

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.240 of 2017**

Arising Out of PS. Case No.-224 Year-2014 Thana- MAHARAJGANJ District- Siwan

Mukesh Mahto @ Mantu Son of Bidya Mahto, aged about 22 Years , Resident of Village- Takkipur, Dhanuk Tola, P.S.- Maharajganj, District- Siwan Binar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Yogesh Chandra Verma, Sr. Advocate Ms. Kumari Anupam, Advocate
For the State	:	Mr. Sujit Kr. Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA

ORAL JUDGMENT

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

Date : 01-02-2024

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Cr.P.C.’) challenging the order of conviction dated 01.12.2016 and order of sentence 08.12.2016 passed by learned Vth Additional Sessions Judge, Siwan in Sessions Case No. 136 of 2015, arising out of Maharaj Ganj P.S. Case No. 224 of 2014 dated 05.08.2014, wherein the appellant has been convicted for the offence punishable under Sections 302, 323 & 307 and he has been sentenced to undergo R.I. for life and also to pay a fine of Rs. 50,000/- (Fifty Thousand Rupees), for the offence punishable under Section 302 of the Indian Penal Code. No separate



punishment is required to be given for the offences punishable under Section 323, 307 of Indian Penal Code. In case of default in payment of fine, the convict shall undergo an additional period of R.I. of six months.

2. Heard learned Senior Advocate Mr. Yogesh Chandra Verma assisted by Ms. Kumari Anupam for the appellant and Mr. Sujit Kr. Singh, learned A.P.P. for the Respondent-State.

3. The prosecution case, in brief, is as under:-

3.1. On 04.08.2014, at about 08:30 pm, when the daughter-in-law of the informant, namely Lal Munni Devi, aged about 40 years, was washing her hand at tube-well in front of the house, his neighbour Mukesh Mahto @ Mantu, aged about 26 years, son of Bidya Mahto, arrived and assaulted his daughter-in-law by brick by which her head was torn. The female members and children of the family started weeping and crying. Then he rushed there from the *bathan* and saw his daughter-in-law in injured condition, wet in blood. He protested Mukesh on which he started assaulting him also. The cousin grandfather of Mukesh, namely Subedar Mahto, aged about 55 years, came having a *lathi* in his hand and assaulted him by *lathi*. With the help of his family members and villagers, he brought his injured daughter-in-law Lal Munni Devi to P.H.C. Maharaj Ganj where she died in course of



treatment. Mukesh Mahto @ Mahto has, with intention to kill her, brutally assaulted her by brick and she succumbed to injuries.

4. After registration of the F.I.R., the Investigating Officer started the investigation and during the course of the investigation, recorded the statement of the witnesses and prepared the Inquest Report. The dead body of the deceased was sent for conducting the *post mortem*. After investigation was over, the Investigating Officer filed the charge-sheet against the appellant/accused before the concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court where the same was registered as Sessions Case No. 136 of 2015.

5. During the course of the trial, the prosecution has examined seven witnesses whereas the defence has examined two witnesses. The prosecution has also produced the documentary evidence. Thereafter, statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court passed the impugned order against which the convict/appellant has preferred the present appeal.

6. Learned counsels for the appellant would mainly submit that though the prosecution has projected PW-1, PW-3 and PW-5 as an eye-witnesses, in fact, the said witnesses have not seen



the occurrence in question and they are projected as eye-witnesses. It is further submitted that the said witnesses are the near relatives of the deceased and no independent witnesses has been examined by the prosecution. It is also submitted that there are major contradictions and improvement in the deposition of the witnesses and, therefore, the Trial Court ought to have given the benefit of doubt to the present appellant. It is pointed out from the record after referring to the deposition of the witnesses that though, as per the case of the prosecution, *fardbeyan* of the informant was recorded at 10:30 p.m., the Police Officer, namely Ugra Nath Jha, who has recorded the *fardbeyan*, has not been examined by the prosecution. It is submitted that the said witness is the material witness, despite which the prosecution has failed to examine him as prosecution witness and, in the facts of the present case, when the said witness is not examined, it was fatal to the prosecution.

7. Learned Senior Advocate would, thereafter, submit that though the PW-5 (Informant), who is the father-in-law of the deceased, has given his *fardbeyan* in which he has not stated that there are eye-witnesses to the occurrence in question i.e. PW-1 Kiran Devi & PW-3 Ranjan Kumar, however, thereafter, the PW-1 and PW-3 were projected as eye-witnesses.



8. Learned counsels would thereafter submit that, as per the *fardbeyan* given by PW-5 (Informant), the deceased died when she was in P.H.C. Maharaj Ganj. However, during the course of the trial, while giving deposition before the Court, the said witness has stated that after giving some treatment in P.H.C. Maharaj Ganj, the concerned Doctor referred the injured to the Sadar Hospital, Siwan for further treatment and when they reached at Sadar Hospital, Siwan, the injured succumbed to the injuries. It is further submitted that even two other so-called eye-witnesses i.e. PW-1 and PW-3 have also stated before the Court that when the injured was taken from P.H.C. Maharaj Ganj to Sadar Hospital, Siwan, the injured died on the way. Thus, there are major contradictions in the depositions of the so-called eye-witnesses.

9. Learned counsels further submit that even as per the case of the prosecution, the informant also sustained injuries when Subedar Mahto gave blow of *lathi* on his head. It is the case of the prosecution that the informant also took the treatment in P.H.C. Maharaj Ganj as well as Sadar Hospital, Siwan. None of the Doctors of the said hospital has been examined by the prosecution nor any injury certificate of the informant was placed on record. It is further submitted that even no motive has been attributed to the appellant/accused for commission of the offence in question. At



this stage, learned Senior Advocate further submits that even the so-called brick by which the blow was given to the deceased was not recovered by the Investigating Officer nor the so-called blood-stained clothes of the deceased were seized and sent to F.S.L. for examination. Even blood was not found from the place of occurrence. Learned counsels, therefore, urged that though the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubt, the Trial Court has passed the impugned order and, therefore, the present appeal be allowed by quashing and setting aside the impugned order passed by the Trial Court.

10. On the other hand, learned A.P.P. submits that there are three eye-witnesses to the occurrence in question i.e. PW-1, PW-3 & PW-5. The presence of the said witnesses at the place of occurrence was natural. It is also contended that even the medical evidence supports the case of the eye-witnesses and, therefore, merely because the blood-stained clothes of the deceased were not seized nor the brick was recovered from the place of occurrence, benefit of the same may not be given to the accused/appellant. It is further submitted that *fardbeyan* was given by the informant immediately i.e. within two hours from the time of occurrence and merely because Police Inspector Ugra Nath Jha was not examined



by the prosecution, benefit of same may not be given to the appellant/accused and the same is not fatal to the case of the prosecution, more particularly, when the prosecution had examined the Investigating Officer who has immediately taken over the investigation after registration of the F.I.R. at 12:30 a.m. during night hours. Learned A.P.P., therefore, urged that when the Trial Court has not committed any error while passing the impugned order, this Court may not entertain the present appeal.

11. Having heard the learned counsels appearing for the parties and having gone through the material placed on record, it would emerge that immediately the *fardbeyan* of the informant, PW-5, was recorded at 10:30 p.m. at P.H.C. Maharaj Ganj. Informant is the father-in-law of the deceased. It is the case of the informant in the *fardbeyan* that the occurrence took place at about 08:30 p.m. and when he heard that the members of the family were crying, he reached the place where he had seen his daughter-in-law. The accused Mukesh Mahto @ Mantu was present and when he tried to protest one Subedar Mahto carrying *lathi* in his hand, he gave blow with *lathi* to him on his head. Thereafter, the injured was taken to P.H.C. Maharaj Ganj and in the said P.H.C., during the course of the treatment, the deceased died. Thus, from the *fardbeyan* it appears that it is the case of the informant that after



hearing the crying/weeping of the family members when he reached at the place, at that time he saw Mukesh Mahto @ Mantu i.e. the accused. Thus, from the said F.I.R., it is revealed that the informant is not an eye-witness to the occurrence in question. He has not referred the name of the eye-witness who has seen the occurrence in question while giving the *fardbeyan* which was given after two hours. It is the specific case of the informant that he also sustained injuries in the occurrence in question and the deceased died in P.H.C. Maharaj Ganj.

12. At this stage, we would like to refer the deposition given by PW-1 Kiran Devi, who has stated in her examination-in-chief that at the time of incident, she was at her father's place and was unmarried. The said incident occurred at 08:30 hrs. in the night. Her mother went to wash her hands after dinner at the hand pump. She went after her mother where she saw that Mukesh Mahto hit her mother with a brick. Her mother fell down and died. The witness was not hit by anybody. She along with other people took her mother to Maharaj Ganj for treatment where her mother died. Her father, namely Rangila Mahto, was hit by Sukhlal after which he fell down. He was also treated at Maharaj Ganj and Siwan Hospital. She has also stated that the villagers also saw the said incident.



12.1. In her cross-examination, she has stated that the area beside hand pump was slippery and filled with moss. She was married in 2015. She has stated that at the time of incident she was aged about 18 years. Police had not recorded her statement. She has also stated that she didn't go at the place of occurrence after the incident, rather she was present at the place of occurrence from before because the hand pump was situated in her house. She took her mother for treatment at Maharaj Ganj with a Marshal Car which was owned by Dinesh Yadav and the number of which she does not know. She along with *mukhiya* Sunil Rai, *panditji* Suresh Rai, Rangeela Mahto and Ranjan Kumar took her mother to the Hospital. Her father and mother both were treated at Maharaj Ganj Hospital. Her father was treated for about 10-15 minutes while her mother was referred to Siwan Hospital. She came along with her mother to Maharaj Ganj in a car and in the same car, took her mother to Sadar Hospital, Siwan. She has also stated that she didn't go to Siwan but sent her mother there. However, she cannot say anything regarding the treatment.

13. PW-2, namely Manman Mahto, is the witness who has turned hostile.

14. PW-3, namely Ranjan Kumar, is the son of the deceased. In his examination-in-chief, he has stated that on the



date of occurrence, he was at *bathan*. On hearing his sister's cry, he along with his father went to the place of occurrence and saw that his mother was hit by Mukesh Kumar with a brick. He along with his father tried to stop him but the accused Mukesh Kumar warned him to go away or else they will be killed. After that, Subedar Mahto came with a *lathi* and hit his father from back which injured him. His mother Lal Munni Devi was lying there in an unconscious state. He, with the help of his fellow villagers, took his mother to Maharaj Ganj Hospital where the Doctor referred her to Siwan as there was huge blood loss. On the way to Siwan, his mother died. His father was treated at Maharaj Ganj Hospital. The statement of Rangila Mahto was recorded at Maharaj Ganj Hospital.

14.1. In his cross examination, he has stated that when he went to rescue his mother, only he and his sister were present. From Takkipur, he along with some villagers took his mother for treatment in a Bolero. The car was owned by Dinesh Rai, the number of which he does not know. The driver of the car was Dinesh Rai. He has also stated that he was not aware about the time when he reached to the Siwan Hospital. On the way to Hospital, he found out that his mother has died. On reaching Sadar Hospital, Siwan, Doctor told him that his mother has died and *post*



mortem was to be done. He has also stated that on hearing his sister's cry, he along with his father reached at the place of occurrence within 30 seconds. There was an ongoing land dispute between the two parties. Further, he has stated that the clothe which his mother was wearing at the time of occurrence was smeared with blood and the blood was also spilled on the ground. The blood-stained clothe was shown to *daroga* but he did not take it with him. The blood-stained clothe of his mother was cremated along with her body. It is also stated that the Doctor at Maharaj Ganj Hospital did not prepare any written report regarding the transfer of his mother to Siwan, rather he gave the instruction orally.

15. PW-4, namely Virendra Mahto, is the husband of the deceased. In his examination-in-chief, he has stated that there was only one place where his wife was hit on her forehead. The brick which was used to hit his wife was left there. The brick was smeared all over with blood. There were brick dust on the forehead of his wife where she was hit.

15.1 In his cross-examination, he has stated that his wife was hit on the right side of the forehead as also above the right eye. He saw brick smeared with blood as also blood on the soil at



the place of occurrence. He has no idea whether the Police took the said brick and the blood-stained soil with them or not.

16. PW-5 Rangila Mahto is a witness, who ran to the place of occurrence when he heard the cry of his grand daughter. When he reached at the place of occurrence, he found that Mukesh Mahto hit his daughter-in-law Lal Munni Devi with a brick. When he went to rescue her, he was hit by Subedar Mahto with a *lathi*. His daughter-in-law fell there unconscious. He along with his daughter-in-law and maternal grandson were taken to Maharaj Ganj Hospital for treatment. After treating his daughter-in-law, the Doctor referred her to Sadar Hospital, Siwan. On the way to Siwan, his daughter-in-law died. He was treated at Maharaj Ganj Hospital where the Police came and recorded his statement.

16.1. In his cross-examination, he has stated that he came at the place of occurrence within 1-2 minutes. When he reached at the place of occurrence, he saw his grand daughter Kiran Kumari, grand son Ranjan Kumar, Mukesh Kumar and Subedar Mahto. Before his arrival at the place of occurrence, Subedar Mahto, aged about 50-55 years, had already reached there with a *lathi* in his hand. He was treated at Maharaj Ganj Hospital but he does not know the name of the Doctor who had treated him. Further, he has stated that he was interrogated by Police, at



Hospital and also at his doorstep. While his statement was being recorded at Maharaj Ganj Hospital, the dead body of his daughter-in-law was lying in the car. He was in the Hospital for about 3-4 hours. After that, he was referred to Siwan. He went to Siwan along with his daughter-in-law, Ranjan Mahto, Manman and the driver. The driver as well as the owner of the car was Dinesh Rai. He cannot state the number of the car. When he was at Maharaj Ganj Hospital, his daughter-in-law was alive and her breathing was slow-paced. Doctor called *Daroga* in the said Hospital. He says that he was treated at Sadar Hospital and was taken from Maharaj Ganj Hospital to Siwan Sadar Hospital. On reaching Siwan, the Doctor declared his daughter-in-law dead and sent the dead body for *post mortem*. He saw the blood being spilled at the place of occurrence. The Police did not take the blood-spilled soil with them. The Police also did not take the clothe smeared with blood which was worn by his daughter-in-law. The said clothe was cremated along with the dead body. Further, it is stated that the night of occurrence was a moonlit night. He has visibility in only one of his eyes. It is also said that the brick which was used to hit his daughter-in-law was a complete brick.

17. PW-6, namely Dr. Ravi Ranjan, is the Doctor who was posted at Siwan as a Medical Officer. The medical board



conducted the *post mortem* of the dead body of Lal Munni Devi. He was one of the members of that board and other members of the board were Dr. Sunil Kumar Ranjan & Dr. Anil Kumar. The medical board found following *ante mortem* injuries:-

External Examination:- Eyes and mouth partially opened. Blood and clots on nose, mouth and both ears. Diffused bruise around both eyes (periorbital bruise). A lacerated wound of size 1" long (cartilage deep) on right external ear. Diffused swelling of right side of face. A lacerated wound of size 1"x1/2"x bone deep on anterior parietal area of scalp on the right side. A lacerated wound of size 2"x1/3"x bone deep on posterior parietal area of scalp on right side.

Dissection- A linear fracture of size 2^{1/2}" x 1/6" of right temporal and parietal bones of the skull. Sub-scalp hematoma of size 3^{1/2}" x 2^{1/2}" found on right temporal parietal area of scalp. Cranial cavity filled with blood and clots (subdural hemorrhage) and epidural hemorrhage. Soft tissues straightness of neck, hyoid, thyroid and trachea found intact. Both lungs found intact. Left and right chambers of heart found empty. Stomach contained- semi-digested food material. Other viscera including liver, kidneys, intestine's and spleen found intact. Uterus found none gravid and intact. Urinary bladder found empty.

Cause of death- Shock and haemorrhage due to above mentioned ante mortem injuries caused by hard and blunt substance. The time since death to *post mortem* examination- 6 to 24 hours. Rigor mortis present."

18. PW-7, namely Samarth Kumar, is the Sub-Inspector who was posted at Maharaj Ganj Thana at 04.08.2014. He took



over the charge of investigation of this case on 05.08.2014 at about 12:30 in the night. He recorded the statement of the daughter of the deceased i.e. Kiran Kumari. He did inspection of the place of occurrence and he recorded the statement of the witnesses present there. In his examination-in-chief, he has stated that, on hearing the cry of the grand daughter of the informant, the informant went to the place of occurrence where he was hit. He also recorded the statement of Musika Devi, Gyanti Devi, Manman Mahto, Ranjan Kumar, Virendra Mahto on different dates. He also recorded the statements of the eye-witnesses. The statement of Rangila Mahto was recorded before Ugra Nath Jha. Two police officers, namely Ugra Nath Jha and Rajni Kant went along with him at the place of occurrence at about 04:00 in the morning. F.I.R. was not marked by him. A hand pump was present at the scene. Due to water spilling, blood could not be collected. Apart from this, there was nothing else there. Blood smeared brick was not found there. The clothes of the deceased were not seized because the deceased was not present there with him. He didn't even go to the Hospital.

19. Thus, from the aforesaid evidence, it is revealed that PW-2, who is an independent witness and who has signed the Inquest Report, has not supported the case of the prosecution. PW-4, who is the husband of the deceased, is, admittedly, not an eye-



witness to the occurrence and he got the information after the occurrence took place. Therefore, the case of the prosecution rests on the depositions given by PW-1, PW-3 & PW-5. From the aforesaid deposition of the so-called eye-witnesses, it is revealed that there are major contradictions and improvement in the deposition of the said witnesses. PW-5 (Informant) has stated before the Court that he had actually seen the occurrence in question and when he tried to intervene, one Subedar Mahto gave blow with *lathi* on his head. During examination-in-chief, the said witness has also stated that the Doctor who had given the treatment at P.H.C. Maharaj Ganj referred the injured i.e. his daughter-in-law to Sadar Hospital, Siwan for further treatment and when she was taken to the hospital at Siwan, she died on the way. During cross-examination, he has admitted that after hearing the cry, he went to the place of occurrence after 1-2 minutes. The said witness has further stated that though he had taken the treatment in Maharaj Ganj Hospital, he was not in a position to give the name of the Doctor who has given the treatment to him. He has further admitted during cross-examination that he remained in Maharaj Ganj Hospital for about 3-4 hours and thereafter they were referred to the Sadar Hospital, Siwan. He has specifically admitted that when they were in the Maharaj Ganj Hospital, his daughter-in-law



was alive. He has also stated that he found blood-stains at the place of occurrence. However, Police did not collect the blood-stained soil from the place of occurrence. He has also specifically stated that blood-stained clothes of his daughter-in-law were also not seized by the Police and it was cremated along with the dead body. Similarly, PW-1 has stated that her statement was not recorded by the Police. The said witness has further admitted during cross-examination that treatment was given to her mother and grandfather at Maharaj Ganj Hospital. The treatment was given for 10-15 minutes and thereafter, her mother was referred to Sadar Hospital, Siwan. She has further stated that number of villagers have seen the occurrence in question. However, she was not in a position to give the names of the villagers. It is also revealed from the deposition of another so-called eye-witness PW-3 that his mother was taken from Maharaj Ganj Hospital to Siwan and, on the way, she died. The said witness has further admitted in Para-17 that he along with his grandfather reached at the place of occurrence after 30 seconds. The said witness also admitted that blood-stains were present at the place of occurrence and the blood-stained clothes of the deceased were shown to *Daroga*. However, he did not seize the same. *Daroga* has also not collected the blood-stained soil from the place of occurrence.



20. From the aforesaid deposition of the so-called eye-witnesses, it is revealed that the story put forward by the informant in *fardbeyan*, which was immediately lodged within a period of two hours, is not supported by the depositions of the witnesses. As observed hereinabove, there are major contradictions and improvement in the depositions of the witnesses. It is a specific case of the informant that his daughter-in-law died at P.H.C. Maharaj Ganj whereas during the course of trial, the witness has stated that she died on the way when she was taken to Sadar Hospital, Siwan.

21. It is further relevant to note that even PW-3 was minor at the time of occurrence and at the time when he had given deposition before the Court, he was aged about 16-17 years. The learned Judge has not recorded his satisfaction whether the said witness was in a position to understand the question put to him or not.

22. It is pertinent to note that though the *fardbeyan* was recorded by Police Inspector Ugra Nath Jha, the said witness was not produced by the prosecution. In the facts of the present case, we are of the view that the said witness was a material witness. Merely because the Investigating Officer was examined by the



prosecution, it cannot be said that from his deposition the prosecution has proved the contents of the F.I.R.

23. It is also not in dispute that PW-7 Samarth Kumar, who has carried out the investigation, has not collected any blood-stained soil from the place of occurrence nor the blood-stained clothes of the deceased were seized by the Investigating Agency. The brick was also not found from the place of occurrence. Though it is a specific case of the informant that he also sustained injuries when he had tried to intervene and one Subedar Mahto blow with *lathi* on his head, the prosecution has failed to produce any document or material before the Trial Court with regard to the treatment taken by the said witness. Doctor who had given the treatment to the informant was not examined nor any medical certificate/injury certificate was produced before the Trial Court.

24. Looking to the aforesaid facts and circumstances of the present case, we are of the view that PW-1, PW-3 & PW-5, who are near relatives of the deceased and who are projected as eye-witnesses, are not trustworthy witnesses. There are major contradictions in the depositions of the said witnesses and the story put forward by the prosecution with regard to the death of the deceased. Thus, though the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubt, the Trial



Court has passed the impugned order. Thus, looking to the facts and circumstances of the present case, we are of the view that the Trial Court has committed a grave error while passing the impugned judgment and order and, therefore, the same is required to be quashed and set aside.

25. The impugned judgment of conviction dated 01.12.2016 and order of sentence dated 08.12.2016 passed by learned Vth Additional Sessions Judge, Siwan in Sessions Case No. 136 of 2015, arising out of Maharaj Ganj P.S. Case No. 224 of 2014 dated 05.08.2014 is quashed and set aside. The appellant namely, Mukesh Mahto @ Mantu, is acquitted of the charges levelled against him by the learned Trial Court. He is directed to be released forthwith, if not required in any other case.

26. Accordingly, this appeal is allowed.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

Sachin/-

AFR/NAFR	
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