

Dev Narayan Mahto Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Aug-19-2017

Appellant : Dev Narayan Mahto

Respondent : State of Jharkhand

Judgement :

1 CRIMINAL APPEAL (D.B.) NO. 207 OF 2005 WITH CRIMINAL APPEAL (D.B.) NO. 264 OF 2005 (with I.A. No. 7159 of 2013) WITH CRIMINAL APPEAL (D.B.) NO. 278 OF 2005 WITH CRIMINAL APPEAL (D.B.) NO. 285 OF 2005 WITH CRIMINAL APPEAL (D.B.) NO. 607 OF 2005 WITH CRIMINAL APPEAL (D.B.) NO. 524 OF 2006 WITH CRIMINAL APPEAL (D.B.) NO. 891 OF 2006-----
[arising out of Judgment of conviction and Order of sentence dated 19th January, 2005 passed by the 4th Additional Sessions Judge, Fast Track Court No.1, Godda in Sessions Case No.39 of 2003 / 64 of 2000] -----

1. Yogesh Mahto son of Narayan Mahto

2. Budhinath Mahto son of Shri Meghu Mahto

3. Koila Mahto son of late Nathu Mahto

4. Dev Narayan Mahto son of late Samroo Mahto

5. Gopal Mahto son of Vijay Mahto . Appellants in Cr. Appeal (D.B.) No. 207 of 2005 Jitu Mahto son of Mangar Mahto . Appellant in Cr. Appeal (D.B.) No. 264 of

2005 Shyam Lal Mahto son of Panchdeo Mahto . Appellant in Cr. Appeal (D.B.) No. 278 of 2005 Dhiraj Mahto son of late Biju Mahto . Appellant in Cr. Appeal (D.B.) No. 285 of 2005 Parmanand Mahto son of late Ritlal Mahto . Appellant in Cr. Appeal (D.B.) No. 607 of 2005 Dev Narayan Mahto son of late Kailash Mahto . Appellant in Cr. Appeal (D.B.) No. 524 of 2006 Sadanand Thakur son of Shibu Thakur . Appellant in Cr. Appeal (D.B.) No. 891 of 2006 versus The State of Jharkhand Respondents in all appeals ----- 2 For the appellants : Mr. Kailash Prasad Deo, Advocate Mr. Jay Prakash Jha, Sr. Advocate Mr. Shree Prakash Jha, Advocate Mr. Manoj Kumar Sah, Advocate Ms. Bandana Kumari Sinha, Advocate Mr. Girish Mohan Singh, Advocate Mr. Vikash Kumar, Advocate Mr. Ravi Raj, Advocate For the Respondents : Mr. Satish Kumar Keshri, A.P.P. Mr. S.K. Srivastava, A.P.P. Mr. Azimuddin, A.P.P. Mr. Sudhanshu Kumar Deo, A.P.P. Mrs. Laxmi Murmu, A.P.P. ----- PRESENT HON'BLE MR. JUSTICE H.C. MISHRA HON'BLE MR. JUSTICE ANANDA SEN ----

JUDGMENT

C.A.V. on 08.08.2017 Pronounced on 19.08.2017 Per Justice Ananda Sen, These 7 (seven) criminal appeals, filed by 11 convicts have been heard together and are being disposed of by this common judgment as the same arise out of the same Judgment of conviction and Order of sentence.

2. The appellants herein have been found guilty for offences under Sections 148 and 302/149 of the Indian Penal Code by Judgment of conviction dated 19.01.2005 passed in Sessions Case No.39 of 2003 / 64 of 2000 by the learned 4th Additional Sessions Judge, Fast Track Court No.1, Godda. After finding these appellants guilty under Sections 148 and 302/149 of the Indian Penal Code, by an order dated 19.01.2005, all these appellants have been sentenced to undergo rigorous imprisonment for 3 years for offence under Section 148 of the Indian Penal Code and imprisonment for life along with a fine of Rs.5000/- for the offence under Sections 302/149 of the Indian Penal Code. In default of payment of fine amount, they are also to undergo simple imprisonment for one month.

3. The prosecution case is based upon the fardbeyan of Dilip Kumar Mahto (P.W.10), which was recorded at 11.50 Hrs. on 05.09.1999. The prosecution case

in brief is that on 05.09.1999, at about 06.00 a.m. Dhiraj Mahto [appellant in Cr. Appeal (D.B.) No. 285 of 2005] came to the house of 3 the informant and requested his father Sheo Pujan Mahto (deceased) to accompany him to Thakurgangti Police Station for some urgent work. Sheo Pujan Mahto accompanied said Dhiraj Mahto on a cycle at about 07.00 a.m. When Sheo Pujan Mahto did not return, the informant got anxious and informed his uncle Nagendra Prasad Mahto and his cousin grandfather Kashinath Mahto. These three persons then went out in search of Sheo Pujan Mahto on foot. When they reached near the tank of Bihari Village at about 10.45 a.m., they saw, the informant's father coming alone riding his cycle. When Sheo Pujan Mahto reached near the Mango trees of Bihari Maidan, the accused Sadanand Thakur son of Shibu Thakur [appellant in Cr. Appeal No. 891 of 2006] Gopal Mahto son of Vijay Mahto [appellant in Cr. Appeal (D.B.) No. 207 of 2005], Jitu Mahto son of Bhagwan Mahto [appellant in Cr. Appeal (D.B.) No. 264 of 2005], Permanand Mahto [appellant in Cr. Appeal (D.B.) No. 278 of 2005], Shyam Lal Mahto son of Panchdeo Mahto [appellant in Cr. Appeal (D.B.) No. 278 of 2005], Dev Narayan Mahto son of late Samroo Mahto [appellant in Cr. Appeal (D.B.) No. 207 of 2005], Budhinath Mahto (Sarpanch) [appellant in Cr. Appeal (D.B.) No. 207 of 2005], Yogesh Mahto son of Narayan Mahto [appellant in Cr. Appeal (D.B.) No. 207 of 2005], Beloon Mahto son of Dayal Mahto and Koila Mahto [appellant in Cr. Appeal (D.B.) No. 207 of 2005] and 6-7 unknown persons suddenly came out and surrounded his father. All these persons were armed with deadly weapons like Pharsa, Garasa, Chheoni etc. Koila Mahto and Dev Narayan Mahto caught hold of the cycle of the deceased, then Shyam Lal Mahto and Jeetu Mahto assaulted him on the back of his head by Chheoni and Garasa as a result of which, Shiv Pujan Mahto fell down from his cycle. No sooner he fell from his cycle, Parmanand Mahto, Sadanand Thakur, Budhinath Mahto, Yogesh Mahto, Beloon Mahto and Gopal Mahto pinned him down on the road along with the cycle and Parmanand Mahto, who was armed with a chheoni, severed the neck of Shiv Pujan Mahto and separated the head from the body. On seeing this, the informant and the two persons accompanying him screamed and shouted for help, but no one came to help them. On seeing the informant, 4-5 aggressors chased the informant, as a result of which the informant ran towards Bihari Village and thereafter, these appellants and others went towards the

eastern side of the field shouting Shanti Pal Jindabad slogans and throwing pamphlets. Thereafter, this informant, his uncle and cousin grandfather went near the deceased and saw the deceased lying on the 4 road in a pool of blood. The right leg of the deceased was under the bicycle and left leg was over the bicycle and his head was lying at a distance of few feet. Some portion of the chheoni (weapon) was also lying on the ground. Several pamphlets were scattered at the place of occurrence. The informant further narrated that his uncle Nagendra Prasad Mahto and his son Krityanand Mahto had filed a criminal case against some of the accused persons previously and they were convicted in that case and when they came out from custody, after grant of bail, they committed this heinous crime. He further stated that his family was always against naxalites, therefore, the naxalites were also making conspiracy to kill them.

4. On the basis of the aforesaid fardbeyan of the informant, the formal FIR was drawn up resulting in Meharama (Thakurgangti) P.S. Case No.125 of 1999 corresponding to G.R. No.831 of 1999 under Section 147, 148, 149, 302 of the Indian Penal Code.

5. The police investigated the case and thereafter filed chargesheet against these appellants and other accused persons under Sections 147, 148, 149, 302 of the Indian Penal Code. The Chief Judicial Magistrate, Godda took cognizance of the offence and thereafter as the case was triable by the Court of Session, committed the case for trial to the Court of Session. Charge was framed against the appellants under Section 148 of the Indian Penal Code and Sections 302/149 of the Indian Penal Code. The appellants pleaded not guilty and claimed to be tried.

6. Altogether 11 witnesses were examined on behalf of the prosecution. P.W.1 is Sarju Yadav, P.W.2 is Kashinath Mahto, P.W.3 is Nagendra Prasad Mahto, P.W.4 is Puran Mahto, P.W.5 is Dandu Murmu, P.W.6 is Bishwanath Mahto, P.W.7 is Ramashankar Mahto, P.W.8 is Shankar Mahto, P.W.9 is Dr. Kulanand Choudhary, P.W.10 is Dilip Kumar Mahto (informant) and P.W.11 is Jagdish Prasad.

7. After closure of the prosecution evidence, the statement of the appellants were recorded under Section 313 of the Code of Criminal Procedure. The defence also examined two witnesses, D.W.1 Manikant Mahto and D.W.2 Sunil Kumar Singh.

Several documents were also marked as Exhibits during trial.

8. Learned Trial Court, after analysing the evidence and after hearing the arguments advanced on behalf of the appellants and the A.P.P., has found these appellants guilty and convicted them for committing an offence punishable under Sections 148 and Sections 302/149 of the Indian Penal Code by the impugned judgment. After finding them guilty of the offence, they have been sentenced to undergo rigorous imprisonment for 3 years for the offence punishable under Section 148 of the Indian Penal Code and imprisonment for life for committing the offence punishable under Sections 149/302 of the Indian Penal Code.

9. Aggrieved by the said Judgment of conviction and Order of sentence, the 13 appellants have preferred these 7 appeals, which have been heard together and are being disposed of by this common judgment.

10. We have heard the lawyers, who have appeared in each individual appeal on behalf of the respective appellants. We have also heard the respective A.P.Ps. in individual appeals and have gone through the evidence and the materials, which are on record.

11. In support of the appeals, the counsel for the appellants submitted that with an ulterior motive, this case has been lodged against the appellants only to wreck vengeance. It is submitted that from perusal of the first information report and after going through the evidence, it will be clear that there were disputes amongst the parties, which resulted in filing this false case. It is submitted that the entire case rests on 3 eye witnesses, i.e., P.W.2 Kashi Nath Mahto, P.W.3 Nagendra Prasad Mahto and the P.W.10, informant himself. It is submitted that save and except these three witnesses, who are closely related to each other and with the deceased, there are no other independent witness to support the prosecution case. It is submitted that as per the prosecution case, the occurrence took place in the broad day light on an open field where there were several persons, but surprisingly, none of the persons were examined by the prosecution as independent witness. As per the appellants, this is a serious lacuna in the prosecution case, which suggests that the appellants have been falsely implicated in this case. It is also submitted that these three witnesses have improved their

story while deposing in the Court and stated many a things, which they did not narrate under Section 161 Cr.P.C. during investigation. He submitted that there are contradictions in their statements, which have been admitted by the investigating officer, who has been examined as P.W.11. It is submitted that the eye witnesses are not reliable witnesses and thus, their evidence has to be discarded. If the evidence of these three eye witnesses are discarded on the aforesaid ground, then there remains nothing in this case to convict these appellants. It is also submitted that the injury found on the person of the deceased is not tallying with the postmortem report, which also suggests 6 that the manner of occurrence, which has been put forward by the prosecution, is not the correct picture. He submits that these appellants have been presented as naxalites, but, there is nothing on record in support of the prosecution version. It is further submitted that immediately after the occurrence, as per the evidence, the house of these appellants were searched, but, surprisingly, neither any weapon of offence nor any apparels having blood stains were recovered from their house, which clearly goes to prove the innocence of these appellants. It has also been argued that the occurrence had taken place on 05.09.1999 and the fardbeyan was recorded at 11.50 Hrs., the formal FIR was drawn up and registered on the same day at 15.00 Hrs., but, surprisingly, the said FIR reached the Court on 08.09.1999, i.e., after three days of occurrence, which clearly casts doubt about the prosecution version. It is submitted that there is no explanation for the said delay, which is fatal for the prosecution. Learned counsel for the appellants also submit that in fact the death had occurred much earlier from the time as mentioned in the FIR, which would be evident from the statement of the doctor, which creates a doubt about the time and place of occurrence. They argue that the occurrence had taken place much earlier in time than what has been put forth by the prosecution.

12. On behalf of Dhiraj Mahto [appellant in Cr. Appeal (D.B.) No. 285 of 2005], it has been additionally argued that the only allegation against this appellant is that he came and requested the deceased to accompany him to the police station and the deceased on such request accompanied him. Save and except the said allegation, there is no material to implead this appellant as admittedly the informant and others have not seen this appellant along with other persons at the place of occurrence where the murder had taken place.

13. On the basis of these arguments, the appellants submit that the prosecution has failed to prove the charges beyond all reasonable doubt as such, they are entitled to get the benefit of doubt and should be acquitted of the charges.

14. Learned A.P.P. submits that the testimony of the three eye witnesses are unimpeachable. He also submits that the ocular evidence is clearly supported by the medical evidence and the only conclusion which can be drawn is the involvement of these appellants in committing murder of the deceased. He also submits that though there are minor contradictions, but, it does not go to the root of the case and thus, it cannot be said that the 7 prosecution has failed to prove the guilt of these appellants beyond all reasonable doubt. He submits that the motive is also present in this case, which goes against these appellants. He lastly submits that the evidence and the circumstances are so strong that it leads to the only conclusion about the guilt of the appellants and thus these appeals are liable to be dismissed.

15. We have scanned the evidence adduced on behalf of the prosecution and the defence. The prosecution has examined altogether 11 witnesses. Out of the said 11 witnesses, P.W.2 Kashinath Mahto, P.W.3 Nagendra Prasad Mahto and P.W.10 Dilip Kumar Mahto (informant) are claiming to be the eye witnesses to the said occurrence. P.W.1 Sagar Yadav, P.W.5 Dhandu Murmu, P.W.6 Vishwanath Mahto, P.W.8 Shankar Mahto are hearsay witnesses. P.W.4 Puran Mahto and P.W.7 Ram Shankar Mahto are hostile witnesses. P.W.9 is the doctor and P.W.11 is the investigating officer.

16. P.W.4 has stated that he knew nothing about the said occurrence and the same was the statement of P.W.7 who stated that he does not know as to how the crime was committed. They were, thus, declared hostile.

17. P.W.1 Sagar Yadav stated that he heard that Sheo Pujan Mahto has been slaughtered. He went near Bihari Tank and saw the dead body whose head was severed from the body. Blood was found there. On inquiry, he came to know that naxalites have committed the said crime. He stated that he disclosed before the police that he saw Sadanand Thakur, Gopal Mahto, Parmanand Mahto, Jitu Mahto, Shyam Lal Mahto, Dev Narayan Mahto, Koila Mahto and Budhinath Mahto,

but, on the same breath, he stated that he has not stated the aforesaid fact before the police. He stated that appellants prepared inquest report, which was marked Exhibit 1. He stated that he also received threats from some unknown persons. In cross examination, he stated that he had seen Nagendra, Dilip and Kashinath at the place of occurrence and there was huge crowd. He stated that he has not seen the occurrence.

18. P.W.5 Dandu Murmu has stated that he heard that Shiv Pujan Mahto was murdered. He stated that he heard that people of Pakaria, Bagha Koal and Madan Chowki have committed this crime, but, he does not know who are the persons.

19. P.W.6 Bishwanath Mahto has stated that he heard about the occurrence and came to learn that naxalites have committed the crime.

20. P.W.8 Shankar Mahto has stated that he had seen the part of the 8 Chheoni smeared with blood and dust and had also seen the cycle. He had stated that he had seen the pamphlets. He stated that all the aforesaid articles were seized in his presence. He admitted that he had signed the seizure list. His signature was marked as Exhibit 2. He admitted that the deceased is his cousin. He stated that on hearing the information, he went to see the dead body.

21. P.W.9 Dr. Kulanand Choudhary is the doctor, who conducted the postmortem. He found the following ante-mortem injuries on the person of the deceased: - 1. one incised wound over the nape of neck at the level of first cervical vertebra posteriorly 6 c.m. x 3 c.m. x 4 c.m covered with blood clot.

2. One transverse incised wound just 2 c.m. below the level of injury No.1. The whole neck cut away through and through (all the intervening blood, nerves, muscles and other structures severed away, the head separated from the remaining part of the neck and body, oozed blood present around the wound. On Dissection Stomach contained about 40 m.l. gastric juice like fluid Nature of Injuries: All grievous caused by sharp weapon. This witness has stated that the postmortem report is in his pen and signature, which has been marked Exhibit 4. In cross examination, he stated that the death was within 36 hours.

22. The 3 material witnesses in this case are P.W.2 Kashinath Mahto, P.W.3 Nagendra Prasad Mahto and P.W.10 Dilip Kumar Mahto, the informant himself.

23. P.W.2 Kashinath Mahto has stated that Dilip Kumar Mahto came to him and stated that Shiv Pujan Mahto was called by Dhiraj Mahto. He (Dilip Kumar Mahto) requested him (Kashinath Mahto) to accompany him to search his father, then this witness, Dilip Kumar Mahto and Nagendra Prasad Mahto went in search of Shiv Pujan Mahto. When they reached the Bihari Tank near the Peepal Tree they saw Shiv Pujan coming from the opposite direction on a cycle. Near the Mango tree, 10-15 persons were sitting and when Shiv Pujan reached place of occurrence, Devan Mahto and Koila Mahto caught hold of the cycle, Jitu Mahto assaulted Shiv Pujan by garasa, Shyam Lal Mahto assaulted him with chheoni, five persons, namely, Budhinath Mahto, Yogesh Mahto, Beloon Mahto, Sadanand Thakur of Pokharia and Gopal Mahto of Madan Chowki pinned Shiv Pujan on the road along with cycle. Parmanand Mahto, then, assaulted him with a chheoni on the neck resulting in severing of the head from the body. Dilip Mahto started crying and then 5 persons from the group chased these witnesses as a result of which, they fled towards north. He stated that thereafter the accused persons by throwing pamphlets and uttering slogans, left the place of occurrence. He stated that, as Shiv Pujan, in a case deposed against Jitu, this murder had taken place. In cross examination, he stated that the deceased is his cousin and the occurrence had taken place near Bihari Maidan. He stated that the accused are of village Madan Chowki, Pokharia and Bagha Koal. He stated that there is no enmity with accused Dhiraj Mahto. He stated that Dhiraj left earlier and after half an hour Shiv Pujan went by his cycle. He stated that he had seen the accused persons from 100 feet. He stated that they screamed as several persons were seen, whom they did not know. He stated that several persons came, but, he could not say who are the persons, who assembled there. He stated that he lifted the head, but no blood stains was found in his apparels. He stated that he had given the statement before the police. The investigating officer had taken the cycle to the police station. The piece of chheoni was also lying there, which was also smeared with blood. He deposed that he had stated before the police that Deven Mahto and Koila Mahto had caught hold of the deceased and Jitu Mahto struck him with Garasa. He stated that other accused persons had pinned down Shiv Pujan and thereafter

Parmanand severed the head by chheoni. He stated that he told the investigating officer that these witnesses fled towards the north. He stated to have stated before the police that these persons were shouting slogans in favour of 'CPI' and fled towards the east. He stated that he had deposed against the accused persons in an earlier litigation and denied the fact that because of the said enmity he is falsely deposing in this Court.

24. P.W.3 is Nagendra Prasad Mahto, who is the Junior Engineer of Irrigation Department. He stated that he accompanied Kashinath and Dilip and they went to search Shiv Pujan Mahto, who was called by Dhiraj Mahto in the morning to accompany him to go to Gangti Police Station. He stated 10 that as Shiv Pujan Mahto did not return. So, they went in search of him. He stated that when they reached near the Bihari Tank, they saw Shiv Pujan coming by a cycle and when he reached near Bihari Field near the Mango Tree, 10-15 persons surrounded him and Koila and Dev Narayan Mahto caught hold of the cycle and Jitu Mahto assaulted Shiv Pujan with Garasa and Shyam Lal Mahto struck him with a chheoni on the head. Shiv Pujan fell down then Sadanand Thakur, Gopal Mahto, Budhinath Mahto, Yogeshwar Mahto, Beloon Mahto pinned down Shiv Pujan on the road and then Parmanand severed the head by a chheoni. 6-7 unknown persons chased these witnesses and others, so they fled towards Bihari Village. This witness saw that the accused persons were going towards the east after shouting slogans of Shanti Pal and they also started throwing pamphlets. They, thereafter, went and saw the dead body and found that the blood was present there on the ground and part of chheoni was also found there. Police came and Dilip got his fardbeyan recorded. He identified the signature of Dilip. He identified Parmanand Mahto, Jitu Mahto, Shyam Lal Mahto, Sadanand Thakur, who were present in Court. He stated that the date of occurrence was a Sunday and he came to his house after taking permission from the S.D.O. He denied the suggestion that he was not present at the place of occurrence and just for the sake of posing as an eye witness, he has falsely stated that after obtaining permission, he had come to the village. He stated that after the occurrence, several persons started coming after half an hour and the persons who came are Shambhu Mahto, Ram Shankar Mahto, Bishwanath Mahto, Uchit Lal Sahu, Ganesh Yadav and others. He stated that with the body, they went to Godda via Pokharia as Pokharia

is on the way. They reached Godda Hospital in the morning at about 4-5 hrs. From there, they went to Kahalgaon. The deceased was wearing Dhoti and shirt, but he could not say what was the colour of the shirt. He stated that he had given statement before the police. He stated that he joined the office on Monday. He stated that he is working in Bhairabandh. He stated that he had told the police that he had seen the occurrence and had seen Koila and Dev Narayan caught hold of the cycle of Shiv Pujan and Jitu Mahto from back gave a garasa blow and Shyam Lal assaulted with chheoni. He further deposed that he told the investigating officer that when Shiv Pujan fell down, Gopal Mahto, Budhinath Mahto, Yogeshwar Mahto, Beloon Mahto pinned down Shiv Pujan on the road and Parmanand Mahto with a chheoni severed the head of Shiv Pujan. He stated that he had also 11 told the police that when he had reached near the deadbody, he saw the right leg of Shiv Pujan was under the cycle and the head was lying 6-8 feet away. He stated that he does not remember whether he told the police that the portion of the chheoni was also lying at the place of occurrence. He denied the suggestion that he is not the eye witness. He denied the suggestion that he has cataract in his eyes from before.

25. P.W.10 Dilip Kumar Mahto is the informant. He narrated that his father was called by Dhiraj Mahto in the morning at about 7 O'clock and they both left together. After 3 hours, this witness told his uncle Nagendra Prasad Mahto and cousin grandfather Kashinath Mahto that Dhiraj had taken his father to the police station for some work, but, he has not returned, then these three persons went to search him. No sooner they reached the Bihari Tank, they saw the father of this witness coming from opposite direction on a cycle. When he reached near the tank, some 16-17 persons came out. Sadanand Thakur, Gopal Mahto, Yogesh Mahto, Budhinath Mahto, Beloon Mahto, Koila Mahto, Shyam Lal Mahto, Parmanand Mahto, Karamchand Mahto, Dev Narayan Mahto and Jitu Mahto were identified by this witness. Dev Narayan Mahto and Koila Mahto caught hold of the cycle of the deceased and Shyam Lal Mahto struck the deceased with a chheoni and Jitu Mahto assaulted him with a garasa. After the assault the deceased fell down on the road, then Sadanand Thakur, Gopal Mahto, Yogesh Mahto, Budhinath Mahto, and Beloon Mahto pinned down the deceased and Parmanand Mahto with chheoni severed the head from the body. This witness started shouting

when some of the assailants chased them as a result of which the informant and others fled. The accused persons, thereafter raising slogans about Shanti Pal and by throwing pamphlets proceeded towards east. This witness went and saw the dead body. He stated that his hand was also smeared with blood. Nagendra Prasad Mahto went to the police station. Police came and recorded the fardbeyan of this witness. The said fardbeyan was identified by this witness and marked as Exhibit 5. This witness disclosed the reason of the murder by stating that his father was opposing the naxalite extremists. He stated that earlier there was a case between his father and accused persons in which accused were punished. He stated that though Jitu, Parmanand, Shyam Lal and Dev Narayan are not members of his family, but, Shyam Lal is his agnate. He states that Gangti Police Station is about half a km. from the place of occurrence. He stated that people of different casts live in his village. He 12 stated that he was worried as to why his father was not returning. He stated that he told the police that his father and Dhiraj left together. He stated that he sensed some danger upon his father so, he went in search of him. He stated that inspite of sensing the danger, he or his brother did not accompany the deceased. He stated that he sensed danger the moment Dhiraj came to call his father. He also informed his mother that something will happen with his father today. He stated that his younger brother was not present. He stated that he informed his mother about his apprehension when his father had already left. He stated that Nagendra and Kashinath were not informed about his apprehension. He stated that his father did not have any work. He stated that his father was a member of 'CPI'. He stated that on many occasions, his father had altercation with the naxalites. He admitted that Gangti block is full of naxalites and his house is the only house which is not influenced by the naxalites. He stated that none of the informant party proceeded towards the deceased, inspite of seeing the accused persons. He stated that they raised alarm, but no one who were near-by, came. He stated that about 30-50 persons were working near-by but no one turned up. He stated that the police officials came at about 11.25 a.m. He stated that he had shown all materials to the police and got his statement recorded. He stated that Nagendra uncle told him that he had given information to the police. He stated that Nagendra had disclosed the name of all the accused before the police in the police station. He also stated that signature of Nagendra was also obtained.

He denied the suggestion that Nagendra had not stated the names of any person rather stated that unknown persons had committed the murder. He stated that he stayed at the place of occurrence till 07.00 in the evening. He stated that after taking the deadbody, they went to their house where they stayed for one hour and at about 4 O'clock in the morning went to Godda from where postmortem was conducted and by 11 O' clock everything was over. He stated that he had given a statement at the place of occurrence and thereafter his statement was not recorded. He stated that his father had many enemies. He stated that the investigating officer had taken blood stained earth and the broken piece of chheoni. He denied the suggestion that he had given false evidence and he also denied that he after hatching a conspiracy with Nagendra had falsely implicated these appellants.

26. P.W.11 is the investigating officer of this case. He stated that on 05.09.1999, he recorded the statement of Dilip Kumar Mahto, which was 13 signed by the informant. Nagendra Prasad Mahto also signed the fardbeyan. He stated that the fardbeyan is written in his handwriting, which was marked as Exhibit 6. The formal FIR was written by Ram Kumar Singh, which was also marked as Exhibit. He stated that he seized blood stained earth, the cycle, the piece of chheoni and naxalite pamphlets from the place of occurrence. He stated that the seizure list was prepared, which was signed by Shankar Mahto, Mansukh Prasad Mahto, which was marked Exhibit 8. He recorded the statement of the witnesses at the place of occurrence and on 28.11.1999 handed over the investigation to Sunil Kumar Mahto, who concluded the investigation and submitted the chargesheet. He stated that said Sunil Kumar Mahto has not recorded the statement of any one. He stated that he has prepared the inquest report in carbon process and some part was written in ink as it was difficult for him to write by putting a carbon since same was being prepared in road. He denied that there is interpolation in the inquest report. He has stated that he has written the cause of death in the inquest report. He stated that he had put the police station case number in the inquest report as Case No.125 because he knew the number of the last case, which was registered as 124. He stated that he has not written the name of any accused in the inquest report. He stated that he has not filled the Column No.6 of the inquest report where his comments about the suspicion had to be recorded. He stated, on rumor,

he went to the place of occurrence. He further stated that he has not recorded the same in the station diary, but, in the case diary, it has been mentioned. He stated that in the seizure list also the police case number has been mentioned. He gave description of the place of occurrence. He stated that he has not recorded the statement of Dhiraj Mahto. He stated that he has searched the house of accused persons, but, could not find any incriminating articles. He further stated that no blood stained apparels were recovered from the house of accused persons. He stated that he has recorded the statement of Kashinath Mahto, who did not say that he had seen Shiv Pujan near the Peepal Tree. He further stated that Kashinath also did not disclosed Koila Mahto and Deven Mahto caught hold of the cycle of the deceased and Jitu Mahto assaulted with Garasa. As per this witness Kashinath Mahto also did not narrate before him during investigation that Beloon, Sadanand Thakur, Gopal Mahto, Yogesh Mahto, Budhinath Mahto pinned down the deceased and Parmanand had severed the neck. He stated that Nagendra Mahto also did not narrate before him that Shiv Pujan was called by Dhiraj Mahto and 14 Shiv Pujan at 7 O'clock went to Gangti Police Station and since Shiv Pujan was not returning, Nagendra Mahto and others went in search of him, when he saw Shiv Pujan coming. This witness has stated that Nagendra did not state before him that Koila Mahto and Dev Narayan Mahto caught hold of the cycle of the deceased and Jitu assaulted with Garasa and Shyam Lal assaulted with chheoni at the back of the head of the deceased, as a result of which, Shiv Pujan fell down. He stated that Nagendra Mahto also did not say that the right foot of Shiv Pujan was pressed by the cycle and his head was lying 6-7 feet away.

27. The defence has also examined two witnesses, they are D.W.1 Manikant Mahto and D.W.2 Sunil Kumar Singh.

28. D.W.1 Manikant Mahto stated that Shiv Pujan was killed in 1999 on Sunday. He reached the place of occurrence in the afternoon and saw the head of Shiv Pujan severed. He went and informed about the occurrence to Abhinandan Mahto. From there he went to the house of the son-in-law of the deceased. He stayed there at night. He stated that Dilip Kumar Mahto and Nagendra Mahto stays in Godda. He stated that they were not present at the place of occurrence. He stated that the occurrence had not taken place in his presence.

29. D.W.2 Sunil Kumar Singh states that he knows Nagendra Mahto, Kashinath Mahto, Dilip Kumar Mahto and Abhinandan Mahto. He also claims to know the deceased Shiv Pujan Mahto. He stated that Kashinath Mahto, Nagendra Mahto and Dilip Mahto were not present at the place of occurrence. He stated that he went to the place of occurrence where only the widow of Shiv Pujan Mahto was present. He stated that Kashinath Mahto, Dilip Kumar Mahto and Nagendra Mahto were in Godda. He stated that all these persons reached next day morning at about 4 O'clock alongwith the son-in-law of the deceased. He also stated that there was dispute amongst the deceased and the accused persons as the deceased had already instituted a case against them, but, thereafter stated that Nagendra Mahto had filed the case.

30. Mainly the defence witnesses were examined to prove that P.W.2 Kashinath Mahto, P.W.3 Nagendra Prasad Mahto and P.W.10 Dilip Kumar Mahto were not present at the place of occurrence and they were at Godda.

31. From perusal of the evidence led by the prosecution, we find that the only allegation levelled against Dhiraj Mahto is that he in the morning had come and requested the deceased to accompany him to the police station 15 and the deceased on accepting his request, left his house with him. That is the only allegation and evidence against him. At the place of occurrence, this appellant was not seen. The deceased was seen returning alone in his cycle. This means that Dhiraj Mahto was not accompanying him at that point of time. This is the prosecution evidence. This fact clearly suggests that there is no involvement of Dhiraj Mahto in the crime. Even he cannot be said to be last seen with the deceased also. Prosecution has thus failed to establish his involvement in the offence. Thus, his conviction is absolutely bad and is liable to be set aside. Thus the conviction of the appellant Dhiraj Mahto, is hereby, set aside and he is acquitted of the charges.

32. One of the main contentions of the other appellants is that there is a delay in sending the FIR to the Court. The FIR was lodged and registered on 05.09.1999, a Sunday, but it was sent to the Court on 08.09.1999, i.e., after three days of the occurrence. It is submitted that this delay is unexplained which is fatal and renders

the entire FIR as a doubtful document. We cannot agree with this argument advanced by the appellants.

33. It is well settled that the defence has to show that what prejudice has been caused to them on delayed transmission of the FIR. It is also well settled that an unexplained delay by itself may not be fatal. It is settled that unless serious prejudice was demonstrated to have been suffered by the accused, mere delay in sending the FIR to the Magistrate by itself will not have any deteriorating effect on the prosecution case. [Authority : (2013) 12 SCC539(Sheo Shankar Singh versus State of U.P.)] 34. In the instant case, the defence has failed to show as to what are the prejudice caused to them in delayed transmission of the FIR to the Court.

35. It has been held by the Hon'ble Supreme Court that if no question is put to the investigating officer concerning the delay, the prosecution is under no obligation to give an explanation [Authority : (2011) 6 SCC288Brahm Swaroop & Anr. versus State of U.P.].

36. In this case, we find that the defence has not put any question to the investigating officer on the point of delay in transmission of the FIR to the Court. Thus, at this stage, in view of the judgments cited above, the defence cannot take the plea that the delayed transmission of the FIR is fatal for the prosecution.

37. From the evidence gathered in this case, we find that the eye witnesses have stated that these appellants had assembled near the Bihari Field next to a Mango Tree and when the deceased arrived on his bicycle, 16 Deven Mahto and Koila Mahto caught hold of the cycle and then Jitu Mahto with a Garasa assaulted on the head of the deceased and Shyam Lal Mahto with a chheoni. The deceased fell down, when the appellants pinned him down and Parmanand Mahto severed the head of the deceased with a chheoni. Only three witnesses have deposed in this manner. These witnesses are P.W.2 Kashinath Mahto, P.W.3 Nagendra Mahto and P.W.10 Dilip Kumar Mahto. All these three witnesses are close relatives of the deceased and related to each other being the cousin grandfather, uncle and son. There are no other witness to support this story. As per these witnesses also, there were several persons in the field, but, on raising alarm, none of them reached the place of occurrence. P.W.1 is Sagar Yadav, who is an independent

witness, who stated that when he made queries, he could come to know that naxals have committed this crime. P.W.6 is also an independent witness. He also stated that he could come to know that the naxalites have committed murder of the deceased. The informant Dilip Kumar Mahto who is P.W.10 also stated that his father had several enemies and their family was the only family who were opposing naxalites and the naxalites had grudge over them. He, in his evidence, has also stated that Meharama Block and Gangti Block are infested with naxalites. He also stated that his father was earlier attacked and assaulted by the naxalites.

38. There is nothing on record and none of the witnesses have stated that these appellants were naxalites or were members of the naxal group. Thus, there is a doubt that these appellants are the persons, who committed the murder or not. The witnesses, P.W.2 Kashinath Mahto, P.W.3 Nagendra Prasad Mahto and P.W.10 Dilip Kumar Mahto, who are eye witnesses and relatives of the deceased, have also stated that there was enmity between them and Jitu Mahto as there was litigation amongst the parties. Since there was long standing dispute between the parties, there is probability of false implication of these appellants.

39. In the FIR and in evidence of P.W.2, P.W.3 and P.W.10, they have stated, with uniformity, that Deven Mahto and Koila Mahto stopped the cycle of the deceased. Jitu Mahto assaulted the deceased with garasa on head and Shyam Lal Mahto with chheoni. It has been also stated that Sadanand Thakur, Budhinath Mahto, Yogesh Mahto and Beloon Mahto pinned the deceased to the ground along with cycle and thereafter, Parmanand Mahto severed the head with chheoni. When the investigating officer, P.W.11 was confronted with the aforesaid statement and was put to a question as to whether these persons have narrated before him in the manner they have stated in their evidence or not, while being examined under Section 161 of the Cr.P.C., he flatly denied by stating that they have not given such statement under Section 161 Cr.P.C. The Investigating Officer has not stated as to who specifically assaulted the deceased and in what manner. This fact also finds support in the case diary where these witnesses P.W.2 and P.W.3 had not stated specifically as to who has assaulted the deceased and who pinned him on the ground, but, while deposing before the Court, they had given vivid description about the overt act of each and every person. This statement in the Court by these

two prosecution witnesses, Nagendra Mahto and Kashinath Mahto, is a development, which had taken place while giving evidence in Court. Because of this material development, these witnesses cannot be said to be fully reliable one.

40. The doctor, while conducting the postmortem, had mentioned that the deceased died within 36 hours from the time when the postmortem was conducted. Postmortem was conducted on 06.09.1999 at about 09.15 a.m. As per the prosecution case, the deceased died at about 11.30 a.m. on 05.09.1999. Thus, the time of death is within 24 hours from the postmortem, but, as per the evidence of the doctor, the death must have/might have occurred much earlier.

41. Further, we find that the occurrence had taken place at about 11.30 a.m. on Sunday. The postmortem was conducted at about 09.15 a.m. on Monday, thereafter the body was taken to Kahalgaon near the Ganges for cremation. This means that cremation must have taken place in the afternoon on Monday. P.W.3 is the brother of the deceased and is an employee of Irrigation Department in the Government. In paragraph 3, he stated that he returned and joined his office on Monday from his house. If what has been stated about the day, date and time of crime, then this eye witness could not have joined his office on Monday, as they were busy in getting the postmortem done and in cremation of the deceased. These facts suggest that the prosecution has not narrated the correct time of occurrence. The gap is too wide to match.

42. Thus, from over all analysis, this Court feels that there is an element of doubt about the involvement of the other appellants in the occurrence. The rest of the appellants, thus, are entitled to be given the benefit of doubt in this case.

43. Thus, on overall consideration, we set aside the Judgment of 18 conviction and Order of sentence dated 19th January, 2005 passed by learned 4th Additional Sessions Judge, Fast Track Court No.1, Godda in Sessions Case No.39 of 2003 / 64 of 2000 and acquit all the appellants from the charges.

44. Appellant Dev Narayan Mahto is on bail in Criminal Appeal (D.B.) No. 524 of 2006. He is discharged of the liability of his bail bonds. All the other appellants, namely, (1) Yogesh Mahto, (2) Budhinath Mahto, (3) Koila Mahto, (4) Dev Narayan

Mahto (son of late Samroo Mahto), (5) Gopal Mahto [appellants in Criminal Appeal (D.B.) No.207 of 2005], Jitu Mahto [appellant in Criminal Appeal (D.B.) No. 264 of 2005], Shyam Lal Mahto [appellant in Criminal Appeal (D.B.) No.278 of 2005], Dhiraj Mahto [appellant in Criminal Appeal (D.B.) No. 285 of 2005], Parmanand Mahto [appellant in Criminal Appeal (D.B.) No. 607 of 2005], Sadanand Thakur [appellant in Criminal Appeal (D.B.) No.891 of 2006] are in custody. They are directed to be released from custody forthwith, if their detention is not required in any other case.

45. These appeals are, thus, allowed.

46. Let the Lower Court Records be transmitted to the Court concerned forthwith along with a copy of this judgment.

47. In view of this judgment, no order needs to be passed in I.A. No. 7159 of 2013 [in Cr. Appeal (D.B.) No.264 of 2005], the same also stands disposed of. (Ananda Sen, J.) H.C. Mishra, J.

I agree. (H.C. Mishra, J.) High Court of Jharkhand, Ranchi The, 19th August, 2017
Kumar/AFR

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