

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.534 of 2016

Arising Out of PS. Case No.-261 Year-2013 Thana- BAHERA District- Darbhanga

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Duni Lal Sahani, Son of Late Bhagwat Sahani, Resident of Village- Antaur,
P.S.- Bahera, District- Darbhanga.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 386 of 2016

Arising Out of PS. Case No.-261 Year-2013 Thana- BAHERA District- Darbhanga

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Ganesh Sahani, Son of Late Ram Charan Sahani, Resident of Village-
Jagdishpur, P.S.- Manigachhi, District- Darbhanga.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 428 of 2016

Arising Out of PS. Case No.-261 Year-2013 Thana- BAHERA District- Darbhanga

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1. Durga Sahani, Son of Late Ravi Sahani;
 2. Sheoji Sahani, Son of Late Ravi Sahani;
 3. Raj Kumar Sahani, Son of Late Bhagwat Sahani;
All resident of Village- Antore, P.S.- Bahera, District- Darbhanga.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

(In Criminal Appeal (DB) Nos. 534 of 2016, 386 of 2016 and 428 of 2016)



For the Appellant/s : Mr. Udit Narayan Singh, Adv.
Mr. Ramchandra Sahni, Adv.
For the State : Mr. Abhimanyu Sharma, APP
For the Informant : Mr. Mukesh Kumar, Adv.
Mr. Ram Nibash Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)
Date : 25-06-2024

All the three appeals have been heard together and are being disposed off by this common judgment.

2. On behalf of the five appellants, in all, in the three criminal appeals, arguments have been advanced by Mr. Udit Narayan Singh, assisted by Mr. Ramchandra Sahni, the learned Advocates.

3. The State is represented by Mr. Abhimanyu Sharma, the learned APP.

4. On behalf of the informant, Mr. Mukesh Kumar, the learned Advocate has appeared.

5. All the appellants have been convicted under Sections 148, 302/149, 341 and 323 of the Indian Penal Code (*in short the IPC*) vide judgment



dated 16.04.2016 passed by the learned Additional Sessions Judge-I, Benipur, Darbhanga in Sessions Trial No. 36 of 2015, arising out of Bahera P.S. Case No. 261 of 2013. By order dated 19.04.2016, they have been sentenced to undergo R.I. for life, to pay a fine of Rs. 25,000/- each and in default of payment of fine, to further suffer imprisonment for six months for the offence under Section 302/149 of the IPC; to undergo R.I. for three years for the offence under Section 148 of the IPC; to undergo R.I. for one month for the offence under Section 341 of the IPC and to undergo R.I. for one year for the offence under Section 323 of the IPC.

6. All the sentences have been directed to run concurrently.

7. One Gulab Sahani is said to have been killed at the hands of the appellants. The FIR has been lodged by Suresh Sahani (P.W. 4), who is the father of the deceased. He has alleged in his *fardbeyan* recorded by SI/Devanand Raut (P.W. 6) at Bahera Police Station



on 08.07.2013 that persons of the village informed him that appellant/Duni Lal Sahani and others had fought with his daughter, viz., Indu Devi (P.W. 2). On such information, his two sons, one being the deceased and the other/Murari Sahani (P.W. 3) came from the field. They wanted to know from appellant/Duni Lal Sahani as to why he and his co-horts had assaulted Indu Devi. Vexed by this, the appellants along with seventeen others came to the house of P.W. 4. All the accused persons were variously armed with *lathi*, *bhala*, *farsa*, knife and country made weapons etc. Appellant/Duni Lal Sahani is said to have assaulted him. When his two sons came to his rescue, appellant/Ganesh Sahani is said to have given a dagger blow on Gulab Sahani (deceased) on his head, as a result of which, he became seriously injured and started bleeding profusely. At that point of time, appellant/Duni Lal Sahani snatched the knife/*chhura* from appellant/Ganesh Sahani and pierced it through and through in the chest of Gulab Sahani.



Gulab Sahani immediately succumbed to the injuries. Rest all were assaulted by the accused persons. Gulab Sahani died instantaneously, whereas the informant and his son/Murari Sahani (P.W. 3) were taken to Bahera Primary Health Centre for treatment. The dead-body of Gulab Sahani was also taken to Bahera Police Station. With regard to the cause of occurrence, P.W. 4 has stated that because of the pending land dispute, a concerted effort was made by the appellants and others to cause harm to the prosecution side. For this purpose, appellant/Ganesh Sahani and Bechan Sahani were called from Jagdishpur. They had arrived at the scene of occurrence on a red coloured motorcycle without any registration number. The motorcycle was left behind and the accused persons ran away. Most of the accused persons exited on a Tata 407 vehicle towards Purnea.

8. On the basis of the afore-noted *fardbeyan* statement of P.W. 4, a case *vide* Bahera P.S. Case No. 261 of 2013, dated 08.07.2013 was instituted for the



offences under Sections 147, 148, 149, 341, 323, 324, 307, 302 and 504 of the IPC against all the appellants and seventeen others.

9. The police, after investigation, submitted charge-sheet only against seven accused persons including the five appellants.

10. The Trial Court, after having examined eight witnesses on behalf of the prosecution and one on behalf of the defense, convicted only five of the accused persons (appellants herein), but acquitted two of the female accused persons, namely, Rajiya Devi and Gauri Devi as there was no material against them. The Trial Court found that all the appellants had participated in the occurrence and, therefore, all of them have been convicted under Section 302/149 IPC.

11. Mr. Udit Narayan Singh, the learned Advocate for the appellants has argued that an absolutely false case has been lodged against the appellants and their associates. It is precisely for this



reason that the prosecution has chosen not to examine any one of the independent persons, especially, Guchhi Sahani, Bhagwanti Devi, Lakhan Jha etc., who would have thrown light on the genesis of the occurrence as also the manner of the occurrence. It has further been argued that a case also had been lodged by appellant/Duni Lal Sahani *vide* Bahera P.S. Case No. 280 of 2013, in which, the witnesses in this case who are made accused and Duni Lal Sahani had received injuries for which he was treated in hospital. This very fact makes the prosecution case absolutely doubtful as there is no reference of any assault on the accused persons including the appellants in the subject FIR.

12. Two inferences, Mr. Singh has argued, can be drawn from such withholding of information, *viz.*, that the appellants have been falsely framed and that the informant has not come out with the correct and uncontaminated version of the occurrence.

13. It has further been argued that if the



prosecution case is to be believed that twenty two persons had assaulted the family members of the informant, it would have been very difficult for anybody, much less P.W. 4 to have seen for himself as to who assaulted whom. That apart, the allegations against all the accused persons were not found to be correct and the Trial Court further found the evidence against two of the sent up accused persons to be non-existent. All this simply suggests that it was an attempt on the part of P.W. 4 to anyhow implicate as many members of the other camp as possible.

14. It has also been submitted that though it has been stated in the FIR and has been supported by the witnesses during Trial that the occurrence took place because of the appellants having fought with Indu Devi (P.W. 2), but P.W. 4 in the *fardbeyan* has categorically stated that because of the land dispute, the occurrence had taken place. This, therefore, in the background of the counter case lodged by appellant/Duni Lal Sahani



vide Bahera P.S. Case No. 280 of 2013, reflects that both sides had fought amongst themselves, but unfortunately one of the persons, namely, Gulab Sahani succumbed to the injuries. The situs of the occurrence also could not be proved.

15. Mr. Singh has further submitted that the Investigating Officer of this case did not find any blood stained earth at the P.O.

16. On these grounds, it has been urged that the conviction and sentence of the appellants is uncalled for and requires interference by this Court.

17. As opposed to the afore-noted contentions, Mr. Abhimanyu Sharma, the learned APP and Mr. Mukesh Kumar, the learned Advocate for the informant have, in unison, argued that the injuries suffered by Duni Lal Sahani was absolutely simple in nature. In fact, there was no injury on him, which could be reflected from the injury report brought on record on behalf of the defense. As such, there was no necessity



for referring to such injuries in the *fardbeyan* or in the deposition of the witnesses. This cannot be treated as a vital information, withholding of which would reduce the weight of the allegation against the appellants.

18. It has also been urged on behalf of the prosecution that it is not uncommon for villagers to avoid being witnesses in a case for the reason that the fight was between two groups of villagers and it is not always easy for independent villagers to take sides. That apart, it has been submitted that the evidence on record is absolutely consistent so far as the genesis and the manner of assault are concerned. The Investigating Officer has explained the reason why blood stained earth was not seized by him. The earth was wet and since there were many persons at the P.O., the field was completely trampled, making it difficult for the Investigator to seize any blood stained earth. The inquest report; the *post-mortem* report; the background enmity between the parties and the consistent and



cogent deposition of the witnesses have made this a full proof case, which does not require any interference.

19. We have examined the evidence on record rather carefully.

20. Suresh Sahani (P.W. 4) though in his *fardbeyan* has not disclosed the name of the person who told him about the appellants having fought with Indu Devi (P.W. 2), but in his deposition before the Trial Court, he has stated the name of Lakhan Jha, who, for some reason or the other, has not been examined at the Trial. Lakhan Jha is said to have informed him that brick-bats were being thrown in the courtyard of his house. His two sons were away in the field for conducting ploughing operations. They were also informed by aforesaid Lakhan Jha, on which they came back and wanted to know from appellant/Duni Lal Sahani as to why Indu Devi was troubled. This apparently is the cause which formed the *casus belli* for the occurrence. The motorcycle of the accused persons



was left behind. There is nothing on record and the Investigator also has not stated anything about the presence of motorcycle at the spot or as to what had happened to that motorcycle.

21. So far as the sequence of events is concerned, P.W. 4 claims to have been assaulted first by appellant/Duni Lal Sahani. His two sons came to his rescue. Appellant/Ganesh Sahani, who apparently had been called from Jagdishpur, gave a knife blow on the head of Gulab Sahani, one of the sons (deceased) of P.W. 4. Though he was injured, but then appellant/Duni Lal Sahani took the knife from the hand of appellant/Ganesh Sahani and again attacked Gulab Sahani in his chest which proved fatal. Murari Sahani, another son of P.W. 4, was assaulted. All the three, viz., P.W. 4, his sons/Murari Sahani (P.W. 3) and Gulab (deceased) were taken to Bahera Primary Health Centre, where P.W. 4 and P.W. 2 were being treated at the time of lodging of the *fardbeyan* by P.W. 4.



22. Similar statements have been made by Mamta Devi (P.W. 1), who is the widow of the deceased, Indu Devi (P.W. 2) and Murari Sahani (P.W. 3).

23. Mamta Devi (P.W. 1) was in the house when the occurrence had taken place. According to her, Indu Devi had gone to the bathroom located behind the house, when the accused persons started banging the door of the bathroom.

24. There is nothing in the evidence which would indicate as to the reason for the appellants/accused persons having any problem with Indu Devi, but then the evidence is consistent that the accused persons started throwing brick-bats inside the courtyard. Even though, P.W. 4 was present in his house, but he had no idea that the accused persons had been throwing stones and bricks inside the courtyard of his house. He was, as noted-above, informed by one Lakhan Jha. On the asking of P.W. 4, Lakhan Jha informed Murari and Gulab about the starting of the



dispute. The assault took place thereafter.

25. Indu Devi (P.W. 2) has also confirmed that when she had gone to the bathroom, the door was pushed and brick-bats were thrown. In the meantime, her two brothers had arrived. When her brothers and her father protested, the occurrence took place.

26. Similar is the statement of Murari Sahani (P.W. 3), the injured witness.

27. In fact, all these witnesses had seen the entire part of the assault. Appellant/Duni Lal Sahani first assaulted P.W. 4. When the deceased and Murari Sahani (P.W. 3) came to his rescue, appellant/Ganesh gave a knife blow on Gulab Sahani (deceased). Later, with the same knife, Gulab was assaulted by appellant/Duni Lal Sahani, which led to his death. Suresh Sahani and Murari Sahani (P.Ws. 4 and 3 respectively) were injured.

28. Suresh Sahani and Murari Sahani were treated by Dr. Ramdeo Sahu (P.W. 7). The injuries on



Murari Sahani were in the nature of swelling on various parts of the body, opined to have been caused by hard and blunt substance, but simple in nature (Exhibit-7). Similar simple injuries were found on the persons of Suresh Sahani, about which no opinion could be given by P.W. 7 regarding its nature. He has further stated before the Trial Court that at the same time both the injured were treated by him.

29. The *post-mortem* on the dead-body of Gulab Sahani was conducted on the same day, *i.e.*, 08.07.2013 at 04:10 P.M. by Dr. Vijay Pratap Singh (P.W. 8). He had found the clothes and the body of the deceased stained with blood. There was a hole in the vest on the left side, which was of one inch diameter. He had also found one incised punctured wound of 01" x $\frac{1}{2}$ " inch, which led to the left chest cavity from the 7th inter-costal space in the mid clavicular line, approximately 03" below the left nipple. On dissection, the 7th inter-costal muscle was found to be bruised with



blood clots. Another lacerated wound of $\frac{1}{2}$ " x $\frac{1}{2}$ ", but muscle deep was found over the right parietal region. Apart from these two injuries, one abrasion of the dimension of 03" x $\frac{1}{2}$ " over the right chest wall in the mid axillary line was also found on the person of the deceased. Because of the bleeding and the injuries, the brain and meninges were found to be pale. The first of the injury, viz., punctured wound below the left nipple was found to have been caused by a pointed sharp cutting weapon, whereas injuries Nos. 2 and 3, viz., the lacerated wound and the abrasion, referred to above, were opined to have been caused by hard and blunt object. The cause of death was stated to be hemorrhage and shock due to the above-noted injuries.

30. In cross-examination, P.W. 8 has clearly stated that he did not find any dagger or knife injury on the head of the dead-body. The injury No. 2 was not superficial, but injury No. 3, viz., abrasion was superficial. Injury Nos. 2 and 3, P.W. 8 further



reiterated was not possible by a sharp pointed weapon. There was profuse bleeding from injury No.1, viz., on the chest.

31. The Investigator (P.W. 6) had visited the place of occurrence and had found that at the P.O., because of heavy foot fall, the blood stained soil was not worth being collected or sized. With respect to the information about the occurrence, he has stated before the Trial Court that he did not remember who gave the information about the occurrence, but he remembered that he had received such information at about 11:45 A.M. on the same day on his official mobile telephone. An entry in the station diary *vide* Entry No. 197 was made by him. After making such entry of the information, he proceeded to the Primary Health Centre, Bahera, where he found P.W. 4 hale and hearty. However, he was admitted in the hospital. According to him and the information gathered, the occurrence had taken place because of land dispute, which was



continuing from long.

32. Apart from all this, nothing substantial was offered by the Investigator (P.W. 6) for the benefit of the Court which dealt with the matter.

33. The defence witness examined in this case, *viz.*, Umesh Ram is of formal nature.

34. From the *post-mortem* report, one thing becomes very clear that the deceased died primarily on account of the injury on his chest, which is directly attributable to appellant/Duni Lal Sahani. In fact, the accusation against appellant/Ganesh Sahani that he first assaulted the deceased by means of knife on his head has been rendered false by the findings of the doctor. The injury on head was not only simple in nature, but caused by hard and blunt substance. In fact, it has specifically been answered by the doctor (P.W. 8) that the injury on the head could not have been caused by any sharp pointed weapon.

35. The other aspect which comes to the fore



is that only two persons were injured and one died, even when twenty-two persons variously armed had arrived at the P.O. The immediate cause of conflagration was the fight with Indu Devi (P.W. 2), but the underlying cause for all the accused persons to gather at the P.O. was old land dispute. The prosecution has not been able to prove any long-standing enmity or dispute between the parties. It has only come by way of deposition of the witnesses and that also interested witnesses and not independent ones in the village.

36. There is absolute lack of evidence with respect to participation of the other appellants, viz., Durga Sahani, Sheoji Sahani and Raj Kumar Sahani [*Cr. Appeal (DB) No. 428 of 2016*] except for their having been named in the FIR or been members of the mob.

37. In such fact scenario, it would be very difficult to attribute that all the appellants had the common object of causing harm to the prosecution side.

38. The allegation against accused persons of



carrying all kind of weapons including country made fire arms does not appear to be proved for the reason that no other weapon appears to have been used except, perhaps, *lathi* and a knife. The knife was also not recovered.

39. It is also surprising that P.W. 4, while recording his *fardbeyan*, knew that after the occurrence all the accused persons left on a Tata 407 vehicle towards Purnea for taking out fox-nuts from the pond.

40. How did he know all this?

41. Is it then the imagination of P.W. 4 to frame as many persons as he could find who had sympathies with the appellants or who were opposed to him?

42. That apart, it appears to be rather improbable that if there was any common intention of the appellants to have caused harm to the deceased and the two injured persons and that also because of the old land dispute, which could not be proved, the first attack



would be on Indu (P.W. 2) and that also not on her person, but by banging at the bathroom door.

43. We have not been able to find out whether there was any dispute with respect to construction of the washroom behind the house. The appellants and the members of the prosecution party are all co-villagers.

44. In this background, we find that it is very difficult to attribute the element of common object and knowledge of all the accused persons including the appellants for them to be held guilty under Section 302/149 of the IPC.

45. In such a situation, the only way out is to assess and strain the evidence with a judicial colander and see the individual acts of the accused persons/the appellants.

46. We have examined this case from this point of view and have found that appellant/Duni Lal Sahani is the author of the fatal injury on the deceased.



He knew it for certain that piercing a sharp pointed object in the chest of a human being is bound to lead to his death. If the allegations are to be believed, he was not satisfied with the attack on the deceased on head by appellant/Ganesh Sahani and, therefore, he snatched the weapon from the hand of appellant/Ganesh and pierced it through and through in the chest of the deceased.

47. Appellant/Duni Lal Sahani [*Cr. Appeal (DB) No. 534 of 2016*] knew the nature and quality of his act and, therefore, the mischief of Section 300 thirdly, IPC, is squarely attracted against him.

48. So far as appellant/Ganesh Sahani [*Cr. Appeal (DB) No. 386 of 2016*] is concerned, he is said to have specifically assaulted the deceased on his head by the same knife, which was used by appellant/Duni Lal Sahani. There is no sharp-pointed weapon injury on the head of the deceased. The only injury on the head is a simple laceration, which could not have been, in the opinion of the doctor conducting the *post-mortem*,



caused by any sharp and pointed object.

49. At best, therefore, appellant/Ganesh Sahani would be liable for the offence under Section 324 of the IPC.

50. With respect to appellants/Durga Sahani, Sheoji Sahani and Raj Kumar Sahani [*Cr. Appeal (DB) No. 428 of 2016*], the evidence is absolutely missing with respect to their participation and respective roles played.

51. We have also given our anxious consideration over non-mentioning of any assault on the appellants, especially, Duni Lal Sahani in the *fardbeyan* of P.W. 4.

52. The defence exhibits though do reflect that a case was lodged by Duni Lal Sahani but till the conclusion of Trial, the FIR lodged by him had not been taken to any logical conclusion. Even, the injury report suggests that nothing of the kind as claimed by Duni Lal Sahani had ever happened.



53. In case of ***Lakshmi Singh & Ors. Vs. State of Bihar; (1976) 4 SCC 394***, it was held that in a murder case, the non-explanation of the injuries sustained by the accused at the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(i) that the prosecution has suppressed the genesis and the origin of the occurrence has thus not presented the true version;

(ii) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(iii) that in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution case.

54. However, in ***State of Gujarat Vs. Bai***



Fatima; (1975) 2 SCC 7, the Supreme Court has held that there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of omission on the part of the prosecution to explain the injuries.

55. In a case of this kind, where FIR lodged by appellant/Duni Lal Sahani was later in point of time with no corresponding injury, non-mentioning of such fact would not render the prosecution story doubtful, especially, when consistently the witnesses have supported the manner of the occurrence.

56. Thus, we convert the conviction of appellant/Duni Lal Sahani [*Cr. APP. (DB) No. 534 of 2016*] into one under Sections 302, 148, 341 and 323



of the IPC and affirm the sentence imposed upon him for the afore-noted sections of the IPC.

57. With respect to appellant/Ganesh Sahani [*Cr. Appeal (DB) No. 386 of 2016*], his conviction is altered into one under Sections 324, 148, 321 and 323 of the IPC. The sentence on him would be the period which he has already undergone during investigation or Trial, which, in the estimation of this Court, would meet the ends of justice.

58. So far as appellants/Durga Sahani, Sheoji Sahani and Raj Kumar Sahani [*Cr. Appeal (DB) No. 428 of 2016*] are concerned, they are acquitted of the charges levelled against them.

59. Since appellant/Ganesh Sahani [*Cr. Appeal (DB) No. 386 of 2016*] and appellants/Durga Sahani, Sheoji Sahani and Raj Kumar Sahani [*Cr. Appeal (DB) No. 428 of 2016*] are on bail, they are discharged of their liabilities under their bail bonds.

60. All the three appeals are disposed off



accordingly.

61. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail/s forthwith for compliance and record.

62. The records of the cases be returned to the Trial Court forthwith.

63. Interlocutory application/s, if any, also stand disposed off accordingly in all the appeals.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Praveen-II/Manoj

AFR/NAFR	NAFR
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