

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.450 of 1992

Arising Out of PS.Case No.214 Year- 1990 Thana -Bhabua District- Rohtas at Sasaram (now Kaimur)

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Mobarak Rain, Son of Riyaz Rain, resident of Bhabhua Town, Ward No. 7,
Bhabhua, District Bhabhua

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arabind Nath Pandey, Advocate
 Mr. Rang Nath Pandey, Advocate
 Mr. Varun Kumar, Advocate

For the Respondent/s : Mrs. S B Verma, APP.

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CORAM: HONOURABLE SHRI. JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 07-08-2015

The present appeal by the solitary appellant brings into question the correctness of the finding of guilt recorded by the learned 4th Additional Sessions Judge, Rohtas at Sasaram, against the appellant by judgment of conviction dated 28.9.1992 passed in Sessions Trial No. 614 of 1990 and the appropriateness of the order of sentence dated 30th September 1992. The appellant was held guilty of committing the offence under Section 302 of the Indian Penal Code and was directed to suffer rigorous imprisonment.

2. The appellant was charged by the learned Additional Sessions Judge for committing the murder of his father-in-law Israil Rain by giving a blow with spade while the deceased was sleeping under the shade of a saijan tree. The murder was committed by the appellant on 29.8.1990 at 3 PM when he appeared with a spade, while the informant PW 14 Jaibun Nissa and her daughter PW



13 Nooraisa Begum were working in the vegetable fields to deweeding the plants. The informant stated that seeing the appellant coming with the spade she thought that he was coming to assist the mother and the daughter, i.e. PWs. 14 and 13 in deweeding work, but he moved towards the tree under which the deceased Israil Rain was sleeping and the informant thought that the appellant was to discuss something with the deceased. But lastly, saw him giving the fatal blow with the spade on his neck. Both PWs 13 and 14 rushed from the field to the place where the deceased was sleeping to find that his neck was cut and Israil Rain was lying dead. The mother and daughter raised cries which attracted people and the appellant ran away from there.

3. The motive for occurrence was that PW 13 Nooraisa Begum had fallen in love with the appellant and inspite of opposition of the informant and the parents of the present appellant who were also not happy with the relationship and opposed to an idea of the two marrying each other, PW 13 was married to the present appellant against the wishes of the parents of the appellant. As soon as the appellant got married to PW 13 Nooraisa Begum, his parents expelled him from their house as a result of which this appellant started living in the house of the informant. It was stated that the appellant was ill-treating and torturing his wife and also the deceased and the informant, by abusively talking to them, the reason behind which was the desire of the appellant to get Rs.20,000/- from the deceased as also the land which was belonging to the deceased transferred to him. The deceased and PW 14 the informant were not agreeable to fulfill the demands of the appellant and only 4-5 days ahead of the incident, as appears from the evidence of PW 14 in paragraph -4, the appellant had walked out of the house of the

informant to rejoin his original family and thereafter to commit the murder of Israil Rain.

4. The investigation of the case was taken up by S.I. Ram Krishna Mishra on the basis of the fardbeyan of PW 14 recorded on 29.8.1990 at 5 PM, i.e., just after two hours of the incident. He inspected the place of occurrence and found copious blood lying under the saijan tree where the man had been hacked to death. The dead body of course was not found there as the same was removed from the house of the informant by the villagers where the inquest proceedings were held and the inquest report Ext. 6 was prepared by PW 15 S.I. Ram Krishna Mishra in presence of the witnesses. He recorded the statement of the witnesses including the further statement of PW 14 and the statement of PW 13 and sent up the solitary appellant for his trial, who pleaded false implication on account of annoyance with him.

5. Of the 15 witnesses examined by the prosecution in support of the charges, PW 13 and PW 14, i.e. Nooraisa Begum, who happened to be the daughter of PW 14 the informant and the informant herself, came to support the charge as eye-witnesses. Other witnesses, like PW 1 Guddu Raeen, PW 5 Dudh Nath Yadav, PW 6 Shamid Khan, PW 7 Rammurat Ahir, PW 8 Shamim Ahmad, PW 9 Pehta Pasi, PW 10 Abdul Aziz Rain, and PW 11 Sobrati Rain did state the fact that Israil Rain was murdered, but as regards the manner of occurrence and the identification of the assailant, they all refused to support the prosecution on those parts of the case. As a result of having not supported the prosecution, the above witnesses were declared hostile. PW 2 Jokhu Ram and PW 3 Narayan Seth did not even state that Israil Rain had been murdered.

PW 12 Dr. S P Gupta had held post mortem



examination on the dead body of the deceased Israil Rain and had found an incised wound measuring 6"x 10 1/2" upto cervical bone deep which had cut the cervical bone along with all the important muscles and nerves of the neck over its left side at its base. PW 12 also found another incised wound measuring 3 1/2"x2" up to bone cut on the head of humerus of left side along with the cutting of the all important vessels, nerves and tendons. On dissection of the injuries, PW 12 Dr. S P Gupta found the cervical vertebra of neck completely cut. The head of left humerus bone was found fractured and the injuries had been caused by sharp cutting weapon, which were dangerous and grievous in the ordinary course of nature. The death had occurred presumably within 20-24 hours of holding of autopsy on the dead body of the deceased Israil Rain by PW 12.

We have already pointed out that the Investigating Officer Ramkrishna Mishra found copious blood under the saijan tree where Israil Rain was sleeping and that blood had been seized by preparing seizure memo. Thus, in addition to the above, what we find further is that the inquest report prepared after holding inquest upon the dead body also found an injury on the neck or throat of the deceased. Thus, it is reasonably shown from the evidence of PW 12 Dr. S P Gupta and PW 15 S.I. Ramkrishna Mishra that the deceased Israil Rain had been murdered. As regards the evidence of other witnesses who had been declared hostile, that also indicated that Israil Rain had been murdered. Though the witnesses had been declared hostile, PWs 1, 5, 6, 7, 10 and 11 had all said that Israil Rain had been murdered.

6. So far as the identification of the killer of Israil Rain is concerned, we have the evidence of PW 13 Nooraisa Begum and PW 14 Jaibun Nissa, the informant of the case. PW 13 Nooraisa



Begum is the wife of the present appellant and as appears from evidence of PW 14, the appellant had married her inspite of the objection of his parents as also of the parents of Nooraisa Begum PW 13, which has resulted in expulsion of the appellant from the house of his parents and as such he had taken shelter in the very house of the deceased. Evidence has sufficiently come to indicate that the present appellant was badly mouthed and had greedy eyes on the properties which the deceased Israil Rain was possessed of. He used to abuse his wife as also the parents of his wife and it appears from the evidence of PW 14 Jaibun Nissa that her parents used to tolerate his misbehaviour considering the status of the appellant of being married to their daughter. After having failed in his attempt to extort money in the sum of Rs.20,000/-, and get the immoveable properties belonging to the deceased transferred in his favour, as appears from the evidence of the two witnesses, the appellant had left the house of the deceased to rejoin his own parents and just four days after, as appears from the evidence of PW 14 Jaibun Nissa, he had picked up a spade to hack the deceased to death.

7. Submission of learned counsel for the appellant was that motive was not proved in the present context as admittedly the appellant had left the house of the deceased and PW 13 and also divorced the wife. This submission has been framed by the learned counsel taking into account the evidence of PW 14 in paragraph-4 where the lady-informant was stating that the appellant had walked out of her house four days prior to the incident as also by considering the evidence of PW 13 in paragraph-9 in which she stated that there was no longer the relationship of wife and husband existing between her and the appellant and that both of them had divorced each other. When we looked into the relevant part of the evidence in paragraph-9



of PW 13 and paragraph-4 of PW 14, we must fairly record that we could not reach the conclusion that the appellant had divorced or had been divorced by his wife prior to the occurrence. What appears from the evidence of PW 13 is that the couple stood divorced which appears quite qualified by the use of certain words which indicated that a separation between the couple, i.e., the appellant and PW 13, was a later development. As regards the commission of murder of Israil Rain on 29.8.1990, we appreciate it also as there was no reason as to why the appellant should have divorced his wife or the latter could have divorced him. It could have occurred only when the appellant had indulged in the killing of the father of PW 13. The motive, in our opinion, had been established from the evidence of the most competent persons like PW 13 and PW 14 who could have the very personal knowledge about the efforts of pressurizing PW 13 Nooraisa Begum to ask her father to pay up an amount of Rs.20,000/- to the appellant and also to ask him to transfer the immoveable properties belonging to him to the appellant. There might not have been forthright rejection of the demand, but we do not find the element of implied consent also of complying the demand sometimes in future. Frustration in not succeeding in gaining monetary benefits or property-benefits appears consistently to be one of the most important motives behind various murders and there can be huge lines of cases indicating that murders are committed for three Z's – Zoru (woman), Zamin (immoveable property) and Zer (money). We cannot, as such, brush aside the evidence of PW 13 and PW 14 in the light of the submissions advanced by the learned counsel for the appellant that the prosecution had failed in establishing the case. We find material facts stated by the two witnesses in sufficient details inspiring our confidence to hold that the prosecution had established the motive.



8. Even assuming for the sake of argument that the prosecution has miserably failed in establishing the motive as a part of its story, we could never have been inclined to reject the whole prosecution case inasmuch as what would have been required to do in that particular situation was to have a very cautious and careful approach in appreciating the evidence of the two witnesses. The two witnesses were of course the daughter and wife of the deceased, but they do not appear to us inimical towards the present appellant. Nooraisa Begum had admitted in her evidence in paragraph-10 that she had been married earlier also to one Minnat Hussain and he died of pox and after attaining her widowhood, she had fallen in love with the present appellant and married him inspite of the opposition by not only the parents of the appellant but also of her own parents. The very bond of love and affection which had persisted between PW 13 and the present appellant might have eroded if the appellant had left the house of the deceased but must not have caused the estrangement between PW 13 and the present appellant so much so as to create a serious sense of animosity and revenge in the mind of PW 13 for that matter and also in the mind of PW 14. The very initial story contained in the fardbeyan itself indicates that inspite of the appellant having walked out from the house of the informant, he was still being treated with some expectation and respect which is very evident from the fact that while the appellant was seen carrying the spade and coming towards the informant or was proceeding towards the deceased, there was no sense of fear or apprehension arising in the mind of PW 13 or PW 14 that the appellant Mobarak Rain would kill the deceased Israil Rain, rather they thought that he was coming to assist them in their day-to-day agricultural operation. It would have been altogether a different experience for the two witnesses when they had seen the

appellant giving blows to the deceased.

9. So far as the other parts of the evidence of the two witnesses are concerned, the ring of consistency appears containing encapsulating the truthfulness. As regards the merits of the evidence of PWs 13 and 14, they were consistent in the short version of the prosecution and we could not find out any major defect in their evidence to discard them as unreliable witnesses. They had been the only persons around the place of occurrence and they had seen it and then had come into the witness-box to narrate it. The manner of occurrence which was stated by both PWs 13 and 14 gets support from the evidence of PW 12 Dr. S P Gupta, which evidence we have already discussed, and that story further gets corroboration from the evidence of PW 15, S.I. Ramkrishna Mishra, the Investigating Officer. We do not see any defect in the evidence of the two witnesses and we find them trustworthy.

10. We have already noted that inspite of having not stated as to what was the manner of killing of Israil Rain or about the man who had done it, the other witnesses also appear stating that the deceased was killed. It is the evidence of PWs 13 and 14 which establishes the authorship of the crime.

11. After appreciating the evidence of the witnesses, we come to the conclusion that the judgment of conviction and order of sentence passed upon the appellant Mobarak Rain was perfectly justified and the impugned judgment does not require any interference by this Court.

12. In the result, the appeal appears meritless and the same is dismissed.

13. However, what we find from the records is that the appellant has been declared a juvenile on the date of occurrence as

appears from the report submitted by the Principal Magistrate of the Juvenile Justice Board, Rohtas at Sasaram, which is on the record of the present appeal. Because we have upheld the conviction of the appellant, he is to be treated under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. We are informed that the appellant has served out eight years of imprisonment. Under Section 15(1)(e) of the said Act, no juvenile can be confined in connection with commission of any offence even if he had been held guilty for a period of more than three years. In that view of the matter, the law does not require any Forum or Authority to pass any further order as regards the present appellant. We do not see any purpose in remitting the matter back to the Juvenile Justice Board as it has done whatever the Board could have done, and the appellant has already suffered on account of having been in the custody for eight years. Besides, this Court finds that no further order can be passed in the instant appeal except that what has been passed by this Court just now.

14. With these findings and observations, this appeal stands finally disposed of.

(Dharnidhar Jha, J)

(Gopal Prasad, J)

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