

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1255 of 2008

Arising Out of P. S. Case No. -288 Year- 2005 Thana –Chapra Mufassil District- SARAN

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Birbal Manjhi son of Chhohra Manjhi, resident of village-Dumaria, P.S. Chapra Muffasil, District-Saran (Bihar)

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Smt. Nutan Sahay. Amicus Curiae.

For the Respondent : Ms. Shashi Bala Verma, APP.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE ADITYA KUMAR TRIVEDI)

Date: 17-03-2015

Challenge in this appeal is judgment of conviction and sentence dated 27.02.2008 passed by Presiding Officer, Fast Track Court-IV, Saran at Chapra in Sessions Trial No. 251 of 2006 convicting and sentencing the sole appellant Birbal Manhi for an offence punishable under Sections 302 IPC and directing him to undergo RI for life as well as also slapped with fine of Rs.10,000/- in default thereof, to undergo RI for three months.

2. Raju Kumar Manjhi (PW-1) gave his *Fard-e-beyan* on 13.12.2005 at about 8:15 a.m. disclosing therein that he used to work at Jaipur. About 20 days ago, he came on leave. In the night of 12.12.2005, he along with his parents after taking meal slept. He had slept in a room while his parents slept in another room. At about 3:00

a.m., he heard cry of his mother whereupon, he rushed to the room occupied by his parents where he saw his father Birbal Manjhi (appellant) by inflicting brick blow over his mother caused severely injured. Blood was oozing out from her ears and nose. She was to rush to hospital for treatment but before that, she died. It has further been disclosed that his father was habituated in maltreating his mother.

3. On the basis of the aforesaid *Fard-e-beyan*, Chapra Mufassil PS. Case No. 288/2005 was registered whereupon investigation commenced and after concluding the same, charge-sheet was submitted on account of which, the sole appellant faced the trial and met with ultimate consequence, the subject matter of instant appeal.

4. The defence as is evident from the mode of cross-examination as well as from statement recorded under Section 313 of the Cr.P.C. is of complete denial as well as pleading innocence.

5. In order to substantiate its case, prosecution had examined altogether seven PWs out of whom PW-1, Raju. Kumar Manjhi, PW-2, Ranjit Kumar Manjhi, PW-3, Fauzdar Manjhi, PW-4, Ganesh Manjhi, PW-5, Depty Manjhi, PW-6, Dr. Bibhu Prasad and PW-7, Suraj Narayan Mandal. Side by side had also exhibited Ext-1, signature of informant over *Fard-e-beyan*, Ext-1/1, signature of informant over inquest report, Ext-1/2, 1/3, 1/4 are the other

signatures upon relevant documents, Ext-2, postmortem report, Ext-3, *Fard-e-beyan*, Ext-4, Inquest report, Ext-5, formal FIR. Neither any DW nor any exhibit has been brought up on record by way of defence.

6. It has been submitted on behalf of learned Amicus Curiae that the judgment impugned speaks a lot with regard to its propriety in the background of the fact that it has been passed in a mechanical manner. To support the same, it has been submitted that the learned trial Court had failed to take notice of the eventualities which, in case had taken note of, would not justify the prosecution version in a manner as flashed. Furthermore, it has been submitted that none happens to be an eye witness to the occurrence. It was dark chilly winter night. The prosecution had not disclosed source of light. In the aforesaid background, appellant happens to be the sole assailant of the deceased and further having been witnessed the occurrence by PW-1, is found not at all appreciable. Virtually, none had seen the occurrence but on account of brawl having taken place in between the spouses, motivated the P.W.1, informant to implicate the appellant, the father.

7. To support the same, it has been submitted that from the evidence of the Investigating Officer, it is apparent that during course of recording of objective finding relating to place of occurrence, he had not found a drop of blood over the bed or in a



room occupied by the spouses. Therefore, the version of the prosecution that occurrence had taken place inside a room is also doubtful. Then, it has been submitted that according to version of the prosecution witnesses, they have stated that the brick particle by which assault was made fallen at that very place itself but during course of inspection of the place of occurrence, P.W.7, the Investigating Officer had not found the aforesaid brick particle stained with blood. Furthermore, it has also been submitted that the obligation lies upon the prosecution to support its case and having perceived a breach therein will dismantle the whole prosecution case. The aforesaid infirmities, as stated above, happen to be sufficient to demolish the case of the prosecution. Hence, appeal is fit to be allowed.

8. On the other hand, the learned APP opposed the prayer and submitted that after going through the judgment impugned, it is evident that the learned Lower Court had taken into account all the material facts having been placed by the prosecution during course of conduction of the trial. Furthermore, it has also been submitted that there happens to be no motive for false implication that too, at the hands of a son against his father. As such, the evidence of PW-1, the son who was sleeping inside the house could be and rightly been accepted to be sufficient to infer guilt against the appellant for the

commission of the crime and being so, the judgment impugned is fit to be confirmed.

9. PW-6 Dr. Bibhu Prasad who had conducted the postmortem over the dead body of the deceased Savitri Devi on 13.12.2005 at about 1.25 PM recorded the following findings:-

External Injuries:- (i) A lacerated wound left parietal region of scalp region (2 ½"x 2"x bone deep.

(ii) A lacerated wound (1"x1"x bone deep just behind with pinna of the left ear.

(iii) Bleeding from the right ear.

On dissection:- Head (i) left parietal bone of the skull was fractured.

(ii) Left temporal bone was also fractured.

(iii) On opening the cranium, the blood clot of varying sizes were present inside the cranium.

Thorax:-

(i) Both lungs were intact and pale.

(ii) Both sides chambers of the heart were empty.

Abdomen:- All abdominal viscerae were intact and pale. The bladder was empty.

Time elapsed since death 6 to 12 hours and further opined regarding cause of death due to severe intra cranial haemorrhage resulting instant coma, on account of severe blow given by hard and blunt substance.

10. Therefore, the death of Savitri Devi is found there having been caused by infliction of blow of hard and blunt substance. During cross-examination, it is apparent that defence did not opt to cross-examine this witness and that being so, his evidence remained intact.

11. Now coming to the evidence of material witnesses, it



is apparent that more or less all the witnesses are own family members having their houses adjacent to the place of occurrence save and except PW-1 who happens to be the son of appellant as well as deceased and who, on the fateful night was sleeping inside his house. PW-3 had stated that while he was sleeping, on 13.12.2005 at about 3:00 A.M., he heard alarm of his mother over which he rushed inside the room and found his father engaged in assaulting her with brick particle. Blood was oozing out from mouth, nose and ears of his mother. He also raised cry attracting his elder uncle Fauzdar Manjhi as well as Depty Manjhi. Ganesh Manjhi and Ranjit Manjhi also came and with the help of aforesaid persons, he caught hold his father. Then, thereafter, Chaukidar was informed who accordingly, informed the police and after whose arrival, he had recorded his *Fard-e-beyan*. His mother died instantaneously. During cross-examination, he had specifically stated that his parents slept in a room jointly. Door was closed from inside. Then, he stated that it was a wooden door which got unlocked on giving a push. He had slept in verandah. The occurrence is about 3-4 AM. It was dark. He rushed after hearing cry of his mother and then pushed the door on account of which, it got opened and then he had seen his father engaged in assaulting his mother. Blood was coming out from mouth and nose of his mother. He raised cry. At that very moment, no one than he himself was



present there. Then, he stated that his uncle and others came with the help of whom his father was apprehended. In paragraph-13, there happens to be admission by way of suggestion whereunder he was suggested that it is not a fact that his father happens to be a drunkard and was insisting for money and on account thereof, quarrel had taken place.

12. PW-2, Ranjit Kumar Manjhi, PW-3, Fauzdar Manjhi, PW-4, Ganesh Manjhi and PW-5, Depty Manjhi are the persons who arrived on a call raised by PW-1 Raju Kumar Manjhi and had apprehended appellant Birbal Manjhi inside the house itself. They further disclosed regarding the occurrence as narrated by PW-1 at that very place itself. Neither there happens to be any sort of exaggeration nor contradiction in their evidence on that very score.

13. Therefore, from conjoint reading of evidence of PW-6, doctor as well as PW-1, it is apparent that death of deceased Savitri Devi was there caused by a blow given with hard and blunt substance which the PW-1 had affirmed by his consistent evidence corroborated by remaining PWs.

14. PW-7 is the Investigating Officer, who was entrusted with the investigation of instant case whereupon he visited the place of occurrence in presence of witnesses which happens to be the house of PW-1 as well as appellant. He had given the topography of the



house. He had recorded the statement of witnesses and then after completing investigation submitted charge-sheet. During cross-examination at para-10, it is apparent that he had stated that he not found sign of blood at the place of occurrence as well as he had not seized any article therefrom.

15. Much emphasis has been drawn at the end of learned Amicus Curiae with regard to para-10 of PW-7 to suggest that place of occurrence lies otherwise than as suggested by the prosecution on account of non-presence of blood stained. It is apparent that neither PW-6, the doctor has been cross-examined on this score at least to trace out ante-mortem injuries having sustained by the deceased will lead profused bleeding and in likewise manner happens to be the absence while cross-examining PW-1, the informant including the remaining witnesses that means to say PW-2, PW-3, PW-4 and PW-5 on this score. Mere oozing out blood from mouth, nose or ears without having profused bleeding will not justify presence of blood and this point, as raised by the learned Amicus Curiae lost its relevance.

16. It has further been submitted that the evidence of sole witness should not be accepted. In terms of Section 134 of the Evidence Act, it is the quality not the quantity which is required to prove the fact in issue. From the evidence of PW-1, it is apparent that

he had categorically stated the manner of occurrence having been committed at the hands of his father, the appellant. Even during course of cross-examination which he faced, remained consistent. As a result of which, he is found trustworthy, credible and being so, satisfies requirement of Section 134 of the Evidence Act.

17. The burden of proof lies upon the party who requires the verdict in its favour and that happens to be the mandate of Section 101 of the Evidence Act but, there happens to be some illustration whereunder the fact is well known to the accused and on account thereof, burden is found shifted, in case, prima facie case is found proved as per Section 106 of the Evidence Act. And the facts of the present case found covered one of those conceptions. It is apparent that deceased Savitri Devi died on account of presence of ante-mortem injury and further, there happens to be consistent, reliable, trustworthy evidence that appellant happens to be the author of the crime which, he committed while deceased was sleeping along with him inside a room and in the aforesaid facts and circumstances of the case, now the burden shifts in terms of Section 106 of the Evidence Act upon the appellant to explain the same. From the evidence as well as from the statement recorded under Section 313 Cr.P.C., it is apparent that appellant had failed to explain the same. Moreover, from the evidence of PW-1 para-13, it is apparent that appellant had

admitted presence of brawl in the background of insistence over money for consuming liquor.

18. Having given our anxious consideration to the materials available on the record coupled with the evidence adduced on behalf of the prosecution, it is found and held that prosecution case coupled with conduct of appellant in terms of Section 106 of the Evidence Act is found proved. Hence the judgment of conviction and sentence recorded by the learned lower court does not attract meddlesomeness.

19. Consequent thereupon, the appeal is dismissed. Appellant is under custody, hence he is directed to serve out the remaining part of the sentence.

20. The first and last pages of instant judgment be handed over to learned Amicus Curiae for the needful.

(Dharnidhar Jha, J)

(Aditya Kumar Trivedi, J)

Brajesh Kr/Perwez

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