

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (DB) No.495 of 1992**

Arising Out of P.S.Case No. -47 Year- 1990 Thana –Sanjhauri District- SASARAM (ROHTAS)

-
1. Ram Nath Chaudhary son of Runa Choudhary,
 2. Dhanpal Chaudhary,
 3. Dharmendra Chaudhary alias Langra &
 4. Praduman Chaudhary, all sons of Ram Nath Chaudhary, all resident of village-Bagaiya, P.S. Sanjhauri, District-Rohtas, Bihar

.... Appellants

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : None.

For the Respondent : Sushri Shashi Bala Verma, APP.

CORAM: HONOURABLE MR. JUSTICE DHARNIDHAR JHA**and****HONOURABLE MR. JUSTICE GOPAL PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DHARNIDHAR JHA)**Date: 17-08-2015**

The four appellants were put on trial by the learned 6th Additional Sessions Judge, Rohtas at Sasaram by being charged with committing offence under Section 302/34 of the Indian Penal Code in Sessions Trial No.149 of 1991. They were held guilty of committing the offence by judgment dated 30.11.1992 and after being heard on sentence on the same day, each of them was directed to suffer rigorous imprisonment for life. The appellant Praduman Chaudhary had distinctly been charged under Section 302 of the Indian Penal Code and he was convicted of committing that offence and he was also directed to suffer rigorous imprisonment for life. The four

appellants have preferred the present appeal to challenge the correctness of the judgment of conviction and order of sentence passed upon them.

2. P.W.4 Bhikhaynia Devi, the mother of the deceased gave her fardbeyan to P.W.7 S.I. Ambika Singh, who was the Officer-in-Charge of Sanjhauli police station on 19.09.1990 stating that her son deceased Raj Kumar Chaudhary had gone out of his house on to the *Darwaza* of the accused persons for indulging into gambling with the convicts. It was stated that he had come back at about 9 A.M. and had slept inside his house. Before he had come back to his house, there had been some dispute between the deceased Raj Kumar Chaudhary and the appellants on payment of Rs.5/- which was demanded by the accused persons. Not getting the payment from the deceased Raj Kumar Chaudhary, it was stated that the deceased had been threatened by the accused persons of reaping the consequences in the next morning.

3. The informant stated that her son had woke up from his bed at about 8 A.M. and as soon as he had gone out of his house on to the *Darwaza*, the appellants had put him down on the ground and appellants Praduman Chaudhary, Dhanpal Chaudhary and accused Mukuya Chaudhary had pressed his neck and killed him. On the cries of the deceased Raj Kumar Chaudhary, the informant

claimed having come out of her house to see the incident and stated that after killing her son, the accused persons had run out of the place towards their respective houses.

4. P.W.7 S.I. Ambika Singh would state in his evidence that he had picked up a rumour while he was present at his police station about the incidence and, as such, he after making an entry into the Station Diary left for village-Bagaiya in order to verifying the truthfulness of the information. He came to the house of P.W.4 Bhikhaynia Devi, the mother of the deceased, and recorded her statement which was marked Ext-2. He stated that he recorded the statements of witnesses and held inquest upon the dead body of deceased Raj Kumar Chaudhary by preparing the inquest report by carbon process, the copy of the inquest report has been marked Ext-4. The investigating officer inspected the place of occurrence which was the vacant land situated north of the *Darwaza* of the deceased Raj Kumar Chaudhary and south of south facing *Darwaza* of appellant Ram Nath Chaudhary which was a strip of land about 10-12 ft. in width and there was a *Nala* running south of the *Darwaza* of the accused from east to west. There were three *Chowkies* placed in the *Darwaja* of the accused persons which had a room facing west and a *Chowki* was also placed inside that room. Another *Chowki* was placed east of the *Darwaza* and it was the place as per P.W.7 S.I. Ambika

Singh where the deceased Raj Kumar Chaudhary had been strangled to death.

P.W.7 S.I. Ambika Singh prepared the dead body *Challan* and sent the dead body for postmortem examination to Sadar Hospital, Sasaram and then he recorded the further statement of the informant along with the statements of other witnesses. He obtained the postmortem examination report and handed over the charge of investigation to S.I. Surendra Prasad Singh who had submitted the chargesheet in the case.

5. The defence of the appellants was that during gambling the deceased Raj Kumar Chaudhary had incurred severe monetary loss and on account of being frustrated, he committed suicide.

6. Seven witnesses were examined by the prosecution, out of whom, P.W.1 Rajadhari Choudhary was a witness who had stated that while coming to the house of the informant Bhikhaynia Devi to meet her, he found the accused persons running away towards east and when he reached the house of P.W.4 Bhikhaynia Devi, his sister, P.W.4 stated that her son had been strangled to death by the accused persons. He looked at his nephew and found him dead. He was stating that P.W.7 had arrived after an hour or so of the incident who recorded the statement of his sister and he signed the statement

as a witness.

7. Thus, what appears from the evidence of P.W.1 Rajadhari Chaudhary is that he was not an eye witness to the real part of the occurrence and he had merely seen the accused persons running away towards east. We want to point out that the basic prosecution case was not that the accused persons had run away to any particular direction, rather the informant had stated that they had run from the place of occurrence after committing murder of the deceased Raj Kumar Chaudhary into their respective houses. There are other defects in the evidence of P.W.1 which we will point out a little later. P.W.2 Doma Choudhary was also not an eye witness to the occurrence and he stated that on being attracted to the place of occurrence by *Hulla* which was emanating from there, he went there to find none present there. P.W.4 Bhikhaynia Devi, the informant of the case, stated to him that it was the accused persons who had killed her son on account of reasons of gambling while the father of the deceased Gopi Chaudhary (P.W.5) did not state any thing. He was stating in cross-examination that he could not say as to how the deceased Raj Kumar Chaudhary had died or who had killed him. It was further stated by P.W.2 that he had never given any statement to the police and thus the evidence of P.W.2 appears inadmissible for the reason of being never questioned by the police. P.W.3 Parash Nath Chaudhary was tendered in cross-



examination. P.W.4 Bhikhaynia Devi was the mother of the deceased Raj Kumar Chaudhary and the informant of the case while P.W.5 Gopi Choudhary was the father of the deceased and the husband of the informant P.W.4. It is very well recorded by the learned trial Judge in paragraph-4 of the cross-examination of P.W.5 that when the witness was shown ten fingers of his hands by the counsel during cross-examination of P.W.5 from a distance of about 5 ft. and was asked to point out the number of fingers, the witness showed his inability by saying that he could not see things from that distance. It further appears from the evidence of P.W.5 in paragraph-2 that he had also claimed being an eye witness to the occurrence. P.W.6 Dr. Devendra Tripathi was the doctor who had held postmortem examination on the dead body of deceased Raj Kumar Chaudhary and had prepared the postmortem examination report (Ext-1). P.W.7 Ambika Singh was the investigation officer of the case.

8. The learned trial Judge held that P.Ws.4 and 5 were competent witnesses and that their evidence had brought the charge home to the accused persons.

9. No one had appeared, on the appeal being called out for hearing and we have heard Sushri Shashi Bala Verma, learned Additional Public Prosecutor on behalf of the State and had ourselves gone through the evidence of the witnesses. We have already noted



that P.W.1 and P.W.2 were not eye witnesses to the occurrence and the evidence of P.W.2 could not be of any use as he has himself admitted having not been questioned ever by the police. So far as P.W.1 Rajadhari Chaudhary is concerned, after we had considered his claim of coming to the house of his sister P.W.4 Bhikhaynia Devi, when he was told by her about the manner of killing of her son Raj Kumar Chaudhary, we scrutinized the evidence of P.W.4, the informant of the case so as to finding out as to whether there could be any support to that particular claim of P.W.1 either directly from the evidence of P.W.4 or from the circumstances appearing from her evidence. During her cross-examination, P.W.4 stated that after she had come out of her house, after hearing the sounds of her son on account of being killed, she saw that her son had been strangled to death by appellant Praduman Chaudhary whereafter she started crying after falling on the dead body and her husband was also weeping and wailing with her. This evidence has come in paragraph -12 of P.W.4. We did not have any reason to doubt the above statement of P.W.4 that she had wept and wailed on the dead body of her son after she had seen and found her son killed. This is the most natural conduct of a mother that she could be weeping inconsolably after falling on the dead body of her son who had been murdered in her presence as soon as she had appeared out of her house. It would have been such a scene



that the mother of the deceased could not have been in a position to make any statement to P.W.1 as to how her son had been strangled to death by the accused persons. Besides, we do not see any particular reason assigned by P.W.1 as to why he should come so early on the day to the house of his sister. What was the urgency which had compelled P.W.1 to move out of his house so early in the morning to arrive at the scene of occurrence so as to becoming a witness to some part of the witness or being a witness who had learnt from P.W.4 about the details of her son. It is true that P.w.1 had signed the fardbeyan but the fardbeyan was recorded after three hours of the occurrence and those three hours could be big space of time during which the witness could have come after learning about the murder of his nephew and, as such, mere signing of document Ext-2, the fardbeyan does not lend credibility to his claim of seeing some part of the occurrence while the accused persons were running away from there or getting news from P.W.2. Even after P.W.4 had stated some facts as regards the manner of occurrence, we do not attach much value to that part of the statement of P.W.1 inasmuch as we could be accepting him as a mere chance witness whose evidence is always dangerous to use in upholding the judgment of conviction.

We have already noted while referring to the evidence of P.W.2 Doma Chaudhary that he had neither seen the occurrence nor



he had seen any accused running away from the place of occurrence and he had stated that P.W.4 had narrated to him the manner of occurrence. But in cross-examination, the witness stated that he was never questioned by the police. On account of having not given any statement to the police, we take it on the safer side of appreciation of the evidence by eliminating from our considering the evidence of P.W.2.

10. So far as the evidence of P.W.4 is concerned, that evidence appears coming from an honest person who had made a true and proper disclosure of the facts which were material in unfurling of the prosecution narration. P.W.4 stated that while she was picking up utensils so as to assemble them at the place meant for washing them, she could pick up the giggling and gagging voice of the deceased Raj Kumar Chaudhary, she rushed out of her house leaving aside the utensils and as soon as she appeared at the entry of the house, she found that the appellants had put her son down and they had immobilized him and appellant Praduman Chaudhary was pressing his neck who ultimately succeeded in strangulating him to death. P.W.4 Bhikhaynia Devi stated that during the night previous to the incident, her son had gone out of her house to gamble with the accused persons on their *Darwaza* and he had come back at about 3 A.M. when he had slept inside his house. Her transparency in being



forthright could be appreciated from the fact that she stated that her son had turned into a habitual gambler and she used to reason with him to desist from continuing in the bad act but she had not so far succeeded in it. During that connection she had stated that she was not the master of the house rather it was her husband who used to keep accounts of cash and other things. P.W.4 further stated that the *Daroga*, i.e., P.W.7 Ambika Singh had appeared at the scene of occurrence from anywhere and she did not know as to how he had come to know about the occurrence having taken place and it was P.W.7 himself who had disclosed his identities to P.W.4 Bhikhaynia Devi and who recorded her fardbeyan (Ext-1). P.W.4 also stated that her husband was very well present at the *Darwaza* and as soon as she saw her son killed, she and her husband started weeping and wailing at the dead body when the *Daroga* had arrived there.

11. From perusal of the evidence of P.W.4 Bhikhaynia Devi, we do not find any fact appearing in her deposition which could render her an untruthfulness witness. There was no personal reasons for P.W.4 to impute allegations against the appellants falsely. She was a close neighbour having her houses opposite the houses of the appellants. The houses of P.W.4 and those of the accused persons were separated only by a vacant land of 12 ft. width. There does not appear any particular reason for which the informant could be telling

lies. Her honesty and fairness appears to such an extent that she was forthright in pointing out that her husband could not see during night and he had also difficulties in seeing properly during day time.

12. P.W.5 Gopi Chaudhary, the husband of the informant had also claimed himself being an eye witness to the occurrence and had stated that he had seen his son being put on the ground by the appellants and thereafter, being strangled to death in a concerted manner as clearly stated by his wife P.W.4. While referring to his evidence, we had noted in the earlier part of the present judgment that the counsel who was cross-examining him in the trial Court was showing ten fingers to him and asking him to point out the number of the fingers when he had failed to properly tell the numbers. But when he was asked to identify the accused persons, he was properly identifying them. The murder had been committed at 8 A.M. on 19.09.1990 when the sun could have been almost on full bloom and the space must have been lighted sufficiently due to sun light so as to facilitating the vision of a man even if his vision was a bit tardy as appears from the evidence of P.W.4 and 5 themselves. It could never have been difficult for P.W.5 Gopi Chaudhary to pick up the identities of such close fellows, like, the appellants who were living with him and who could have been acquainted with him, like, the palm of his hands. Even if the vision of P.W.5 was impaired as

appears from the evidence of himself as also from his wife during the night time. The identification of the accused clearly tells us that he could have seen and identified the accused persons.

13. Moreover while considering the evidence of P.W.4, what we could find out was that her evidence was blemishless. She was forthrightly an honest lady. She was fair as well and she was conceding that her husband was afflicted by some vision impairment and he was not able to see during night. She did not have any particular reason to implicate the accused persons as the relationship between the families were quite cordial. Moreover, the incident was not a result of any acrimony or ill-will which could have existed between the families rather it was the result of the personal grudge of the appellants towards the deceased Raj Kumar Chaudhary which they had carried in their hearts on account of not getting the payment of Rs.5/- from the deceased who had undisputed gambled with them during the night of 19.09.1990. The evidence of P.W.4 appears bearing a very strong hinge of truth and we, after perusing her evidence, placed our faith in her who appeared to us telling the truth.

14. The manner of occurrence was that the deceased Raj Kumar Chaudhary was put on the ground and he was strangled to death by using hands. While considering the evidence of P.W.6 Dr. Devendra Tripathi who had performed autopsy on the dead body of



deceased Raj Kumar Chaudhary, we found the doctor telling the trial Court that he had found an ante-mortem swelling measuring 4"x 3" on the front of neck with multiple linear abrasions measuring from 1" to ¼", placed irregularly on the neck. On dissection of the neck, P.W.6 had found blood under the skin. Thyroid bone was found fractured contained blood. What appears from the consideration of the evidence of P.W.6 is that the deceased had been caught on his neck and the pressing of the neck by fingers had caused the multiple abrasion measuring from 1" to ¼" and those abrasions were linear which further indicated that the deceased had put up resistance at the time of his strangulation. P.W.4, the mother of the deceased, was put a question as to whether her son had eaten anything after he had woke up and what appears from her evidence in paragraph-9 is that she stated that he had not even washed his mouth after he got out of his bed and as soon as he had gone out of his house, he had been caught by the accused persons to be killed. That fact stated by P.W.4 during her deposition appears corroborated by the evidence of P.W.6, the doctor who did not find either undigested or semi-digested food in the stomach of the deceased and, as such, what appears that stomach of the deceased was empty after he had awoken from his bed.

15. The defence that the deceased had committed suicide out of frustration due to losing while gambling appears not

probable as the medical evidence does not suggest that the fatal injury could have been caused to commission of suicide, which more prominently appears fit to be rejected as the length and width of the mark of neck was overruling the theory.

16. After having considered the evidence of witnesses, what we find is that the learned trial Judge had appropriately reached the finding that the deceased Raj Kumar Chaudhary had been strangled to death by the accused persons and, as such, had justifiably convicted the appellants.

17. However, what we find from the very judgment itself is that the appellant Dharmendra Chaudhary alias Langra was aged about 19 years on 06.11.1992 and the appellant Praduman Chaudhary was aged about 20 years on that day. These facts have been recorded by the learned trial Judge himself not only in his judgment but also while recording the statements of the above named two appellants under Section 313 Cr.P.C. The occurrence is dated 19.09.1990 and, as such, appellant Dharmendra Chaudhary alias Langra could be below 18 years and appellant Praduman Chaudhary could be below 20 years of age. In fact, the recording of statement recorded under Section 313 Cr.P.C. in respect of appellant Dharmendra Chaudhary alias Langra indicates as if that appellant had pointed out his age as 15 years while appellant Praduman Chaudhary



had claimed himself to be 17 years on 06.11.1992, when his statement under Section 313 Cr.P.C. was recorded by the learned trial Judge. While appellant Dharmendra Chaudhary alias Langra could be below 18 years of age on the basis of record made by the learned trial Judge, the appellant Praduman Chaudhary could be somewhere at the margin of being 18 years. As such, after having upheld their conviction, we direct the Juvenile Justice Board, Rohtas at Sasaram, to hold an enquiry as regards their age. We direct that the informant of the case if she is alive and available, must be given a notice to contest the enquiry under Section 49 of the Juvenile Justice (Care & Protection) Act, 2000 and she also be allowed to adduce evidence in enquiry. As regards other appellants, namely, Ram Nath Chaudhary and Dhanpal Chaudhary, we after having upheld their conviction also uphold the sentence which was passed upon them.

18. With the above direction in the light of Section 7A of the Juvenile Justice (Care & Protection) Act, 2000, we dismiss the appeal in its entirety. The learned Juvenile Justice Board, Rohtas at Sasaram shall, after holding an enquiry on the age of the two appellants, would proceed as per Sections 15 and 16 of the Juvenile Justice (Care & Protection) Act, 2000. The appeal stands dismissed.

19. The appellants are on bail. Their bail bonds are hereby cancelled. Those appellants whose enquiry is to be taken up by

the Board shall be produced before the above Board and it shall be within the fitness of the jurisdiction of the Board to proceed to admit them to bail in the light of Section 12 of the said Act.

(Dharnidhar Jha, J)

(Gopal Prasad, J)

Brajesh Kr./mrl.

U		T	
---	--	---	--