

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.619 of 2009

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(AGAINST THE JUDGMENT OF CONVICTION, DATED, 6TH MAY, 2009, AND THE ORDER OF SENTENCE, DATED, 8TH MAY, 2009, PASSED BY SHRI PREM CHANDRA GUPTA, 1ST ADDITIONAL SESSIONS JUDGE, VAISHALI, AT HAJIPUR, IN SESSIONS TRIAL NO. 286 OF 2007, ARISING OUT OF VAISHALI POLICE STATION CASE NO. 48 OF 2006, CORRESPONDING TO G.R.NO.2424 OF 2006).

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Anant Ram alias Nathu Ram, son of late Sitaram Ravidas, resident of village Sorahatha, Police Station Vaishali (Belsar), District Vaishali

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance:

For the Appellant : None

For the Respondent: Mr. Ajay Mishra, APP

Mrs. Fauzia Shakil, Advocate as Amicus Curiae

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

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

Date: 08-04-2015

By the judgment, dated 06.05.2009, passed, in Sessions Trial No. 286 of 2007, by learned 1st Additional Sessions Judge, Vaishali at Hajipur, the accused-appellant, Anant Ram @ Nathu Ram, stands convicted under Section 302 of the Indian Penal Code. In consequence of his conviction, the accused-appellant stands, under the order, dated 08.05.2009,

sentenced to suffer imprisonment for life and fine of Rs. 10,000/- and, in default of payment of fine, further undergo rigorous imprisonment for a period of six months.

2. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:

(i) Deceased Sita Ram Ravidas was father of the accused Anant Ram @ Nathu Ram. On 30.03.2006, at about 10.00 PM, having taken their meals, when the informant, Muneshwari Devi (PW7) and her husband Sita Ram Ravidas (since deceased), were sleeping in their room, they heard the sound of their daughter-in-law, Sanju Devi (PW1), being abused and assaulted by her husband, Anant Ram @ Nathu Ram (i.e., the accused-appellant), at about 12.30 AM. On hearing *hulla*, so raised, the informant and her husband came out of the room and her husband, Sita Ram Ravidas, objected to his son, accused Anant Ram @ Nathu Ram, abusing and beating his wife. On being so admonished, the accused started abusing his father. Informant's husband, then, asked his son, Anant Ram @ Nathu Ram, to get out of the house. Enraged by the fact that his father had asked him to get out of his house, accused Anant Ram @ Nathu Ram took out a knife lying in the house and stabbed, by means of the knife, on the left side of the chest of his father and also gave a blow with the said knife on the left wrist of his father. Having been so stabbed, Sita

Ram Ravidas died on the spot.

(ii) The said deceased was carried to Belsar Outpost (Vaishali), where informant, Muneshwari Devi, widow of the said deceased, lodged oral information with the police, which was reduced into writing in the form of her *fardbeyan* and treating the said *fardbeyan* as the First Information Report, Vaishali (Belsar O.P.) Police Station Case No.48 of 2006, under Section 302 of the Indian Penal Code, was registered, on 31.03.2006, against accused Anant Ram @ Nathu Ram.

(iii) During investigation, inquest was held over Sita Ram Ravidas's dead body, which was also subjected to post mortem examination, and, on completion of investigation, a *charge sheet* was laid, under Section 302 of the Indian Penal Code, against the accused-appellant.

3. At the trial, when a charge, under Section 302 of the Indian Penal Code, was framed against the present accused-appellant, Anant Ram @ Nathu Ram, he pleaded not guilty thereto.

4. in support of its case prosecution examined altogether 10 (ten witnesses). The accused was, then, examined under Section 313 (1)(b) of the Code of Criminal Procedure, 1973, wherein 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.

5. Having, however, found the accused guilty of the offence, which he stood charged with, learned trial Court convicted him accordingly and passed sentence against him as mentioned above.

6. Aggrieved by his conviction and the sentence, which has been passed against him, the accused has preferred this appeal.

7. We have heard Mrs. Fauzia Shakil, learned Counsel, appearing as *Amicus Curiae*, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

8. In order to correctly appreciate the evidence, which has been adduced by the prosecution against the accused-appellant, it is imperative to take note of the evidence of Dr. Amresh Kumar (PW 9), who had, admittedly, conducted, on 31.03.2006, *post mortem* examination on Sita Ram Ravidas's dead body and found the following *ante mortem* injuries:

"(i) *Incised wound over left costal margin at epigastrium measuring 3" x ½"cutting costal cartilage and communicating with thoracic cavity, bleeding;*

(ii) Small incised wound at left wrist measuring 1" x ¼"x skin deep;

On dissection-Head

The scalp cravial bones meninges and brain matter were intact.

Thorax and Abdomen:

The injury No.1 was cutting through the costal cartilage at epigastrium. There was an incised wound involving pericardium and right vertical of heart. The incised wound of right vertical measuring 1½" x 4" causing massive haemothorax. The lungs are intact. The stomach contains about 100 ml pre-digested food material. The loops of small and large gut contains gas and fical matter. The liver, spleen and kidneys were intact. The viscerae were pale. The bladder was empty."

9. In the opinion of the doctor (PW 9), death was caused due to shock and haemorrhage, resulting from the injuries sustained on heart by the said deceased, the injuries have been caused by a sharp and pointed knife.

10. Neither the finding of the doctor nor his opinion, with regard to cause of death of the said deceased and/or his opinion with regard to the nature of weapon, which might have been used, for causing assault on, and death of, the said deceased, were disputed either by the prosecution or by the defence. This apart, we, too, do not notice anything inherently incorrect or improbable in the evidence given by the doctor (PW 9).

11. Situated thus, it becomes clear that Sita Ram Ravidas's death was *homicidal* in nature.

12. The question, however, remains : whether the accused-appellant was one, who has caused the death of Sita Ram Ravidas and thereby committed the offence of *murder* punishable under Section 302 of the Indian Penal Code?

13. In order to prove its case, the prosecution examined apart from Sanju Devi (PW 1) and Muneshwari Devi (PW 7), as many as 8 (eight) witnesses.

14. While considering the present appeal, it needs to be noted that the fact that Sita Ram Ravidas was stabbed to death in his house is not in dispute. It is also not in dispute that at the time, when the said deceased suffered stab wound and died, there were present, according to the prosecution, only two witnesses, namely, PW 7 Muneshwari, who is wife of the deceased and mother of the accused-appellant and, PW 1 (Sanju Devi), who is wife of the accused-appellant.

15. Coming to the evidence of PW 1 (Sanju Devi), wife of the accused-appellant, we notice that, according to her evidence, deceased Sita Ram Ravidas was her father-in-law. She claims that she does not know anything about the occurrence, which resulted into her father-in-law's death.

16. Close on the heels of the evidence of her daughter-in-law, Sanju Devi (PW 1), PW 7, Muneshwar Devi, widow of the said deceased, has deposed that on the night of

the occurrence, she was sleeping with her husband, Sita Ram Ravidas, they woke up on hearing altercation between her son, Anant Ram @ Nathu Ram, and daughter-in-law, Sanju Devi, and, then, her husband asked their son, Anant Ram @ Nathu Ram, to leave the house. It is the further evidence of PW 7 that she does not know as to who had killed her husband or how he died.

17. Though the prosecution declared PW 7 hostile and cross-examined her, she (PW 7) has denied, in her cross-examination by the prosecution, that she had stated before the police that her son had stabbed on the chest and wrist of her husband by means of knife.

18. Although the investigating officer (PW 8) has confirmed that the statement, which is attributed to have been made by PW 7, had, indeed, been made by her before the police (PW 8), the fact remains that the said statement, recorded during investigation, was the previous statement of PW 7 and could not have, therefore, been regarded as the substantive evidence. It is also trite that the said statement of PW 7 could have, at best, been used for contradicting her evidence and not for corroborating her.

19. Coupled with the above, there is no dispute before us that there was no evidence, either direct or circumstantial, showing that it was the accused-appellant and none else, who had put to death his father, Sita Ram Ravidas.



20. In fact, we are aghast in the manner the learned trial Court has proceeded and made the previous statement of PW 2 as the sole basis of conviction of the accused-appellant without realizing that the previous statement, recorded under Section 161 of the Code of Criminal Procedure, could not have been used as her substantive evidence and could have, at best, been used for the purpose of contradicting the evidence of PW 7. We reiterate that a statement, under Section 161 of the Code of Criminal Procedure, is not substantive piece of evidence. In view of the proviso to sub-section (1) of Section 162 of the Code of Criminal Procedure, such a statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso. (see : ***Rajendra Singh v. State of U.P. and Another, (2007) 7 SCC 378***)

21. Relying on, and depending upon, the previous statement of PW 7, conviction of the accused-appellant could not have legally been founded, when PW 7 had clearly deposed that she was not aware as to how her husband had died.

22. What crystallizes from the above discussion is that none of the incriminating circumstances, which the learned trial Court has relied upon, could be proved legally and convincingly. In the face of such a state of evidence on record, the accused-appellant ought to have been acquitted.

23. 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.

24. As the accused-appellant, namely, Anant Ram @ Nathu Ram, is in custody, he is directed to be released forthwith if not required to be detained in connection with any other case.

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

26. 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.)

A.I./Mkr-
N.A.F.R.

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