

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.103 of 1992

Against the judgment of conviction and order of sentence, both dated 30.04.1992 passed by Shri Dinesh Narain Pathak, Ist Additional Sessions Judge, Madhepura, in Sessions Case No. 26 of 1989.

Chamak Lal Gupta @ Chamak Lal, son of late Hira Lal Gupta, resident of village Biraili, Bazar, P.S. Madhepura, District Madhepura.

.... Appellant

Versus

State of Bihar

.... Respondent

Appearance :

For the Appellant : M/s Shashidhar Jha and
Sunil Kumar No.5, Advocates. .

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

**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 28-01-2015

The sole appellant has preferred this appeal against the judgment of conviction and order of sentence, both dated 30.04.1992, passed by the Ist Additional Sessions Judge, Madhepura, in Sessions Case No. 26 of 1989, whereby the sole appellant has been convicted for an offence punishable under Section 302 of the Indian Penal Code (for short 'I.P.C.') and sentenced to undergo life imprisonment for allegedly murdering a child Arun Gupta, aged about one year, on 16.12.1985 in village Biraili Bazar, Police Station and District



Madhepura. It may be noted that considering the gruesome and merciless killing of a child, appellant's repeated bail applications were rejected by this Court and ultimately he was granted bail only after appellant had been in jail for almost nine years. It is a tragedy. This Court for eight years rejected his bail applications on four or five occasions without looking into the records. Presumably only on the allegation that he had killed a child of one year, he was let to rot in jail. As we would show the accusation itself being false and useless, the appellant has been made to suffer.

3. The prosecution case is based upon a fardbeyan given by Umesh Prasad Gupta (P.W.4), the father of the deceased, himself to the Police at Madhepura Police Station on 17.12.1985 at about 11.30 am alleging that he and his family members were having quarrel with the appellant and his family members for last three days in respect of a land. First for two days the ladies were quarreling. Then on 16.12.1985 at about 7 pm, when the informant was sitting near a fire with his one year infant in his lap, the appellant is said to have come and started abusing. This escalated into an altercation between the two when the appellant pushed the informant to the ground. The informant fell with the child. It is alleged that the appellant then picked up the child and throttled him to death. This was allegedly seen by Shree Lal Sah (P.W.3), Panna Lal Prasad

Gupta (P.W.2) and Bhola Gupta (C.W.3) and one Kaleshwar Ram, who had not been examined in court.

4. Upon the said information being given at 11.30 am on 17.12.1985 with regard to altercation that took place on 16.12.1985 at 7 pm, the case was immediately registered. The dead body of the infant was handed over to the Police, which was sent for post-mortem. The post-mortem was conducted between 3 pm to 3.45 pm on 17.12.1985. The case was then investigated and first a charge-sheet was filed showing the appellant as absconder. A protest petition was filed by the informant and, thereafter, apparently the matter was entrusted to the C.I.D. for investigation and a report by the C.I.D. was also submitted clearly exonerating the appellant of all charges. Notwithstanding the same, the appellant was then arrested and a second charge-sheet was filed. The Chief Judicial Magistrate took cognizance against the appellant for offence punishable under Section 302 I.P.C. and committed the case to the court of session. Charges were framed under section 302 I.P.C., to which the appellant pleaded not guilty. He was tried and having been found guilty was convicted and sentenced as stated above. Hence this appeal.

5. First the prosecution examined eight witnesses, out of whom three witnesses totally turned hostile. Court then summoned six witnesses, out of whom most of the court witnesses are formal

witnesses, but the alleged eye witness turned hostile. The defence had examined one witness, namely, C. P. Paswan, who was Inspector, C.I.D. and was entrusted with the enquiry in the matter. He had submitted his report exonerating the appellant from the charges.

6. Learned counsel for the appellant submitted that a bare perusal of the post-mortem report would show that the same has not been properly proved and the allegations would show that the post-mortem report does not at all support the allegations. We would see that learned counsel for the appellant is correct. He then submits that even the witnesses have fairly said that the theory of appellant trying to kill the child has been manufactured taking advantage of the death of the infant, which we would also accept. We must, at this point, note that originally we were of the opinion that at best even if the allegation was accepted to be true, it would be a case punishable under Section 304, Part II I.P.C. and considering also that the appellant had already been in custody for over 9 years, we would not go into other aspect of the matter, but on close examination we are of the opinion that materials on record do not justify the conviction of the appellant at all. The reasons for saying so are obvious. The first thing to be noted is that as per the fardbeyan of the informant Umesh Prasad Gupta (P.W.4), the child was throttled to death by the appellant at about 7 pm on 16.12.1985. The report of this incident



was given to the Police, which is about 10 kms away only on next day at 11.30 am by going to the Police Station and depositing dead body of the infant along with the fardbeyan. The only explanation was that it had become late in the night. This is not correct because we have the evidence of one of the witnesses, who clearly deposed that there being lot of quarrels between the two i.e. the informant and the appellant and altercation having taken place, the Sarpanch had come and a panchayati was held in the night of 16.12.1985, wherein the appellant was also called, but the dispute could not be resolved. In fact, no effort was made to inform the Police at all. It was only after reconciliation efforts having failed, the next day at 11.30 am, information was given to the Police and body was handed over to the Police. This creates a doubt upon the version of the prosecution.

7. The next thing, we would notice, is the post-mortem report. Unfortunately, the Doctor has not been examined. The post-mortem report has been proved by an Advocate Clerk. Defence does not take objection thereto, rather the defence heavily relied upon the post-mortem report for three basic reasons. The post-mortem report negates any suggestion of death by throttling, thus, falsifying the very F.I.R. and the consistent evidence of the prosecution that the appellant throttled the child to death. Trachea is not injured much less broken. There is no sign of asphyxia. The entire genesis of the

prosecution is false.

8. The second important revelation from the post-mortem report is with regard to the time noted. It is 36 hours and coupled with this, it is the finding of the Doctor that there is neither rigor mortis, nor any sign of decomposition. Those three things clearly establish that the infant had died much earlier for other reasons and not by throttling. If we co-relate it with other evidence on record being evidence of the prosecution witnesses and the Court witness, they have deposed that infant had actually died on 15.12.1985 and not on 16.12.1985 as alleged in the fardbeyan.

9. Apart from the prosecution and court witnesses as stated above, we have one defence witness, who is C. P. Paswan, Inspector of C.I.D., who had enquired into the matter as a part of C.I.D. enquiry and he has also found that, in fact, the infant had died due to other causes on 15.12.1985 and it was falsely alleged that he had been killed on 16.12.1985. He had submitted a report to the Chief Judicial Magistrate as well in this regard, copy of which is marked as Ext. 'A' and the trial court found the original letter on the records of the Chief Judicial Magistrate, but for some curious reason refused to accept it as evidence.

10. The third is the cause of death. The post-mortem report clearly shows that the child had no external injuries whatsoever.



Upon dissection of the scalp, it was found that front of the skull was fractured with haemorrhage in the brain tissue. The eyelids had turned blue. There was blood clot under the scalp. Thus, the post-mortem report, by no stretch of imagination, suggests the death of the child by strangulation. The answer is this. It is obvious that the child had fallen and hit his forehead, which gradually led to internal bleeding as a consequence of skull fracture leading to his death, thus, totally falsifying the prosecution story. These three things clearly emanate out of the post-mortem report itself as brought on record by the prosecution and falsify the entire prosecution story. Absence of rigor mortis suggests that the death had taken place more than 24 hours earlier. Considering the period of occurrence being mid-winter, the rigor mortis lasted a bit longer. That matches with the post-mortem report that the death had taken place in about 36 hours and not 12 hours as was alleged. In our view, this is enough to acquit the appellants.

11. I would like to refer to the evidence of the witnesses as well. The evidences are not consistent. Firstly P.W.1 is a formal witness, who proved the fardbeyan. P.W. 2 is the only alleged eye witness apart from the informant. Though P.W. 3 Shree Lal Sah is shown to be a witness, he turns out to be a hearsay witness and is the brother of the informant. Similar is the case of P.W.5 Mishri Lal

Gupta, who also turns out to be a hearsay witness and is the brother of the informant. The rest three of the prosecution witnesses have turned hostile, two of them specifically stating that the death of the child had taken place not on 16.12.1985 but on 15.12.1985 itself and that too because of other reasons not attributable to the appellant.

12. When we come to the court witnesses, situation does not improve. One of the Court witnesses exaggerated that the appellant beaten up the child by fists and kicks, which was never the case of any of the prosecution witnesses, or the informant himself. From the evidence of the informant (P.W.4), it is clear that the appellant and informant are not only neighbours sharing a common Angan, but they are close relations. In fact, they are first cousins. They had been quarreling over a piece of land, which was sold by the informant's father to the appellant. There had been a panchayati in the night of 16.12.1985, but neither the Sarpach, nor other Panches were ever examined either by the Police, or in the Court as a witness. In such a situation, it is difficult for us to hold that the prosecution has established the guilt of the appellant beyond reasonable doubts. Doubts are numerous. Being so, we have no hesitation in allowing the appeal and setting aside the judgment and order of conviction and sentence.

13. In the result, this appeal is allowed, the judgment of

conviction and order of sentence passed by the trial court against the appellant are set aside and the appellant is acquitted of the charge levelled against him. He is discharged from the liability of the bail bonds.

(Navaniti Prasad Singh, J)

MPS/-

(Anjana Mishra, J)

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