

CRIMINAL APPEAL No.159 OF 1993

Against the judgment and order of conviction and Sentence dated 4.6.1993 passed by Sri Surya Kant Mishra, Sessions Judge, Madhepura in Sessions Case No. 127 of 1987.

1.Arjun Bhagat
2.Jawahar Bhagat
3.Rajeshwar Bhagat Appellants
Versus
The State of Bihar Respondent

For the appellants : Mr. Amresh, Advocate
For the State : Mr.R.B.S.Pahepuri, Addl.P.P.


P R E S E N T

THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA

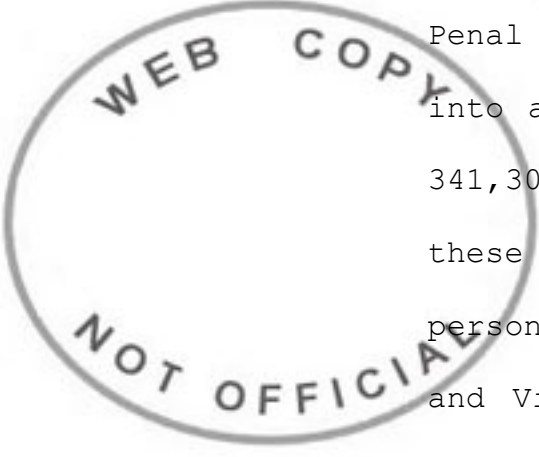
S.K.Sharma, J.

This appeal has been filed by the above three appellants against the judgment dated 4.6.1993 passed by Sessions Judge, Madhepura in Sessions Case No. 127 of 1987 by which appellant Arjun Bhagat has been convicted under Section 323 of the Indian Penal Code and has been sentenced thereunder to undergo rigorous imprisonment for one year and appellants Rajeshwar Bhagat and Jawahar Bhagat have been convicted under Section 323/34 and 341 of the Indian Penal Code and have been sentenced thereunder to undergo rigorous imprisonment for one year and one month respectively but their sentences were ordered to run concurrently.

The prosecution case relates to an



occurrence dated 9.9.1986 at about 6.00 P.M. At that time, Tariya Devi, **bhabhi** of informant Chhathu Sah (since dead) was returning from her land through the **Bathan** of accused Arjun Bhagat. She was restrained by the said accused Arjun Bhagat who started hurling abuses to her. In the meanwhile, Puran Bhagat (P.W.8) informed Chhathu Sah about the occurrence. The informant went there and protested. Thereafter accused Rajeshwar Bhagat and Arjun Bhagat caught hold of the informant and accused Arjun Bhagat struck a **lathi** blow on the head of the informant causing bleeding. The injured Chhathu Sah brought to his house by Mishri Sah (P.W.9), Tarni Sah and others. When the informant was ready to report the matter to the police, he was restrained by the villagers namely, accused Brahmdeo Sharma, Ramanand Sharma and Vishwanath Sharma saying that the matter would be settled in **panchaiti**. The informant thereafter stayed in the village and he was attended by the village doctor itself. When the informant was not cured, he went to hospital and thereafter he gave his fardbeyan (Ext.3). The police registered his case as Chausa P.S.Case No. 80 of 1986 on 16.9.1986 for offences under Sections 342, 325, 306 and 201 of the Indian Penal Code. Later



on the informant died and Section 304 of the Indian Penal Code was added. The matter was investigated into and charge sheet was submitted under Sections 341, 304 and 201/34 of the Indian Penal Code against these three appellants and also against other three persons namely, Brahmadeo Sharma, Ramanand Sharma and Vishwanath Sharma. After cognizance, the case was committed to the court of Sessions. The trial proceeded. Charge under Section 201 of the Indian Penal Code was framed against accused Brahmadeo Sharma, Ramanand Sharma and Vishwanath Sharma. Charges under Sections 304/34 and 341 of the Indian Penal Code were framed against Rajeshwar Bhagat and Jawahar Bhagat. Another accused Arjun Bhagat was charged under Section 304 of the Indian Penal Code. Charges were explained to the accused persons who pleaded innocence and faced trial.

In order to prove the case, the prosecution examined altogether 14 witnesses. Out of whom, P.W.1 Anandi Das, P.W.3 Ram Sharan Sharma and P.W.5 Awadhesh Sharma have been declared hostile as they have not supported the prosecution case and P.W.2 Umesh Malakar, P.W.4 Abhinandan Mandal, P.W.6 Biranchi Mandal, P.W.7 Bhagwat Sharma, P.W.8 Puran Bhagat, P.W.9 Mishri Sah and P.W.10 Musan Sah have

been declared tenders. P.W.13 Bhupendra Narayan Yadav and P.W.14 Laxman Prasad Mandal are formal witnesses who have proved the F.I.R. and the postmortem report (Exts. 3 and 4) respectively. Only P.W.11 Tariya Devi has supported the prosecution case. P.W.12 is Dr. Satish Chandra Jaiswal who had examined the injured Chhathu Sah (since dead).


The defence has also examined two witnesses. D.W.1 is Mahendra Sharma and D.W.2 is Nago Sharma.

After scrutinising the evidences on record, the trial court came to the conclusion that the prosecution has not been able to prove the charges against three accused namely, Brahmadeo Sharma, Ramanand Sharma and Vishwanath Sharma and acquit them from the charges but convicted and sentenced rest three accused i.e. the appellants of this appeal under the offences stated above.

Firstly, the evidence of doctor is being considered. According to doctor, on 16.9.1986 at 3.00 P.M. he examined Chhathu Sah and found one lacerated infected wound measuring 1 ¼"x1/2"x1/4" deep on the middle of his scalp with fresh incised wound attached posterior end of above noted injury

and measuring $\frac{1}{2}$ "x1/6"x1/4" deep from which profused discharge of fresh blood was coming out. The age of the infected wound was more than five days and the fresh incised wound age was within 24 hours. The infected wound was caused by hard and blunt substance and the other was by sharp weapon. The above noted incised wound was grievous in nature. Since it was a dangerous to life, the doctor had referred the patient to Madhepura Sadar Hospital but his attendant refused to take the patient to Madhepura and ultimately the patient died of the injury on 18.9.1986. The injury report(Ext.2) was given by the doctor which bears his signature.

In this background, the evidence of P.W.11 Tariya Devi has to be examined. She has stated that while she was returning, accused Arjun Bhagat, Jawahar Bhagat and Rajeshwar Bhagat abused her. The matter was reported to the informant by P.W.8 Puran Bhagat who came at the place of occurrence and he was assaulted by Arjun Bhagat on his head. The blood was coming out from the head. The persons gathered at the spot. Thereafter the accused persons escaped. Injured Chhathu Sah was taken to his house from where the matter was to be reported



to police but accused Brahmade Sharma, Ramanand Sharma and Vishwanath Sharma restrained him from going to police on the pretext that the matter will be settled through Panchaiti. This witness has further stated that the injured was attended by Charitra Poddar, a village doctor. After 5-6 days of the occurrence, blood started coming out, then the injured was taken to hospital where he died.

The occurrence is of 9.9.1986 but the matter was reported on 16.9.1986 and there is no satisfactory explanation as to why such delay was caused. From the evidence of the doctor, it appears that the death of the informant was not done due to the injury caused on 9.9.1986, rather an injury which was caused within 24 hours of examination of the injured by the doctor. That injury was an incised wound from which fresh blood was coming out. It also appears that the most important witness of this case Puran Bhagat (P.W.8) has been declared tendered. The village doctor namely, Charitra Poddar who attended the injured, has not been examined. A number of witnesses have been declared hostile or tender. In this case, Investigating Officer has also not been examined. Therefore, no contradiction could be taken out and

many contradictions voluntarily remained unexplained.

From the above discussions, it appears that the death was not done on account of injury inflicted by the appellants, rather death occurred due to subsequent assault for which no explanation was given as to why fresh incised wound was found which was beyond the case of the prosecution. The prosecution witnesses except one have not supported the case and the delay in lodging the case has also not satisfactorily been explained. Taking all these into consideration, I am of the view that the prosecution has not been able to prove the case at all against the appellants beyond shadow of all reasonable doubts.

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

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

Patna High Court, Patna
The 17th January, 2008
Tahir/- (NAFR)