

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 1014 of 2013

Arising Out of PS. Case No.-53 Year-1990 Thana- Gamahariya District- Madhepura

- =====
1. Ram Prasad Mehta son of late Musharu Mehta
 2. Banarsi Mehta son of late Ramjee Mehta
- Both resident of Village- Bhelwa, P.S. Gamhariya, District Madhepura

... .. Appellants

Versus

The State of Bihar

... .. Respondent

=====

with

CRIMINAL APPEAL (DB) No. 1067 of 2013

Arising Out of PS. Case No.-53 Year-1990 Thana- Gamahariya District- Madhepura

- =====
1. Kallar Mehta son of Late Dharmi Mehta
 2. Upendra Mehta son of Late Musahru Mehta
 3. Dinesh Mehta son of Kallar Mehta
 4. Sheodatta Mehta son of Late Manik Mehta
 5. Chandrabhushan Mehta son of Sheodatta Mehta
- All are resident of Village- Bhelwa, P.S. Gamhariya, District Madhepura.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

=====

with

CRIMINAL APPEAL (DB) No. 1053 of 2013

Arising Out of PS. Case No.-53 Year-1990 Thana- Gamahariya District- Madhepura

- =====
1. Bhupendra Mehta S/o Late Musaharu Mehta
 2. Chichai Mehta S/o Late Laxmi Mehta
 3. Devendra Mehta @ Deo Narain Mehta, Son of Masaharu Mehta
- All residents of Village- Bhelwa, P.S.- Gamhariya, District- Madhepura.

... .. Appellants



Versus

The State of Bihar

... .. Respondent

=====

Appearance :

(In CRIMINAL APPEAL (DB) No. 1014 of 2013)

with

(In CRIMINAL APPEAL (DB) No. 1067 of 2013)

with

(In CRIMINAL APPEAL (DB) No. 1053 of 2013)

For the Appellants : Sri Ajay Kumar Thakur, Advocate
Sri Rana Vikram Singh, Advocate
Sri Shailendra Kumar Singh, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 01-05-2019

In aforesaid three appeals, appellants (total ten in number) were tried together and convicted and sentenced by the common judgment passed in Sessions Trial No. 22 of 1992 and as such, all the three appeals were taken up together under the heading "For Hearing" and are being disposed of by this common judgment.

2. By judgment dated 30-09-2013, all the aforesaid ten appellants were held guilty and convicted for offence under Sections 148, 302/149 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.'). By order dated 03-10-2013,



under Section 148 of the I.P.C., all the appellants were sentenced to undergo rigorous imprisonment for one year and under Section 302/149 of the I.P.C., all the appellants were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- (ten thousand) each. In case of default in payment of fine, they were directed to further undergo rigorous imprisonment for one year. Both the sentences were directed to run concurrently. The appellants were convicted and sentenced in Sessions Trial No. 22 of 1992 (arising out of Gamhariya P.S. Case No. 53 of 1990) by Dr. Ram Lakhan Yadav, learned 1st Additional Sessions Judge, Madhepura (hereinafter referred to as the 'Trial Judge').

3. Short fact of the case is that on 31-08-1990 at 8:00 P.M., Sub-inspector of Police-cum-officer incharge, Madhepura Police Station, B.K. Das (not examined) recorded *fardbeyan* of Birendra Mehta (P.W.7) son of deceased Buchan Mehta. The *fardbeyan* was recorded in Sadar Hospital, Madhepura. In the *fardbeyan*, informant (P.W.7) disclosed that on the same date i.e. on 31-08-1990 (Friday), his thatched hut was being reconstructed. The said hut was near the side of Gamhariya-Wamni metalled road. He with labourer Ravi Paswan (P.W.5),



Ram Paswan (not examined) and Bhagwat Paswan (P.W.2), all residents of village Bhelwa, P.S. Gamhariya were doing the repairing work. The informant returned back to his house, however labourers were cleaning the hut. The informant further stated that his father Buchan Mehta (deceased) was maintaining his family by way of selling clothes near the *hat bazar*. As usual on the same date, his father was ready for going to *Haadi Chauhra Haat*. Bundle of clothes amounting to Rs. 5,000/- was kept on old bicycle and informant with his father proceeded. Since half kilometer of passage was unmetalled, the informant, talking with his father, was moving and while preceded on metalled road, he saw Ram Prasad Mehta (A-1 in Cr.App.DB No. 1014/13) carrying a stick in his hand was sitting there. After seeing him and his father, Ram Prasad Mehta (A-1 in Cr.App.DB No. 1014/13) exhorted that enemy was going. On *hulla* raised by Ram Prasad Mehta (A-1 in Cr.App.DB No. 1014/13), all the accused persons from behind bamboo orchard in a group came there and surrounded informant and his father. In the said group, he identified all the appellants including Ram Prasad Mehta (A-1 in Cr.App.DB No. 1014/13). All the accused persons were carrying *khanti* and rod in their hands, whereas appellant/Ram



Prasad Mehta was carrying stick in his hand. Thereafter, at about 2:00 PM, Bhupinder Mehta (A-1 in Cr.App.DB No. 1053/13) exhorted and thereafter, he (Bhupinder Mehta), Chichai Mehta (A-2 in Cr.App.DB No. 1053/13), Devendra Mehta (A-3 in Cr.App.DB No. 1053/13) carrying *khanti* in their hands, which were fitted in stick of bamboo, and Upendra Mehta (A-2 in Cr.App.DB No. 1067/13), Kaller Mehta (A-1 in Cr.App.DB No. 1067/13), Dinesh Mehta (A-3 in Cr.App.DB No. 1067/13), Sheodatta Mehta (A-4 in Cr.App.DB No. 1067/13), Chandrabhushan Mehta (A-5 in Cr.App.DB No. 1067/13), Benarsi Mehta (A-2 in Cr.App.DB No. 1014/13) were carrying iron rod in their hand. On order given by Ram Prasad Mehta (A-1 in Cr.App.DB No. 1014/13), Bhupendra Mehta (A-1 in Cr.App.DB No. 1014/13), Chichai Mehta (A-2 in Cr.App.DB No. 1053/13) and Devendra Mehta (A-3 in Cr.App.DB No. 1053/13) carrying *khanti* in their hand, Upendra Mehta, Kaller Mehta, Dinesh Mehta, Sheodatta Mehta, Chandrabhushan Mehta (all appellants in Cr.App.DB No. 1067/13), Benarsi Mehta (A-2 in Cr.App.DB No. 1014/13) carrying rod in their hand, with intent to kill, started indiscriminately assaulting his father. In the midst, Bhupendra Mehta (A-1 in Cr.App.DB No. 1053/13) was saying that only



after killing, he would leave. Firstly, Bhupendra Mehta (A-1 in Cr.App.DB No. 1053/13) from the back of the *khanti* indiscriminately assaulted on the chest of his father and with intent to kill him, he gave one *khanti* blow on head of the father of the informant. Chichai Mehta, Devendra Mehta (A-2 & A-3 in Cr.App.DB No. 1053/13) with intent to kill his father assaulted on left and right wrist of his father and other parts of his body, Upendra Mehta, Kallar Mehta, Dinesh Mehta, Sheodatta Mehta, Chandrabhushan Mehta (all five appellants in Cr.App.DB No. 1067/13), Banarsi Mehta (A-2 in Cr.App.DB No. 1014/13) assaulted on the whole body of his father. There was swelling in both the hands and near the knee and injured started bleeding. On *hulla* raised by the informant, Kusumlal Paswan (P.W.1), Bhagwat Paswan (P.W.2), Rajendra Mehta (not examined) etc. arrived there and they saw the occurrence. All the labourers, who were near the hut, also arrived there and seen the occurrence. Others also had seen the occurrence. Thereafter, Bhupendra Mehta (A-1 in Cr.App.DB No. 1053/13) by the means of *dhoti* tied his father and Bhupendra alongwith Chichai and Devendra (all three appellants in Cr.App.DB No. 1053/13) dragging his father started to carry him and also they took bundle of cloths,



umbrella etc. Thereafter, the accused persons dragged his father for about one mile in eastern side and threw the injured in a bush near small canal. The informant alleged that all the accused persons had taken bundle of clothes and umbrella. He claimed that while his father was being dragged, he crying and following the accused persons requested to leave his father, for which, the informant would leave entire land, however the accused persons dragged his father and threw him. In the meanwhile, his mother and other witnesses also arrived there and injured was brought to Madhepura Hospital. The doctor of Madhepura Hospital referred the injured to Saharsa Sadar Hospital. After recording the said *fardbeyan*, the same was read over to him and after finding it correct, the informant put his signature, however in hospital, the injured died.

4. On the basis of said *fardbeyan*, on 01-09-1990, a formal F.I.R., vide Gamhariya P.S. Case No. 53 of 1990, was registered under Sections 147, 148, 149, 341, 323, 324, 307, 302, 379 of the I.P.C. against aforesaid ten appellants. After investigation, chargesheet was submitted against all the ten F.I.R. named accused on 07-12-1990, whereupon on 03-04-1991, learned Chief Judicial Magistrate, Madhepura took



cognizance of the offence and thereafter, the case was committed to the court of sessions on 25-04-1992. On 29-01-1997, joint charge under Sections 148, 302/149, 379/149 of the I.P.C. was framed against all the appellants excepts appellant Dinesh Mehta, since he had already absconded and his case was separated. Thereafter, on 21-07-1997 after amalgamating the case of Dinesh Mehta with remaining accused persons, charge against Dinesh Mehta (A-3 in Cr.App.DB No. 1067/13) was framed for the same offence.

5. During the trial, to establish its case on behalf of the prosecution, altogether ten witnesses were examined. Out of ten witnesses, P.W.1 Kusumlal Paswan, P.W.2 Bhagwat Paswan, P.W.4 Pannalal Mehta, P.W.5 Ravi Paswan and P.W.7 Birendra Mehta (informant and son of the deceased) were examined as eye-witnesses to the occurrence, whereas P.W.3 Dukhi Mehta deposed that after hearing *hulla*, he reached at the place of occurrence and saw the dead body. Besides this, he has stated nothing. P.W.8 Hare Ram Mandal is the hearsay witness. Ofcourse in his examination-in-chief, he had not disclosed the source of information, but in cross-examination, in paragraph-3, he stated that he got the information regarding the occurrence



from P.W.4 Pannalal Mehta. P.W.9 Anil Kumar Yadav is a formal witness, who has proved formal F.I.R., which was marked as Ext.2. P.W.10 Dr. Kishore Kumar 'Madhup', has conducted *post-mortem* examination on the dead body of the deceased. However, in the case, investigating officer has not been examined.

6. After completion of the prosecution evidence, the appellants were questioned with incriminating circumstances and evidences on 04-12-2012 and their statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') was recorded, in which, they claimed regarding their false implication in the case due to land dispute. On behalf of defence, besides taking defence in statement recorded under Section 313 of the Cr.P.C., two defence witnesses were also examined. Those are D.W.1 Gajendra Mehta and D.W.2 Surendra Mehta. So far as D.W.1. Gajendra Mehta is concerned, he was examined during investigation and his statement under Section 161 of the Cr.P.C. was recorded.

7. After placing entire evidence, Sri Ajay Thakur, learned counsel assisted by Sri Shailendra Kumar Singh, learned counsel for the appellants has argued that prosecution has not been able



to establish its case beyond all reasonable doubt. He submits that presence of informant (P.W.7) at the place of occurrence along with the deceased appears to be doubtful, in view of evidence of P.W.1, P.W.2, P.W.4 and P.W.5. It has been argued that P.W.5 Ravi Paswan in his evidence has stated that at the time of occurrence, the informant/P.W.7 was present in thatched hut, which was under repairing along with P.W.2 Bhagwat Paswan and one another witness, who has not been examined by the prosecution. As per evidence of P.W.5, it is evident that before the actual occurrence had taken place, the deceased on a bicycle carrying bundle of clothes had arrived near the thatched hut and there was some discussion in between the deceased and the informant. Subsequently, the deceased proceeded for *haat*, thereafter the occurrence had taken place and on alarm, they arrived there. Similarly, by way of referring to paragraph-4, 6,7 and 10 of the evidence of P.W.2 Bhagwat Paswan, it has been argued that the presence of informant appears to be doubtful. Similar is the evidence of P.W.1 and P.W.4, according to learned counsel for the appellants. Accordingly, it has been argued that the presence of the informant at the place of occurrence has not been established by the prosecution by credible evidence.



8. Sri Thakur has further argued that assault on the deceased has not been corroborated by the medical evidence. According to Sri Thakur, the informant (P.W.7) in his evidence as well as in his *fardbeyan* has given specific statement that his father, in his presence, was brutally assaulted by the accused persons. The assault continued for about 25 minutes. He has specifically drawn our attention to paragraph-3 of the evidence of P.W.7 to corroborate that how the deceased was given repeated blow of iron rod as well as *khanti*, whereas the medical report i.e. *post-mortem* report suggests that the deceased had received only one injury on his vital part i.e. head, otherwise he had received injury on wrist as well as knee and other non-vital part. In any event, as per Sri Thakur, the manner, in which, it was alleged that repeated blow was given on the deceased, which continued for 25 minutes, there was possibility of finding number of injuries on the person of deceased, which has not been found during *post-mortem* examination of the deceased. He further submits that the witnesses, in the case, have given their evidence as per their own convenience. There is no consistency in the evidence of either of the witnesses. It has further been argued that though, it was case of the prosecution that after inflicting number of injuries



on the father of the informant when he fell down, his neck was tied by *gamchha* and *dhoti* and he was dragged for more than 500 yards, but no such abrasion or scratch was found on the person of the deceased, whereas from the place, where the injured was dragged and the place, where the injured was thrown, covers paddy and *arhar* field. He further submits that there is no apparent evidence of trampling of the paddy crops or *arhar* field. It has been argued that in the case, save and except interested and partision witnesses, none of the independent witness has come forward, whereas in the evidence, it has come that number of other independent witnesses had seen the occurrence, such as; Ram Paswan, Rajendra Mehta etc. however, to the reasons best known to the prosecution, they have not been examined as prosecution witness.

9. Lastly, it has been argued by learned counsel for the appellants that it was case of false implication, since animosity in between the parties was not in dispute. He has drawn our attention to Ext.B, which is an order passed in Complaint Case No. 719-C of 1989 to show that all the witnesses, who have been examined in the present case, were convicted in the said complaint case, which was filed by brother of appellant no. 1 in



Cr. Appeal (DB) No. 1067 of 2013. Ofcourse, after conviction, they were released under the provision of Probation of Offenders Act. He has also drawn our attention to Ext. C i.e. copy of F.I.R. in Gamhariya P.S. Case No. 41 of 1990 dated 06-07-1990 lodged by Bhupendra Mehta (appellant no. 1 in Cr. Appeal (DB) No. 1053 of 2013), which was lodged against the informant of the present case i.e. Birendra (P.W.7) and others.

10. Sri Thakur, learned counsel for the appellants has argued that in the background of the evidences, which is inconsistent and also animosity in between the parties, it appears that the appellants were falsely implicated in the present case and the learned Trial Judge, without any cogent material on record, has passed the judgment of conviction and sentence. Alternatively, it has been argued that on the basis of oral evidence vis-a-vis medical evidence, it is evident that there was no intention on the part of the appellants to kill the father of the informant, rather it appears that the intention was to cause injury on the person of the deceased, otherwise the appellants would have inflicted repeated iron rod blow on the vital part of the deceased, whereas only one injury on vital part i.e. head was found during *post-mortem* examination, otherwise other injuries



were on non-vital part of the deceased. He submits that it can hardly be a case under Section 302 part II of the I.P.C. and since the appellants have remained in custody for more than 6 years, he submits that purpose would be served if the conviction from Section 302/149 I.P.C. is altered to Section 304 part II r/w Section 149 of the I.P.C. and sentence may be reduced to the extent of period already undergone.

11. Sri Ajay Mishra, learned Addl. Public Prosecutor has vehemently opposed and argued that the prosecution has been able to establish its case beyond all reasonable doubt. He submits that ofcourse, there are some inconsistencies in the evidence of other witnesses, but on going through the evidence of informant (P.W.7), it is evident that whatever fact, which was disclosed by this witness during investigation, was reiterated during the trial. He further submits that on the basis of evidence of P.W.7, ofcourse investigating officer has not been examined, the place of occurrence has also been established and at the place of occurrence, blood mark was noticed, which had percolated from the road to the small canal, where the injured was thrown. He submits that there was also mark of trampling. According to Sri Mishra, learned A.P.P., on going through the evidence, there is no



reason to raise any doubt on the prosecution case, however, on the alternative submission i.e. altering conviction from Section 302/149 I.P.C. to Section 304 Part II r/w Section 149 of the I.P.C., advanced by Sri Ajay Thakur, learned counsel for the appellants, Sri Mishra has not disputed the same.

12. Besides hearing learned counsel for the parties, we have examined entire evidence on record and after going through the same, there is no reason to raise any doubt on the prosecution case, rather it is evident that prosecution has been able to establish its case beyond all reasonable doubt. Ofcourse, there is some inconsistency in the evidence of witnesses, but fact remains that it is difficult for all the witnesses to depose in the same manner. It is normal that one occurrence can be explained by other witnesses in different manner, however while examining the evidence, the Court is required to examine credibility of the evidence in totality.

13. On going through the evidences, particularly evidence of informant (P.W.7) as well as medical evidence, it is difficult to come to the conclusion that the judgment of conviction and sentence is incorrect. However, on the basis of evidence on record, it appears that the prosecution has not been able to



establish the case that the appellants had intended to kill the father of the P.W.7. The reason is that while the deceased was intercepted, there were ten accused persons, who are appellants before this Court and as alleged, all accused were carrying either iron rod or *khanti*. Had there been any intention to kill the deceased, there was no restriction to give repeated blow on the vital part of the deceased, however on examination of the *post-mortem* report, it appears that there is no such repetition.

14. At this juncture, it would be necessary to examine the evidence of P.W.10 Dr. Kishore Kumar Madhup, who on 01-09-1990 was posted as Medical Officer, Sadar Hospital, Saharsa and conducted *post-mortem* examination. During *post-mortem* examination, he had noticed following facts:-

"Riger mortis present in all limbs.

Ante-mortem injuries-

1. Sticked wound- 1" long middle of forehead.
2. Two sticked wounds about 1½" long x right hand near second metacorpal each,
3. two sticked wound- 1" long x left hand near left thumb and middle finger- each,
4. 3" long sticked wound – left leg middle third,
5. 3" long sticked wound over right leg middle third,
6. abrasion- 3" x 4" over right side on back.

On Dissection:-

Skull- intact,
Brain and meninges (brain-cover)- pale,
Abdomen- stomach empty,
Intestine – gas present,
liver, splin, kidney, completely pale,
Chest- bony cage- intact, lungs- pale, heart-empty
and pale, gladder- full, left tibia and fibula- communicated



fracture in- middle-third, area, right- tibia communicated fracture, in middle third area, blood vessels of left leg, near fracture also damaged.

Opinion – Death caused due to haemorrhage and shock due to above mentioned injuries.

Time elapsed since death:- within 12 hours.”

15. P.W.10 has proved the *post-mortem* report, which was marked as Ext.5. On examination of the *post-mortem* report, it is evident that on vital part i.e. head, there was only one injury, otherwise rest all the injuries were found on non-vital part of the deceased. In such situation, it would be difficult to come to a conclusion that the deceased was inflicted injuries with intention to cause him death.

16. The Court is in agreement with the alternative submission of Sri Thakur, learned counsel for the appellants that there was only intention to give injury to the deceased and this was the reason that no repeated injury was given on the vital part of the deceased. In such situation, we are of the considered opinion that the judgment of conviction under Section 302/149 of the I.P.C. can be altered to Section 304 part II read with Section 149 of the I.P.C. and accordingly, the judgment of conviction is altered from Section 302/149 of the I.P.C. to Section 304 part II read with Section 149 of the I.P.C.



17. Learned counsel for the appellants has argued that both appellants in Cr. Appeal (DB) No. 1014 of 2013 had remained in custody before judgment of conviction for about 4 months and 15 days. Three appellants in Cr. Appeal (DB) No. 1053 of 2013 remained in custody for 13 months, 3 months 15 days, 3 months 10 days respectively before their conviction, whereas all the five appellants in Cr. Appeal (DB) No. 1067 of 2013 remained in custody before conviction for about 4 months. In the case, the judgment of conviction was passed on 30-09-2013 and since then, all the appellants are in custody. Meaning thereby that they had already remained in custody for about six years. Besides this, it is evident that on the date of recording statement under Section 313 of the Cr.P.C., which was recorded on 04-12-2012, most of the appellants had crossed age of 50 years and as such, purpose would be served if the sentence is reduced to the period already undergone.

18. Accordingly, the judgment of conviction dated 30-09-2013 from Section 302/149 of the I.P.C. is converted to Section 304 Part II read with Section 149 of the I.P.C. and the order of sentence dated 03-10-2013 in respect of all the aforesaid appellants passed by Sri Ram Lakhan Yadav, learned Additional



Sessions Judge, 1st, Madhepura in Sessions Trial No. 22 of 1992 (arising out of Gamhariya P.S. Case No. 53 of 1990) in aforesaid three appeals is reduced to the period already undergone.

19. With above observation, all the aforesaid three appeals are dismissed.

20. Since the sentence has been reduced to the period already undergone, it is, hereby, directed to release all the appellants namely 1. Ram Prasad Mehta, 2. Banarsi Mehta (both appellants in Cr.Appeal DB No. 1014 of 2013), 3. Bhupendra Mehta, 4. Chichai Mehta, 5. Devendra Mehta @ Deo Narain Mehta (all three appellants in Cr.Appeal DB No. 1053 of 2013), 6. Kallar Mehta, 7. Upendra Mehta, 8. Dinesh Mehta, 9. Sheodatta Mehta and 10. Chandrabhushan Mehta (all five appellants in Cr.Appeal DB No. 1067 of 2013) in aforesaid three appeals forthwith, if not wanted in any other case.

(Rakesh Kumar, J.)

(Anil Kumar Sinha, J.)

Anay

AFR/NAFR	AFR
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