

**Arjun Thakur Vs. State of Bihar**

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**Court :** Jharkhand

**Decided On :** Apr-11-2017

**Appellant :** Arjun Thakur

**Respondent :** State of Bihar

**Judgement :**

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Appeal No. 166 of 1992 (R) (Against the Judgement of conviction and Order of sentence dated 05.09.1992 passed by the learned 3rd Additional Sessions Judge, Jamshedpur, in S.T. No. 116 of 1984-89.) Arjun Thakur Appellant Versus The State of Bihar (Now Jharkhand) Respondent ----- CORAM : HONBLE MR. JUSTICE H. C. MISHRA HONBLE MR. JUSTICE Dr. S.N. PATHAK For the Appellant : M/s. P.P.N. Roy, Sr. Advocate Pragati Prasad, Advocate For the State : M/s. Satish Kumar Keshri, A.P.P. ----- 08/ 11.04.2017. Heard learned counsel for the appellant and the learned counsel for the State.

2. The sole appellant is aggrieved by the Judgement of conviction and Order of sentence dated 05.09.1992, passed by the learned 3rd Additional Sessions Judge, Jamshedpur, in S.T. No. 116 of 1984-89, whereby the appellant was found guilty and convicted for the offence under Sections 302 / 34 of the Indian Penal Code, and upon hearing on the point of sentence, he was sentenced to undergo rigorous imprisonment for life for the said offence.

3. The prosecution case was instituted on the basis of the fardbeyan of one Ram Parvesh Dubey, the father of the deceased Anil Kumar Dubey, who had stated that on 20.11.1983 his son had gone out of his house, but he did not return back. Subsequently, the informant was informed that his son was done to death, whereupon he rushed to the place of occurrence along with his nephew, Sanjay Kumar Dubey and found the dead body of his son. He has stated that there was a fire arm injury on the head of the deceased and it also appeared that the deceased had also been assaulted by sharp cutting weapon. He was also informed at the place of occurrence that the deceased was murdered by the appellant, Arjun Thakur alongwith one of his associates. On the basis of the fardbeyan of the informant to the aforesaid effect, Jugsalai P.S. Case No. 172/1983 was instituted for the offence under Sections 302 / 34 of the Indian Penal Code, and investigation was taken up. After investigation the police submitted the charge-sheet against the appellant, Arjun Thakur.

4. After commitment of the case to the Court of Session, charge was framed against the appellant for the offence under 2 Sections 302 / 34 of the Indian Penal Code, and upon the appellant pleading not guilty and claiming to be tried, he was put to trial.

5. In course of trial 11 witnesses have been examined by the prosecution, out of whom P.W.-2 Ram Kathin Tewary and P.W.-9 Dineshwar Jha, were only tendered by the prosecution.

6. P.W.-5 Jitendra Tewary, P.W.-6 Munna @ Satyapal Thakur and P.W.-7 Razi Ahmad are the eye witnesses to the occurrence and they have stated that on the date of occurrence they had gone along with the deceased to view a video show. They have stated that while they were returning back they saw Arjun Thakur who was armed with fire arm apprehending the deceased. Arjun Thakur was also accompanied with other persons. They also threatened these witnesses to flee away and while they were fleeing away they heard the sound of firing and subsequently they found the dead body of the deceased. P.W.-5 Jitendra Tewary, has also admitted in his cross-examination that there were cases relating to murder, attempt of murder and explosives against the deceased.

7. P.W.-10 Ram Prabesh Dubey is the informant in the case and he has supported the prosecution case as stated in the F.I.R. Admittedly, he is not the eye witness to the occurrence. He has stated that he saw the dead body of his son with fire arm injury on his head and there were other injuries also. He was informed at the place of occurrence that his son was murdered by Arjun Thakur. This witness has also stated that both the accused and the deceased were claiming themselves to be the Hero of the area. In his cross-examination this witness has also admitted that there were in all about 20-22 cases against his deceased son, including the cases under Section 307 of the Indian Penal Code, two cases for murder and the cases relating to explosives.

8. P.W.-3 Devendra Kumar Dubey, is also another hearsay witness who has stated that he had heard that Arjun Thakur had taken the deceased towards Baikunthdham Mandir and when he reached there he found the dead body of the deceased. This witness is also the witness to the inquest report of the dead body of the deceased and he has identified his signature on the inquest report, which was marked Exhibit-1/3.

9. P.W.-1 Brij Behari Bajpayee had only seen the dead body of the deceased and he is the witness to the inquest report of the dead body of the deceased as also the seizure list of the seized blood stained earth from the place of occurrence. He has 3 identified his signature and the signature of the other witnesses on these documents, which were marked Exhibit-1 series. P.W.-8 Rahamat Ali is the Constable who had taken the dead body for post-mortem examination.

10. P.W.-4 Dr. R.K. Sharma, had conducted the post-mortem examination on the dead body of the deceased and had found the following ante-mortem injuries:- (i) Contused lacerated wound, back of scalp and left side of scalp measuring 8cm x 3cm x 2cm, exposing the bone along with comminuted fracture of the left parietal and temporal bone. The fractured ends of the bones were depressed causing rupture of meninges and laceration of the brain. This injury was likely to have been caused by heavy blunt weapon. There was also fracture of the anterior cranial fossa. (ii) Lacerated wound left side of forehead above the left eye brow, measuring 4cm x 3cm x bone deep. There was no fracture of the under line bone.

This again was likely to have been caused by impact with hard blunt substance. (iii) Contused lacerated wound Right forehead, upper part, 2cm x 1cm x bone deep - 3cm away from the injury No. (ii) above. (iv) Contused lacerated wound 1cm x 1cm x bone deep on the right temple. (v) Defence contused lacerated wound on the Right middle finger, Right little finger and right thumb, likely to have been caused by cutting instrument with blunt edges. (vi) Lacerated wound 1cm x 0.5cm. X05 cm on the right eye brow. (vii) Lacerated wound, lower lip transverse exposing the front lower teeth and measuring 4cm x 2cm x 2cm. (viii) Abrasion on chin and neck right side. (ix) fracture, dislocating left Jaw Bone. This witness has stated that death was due to laceration of brain. Injury No. (i) was sufficient in ordinary course of nature to cause death. Injury No.(i) was not possible by the butt of revolver or pistol, but it was possible by the butt of rifle. He has identified the post-mortem to be in his pen and signature which was marked Exhibit-2.

11. P.W.-11, Mukhdeo Sharma, is the investigating Officer of the case. This witness has identified and proved the fardbeyan as also the formal F.I.R., which were marked Exhibits-3 & 5 respectively. He has also proved the inquest report which was marked Exhibit-6. He has stated about the investigations made by him and has stated that he had also seized the blood stained earth from the place of occurrence and had prepared the seizure list, which upon his identification was marked Exhibit-8. 4 12. The inquest report, which had been proved as Exhibit-6, clearly shows that there was fire arm injury on the head of the dead body of the deceased and there were other cut injuries on him. Thus, from the material on record it is apparent that in the F.I.R., the informant had stated that he had seen the fire arm injury on the head of the deceased and other injuries caused by sharp cutting weapon. This fact is also corroborated by the inquest report of the dead body of the deceased, which shows that those injuries were there on the dead body. The eye witnesses P.W.-5 Jitendra Tewary, P.W.-6 Munna and P.W.-7 Razi Ahmad, have also stated that they had seen the accused appellant, Arjun Thakur armed with fire arm who had apprehended the deceased and while they were fleeing away, they heard the sound of firing and thereafter they saw the dead body. Thus the entire evidence on record suggest that the deceased was assaulted by fire arm causing his death. However, the evidence of P.W.-4 Dr. R.K. Sharma, who had conducted the post-mortem examination on the dead body of

the deceased, does not at all corroborate the aforesaid materials on record. According to this witness and the post-mortem report proved by him as Exhibit-2, the injuries found on the dead body of the deceased, including on his head, were caused by hard and blunt substance. No fire arm injury or any injury caused by sharp cutting weapon was found on the dead body of the deceased. It is thus apparent that the ocular evidence of the witnesses were not at all corroborated by the medical evidence on record. The informant claims to have been informed at the place of occurrence that it was the appellant who had committed the murder, but the fact remains that it is admitted by the informant himself in his evidence as P.W.-10, that both the accused and the deceased were claiming themselves to be the Hero of the locality. In that view of the matter, there was enmity between the parties and the false implication cannot be ruled out. This apart, as admitted P.W.-10 the informant, Ram Prabesh Dubey himself, his deceased son was of a criminal nature, having about 20-22 cases upon him, including the cases of murder, attempt of murder and the cases of explosives.

13. In the facts and circumstances of this case, we are of the considered view that the prosecution has not been able to prove the case against the accused appellant beyond all reasonable doubts and it is a case in which the appellant is entitled at least to the benefit of doubt. 5 14. Accordingly the impugned Judgement of conviction and Order of sentence dated 05.09.1992, passed by the learned 3 rd Additional Sessions Judge, Jamshedpur, in S.T. No. 116 of 1984- 89, are hereby, set aside. The appellant Arjun Thakur is given the benefit of doubt and he is acquitted of the charge. The appellant is on bail and he is discharged from the liabilities of his bail bonds.

15. This appeal is accordingly, allowed. Let the Lower Court Records be sent back forthwith along with the copy of this Judgement. (H.C. Mishra, J.) (Dr. S.N. Pathak, J.) D.S./ B.S.

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