Paswan and Dinesh Paswan since they came to the village. He has denied the fact that he did not show any papers of ownership of the land to the police nor he will, as he does own any land near Bathan. He also denies the suggestion that actually there is no Bathan and description of Bathan is



imaginary. It is further stated by this witness in his cross-examination that the place of occurrence is ten bamboo length away from Bathan. When he reached near the dead body, there were five persons present there and all of whom fled way when he reached. He stayed at Bathan that night and went alone to the police station next day to inform. This witness further stated that Daroga Ji wrote down his statement and took his thumb impression. At another place he states that his son had gone to the police station to give information. He supports both the statements. When he came back at Bathan, he met Shambhu after two hours. Shambhu was alone at that time and he was with the witness till 04:00 a.m. He had described the incident witnessed by him to Shambhu. He cannot say the time of arrival of the police but it was afternoon. At that time, he was at the place of occurrence. The place where the dead body of his son was lying is a paddy field having crops. A great amount of blood had fallen into mud. There were signs of trampling by the accused persons. He has further stated that he had stated before the police that his son Shambhu was coming with Bhasho Dhadhi to him at Bathan when accused Shankar, Bhushan, Mantu and Gongu, Son of Prayag and Dinesh were waiting for them in the field belonging to Jageshwar Mahto and they



surrounded his sons, abused them and killed Bhasho Dhadhi with farsa and lathi. He had also stated before the police that his son Shambhu had seen the occurrence in torch light and he informed him about the occurrence in the morning upon which he also went to the place of occurrence and saw the dead body. He has denied to have stated before the police that he had not heard any commotion at night and he sent Chowkidar to the police station to give information. He has denied the suggestion that he had not seen the occurrence himself and he was giving false deposition. In para-15 of his cross-examination, he has supported his statement as given by him in para-1 of his examination-in-chief. He has further stated that his statement was taken by the police only once. No further statement was recorded nor his thumb impression was taken. He had put his thumb impression when his statement was recorded. It is also stated that at the place of occurrence his statement was recorded alongwith that of Ramchandra Dhadhi and Botal Dhadhi. After recording their statements, Daroga Ji took away the dead body. No document was prepared in his presence. This witness lastly stated in his cross-examination that it is not a fact that he has falsely implicated the accused persons.

7. P.W.-6, Shambhu Dharhi is the informant who



lodged the FIR and is the brother of the deceased. The said witness has *inter alia* stated in his examination-in-chief that about five years ago, the occurrence took place at 08:15 p.m. He alongwith his elder brother Bhasho Dhadhi was going to Bathan with tiffin for his father. On the way, four persons, namely, Shankar Paswan, Mintu Paswan, Bhushan Paswan and Gongu Paswan came from eastern side and asked as to who they were? The brother of this witness replied that he is Bhaso Dhadhi. At this Mintu Paswan assaulted his brother by means of farsa causing cut injury on his jaw. At that time, Dinesh Paswan also came running and started assaulting with a lathi. Gongu Paswan assaulted his brother by means of farsa on his buttock. His brother was assaulted by all the accused persons. The accused persons also tried to assault him but he fled away raising alarm. His father also came after hearing the alarm. This witness told his father that all the aforesaid persons were assaulting Bhaso Dhadhi. It is further deposed by this witness that he identified all accused persons in the torch light. Thereafter he and his father went there and saw Bhaso Dhadhi lying dead. He gave such information to the police in the morning and police came.

7.1. P.W.-6 has stated in his cross-examination that the occurrence took place within half an hour. At the time of



occurrence, he and his brother themselves raised alarm. Bhaso Dhadhi also raised alarm. The act of assaulting and raising alarm continued for half an hour. There was no enmity with the persons who made assault. The act of assault took place in the field of Nagesar Mahto. This witness further stated in his cross-examination that he neither went to his village nor to his father. He had nothing in his hand and he was alone. He fled away to another place. The body and cloth of his brother was smeared with mud. Blood was also oozing. Bhaso Yadav wore *Lungi* and shirt at that time. *Lungi* and shirt of his brother were also smeared with mud. Bhaso Dhadhi sustained injuries on his left jaw, left buttock and neck. Lunch material and other clothes were there. Bhaso Dhadhi had torch in his hand. This witness further stated in his cross-examination that he stayed at the place of occurrence whole night. He stayed with his father whole night. No one came from his village till he stayed with his father. He went to the police station after sunrise. He talked with his father in the night. His father was ready to lodge the case and he went to the police station after consulting his father. His father did not tell him to bring Chowkidar or Dafadar with him. He went to the police station alone. He told his father to stay with the dead body and he goes to the police station. When



Daroga Ji came at the place of occurrence, there was none except him and his father. First of all, Daroga Ji put the dead body in his jeep and thereafter took his statement. He put his thumb impression on his statement. Thereafter Daroga Ji went with the dead body. He also went with the dead body. Torch and utensils remained there and the food was in the bowl. The *farsa* by which his brother was assaulted was straight. First of all, the injury occurred on jaw. After sustaining injury, his brother fell down in the field. His brother fell down on the right side. The four accused persons assaulted him for ten minutes. His brother remained in the same condition. He handed over the torch to Daroga Ji by which he had identified the persons at the place of occurrence. He has denied the suggestion of false implication in connivance with the enemies of the accused persons. He has also denied that he had not seen the occurrence himself.

8. At this stage, it is pertinent to note that except the aforesaid version given by the so called eye witnesses, there is nothing on record to corroborate the version of the said witnesses. It is not in dispute that P.W.-4 and P.W.-6 are the relatives of the deceased, i.e., father and brother of the deceased, therefore, their deposition is required to be scrutinized closely. From the aforesaid version given by the so called eye witnesses,



it emerges that there are major contradictions in their deposition. It is specific case of P.W.-6, the informant, that he identified the accused in the torch light however, it is relevant to note that the said torch was not produced before the Investigating Officer. Even from the deposition of P.W.-6, it is also revealed that P.W.-4 is not an eye witness to the occurrence in question. He came at the place of occurrence after the incident was over. The conduct of the so called witnesses, i.e., P.W.-6 is also unnatural. From the aforesaid deposition of the prosecution witnesses, i.e., P.W.-4 and P.W.-6, we are of the view that their deposition is not trustworthy and they are interested witnesses and were projected as eye witnesses.

9. It is relevant to observe, at this stage, that admittedly the prosecution did not examine the doctor who had conducted the postmortem on the dead body of the deceased, therefore, in absence of any medical evidence, led by the prosecution before the Trial Court, the prosecution has failed to prove that the death of the deceased was homicidal death and what was the cause of the death of the deceased.

10. It is also relevant to observe, at this stage, that the prosecution has also not examined the Investigating Officer, who had carried out the investigation and recorded the statement



of the witnesses. Whether the blood was found at the place of occurrence or not, is not known. Even weapons, which were allegedly used by the accused, are also not recovered or discovered. We are of the view that in the facts and circumstances of the present case, non-examination of the Investigating Officer by the prosecution was fatal. It is the specific contention of the learned counsel for the appellants that because of non-examination of the Investigating Officer, the defence has lost the opportunity to cross-examine him and thereby prejudice has been caused to the defence.

11. In view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has miserably failed to prove the case against the appellants-convicts beyond reasonable doubt. We have gone through the reasoning recorded by the Trial Court while passing the judgment of conviction and order of sentence and we are of the view that the Trial Court has committed grave error while recording the conviction of the present appellants. Hence, the same is required to be quashed and set aside.

12. Accordingly, All these appeals stand allowed. The impugned judgment of conviction dated 06.12.2017 and order of sentence dated 08.12.2017 passed by learned Additional



Sessions Judge-cum-F.T.C.-I, Lakhisarai in connection with Sessions Trial No.309/2003, arising out of Halsi P.S. Case No. 58 of 2002 are quashed and set aside and the appellants are acquitted of the charges levelled against them by the learned Trial Court.

12.1. Appellants, namely, Bhushan Paswan (in Criminal Appeal (DB) No.100 of 2018) and Shankar Paswan (in Criminal Appeal (DB) No.152 of 2018) are on bail. They are discharged from the liabilities of their bail-bonds.

12.2. Since appellants, namely, Chhotka @ Gonga Paswan (in Criminal Appeal (DB) No.170 of 2018) and Mantu Paswan @ Mithun Paswan @ Mintu Paswan (in Criminal Appeal (DB) No.1512 of 2017) are in jail, they are directed to be released from custody forthwith, if their presence is not required in any other case.

(Vipul M. Pancholi, J.)

(Ramesh Chand Malviya, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
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