

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.345 of 1993

AGAINST THE JUDGMENT OF CONVICTION AND THE ORDER OF SENTENCE, DATED 28.06.1993, PASSED BY SHRI RAM PRABODH SINGH, 2ND ADDITIONAL SESSIONS JUDGE, MUNGER, IN SESSIONS TRIAL NO. 222 OF 1990, ARISING OUT OF JHAJHA POLICE STATION CASE NO. 134 OF 1989

SAMAR GOSAI, SON OF LATE HARI GOSAI, RESIDENT OF VILLAGE DHAMNA, POLICE STATION JHAJHA, DISTRICT MUNGER

.... APPELLANT

VERSUS

THE STATE OF BIHAR

.... RESPONDENT

Appearance :

For the Appellant : NONE

For the Respondent : Mr. Ajay Mishra, A.P.P.

MR. NEERAJ KUMAR @ SANIDH, ADVOCATE : AMICUS CURIAE

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 11-03-2015

Under the judgment, dated 28.06.1993, passed, in Sessions Trial No. 222 of 1990, by learned 2nd Additional Sessions Judge, Munger, the appellant, Samar Gosai, stand convicted under Section 302 of the Indian Penal Code. Following his conviction, the accused-appellant has been sentenced to suffer imprisonment for life.

2. As unfurled by the First Information Report, prosecution's case may, in brief, be described thus.

(i) On 05.06.1989, at about 07:00 AM, when Paras Gosai, brother of the informant, Mahadeo Gosai, was, with the help of his nephew, Dilip Gosai (PW 3), repairing his



residential house, which had thatched roof, accused Samar Gosai, cousin of Paras Gosai, objected to the repairing of the said thatched residential house. As Paras Gosai did not pay any heed to the objection so raised by accused Samar Gosai, accused fetched a dagger from his house and pulled down Paras Gosai, when he was repairing the thatched roof of his residential house. Frightened by the sight of the accused holding a dagger in his hand, Paras Gosai started running towards his house, but the accused chased him and when Paras Gosai reached near the door of his house, he was overpowered by the accused, who threw Paras Gosai to the ground and gave three blows by means of his dagger on the person of Paras Gosai, two of the blows, so given by the dagger, fell on the right and left side of the scapular region at the back side of the chest of Paras Gosai and the third one fell on the Paras Gosai's left arm.

(ii) Mahadeo Gosai (PW 1), brother of Paras Gosai, while returning home after answering the call of nature, saw the accused chasing Paras Gosai throwing him to the ground and giving him blows by means of a dagger as described hereinbefore.

(iii) As *hulla* was raised, the accused tried to flee away; but his co-villagers apprehended him and handed him over to the Chowkidar (PW 6). So far as the injured was

concerned, he asked for water and, immediately after he was made to drink water by his brother, Mahadeo Gosai (PW 1), injured Paras Gosai succumbed to his injuries.

(iv) Mahadeo Gosai, then, went to Jhajha Police Station and orally informed the Officer-in-Charge, Jhajha Police Station, about the occurrence. The oral information, so given to the police, was reduced into writing and treating the same as the *First Information Report* (Exhibit-2), Jhajha Police Station Case No. 134 of 1989 was registered, under Section 302 of the Indian Penal Code, against accused Samar Gosai.

(v) Accompanied by the informant (PW 1), when Officer-in-Charge, Jhajha Police Station (PW 9), arrived at the place of occurrence, the accused was handed over to him by the Chowkidar (PW 6) and other co-villagers of the accused.

(vi) Inquest was held over Paras Gosai's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, *charge sheet* was laid, under Section 302 of the Indian Penal Code, against accused Samar Gosai.

3. At the trial, when a *charge* was framed, under Section 302 of the Indian Penal Code, against the accused, the accused pleaded not guilty thereto.

4. In support of their case, prosecution

examined altogether 9 (nine) witnesses including the doctor (PW 8), who had conducted the *post mortem* examination, and the Investigating Officer (PW 9) too.

5. The accused was, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in his examination aforementioned, the accused denied that he had committed the offence, which was alleged to have been committed by him, the case of the defence being that of denial. No evidence was adduced by the defence.

6. Having, however, arrived at the finding that accused-appellant, Samar Gosai, had been proved guilty of the *charge* under Section 302 of the Indian Penal Code, the learned trial Court convicted him accordingly. Following the conviction, sentence has been passed against the convict, Samar Gosai, as mentioned above.

7. Aggrieved by his conviction and the sentence passed against him, the convict, Samar Gosai, has preferred this appeal.

8. We have heard Mr. Neeraj Kumar @ Sanidh, learned Counsel, appearing as Amicus Curiae, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

9. While considering the present appeal, it may be noted that though, according to the *First Information*

Report, besides the informant (PW 1) and his nephew, Dilip Gosai (PW 3), many other co-villagers were claimed to have seen the occurrence, none other than the informant (PW 1) and his nephew (PW 3) have claimed, at the trial, to have witnessed the occurrence of assault by the accused on the said deceased.

10. Before, however, we enter into the discussion of the evidence of the alleged witnesses to the occurrence, let us take note of the evidence of the doctor (PW 8), who had, admittedly, performed, on 06.06.1989, at 06:45 AM, *post mortem* examination on the dead body of Paras Gosai. According to the doctor (PW 8), on conducting *post mortem* examination, he found following *ante mortem* injuries on the dead body of Paras Gosai.

"(i) *Incised wound and penetrating wound 1½" x ½" x thoracic cavity on right scapular region.*

(ii) *Incised wound and penetrating wound 1½" x ½" x thoracic cavity in the left scapular region.*

(iii) *Incised wound 1" x 1/3" x bone deep on the left arm."*

11. In the opinion of the doctor (PW 8), all the injuries were caused by sharp-edged weapon, such as, knife.

12. The prosecution did not dispute the correctness of the findings of the doctor and/or his opinion

with regard to the nature of the injuries, which had been found on the said dead body, the cause of his death or the nature of weapon, which might have been used. Even the defence did not dispute the evidence given by the doctor (PW 8). This Court, too, does not find anything inherently incorrect or improbable in the evidence given by the doctor (PW 8).

13. In the light of the injuries, which have been sustained on the back of his chest by the said deceased, it becomes evident that the said injuries were not self-inflicted and the death of the said deceased can safely be concluded to be *homicidal* in nature.

14. The question, however, remains: whether the accused-appellant has been proved, beyond reasonable doubt, to have caused the death of Paras Gosai?

15. Our search for an answer to the question posed above, brings us to the evidence of the informant, namely, Mahadeo Gosai (PW 1), whose evidence, we notice, is that on the day of the occurrence, at about 7:00 AM, when his elder brother, Paras Gosai, was repairing the thatched roof of his residential house, he (PW 3) went to answer nature's call and when he was returning, he saw the accused chasing Paras Gosai throwing him to the ground, at the courtyard, in front of the house of Paras Gosai and, then, giving blows by means of dagger on his back and left arm. It is in the evidence of PW 1

that the members of his family came out of the house, they saw the occurrence and, on raising *hulla*, their co-villagers came and caught hold the accused and handed him over to the Chowkidar (PW 6) and that some co-villagers had also slapped the accused and gave him a few fists blows.

16. Even in his cross-examination, though PW 1 has claimed to have seen the occurrence of assault on the said deceased at the hands of the accused-appellant, he has conceded, in his cross-examination, that the first time, when he saw his brother, he found him lying injured on the ground. If this piece of evidence is kept in view, it becomes clear that PW 1 could not have seen the accused-appellant chasing the said deceased and/or throwing him to the ground at the courtyard and/or giving Paras Gosai blows by means of dagger, when it is specifically conceded by PW 1, in his cross-examination, that when he saw his brother the first time, he was lying on the ground in injured condition. At any rate, it is difficult to confidently hold that PW 1 had witnessed the occurrence of assault on his brother, Paras Gosai.

17. Bearing in mind what we have indicated above, when we turn to the evidence of PW 3, who, too, is claimed to be an eye-witness to the occurrence from the beginning to the end, we find that according to his evidence, while his uncle, Paras Gosai, was repairing the thatched roof of



his residential house with the help of PW 3, the accused came there and asked Paras Gosai not to repair the thatched roof, but Paras Gosai did not pay any heed to the protest, raised by the accused, whereupon the accused fetched a dagger from his house, pulled down Paras Gosai on the ground from the roof and as Paras Gosai started running towards his house, accused started chasing him and when Paras Gosai reached the front door of his house, he was thrown to the ground and the accused, then, gave three blows by means of dagger on Paras Gosai injuring thereby Paras Gosai, who died shortly thereafter, and as far as the accused was concerned, though he tried to flee away, their co-villagers apprehended him and handed him over to the Chowkidar (PW 6).

18. If the evidence given by PW 3 were true, then, more than one person had witnessed the occurrence and had apprehended the accused and handed him over to the Chowkidar (PW 6); whereas the evidence of PW 6 is that on the day of the occurrence, at about 7:00 AM, on having *hulla*, he went to the house of Paras Gosai and saw him lying dead with the injuries on his person and those, who had assembled there, informed him that accused Samar Gosai had killed Paras Gosai. There is no assertion, in the evidence of PW 6, that the accused was apprehended by the co-villagers of the accused and/or that the accused was handed over to this

witness (PW 6).

19. Similar is the evidence, we find, of PW 7, a co-villager of the accused inasmuch the evidence of PW 7 is that on hearing *hulla* at his house, he went to the house of Paras Gosai and found him lying injured at his door and those, who had assembled there, told that following an altercation, accused Samar Gosai had inflicted blows on Paras Gosai by means of dagger. It is in the evidence of PW 7 that when police arrived there, they arrested Samar Gosai.

20. There is, thus, no assertion in the evidence of PW 7 either that the accused was apprehended by their co-villagers and/or was handed over to the Chowkidar (PW 6) and/or was, in turn, handed over by the Chowkidar to the police.

21. From the evidence, which we have discussed above, it becomes clear that except PW 3, there is no one, whose evidence can be said to be an evidence of eye-witness and though PW 3 claims to be eye-witness to the occurrence, his evidence is not supported by the evidence of the independent witnesses, such as, PW 6 and PW 7, who do not support the assertions of PW 3 and, as a matter of fact, of PW 1, too, that the accused was apprehended by his co-villagers and was handed over to PW 6. If the evidence of PW 3 were true that a large number of people had assembled at



the place of occurrence and they had apprehended the accused to the Chowkidar, there is no reason as to why the remaining witnesses, examined by the prosecution did not support the deposition of PW 3. We find it frightfully hazardous to conclude that PW 3 was an eye-witness to the occurrence; more so, when we do not find any explanation, offered by the prosecution or discernable from the materials on record, as to why the weapon of assault was not found, when the accused was apprehended immediately after he had inflicted blows by means of dagger on the person of Paras Gosai.

22. At any rate, in the light of the nature of the evidence on record, the prosecution could not have been held, and ought not to have been held, to have proved their case beyond reasonable doubt against the accused-appellant. Consequently, the accused-appellant deserved to be accorded, at least, benefit of doubt.

23. Situated thus, we are clearly of the view that the present one is a case, where the accused-appellant ought to be accorded benefit of doubt.

24. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellant and the sentence passed against him by the judgment and order, under appeal, are hereby set aside. The accused-appellant is held not guilty of the offence, which he

stands convicted of, and he is hereby acquitted of the same under benefit of doubt.

25. Since the accused-appellant is on bail, his bail bond is hereby cancelled and his sureties shall stand *discharged*.

26. Let the Amicus Curiae be paid a fee of Rs.5,000/-.

27. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J.)

(Gopal Prasad, J.)

Prabhakar Anand/-

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