

Umesh Mehta Vs. the State of Bihar

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Court : Patna

Decided On : May-20-2011

Judge : Shyam Kishore Sharma; Gopal Prasad, JJ.

Acts : Indian Penal Code (IPC) - Sections 149, 302, 307, 323, 324; Code of Criminal Procedure (CrPC) (Cr.P.C) - Sections 313, 161

Appeal No. : Criminal Appeal (DB) No.409 OF 2004

Appellant : Umesh Mehta

Respondent : The State of Bihar

Advocate for Def. : Shri O. P. Upadhyay, Shri Manoj Kumar Singh, Shri Mithilesh Kumar Upadhyay, Advs.

Advocate for Pet/Ap. : M/s Akhileshwar Pd. Singh, Girish Pd. Gupta, Advs.

Judgement :

1. Heard learned counsel for the appellants and learned counsel for the State.
2. Two appeals i.e. Cr. Appeal No. 409 of 2004 and 411 of 2004 have heard together and being disposed by the common order as both the appeals are against the judgment and order passed in Sessions Trial No. 53 of 1993 which arises out of Birpur P.S. Case No. 96 of 1991 (under Saharsa District) for by which the appellants have been convicted for offence under Sections 302/149, 307/149,

324/149 and 323/149 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life for offence under Section 302/149 of the Indian Penal Code and has further sentenced to undergo rigorous imprisonment for seven years for conviction under Section 307/149 of the Indian Penal Code and further sentence to undergo Rigorous Imprisonment for two years for offence under Section 324/149 of the Indian Penal Code and further sentence to undergo rigorous imprisonment for one year under Section 323/149.

However, it has been ordered that the entire sentence run concurrently. The appellant Ramjee Mehta has further been found guilty for offence under Section 302 of the Indian Penal Code and has been sentenced to undergo Rigorous Imprisonment for life.

3. The prosecution case as alleged in the Fardbeyan by the informant Rajendra Mahto that on 24. 11. 1991 at about 14.00 hours (2 P.M.) the father of the informant Sewak Mehta, Sriprasad Mehta, Mishrilal Mehta and Mahendra Mehta went to work in the field of radish, cauliflower and potato which they have grown. Then the accused Ramjee Mehta, Prabhu Mehta, Ramakant Mehta, Umesh Mehta, Ramswarup Mehta, Koa Mandal, Trideo Gupta, Jagdish Gupta, Shatrudhan Gupta came forming an unlawful assembly armed with Bhala, Farsa, Hansa and lathi. They surrounded the prosecution party and assaulted them by Bhala, Hasa and Farsa. Ramjee Mehta assaulted Sewak Mehta with Hansa on the abdomen causing intestine bulge out from stomach.

Later on Prabhu Mehta gave ballam blow on the neck and shoulder of Sewak Mehta. Ramakant gave Hansa blow on the head of Sriprasad Mehta by which he also got injury and Umesh Mehta assaulted by Lathi to the informant. The motive of the occurrence as alleged that accused person's claim the land in which radish, cauliflower and pototato was grown. The witnesses of the occurrences are Gugli Mehta, Ram Chandra Mehta, Dwarka Mehta and Ram Prasad Mehta.

4. The Fardbeyan of Rajenda Mehta was recorded before Shri R. D. Singh, Daroga, Birpur at 4 P.M. on 24.11.1991. On the Fardbeyan, F.I.R. was lodged on 25. 11. 1991. However, after investigation, the charge sheet submitted,

cognizance was taken and the case was committed to the court of sessions and after commitment, the charges were framed under Section 302 of the Indian Penal Code against Shri Ramjee Mehta and further charges were framed against five accused persons Ramakant Mehta, Umesh Mehta, Ramswarup Mehta, Koa Mandal and Trideo Gupta for offence under Sections 302/149, 307/149, 324/149 and 323/149 of the Indian Penal Code.

5. After submission of the charge sheet the prosecution adduced eleven witnesses. Where P.W. 1 Ram Prasad Mehta, P.W. 2 Gugli Mehta, P.W.3 Rameshwar Mehta, P.W. 4, Sri Prasad Mehta, P.W.5 Jagdish Mehta, P.W.6 Ram Chandra Mehta, P.W. 7 Mishrilal Mehta, P.W. 8 Mahendra Mehta, P.W.9 Rajendra Mehta, P.W. 10 Dr. Krishna Chandra Jha, P.W. 11 Dr. M. K. Singh. However, I.O. of this case has not been examined.

6. The Documentary evidence adduced on behalf of the prosecution is Ext. 1, Signature of Gugli Mehta on Fardbeyan, Ext. 2, is the Fardbeyan, Ext. 3 is the original sale deed executed by P.W. 4, Deep Narain Pd. Gupta in favour of Rajendra Mehta, Ext. 4 is the rent receipt, Ext. 5 is the petition of the informant dated 29. 04. 1992, Ext. 6 is the injury report of Mishrilal Mehta, Ext. 6/1 is the injury report of Mahendra Mehta, Ext. 6/2 is the injury report of Rejendra Mehta, Ext. 6/3 is the injury report of Sewak Mehta, Ext. 6/4 is the injury report of Mishrilal Mehta, Ext. 6/5 is supplementary injury report of Shri Prasad Mehta, Ext. 7 is the Postmortem Report, Ext. 8 is the formal F.I.R., Ext. 9 is the Fardbeyan of Rajendra Mehta, Ext. 10 is the certified copy of the judgment of G.R. No. 593/91 and Ext. 11 is the inquest report.

7. The defence has also adduced both oral and documentary evidence. Oral evidence has been adduced on the defence, D.W. 1 Budhi Lal Mehta, D.W. 2 Kishundeo Mehta, D.W.3 Hriday Mehta, D.W. 4 Sitaram Mehta and D.W.5 Ramdeo Mehta. The defence has also adduced documentary evidence. The documentary evidence adduced is Ext. A is the sale deed, Ext. B is the rent receipt, Ext. C is the certified copy of formal F.I.R. with Fardbeyan of Birpur P.S. Case No. 97/91, Ext. D is the injury report, Ext. E is the certified copy of the charge sheet, Ext. F is depositions of witnesses in G.R. Case No. 593/91, Ext. F/1

is certified copy of deposition of Kishundeo Mehta, Ext. G is certified copy of charge sheet of case bearing G.R. No. 446/91, Ext. H is certified copy of the judgment of G.R. Case No. 446/91.

8. The defence of the accused persons as apparent from the trend of the cross examination and suggestion to prosecution witnesses that witnesses have not seen the occurrence and have falsely deposed and this case is a counter blast to the occurrence about looting the house of Rajendra Mehta for which a counter case has been filed bearing Birpur P.S. Case No. 97/91.

9. The further case of the defence that P.O. land was being cultivated by the accused persons as 'Bataidar' and disputed land is in their possession since last 20 to 25 years prior to the occurrence and the land was a joint property of Deep Narain and Adhojee. Further that Ramjee Mehta was also received injury but injury not explained by prosecution and the defence witness also examined about assault and injury by the witnesses of this case.

10. Hence after considering the oral and documentary evidence and taking into consideration the submissions and defence of the accused persons, the Trial Court convicted the accused persons and sentenced as mentioned above. Two appeals were filed, one by Ramjee Mehta bearing Cr. Appeal No. 409 of 2004 and other by rest of convict Umesh Mehta, Ram Swaroop Mehta, Prabhu Mehta and Ramakant Mehta bearing Cr. Appeal No. 411 of 2004.

11. Learned counsel for the appellants has however contended that I.O. has not been examined has caused prejudice as place of occurrence has not established and contradiction could not be recorded for the attention drawn to prosecution witnesses. It has further been contended that the admitted case of prosecution that accused persons were in possession of the land since nine years prior to the occurrence as Bataidar of Ayodhi whereas prosecution claim to have purchased the land from Deep Naryan, son of Ayodhi but neither the vendor Deep Narayan nor any of the co-sharer of vendor has come to depose that they dispossessed the accused Ramjee from the land mere on sale deed or rent receipt it can not be inferred possession of the prosecution party.

12. It has further been contended death of Ram Sevak is not the immediate cause of the injury but the cause of death is due to mediastenal sepsis the victim was not properly treated and hence the injury on deceased cannot be attributed for murder. It has also been contended that statement under Section 313 Cr.P.C. of accused is cryptic and amounts to non-compliance of 313 Cr.P.C. and hence prosecution has not proved the charges beyond reasonable doubt.

13. The learned counsel for State however, contends that the prosecution has proved the case beyond reasonable doubt.

14. On the respective submission of the parties, question for consideration whether prosecution has not been able to proof the charges beyond reasonable doubt to maintain the conviction and sentence.

15. However, prosecution case as alleged in the Fardbeyan that on 24.11.1991 at about 2 P.M., Sewak Mehta, Sri Prasad Mehta, Mishri Lal Mehta, Mahendra Mehta were working in the field near the house in which radish, cauliflower and potato was grown At that time Ramjee Mehta, Prabhu Mehta, Ramakant Mehta, Umesh Mehta, Ram Swaroop Mehta, Koa Mandal, Indradeo Gupta, Ramanand Gupta, Jagdish Gupta, Shatrudhan Gupta, resident of Hriday Nagar and Brahmpura came armed with spear, Farsa and Fasa and surrounded the prosecution party Ramjee Mehta gave Hasa blow on the abdomen of Sewak Mehta, Prabu Mehta gave ballam blow on the neck of the informant and also gave ballam blow on the shoulder. Chandrakant gave Farsa blow on the head to Shri Prasad and Umesh gave lathi blow. Ram Sewak Mehta died after 7- 8 days during his treatment in private nursing home.

16. However, out of eleven persons, examined as prosecution witnesses, P.W. 1, 4, 7, 8 and 9 are from same family that is descendent of common ancestor. P.W. 3 is tender; P.W. 5 and 6 are not eye witness. P.W. 10 is the Doctor who has examined the injured and P.W. 11 is Doctor who conducted Postmortem examination of the deceased Ram Sewak Mehta who died after 6-7 days of the occurrence.

17. Now I proceed to consider evidence of prosecution, P.W. 9 is informant. He has stated that at the time of occurrence his father Sewak Mehta, Mahendra Mehta, Sriprasad Mehta and Mishrilal Mehta were present in the field of raddish, potato. The appellants came armed with weapon and surrounded them. Thereafter, Ramjee Mehta assaulted Ram Sevak (deceased) by 'Hansa' on the abdomen. Prabhu Mehta also assaulted Ram Sevak by 'Bhala'. Hence, P.W.9 supported the prosecution case as alleged in the Fardbeyan. He has further stated that his father was treated at Birpur then to Purnea and finally at Private Nursing Home where he died during treatment on 01. 12. 1991 at 8.45 P.M. He has further stated that the disputed land is at Plot No. 122, Khata No. 132 which belongs Deep Narain Gupta, son of Ayodhi Gupta which was purchased by his father on 28. 10. 1991 by registered sale deed. The said land used to be cultivated by Ramjee Mehta in BATAI. Ayodhi Gupta has taken back the said land from Ramjee Mehta. Deep Narain Gupta agreed to sale the land for consideration of Rs. 5,000/- and handed the possession of land to prosecution party. The prosecution has grown potato, raddish and cauliflower. He has further stated that after purchase of the land he got the land mutated in his name after execution of the sale deed proved as sale deed (Ext.3) and rent receipt (Ext.4) However, this witness has admitted in para 33 of his cross-examination that accused Ramjee Mehta was in possession of the land since last eight-nine years till three months prior to the occurrence and denied the suggestion in para 34 of his deposition that Ramjee Mehta was in possession of the land since last twenty five years and prosecution party was never possession in the land.

18. However, attention has been drawn of this witness regarding statement before the Police in this context of the evidence made before the Police.

19. P.W. 4 in his evidence has stated in para 1 that at the time of occurrence he was at his house which is situated north-west to the place of occurrence at the distance of five to six lagga and after hearing the hulla he went to the place of occurrence then saw Ramjee Mehta Prabhu Mehta, Ramakant Mehta and Umesh Mehta armed with variously weapons were assaulting the Sewak Mehta, Mishrilal Mehta, Mahendra Mehta and Rajendra Mehta and has stated that when he tried to save them he was also assaulted by Ramakant and he got unconscious and

supported prosecution case as mentioned in Fardbeyan. The attention of this witness drawn to record contradiction in para 22 of Case Diary regarding occurrences as well as assault.

20. P.W. 7 has further stated in his evidence that at the time of occurrence he was at his house and on hearing the hulla he went to the field of Rajendra Mehta, growing radish, cauliflower and brinjal. He has further stated that at the distance of seven to eight lagga south from the said field and he saw Sewak, Rajendra, Sriprasad, Mehendra and also saw the accused persons armed with various weapons and saw that accused persons were assaulted as specifically mentioned in Fardbeyan. The attention of this witness has been drawn in para 13 of his deposition drawn to record contradiction but I.O. not examined to take contradiction.

21. P.W. 8 has stated in his evidence that wife of Ramjee Mehta was uprooting the radish from the field which they have purchased and then he went to protest on which there was verbal altercation which converted in physical altercation and thereafter, his brother, Rajendra Mehta, his father Sewak Mehta, Sriprasad Mehta, Mishrilal Mehta also came to the field and in the meantime accused persons also came variously armed and assaulted as specific in the Fardbeyan and stated that wife of Ramjee Mehta uprooted 10-12 radish and attention drawn in para 21 and 23 of his deposition.

22. P.W.1 has supported in his evidence as mentioned in Fardbeyan, but attention has drawn toward earlier statement before the Police under Section 161 Cr.P.C. for taking contradiction and has stated in para 24 and 25 of the deposition that he has not stated before the Daroga that after occurrence of assault he ran to the place of occurrence and stated before the Daroga that he only gave hearsay version. Hence, attention has been drawn towards contradiction that he has not seen the occurrence, but has not been examined to record contradiction.

23. P.W. 2, has also supported the prosecution in his deposition in Court about the occurrence, but attention has been drawn in para 20 and 21 of his evidence to record contradiction. He has stated in para 21 that he can not say who (i.e. which accused) assaulted whom (injured). However, P.W. 3 has been tendered.

Similarly, P.W. 5 has stated that by the time he reached to the place of occurrence, the occurrence of assault was over, so not an eye witness.

24. However, P.W. 6 in his evidence has stated that on hearing hulla, he went to the place of occurrence and there he saw Dukha Mahato and Ramesh Mahto and also saw that Sewak Mehta, Sriprasad Mehta and Mahendra Mehta, Mishrilal Mehta were injured and saw the accused persons. Hence, this witness has not also eye witness to the occurrence.

25. Prosecution case in the Fardbeyan that the informant (P.W.9) along with Sewak Mehta (deceased) Sriprasad Mehta (P.W.4), Mishrilal Mehta (P.W.7) and Mahendra Mehta (P.W.9) were working in the field and then accused persons came surrounded and assaulted them by Hansa. P.W. 9 supported the prosecution case. Whereas P.W.4, 7 and 8 have not supported the prosecution case as alleged in the Fardbeyan about the genesis of occurrence. P.W. 4 and 7 have stated that at the time of occurrence they were at their respective house and on hulla they came to the place of occurrence and then saw the occurrence and P.W. 8 develop the prosecution story that wife of Ramjee was uprooting the radish then there was verbal and physical altercation and then hulla accused persons and witnesses came is against the prosecution case alleged in the Fardbeyan as well as deposed by P.W. 9 the informant. However, the genesis of occurrence that when P.W. 4, 7, 8,9 with deceased working in the field then accused persons came and surround the prosecution party and assault whereas P.W. 8 says that wife of Ramjee was uprooting the radish then there was verbal and physical altercation then accused and witness came. P.W. 4 and 7 also stated that on hulla they came to the field, the place of occurrence and hence not supported the genesis of occurrence as alleged in Fardbeyan.

26. P.W. 9 the informant has stated in his evidence that the land belong to Deep Narain Gupta, son of Ayodhi Gupta and the land was purchased by his father on 28. 10. 1991 by a registered sale deed (Ext. 3) got mutated and has admitted mutation was done and rent was paid and rent receipt issued. However, P.W. 9 has accepted in his evidence in para 33 that the said land was used to be cultivated by Ramjee Mehta in BATAI, though, stated that Ayodhi has taken back

the land from Ramjee Mehta and Deep Narain Gupta gave in the possession. However, neither Ayodhi has examined as witness to support or corroborate the evidence of taking back the land from Ramjee Mehta nor Deep Narain Gupta has been adduced evidence to support over possession of the land to the informant. Moreover, the execution of the sale deed and rent receipt and even mutation of the land in the name of the petitioner is not in evidence on the basis of which the possession can be inferred or established.

27. However, the P.W. 3, 5 and 6 have also not supported the prosecution case and evidence of P.W. 1, 4, 7 and 8, though, supported prosecution case but attention of the witness has been drawn with regard to their statement before Police as well as in Court, but I.O. has not been examined to record contradiction and hence cause prejudiced to the defence both for recording contradiction and establishing the place of occurrence.

28. However, P.W. 10 is the Doctor who has come to prove the injury and has stated that on 24. 11. 91 at 4 P.M. examined Mishrilal Mehta and found three injuries on his person at scalp, shoulder and head. However, all the injuries are found to be simple in nature. He has also proved injury on the person, Mahendra Mehta and found

(i) Incised wound over left shoulder in $1\frac{1}{2}$ " x $\frac{3}{4}$ " bone deep.

(ii) Incised wound over upper portion of left cheek in $\frac{1}{2}$ " x $\frac{1}{4}$ " and said to refer to Purnea Hospital for specialized treatment and opinion regarding nature of injury was reserved.

He also examined Rajendra Mehta and found two injuries

(i) Defused swelling over left shoulder,

(ii) Defused swelling over the right upper arm and both injuries are found to be simple in nature.

He also examined Shriprasad Mehta and found three injuries on his person

(i) Incised wound over posterior and inferior portion of right upper arm in 2.5"x 05"

(ii) Incised wound over left side of head, extending upto mid ion 5" x ½" bone deep and

(iii) Incised wound over left supra scapular region in 1" X ½". However, nature of injury has been reserved and has referred to Purnea Hospital. He has further stated on 08. 12. 1991 x-ray place of Sriprasad Mehta was shown to him and x-ray plate examination shown the fracture of frontal bone and has opined that injury no. ii was grievous in nature. However, in cross-examination that x-ray plate of Sriprasad Mehta is not placed before him today and he has not mentioned the fact as to who had brought the same. He has further stated he has not prescribed for x-ray of the injured of Sriprasad. Hence, opinion about grievous injury no. 2 of Sriprasad without proving the x-ray report and it has neither been established that x-ray place on which opinion was given. Hence on the said basis, it can not be said that injury on the person of Sriprasad was grievous in nature and hence none of the injury either on Mishrilal or Mahendra or Rajendra or Sriprasad is not as such either simply or cumulative effect of all injury on the injured is as such to infer that they were inflicted with intention to kill and hence offence under Section 307 of Indian Penal Code is not made out.

29. However, P.W.10 has also proved the injury on the person of Sewak Mehta and referred three injures on Sewak Mehta

(i) Incised wound over left groin, in 2" x 1" intestine bulged out from the injury,

(ii) Incised wound over upper portion of left thigh in 1" x ½" x ¼" and

(iii) Incised wound over left side of neck 1/1/2" x ½" muscle deep. Injury no. (i) was shown to be grievous while remaining injuries, opinion reserved and was referred to Purnea Hospital. However, except Sewak Mehta, all the injuries found on the persons of the victim Mishrilal Mehta, Mahendra Mehta, Rajendra Mehta and Sriprasad Mehta has been reported to be simple except

one of the injury on the person of Sriprasad shown to be grievous on the basis of xray report which was, though, not advised by this witness and x-ray plate has also not been proved in evidence and hence opinion of Doctor that said injury was grievous is without a basis and hence not acceptable. Hence, injury on the person of accused persons except Sewak Mehta can not be said to be inflicted with intention to kill as the injuries pointed out are all simple and superficial and most of them are not on vital part.

30. So far injury on the person of Sewak Mehta one of the injury, injury no. (i) is said to be grievous. However, injured Sewak Mehta was reported to send Purnea Hospital and finally he was treated in Private Nursing home and died after six-seven days during treatment. Though, P.W. 10, Doctor has stated in his deposition at para 13 of examination report that injured Sewak Mehta was conscious when he was sent to Purnea Hospital and during his treatment at Nandan Nursing Home and after undergoing treatment of six-seven days he died. P.W. 11 is the Doctor has conducted autopsy on the person of Sewak Mehta and found injury

- (i) On neck of 2" x 2" muscle deep,
- (ii) Surgical emphysema in the neck,
- (iii) Cut injury on left iliac fossa= 3" x 2" x muscle deep,
- (iv) omentum plus loop of intestine outside the wound and
- (v) Right para medium operative wound 4" stitched wound.

However, Doctor has further opined that

- (i) Left lung collapses, right lung contain full of pus,
- (ii) Oesophagustherasic part ruptured size = 2" X 1" through and through
- (iii) Mediastinum- contains pus-incised wound on left sixde chest with drainage to in it,

(iv) Heart- both chambers full, but pale,

(v) Liver pale, congested,

(vi) Spleen, kidney- congested,

(vii) Scalp - abrasion- 3" x 1" meninges not torn,

(viii) Abdomen- multiple stitch on small intestine

(ix) Bladder full, stomach empty and cause of death in his opinion is due to mediastenal sepsis leading to shock and haemorrhage.

Though, he has opined that all the injuries taken together are sufficient to cause death, but the neck injury was individually sufficient to cause death. However, the deceased survived for six-seven days and the immediate cause of death was mediastenal sepsis. However, the Doctor in his further cross-examination in para 16, has stated that he has not mentioned the age of the injuries and what medicine were given to the injured. However, he has opined in para 16 of his deposition that injured could have been survived if he had been given specialized treatment for which he had no equipment.

However, this Doctor was associated with Hospital also runs a Nursing Home and as per his evidence since there was strike in the hospital and so he admitted the injured in his Nursing Home on request and has opined that if the mediastenal sepsis was properly treated deceased could have been survived, but he had no such specialized equipment. He has further stated that injury no. (i) mentioned in Postmortem report is muscle deep and sepsis can be caused by simple injury and if such sepsis not properly treated it can be fatal.

31. Hence, in view of evidence of the doctor that deceased could have been survived, but in view of the fact specialized treatment was not given then he died due to mediasternal sepsis.

32. The prosecution during his evidence has admitted in para 33 of P.W.9 that accused persons were cultivating the land as Bataidar of co-sharer Ayodhi. The defence case also as per suggestion in para 33 of the evidence of P.W. 9 that

defence is in cultivating possession of the land since last 20-25 years. However, the prosecution made out a case that Ayodhi got the possession of land from accused Ramjee Mehta. Deep Narain Gupta, son of Ayodhi sold the land by a registered deed of Sale on 24.10.1991 to prosecution party and gave the possession three months before sale deed, but neither Adho nor Deep Narain came to prove that they actually took the possession of the land from Ramjee and handed over the land to the prosecution.

However, the prosecution have proved the sale deed (Ext.3) the mutation order and rent receipt (Ext.4) but these documents are not the evidence of possession and reliance placed on 2009 (7) SCC 614 is well established principle in facts and circumstance the sale by one cosharer regarding undivided share in joint family property where purchaser has only acquire the right to partition and not possession and hence the possession of the prosecution can not be inferred on sale deed and rent receipt whereas the possession of Ramjee coming in possession can well be inferred and probable. Moreover, the case of prosecution that the informant went in the field with deceased as well as P.W. 4, 7 and 8, then accused persons came surrounded, but P.W. 8 in his evidence given a go bye to prosecution case in Fardbeyan and develop a case that wife of Ramjee uprooted the radish lead to verbal and physical altercation lead to the occurrence and P.W. 4 and 7 also deposed that on hulla they came to the place of occurrence given a complete go bye to prosecution case that P.W. 4, 7, 8, 9 along with deceased had gone in the field to work in the filed then accused persons came surrounded and assaulted the prosecution.

33. During statement under Section 313 Cr.P.C. only two questions have been asked from each of the accused persons. First question is that they have killed Sewak Mehta and second question is that they have intention to kill and assaulted Mahendra Mehta and Rajendra Mehta but no question has been asked about their being member of unlawful assembly and they shared common object to murder or attempt to murder the deceased Ram Sewak and others. Hence, no opportunity was given to the accused persons to explain the circumstance regarding their being member of unlawful assembly with a common object to kill Sewak Mehta or

to attempt to kill other in pursuance of common object or common intention of said unlawful assembly. Though, this circumstance was not brought to the notice to explain the circumstance conviction under Section 302/149 is not sustainable. Hence it appears that the compliance of 313 has not been properly done and mere formalities have been observed.

34. Hence taking into consideration that the genesis of occurrence that occurrence took place while prosecution party were working in the field then accused persons came surrounded and assault, but during trial the prosecution develop the case that they purchase the land and occurrence took place for uprooting the radish by wife of Ramjee causing verbal and physical altercation. Thereafter, the accused persons and witnesses came. Though, P.W. 9 supported the prosecution case in Fardbeyan that P.W. 4, 7, and 8 while working in the field then accused surrounded and assault. However, P.W.8 came with story of uprooting the radish by wife of accused Ramjee which led to cause verbal and physical altercation and on hulla P.W. 4 and 7 came. P.W. 4 and 7 has also deposed that they came on hulla. The genesis of the occurrence has changed. The prosecution admitted that Ramjee was in possession of land since 8-9 years prior to occurrence as Bataidar of the cosharer just few days prior to occurrence claiming that the co-sharer of his vendor dispossessed Ramjee and gave him the possession, but neither the co-sharer or vendor of prosecution of the said land came to depose about dispossession of Ramjee nor about possession to prosecution party and it is well settle that sale deed and rent receipt is not an act of possession. Hence the possession of prosecution over land under the facts and circumstances becomes doubtful. Though P.W. 1, 2, 4, 7 and 8 have come to support the prosecution case about the occurrence but the attention of the witness has been drawn with regard to their statement in court as well as before Police but I.O. has not been examined has caused prejudice to prosecution to record contradiction and establish the place of occurrence. Moreover, the medical evidence about the injury on person of prosecution party except Ram Sewak are simple and none of the injuries either single or cumulative effect of which can be said to have been inflicted with intention to kill. The immediate cause of death of deceased Ram Sewak is sepsis as the specialized treatment could not be given. Hence, injury on deceased by accused is not the immediate cause of death. The statement recorded under

Section 313 Cr.P.C. is mere formalities. P.W. 3 and 6 not supported the prosecution and no independent witness came.

35.Hence under the facts and circumstances, the accused persons are entitled for benefit of doubt as the prosecution party has not been able to prove the charges beyond all the reasonable doubt and hence the order of conviction and sentence is set aside. Both appeals are allowed. The appellants are acquitted. Appellant, Ramjee Mehta (in Cr. Appeal No. 409 of 2004) in jail is ordered to be released forthwith if not required in any other case. The other appellants (in Cr. Appeal No. 411 of 2004) are discharged from the liabilities of their respective bail bonds.

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