

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.28 of 1993

(Against the judgment of conviction and order of sentence, dated 28.11.1992, passed by Sri Awadh Kishore Singh Chauhan, 5th Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 356 of 1991, arising out of Town P.S. case No. 151 of 1991,)

Garib Nath Sah, Son of Hari Nath Sah, resident of Mohalla- Balughat New Colony,
Police Station- Muzaffarpur, District- Muzaffarpur. Appellant

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Prabhat Kumar, Advocate.

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

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 08-07-2015

The sole appellant has preferred this appeal against the judgment and order, dated 28.11.1992, passed by the learned 5th Additional Sessions Judge, Muzaffarpur, in Sessions Trial No. 356 of 1991, whereby the learned 5th Additional Sessions Judge, Muzaffarpur, convicted the accused-appellant, Garib Nath Sah, under Sections 302 and 460 of the Indian Penal Code. Following his conviction under Section 302 of the Indian Penal Code, the accused-appellant has been sentenced to suffer imprisonment for life. However, no separate sentence has been passed for the accused-appellant's conviction under Section 460 of the Indian Penal Code.

2. The case of the prosecution, as made out in the

fardbeyan of Gopal Singh Bhagalpuri (P.W.8), recorded by R.P. Singh (P.W.11) of Town P.S., Muzaffarpur, on 03.05.1991, at 6.30 A.M., at Sadar Hospital, is as follows:

(i) In the intervening night of 2/3.05.1991, while the informant was sleeping with his family at his house, an unknown thief, at about 4.00 AM, tried to steal clothes from a room located on the southern side of the informant's house, through its window, with the help of a *fattha* (i.e., a piece of bamboo), when the informant's daughter, Sunita Kumari, was sleeping there. On hearing the sound of attempt to remove clothes, Sunita Kumari woke up and raised *hulla*. On hearing *hulla*, the informant's son, Krishna Kumar @ Kishun Jee (deceased), who was sleeping in another room, woke up and began to chase the thief, who started fleeing. While so chasing the thief, informant's son, Krishna Kumar @ Kishun Jee, shouted "Babu Jee Garib Nath ba" (i.e., Babu Jee he is Garib Nath). On his call, the informant woke up and, calling his son, the informant, too, started running after his son, who was chasing the thief. Upon covering some distance, the informant found his son in injured condition in a ditch on the west of the house of Prof. Nagendra Prasad Singh. He also saw accused Garib Nath coming out of the ditch with a dagger in his hand. On *hulla* being heard, the local residents started gathering and, with their help, the injured was taken to Sadar Hospital, where the doctor declared the injured dead.

(ii) Upon lodging of the *fardbeyan* of Gopal Singh Bhagalpuri as informant, Town P.S. Case No. 51 of 1991, dated 03.05.1991, was registered for the offence under Section 460 and 302 of the Indian Penal Code.

(iii) During investigation, inquest was held over Krishna Kumar's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, a *charge sheet* was laid, under Sections 460 and 302 of the Indian Penal Code, against accused Garib Nath.

3. At the trial, charges were framed, under Sections 302 and 460 of the Indian Penal Code against accused Garib Nath. To the charges so framed, the accused pleaded not guilty.

4. In support of their case, prosecution examined altogether 11 (eleven) witnesses including Dr. Mumtaz Ahmad (PW 7), who had conducted the *post mortem* examination on the dead body of Krishna Kumar @ Kishun Jee.

5. Accused Garib Nath 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 offences, which were alleged to have been committed by him, his case being that of denial. No evidence was adduced by the defence.

6. Having, however, found the accused guilty of the offences charged with, learned trial Court convicted him

accordingly and passed sentence against him as mentioned above.

7. Aggrieved by his conviction and the sentence passed against him, the accused, as a convicted person, has preferred this appeal.

8. We have heard Mr. Prabhat Kumar, learned Counsel, appearing on behalf of the appellant, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

9. Before we consider the case of the defence, it will be relevant to notice the evidence upon which the prosecution has built its case to bring home the charges under Sections 302 and 460 of the Indian Penal Code.

10. In order to substantiate its case that it is the appellant, who had killed Krishna Kumar, the prosecution has examined a number of witnesses, namely, P.Ws. 1, 2, 3, 4, 5, 6, 8 and 9.

11. Before we examine the oral evidence, it will be apposite to examine the evidence of Dr. Mumtaz Ahmad, tutor of Forensic Department of S.K.M. College, Muzaffarpur, who had conducted *post mortem* examination on the dead body of the said deceased at 11.30 A.M. on 03.05.1991. The doctor found as many as 10 incised injuries on the person of the deceased. These injuries were as follows:

"(i) Incised wound over the centre of the

nose 2"x 0.5"x whole thickness of the skin.

(ii) Incised wound over the Rt. Side of the nose extending downward to the right side of the upper lip 2.2" x 0.25" x whole thickness of the nasal wall and half thickness of the upper lip. This wound was found extended to Rt. Side of face from its middle 0.8"x0.25"x half thickness of the muscle.

(iii) Seven incised wounds over different parts of chest and abdomen as detailed below:

(a) 1"x0.5"x0.5" over upper part of chest on right side.

(b) 1.5"x0.5"x muscle deep 1" below right nipple.

(c) 2.5"x1"x internal cavity deep in epigastric region.

(d) 3.5"x1.3"x muscle deep below right side of thoracic cage.

(e) 3.5"x1.5"x internal cavity deep below left side of thoracic cage.

(f) 1"x1"x muscle deep on left side 2" below thoracic cage.

(g) 6.2"x0.25"x muscle deep 1.5" below wound no. 3(f)."

12. In the opinion of the doctor (PW 7), all the injuries were *ante mortem* in nature, which were caused by knife and that the cause of death was shock and haemorrhage as a result of above mentioned injuries, the time elapsed since death being 6 to 18 hours.

13. It is apparent from the *post mortem* report (Ext.2) and the evidence of doctor that as many as 10 blows were inflicted on the person of the deceased, all by sharp cutting weapons. It is also the prosecution's case that the deceased was done to death by knife.

14. It appears from the evidence of P.W.10 that the accused was arrested from his house on the very next day of the occurrence. The investigating officer has deposed that he had noticed, at the house of the accused, that the accused had tried to wash away blood from his shirt. What is, however, extremely important to note in this regard is that the said shirt of the accused was not serologically examined and there is, therefore, no supporting medical evidence on record that the shirt of the accused ever bore any stains of blood far less stains of blood of the said deceased. This apart, no seizure of *fattha* was proved by producing the *fattha* and its seizure. Though the investigating officer claims to have seized the *fattha* from near the window of the informant.

15. The core issue is: whether the prosecution has been able to establish the charges against the appellants beyond all reasonable doubts?

16. We would like to point out, at the very outset, that there is no eye witness to the occurrence, which fact has not been disputed by the prosecution. Even the informant (P.W. 8), who, immediately, followed his son, who was, in turn, chasing the thief, did not see the actual commission of the occurrence. There are some witnesses, who followed the informant and deceased Krishna Kumar, who was chasing the accused in the intervening night of 2/3.05.1991.

17. There is another set of witnesses, who have claimed to have seen accused Garib Nath Sah running from west of the ditch, where the deceased Krishna Kumar was lying in injured condition with a blood stained dagger.

18. The third circumstance comprises of witness, Sunita Kumari, sister of the deceased, on whose alarm, the deceased woke up and chased accused Garib Nath Sah, who was attempting to commit theft with a *fattha*.

19. As noticed in preceding paragraphs, the first set of witnesses comprises of P.W.2 (Lallan Prasad Srivastava), P.W. 4 (Hanuman Prasad), P.W. 5 (Sanjay Kumar Singh) and P.W. 8 (Gopal Singh Bhalpuri).

20. We would first take up the evidence of P.W. 8, the informant itself. This witness, in his evidence, has



reiterated that Sunita Kumari and other children were sleeping in the room situated on the south of his house and deceased Krishna Kumar was sleeping in the room situated just by side of the said room. He woke up on the alarm raised by children, particularly, alarm raised by Krishna Kumar, who was saying 'Chor-Chor' (i.e., thief-thief) and also was saying "Babu jee, Garib Nathwa Ba" (i.e., Babuji he is Garib Nath). He reiterated the prosecution's version that he followed his son, who chased the accused, and identified the accused in the electric light. This witness has also deposed that on hearing *halla*, people from neighbourhood, such as, P.Ws. 2, 4 and 5 also followed him and as soon as they reached west of the house of Prof. Nagendra Prasad Singh, they saw the accused coming out from the ditch with knife and fleeing towards east. It is in the evidence of the informant (PW 8) that he found his son lying in the ditch.

21. P.W. 2, P.W. 4 and P.W. 5 have supported the prosecution's version in *toto* that on hearing *halla* of 'Chor-Chor', they followed the informant and saw the accused fleeing with dagger, while he (accused) was being chased by Krishna Kumar. They, too, in fact claimed to have seen the accused in the electric light. They claims to have seen the accused coming out of the ditch with blood stained knife, where the son of the informant was found lying in injured condition.

22. The next set of witnesses comprises of P.W. 1,



P.W. 3 and P.W. 6, who had seen the accused fleeing away with blood stained knife from west to east from near the ditch, where the injured was found lying. They have stated that while they were returning after enjoying *Quawali* and as soon as they reached north of Mahila Shilp Kala Bhavan, they saw accused Garib Nath Sah fleeing with blood stained knife from west to east. They claim to have recognized the accused in the light of electric bulb.

23. P.W. 9 Sunita Kumari, has deposed that she woke up on the sound created in the process of committing theft with the help of *fattha*. It is in her evidence that in the electric light of her room, she saw the face of the thief and, on her *halla*, her brother woke up, who ran after the thief. She has deposed that she learnt from her father that her brother died on account of knife injuries caused by the thief, Garib Nath Sah. She identified the accused in the dock as the person, who was stealing clothes through window.

24. On the other hand, the case of the defence is that the prosecution's case is too improbable to believe. Learned counsel for the appellant submits that there was hardly any time and it was impossible for an accused to hurl as many as 10 blows on the deceased, when he was being chased by half a dozen persons close on his heels. It is next submitted, on behalf of the defence, that more and more people came to the place of occurrence after seeing *Quawali*

and it was, in such a situation, impossible for the accused to make good his escape. Further-more, the prosecution has failed to explain the presence of another Lungi in the ditch, which indicates that the occurrence took place at a different manner.

25. We have heard the counsel for the parties. Admittedly, there is no eye witness to the occurrence. The defence case is that if a thief is chased by more than half a dozen persons close on his heels, it would be impossible for any one to strike as many as at 10 blows with kinfe on the body of the said deceased, while the accused was being chased and still would manage to escape.

26. We find considerable force in the submissions so made on behalf of the appellant inasmuch as we notice that according to the evidence, led by the prosecution, while Krishna Kumar was chasing the accused, it was initially Krishna Kumar's father, Gopal Singh Bhagalpuri (PW 8), who started running after his son, while his son was chasing the accused and, while they were running, more and more people joined them. In such circumstances, we find it impossible for a person, placed in a situation as the accused was placed, to have stabbed as many as ten times with the help of his knife and yet managing to make good his escape. The learned counsel for the appellant has substance in his submission that in the situation in which the accused was placed, his first



inclination would be to save his life by running away instead of trying to attack and kill Krishna Kumar, who was already chasing the accused. This apart, when so many people were chasing the accused, it was impossible for the accused to run away. There is no explanation as to why the accused was not chased to his house. More importantly, there was no explanation as to how a *lungi* was found in the ditch, where Krishna Kumar was found injured, when it is not a case that *lungi* belonged to either the accused or the said injured.

27. Moreover, none has been named in the F.I.R. as witness, though quite a number of them have claimed to have converged near the ditch along with the informant, where the deceased was found lying in injured condition. Surprisingly, no one has deposed that the deceased had cried, while he was being stabbed. Further-more, the prosecution has not been able to explain how the *Lungi* was found in the ditch, which also creates doubts about the manner of occurrence.

28. Situated thus, we are of the view that there are various missing chains in the present case, which have not been established beyond all reasonable doubt. Situated thus, we are clearly of the view that in the facts and attending circumstances of the present case, the accused appellant deserves to be accorded, at least, benefit of doubt.

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

30. Since the accused-appellant is on bail, his bail bonds are hereby cancelled and his sureties shall stand discharged.

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

(Samarendra Pratap Singh, J.)

I. A. Ansari, J: **I agree.**

(I. A. Ansari, J.)

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