

**CRIMINAL APPEAL No.190 OF 1993**

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Against the judgment of conviction dated 23.6.1993 and sentence dated 24.6.1993 passed by Sri Prem Narayan Sukla, Ist Addl. Sessions Judge, Khagaria in Sessions Case No. 645 of 1986.

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1. Arbind Poddar
2. Rabin Poddar
3. Shivnarain Poddar
4. Fulchand Poddar
5. Yogendra Poddar
6. Gita Devi
7. Uma Devi
8. Dulo Devi

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Appellants

Versus

The State of Bihar & another....

Respondents

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For the appellants : Mr.Anil Kumar Mukund, Advocate  
For the State : Mr.Ali Muzaffar, Addl.P.P.

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**P R E S E N T**

THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA

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**S.K.Sharma, J.**

This appeal has been filed by the above eight appellants against the judgment of conviction and sentence dated 23.6.1993 and 24.6.1993 respectively passed by Ist Additional Sessions Judge, Khagaria in Session Case No. 645 of 1986 by which appellant no.1 Arbind Poddar was found guilty under Section 304,323 and 147 of the Indian Penal Code and was convicted thereunder and was sentenced to undergo rigorous imprisonment for five years and one year under Sections 304 and 147 of the Indian Penal Code respectively and no sentence was awarded under Section 323 of the Indian Penal Code. Rest seven appellants have been found guilty under Sections 147

and 323 of the Indian Penal Code and were convicted thereunder and were sentenced under Section 147 of the Indian Penal Code to undergo rigorous imprisonment for one year. No separate sentence was awarded against them under Section 323 of the Indian Penal Code.

The informant Bindeshwari Poddar (P.W.7) had given a written report to Chautham police station on 11.6.85 which has resulted in Chautham P.S.Case No.93 of 1985 under Sections 147, 447,323 and 336 of the Indian Penal Code. The allegation was that at 7.00 A.M. the Shiv Narayan Poddar, Fulchand Poddar, Yogendra Poddar, Arbind Poddar and Robin Poddar came and asked the informant to vacate his house and when the informant refused, the accused persons started assaulting him by lathi. When Turanti Poddar and Madhur Devi who were inforamnt's neighbours came for rescue, accused Arbind Poddar assaulted Turanti Poddar with brick which caused injury in his eye. Turanti Poddar after receiving injury fell down and thereafter Arbind Poddar again assaulted Turanti Poddar on his testicles with brick. Accused Yogendra Poddar assaulted Madhur Devi with lathi on her head and legs. Accused Shiv Narayan Poddar, Fulchand Poddar and Robin Poddar assaulted the informant and

in the meantime, Dulo Devi, Uma Devi and Sita Devi also came and they also took part in assault and they assaulted Pramod on his right knee. Occurrence was witnessed by Basudeo Poddar (P.W.2), Bahadur Poddar (P.W.6) Chakram Singh (P.W.4) and others. The case was investigated into and after completion of investigation, charge sheet was submitted under Sections 147, 148, 149, 447, 323, 337 and 304 of the Indian Penal Code because Turanti Poddar died in the meanwhile.

In order to prove its case, the prosecution has examined seven witnesses. They are P.W.1 Dr. Satish Chandra Prasad, P.W.2 Basudeo Poddar, P.W.3 Madhur Devi, P.W.4 Chakradhar Singh alias Chakram Singh, P.W.5 Hari Shankar Pandey, I.O. of the case, P.W.6 Bahadur Poddar, P.W.7 Bindeshwari Poddar, the informant and P.W.8 Nandu Sharma, a formal witness.

The informant Bindeshwari Poddar (P.W.7) in his evidence has supported the prosecution case by stating that on 10.6.1985 at 7-8 00 A.M. when he was at his house, Shiv Narayan Poddar, Jogi alias Yogendra Poddar, Arvind Poddar, Robin Poddar and others came inside the **Aangan** of his house and asked the informant to vacate the house. On refusal, the accused persons assaulted him. Neighbours Basudeo

Poddar, Madhur Devi, Bahadur Poddar, Turanti Poddar came to rescue the informant but they were also assaulted. Tuaranti Poddar was assaulted by lathi on his head by Arvind Poddar and when he fell down Arbind Poddar again assaulted him on his leg. Madhu was assaulted by Shiv Narayan Poddar and the informant was also assaulted by Fulchand and Robin Poddar. The wives of Shiv Narayan Poddar, Yogendra and Fulchand also assaulted with bricks to Pramod.

Other prosecution witnesses, who are P.Ws. 2, 3 and 6, have also supported the version of the informant.

P.W.1 Dr. Satish Chandra Prasad has conducted the post mortem over the dead body of the deceased Turanti Poddar on 19.6.1985 at 11.30 A.M. while he was posted as C.A.S. in Sadar Hospital, Khagaria and found that left side of eyelids were echymosed with brownist black discolouration and slight swelling of left temporal part. No other external injury was found. The doctor in his cross-examination has stated that the injury may be possible by fall on a hard blunt substance.

Attention has been drawn towards the statement of P.W.7 and it has been stated that P.W..7 in paragraph 5 has stated that at the time of

occurrence both sides were pelting stones on each other. P.W.7 has further stated that Turanti Poddar was an ill person and having poor health. This witness has further stated that when the bricks were being pelted, he began to come down from the roof and he became nervous and fell down from the roof and received injuries. If the evidence of P.W.7 is read with the evidence of doctor P.W.1, then possibility of death of Turnati Poddar on account of injury of fall on a hard blunt substance cannot be ruled out.

Learned counsel for the appellants has submitted that the charges are not proved because the doctor who initially treated the injuries of the deceased were not brought to the court by the prosecution and there is no explanation as to why the said doctor was not brought to the court.

Further submission of the learned counsel for the appellants is that the prosecution case is that wife of injured Turanti Poddar, who later on died, came immediately after occurrence, but she was not examined in this case and there is no explanation of that. The evidence has come that there was enmity with regard to the land between the accused persons and the prosecution party and a proceeding under Section 144 of the Code of Criminal Procedure was

being litigated by them. The actual fact is that Turanti Poddar was an ill person and was having a poor health and he got injury when he fell down from the roof as a result of which he died. Hence, learned counsel for the appellants has submitted that two versions of the death of Turanti Poddar have been stated by the informant himself in his evidence- one is on account of fall from the roof and second version is on account of assault by appellant Arvind Poddar.

Learned A.P.P. has submitted that the prosecution has proved its case beyond all reasonable doubts and the trial court has rightly convicted and sentenced the appellants.

I perused the entire evidence. The ocular evidence is that Turanti Poddar was assaulted near the eye and on his testicles and also on his leg. The doctor, who initially treated the Turanti Poddar, has not come to give evidence. So it is difficult to say as to what injuries Turanti Poddar had received. The post mortem shows that deceased Turanti Poddar had received only one injury and according to the doctor, that may be possible by fall on a hard blunt substance. The evidence of doctor (P.W.1) and the informant (P.W.7) are also not corroborative to each

other. In these circumstances, a doubt has been created in the prosecution version regarding the death of Turanti Poddar at the hands of the appellants.

Taking into consideration all the evidences of the prosecution, I am of the view that the prosecution has not been able to prove the charges beyond all reasonable doubts. As such, the judgment of conviction and sentence of the appellants is fit to be set aside and the appellants are entitled to be acquitted.

In the result, the appeal is allowed and the impugned judgment of conviction and sentence is set aside. The appellants are also discharged from the liabilities of their bail bonds.

( **Shyam Kishore Sharma, J.**  )

Patna High Court, Patna  
The 8th February, 2008  
Tahir/- (NAFR)

