

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.3 of 2010

Arising Out of P.S. Case No. -32 Year- 2001 Thana –Belsand District- SITAMARHI

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1. Nand Kishore Sah S/O Late Ramashish Sah
2. Sukh Chain Sah S/O Late Ramashish Sah
3. Rajkali Devi W/O Nand Kishore Sah
All are R/O Vill.- Kansar, P.S.- Belsand, Distt.- Sitamarhi

.... Appellants

Versus

The State of Bihar

.... opp. party Respondent

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Appearance :

For the Appellant/s : Mr. Barun Kumar Choudhary
Mr. Lalit Narain Jha
Smt. Kshem Sharma

For the Respondent/s : Ms. Shashi Bala Verma

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 15-05-2015

The three appellants were put on trial by the learned Presiding Officer, Fast Track Court No. I, Sitamarhi in Sessions Trial No.58 of 2004/20 of 2009 after being charged with commission of offence under Section 302/34 Indian Penal Code. The learned trial Judge handed out the judgment of conviction to the three appellants on the 3rd of December, 2009 by holding them guilty of committing the offence under Section 302 read with 34 Indian Penal Code. The appellants were heard under Section 235 Cr.P.C. on quantum of sentence to be inflicted upon each of them and after such hearing each of the three appellants was directed to suffer rigorous imprisonment for life as also to pay a fine of Rs.5,000/-, each else to suffer rigorous

imprisonment for a further period of one year each. The appellants have jointly preferred the present appeal to challenge the judgment of conviction and order of sentence.

2. Deceased Ram Sewak Sah was the brother of the informant Ram Lal Sah (P.W.10). As appears from the evidence as also from the fardbeyan Ext-1 of P.W.10, he was friendly to appellant Nand Kishore Sah and they were on regular visiting terms to their respective houses. It was stated that in the evening on 30.05.2001 at about 7 P.M., appellant Nand Kishore Sah took the deceased Ram Sewak Sah to his house, but subsequently Ram Somari Devi, examined as P.W.7 and who happened to be the aunt of the deceased, came shouting to the house of the informant that the cries of deceased Ram Sewak Sah was emanating from the house of appellant Nand Kishore Sah.

3. The informant stated that he along with P.W.7 Ram Somari Devi, on reaching the house of the appellant Nand Kishore Sah, found that the deceased was shouting for help by crying out “Bachchao, Bachchao” and after a little while, the three appellants emerged from there and seen running away. During that course, the informant claimed to have found appellant Nand Kishore Sah carrying a chhura and the said appellant attempted to give a blow to the informant, but he withdrew from the line of attack and that facilitated the accused persons to make good their escape.

4. The informant had stated that in spite of being friendly to the deceased, the appellant Nand Kishore Sah used to create rifts often between him and his brother, but the two brothers used to mend the relationship.

5. It has not been stated in the FIR as to whether the informant had gone inside the house of the appellant Nand Kishore Sah to see the dead body, but what we find stated by the investigating officer P.W.12 S.I. Md. Qasim Khan is that after recording the fardbeyan of P.W.10, he took up the investigation of the case and during that course, he held inquest upon the dead body after finding it inside the house of appellant Nand Kishore Sah. This fact is indicated also from the inquest report Ext-2 in its column no.3. The investigating officer had also stated that he found the dead body lying on the cot and there was copious blood found beneath the cot. The cot was placed in the western room of the house which was facing east. Thus, the evidence of the investigating officer clearly indicated that the deceased Ram Sewak Sah had been done to death inside a room of the house which belonged to appellant Nand Kishore Sah.

6. During the course of the trial, the prosecution examined as many as 12 witnesses to bring the charges home against the appellants. However, only two witnesses P.W.1 Janak Sah and P.W.10 Ram Lal Sah appeared supporting the charges in their evidence and that too only during the examination-in-chief. The other



witnesses, like, P.Ws.2,3,4,5,6 and 7 did not support the charges or any part of the prosecution story and it was the reason that the learned Public Prosecutor conducting the case cross-examined those witnesses with the permission of the Court. So far as P.Ws.8 and 9 were concerned, they were formal witnesses having signed the seizure memo prepared in respect of the seizure of the blood and other articles found at the place of occurrence. But there hostility is also apparent from their evidence when they refused to acknowledge that they had been associated with the search and seizure of the house and rather stated that they were made to sign plain papers by the investigating officer. P.W.12, as we have just noted, was the investigating officer and P.W.11 Dr. Shiv Kumar Thakur had held postmortem examination on the dead body of deceased Ram Sewak Sah and had issued the report Ext-4.

7. The learned trial Judge considering the evidence of the witnesses convicted the appellants as pointed out at the very outset of the present judgment.

8. We were taken through the evidence of the witnesses especially that of P.W.1 and P.W.10 by Shri Barun Kumar Choudhary, the learned counsel appearing on behalf of the appellants. While P.W.1 Janak Sah had supported his story that his brother Ram Sewak Sah had been taken away from his house by appellant Nand Kishore Sah to his house at 7 P.M. on 30.05.2001 and his aunt P.W.7

Ram Somari Devi came rushing to him to tell him that the cries of Ram Sewak Sah was emanating from the house of appellant Nand Kishore Sah. He along with his father P.W.10 as also the aunt Ram Somari Devi started towards the house of appellant Nand Kishore Sah to find that the three appellants were emerging from the house of appellant Nand Kishore Sah and at that time appellant Nand Kishore Sah was carrying a *chhura* which was blood stained. But, when we came to consider the cross-examination part of the evidence of P.W.1, what we found was that in spite of having supported his story in his examination-in-chief, he was very cleverly stating facts which were demolishing the effect of the evidence in the examination-in-chief. The witness stated that he had not seen any body killing his brother and he did not also know as to how his brother was killed. This fact was stated by P.W.10 in paragraph-5 of cross-examination. In paragraph-6, the witness stated that it was evening time and quite dark so much so that he could not exactly identify the appellant Nand Kishore Sah. The further statement which appeared in the same paragraph-6 of P.W.10 was that he saw appellant Nand Kishore Sah at a place which was about 15-20 *lagga* away from his house, each *laggas* measuring 6 and ½ cubits and further that there were many other houses which were intervening the distance in between the house of the appellants and the place where he was seen by P.W.10. We have already pointed out with reference to inquest report that the



dead body was found inside a room which was lying on a cot and the investigating officer had found copious blood beneath the cot, but the evidence of P.W.10 was contrary to that documentary evidence when he was stating that the dead body was found lying in an open space which was by the side of a gali or a road going towards south and it was probably by the side of the house of appellant Nand Kishore Sah.

9. Thus, what we find from the evidence of P.W.10 is that in spite of having first stated that he had identified appellant Nand Kishore Sah quite clearly and had also seen him carrying the blood stained *Chura*, during his cross-examination, he made his evidence in examination-in-chief suspect when he was pointing out that on account of darkness enveloping the area at 7.00 P.M. on the 30th of May, 2001 the vision was as impossible as to facilitate the identification of the accused. Not only that, he had increased the distance between himself and the place where the accused had been seen to such an extent that it may not be possible for any one to really identify any one. The distance was extended up to 20 laggas and that is some where around 120 cubits and which when measured in feet terms was more than 180 feet. There are the reasons we were observing that P.W.10 had very cleverly demolished the effect of his evidence in cross-examination. We record our anguish after perusing the evidence of P.W.10 that the learned Public Prosecutor who was



conducting the prosecution in the court below in spite of being present through out the hearing of the witness, was so indifferent to these facts which were brought so cleverly on the record by the cross-examining lawyer that he missed identifying his duties as a prosecutor. It was expected of him that he should have recalled the witness for re-examination and ought to have sought the permission of the Court to declare the witness hostile and during cross-examination by him should have put those facts which were stated by the witnesses to diminish the evidence of witness in examination-in-chief by suggesting to him that these facts had never been stated by him in his examination-in-chief as also before the investigating officer.

10. As regards the evidence of P.W.1 what we find is that as per the evidence of P.W.10 or as per the very initial prosecution document, the fardbeyan, no one was an eye witness to the occurrence. This P.W.1 Janak Sah as against that basic factual position was projecting himself as an eye witness to the occurrence. He had stated that hearing the Hulla emerging from the courtyard of appellant Nand Kishore Sah, he went there to find that deceased Ram Sewak Sah his son was lying in a cot and appellant Rajkali Devi had caught his hands while appellant Sukh Chain Sah had caught the other hand of the deceased. Appellant Nand Kishore Sah welded multiple *chhura* blows to the deceased on his abdomen, thighs, chest and killed



him. The cross-examining lawyer had put certain questions to him as to whether he had stated these facts of blows with *chhura* being given to the deceased, his son to his other son, the informant Ramlal Sah, before he had set out for the police station and stated that he had not. P.W.1 also stated that he did not go to the police station himself and further stated that the investigating officer had come there at the place of occurrence and the investigation officer had reached the village in the night itself and had in fact questioned his son Ramlal Sah but he never questioned P.W.1 in connection with the occurrence. P.W.1 was suggested in para-12 of his evidence that he had made a statement to the investigating officer that at the time of occurrence that he along with the family members, like, the informant and others were conveyed about the murder of Ram Sewak Sah and he ran to the house of the appellant. This witness was also cross-examined to the above statements by being suggested that he had not made those statements that he had seen appellant Rajkali Devi catching hold one of the hands of the deceased while the other was being held by appellant Sukh Chain Sah when appellant Nand Kishore Sah had dealt multiple blows to the deceased and the investigating officer (P.W.12) corroborated in paragraph-6 of his evidence that those facts were not stated by P.W.1. Thus, what we find is that P.W.1 was giving evidence against the basic prosecution claim that no one had really seen the occurrence. If he had really seen the occurrence as he



claimed to have, then he was supposed to have divulged those details of occurrence to his son Ramlal Sah when he was giving the fardbeyan and he had not at that time, then at least he should have divulged those details to the investigating officer to whom he had the occasion of the meeting at the village as appears in paragraphs-7 and 8 of his deposition. The witness appears adding embellishment to the prosecution narration and appears attempting to make a serious departure from its basic prosecution story which was contained in Ext-1, the fardbeyan of P.W.10 as we have just pointed out, those facts regarding the witness being an eye witness were not stated by him to the investigating officer P.W.12. We find P.W.1 not a trustworthy witness. On account of being the father of the deceased, we are of the opinion, that the witness was exaggerating the facts by making statements in respect of the occurrence which indeed had never been seen by him.

11. The other defect in the prosecution case was that Ram Somari Devi who was the first person to come shouting to the informant to narrate to him that she had picked up the cries or shouts of the deceased emanating from the house of appellant Nand Kishore Sah and which information had moved the informant and the lady from their houses to go to the house of the appellants, had in fact not supported that part of the story the informant stated that he was not present at the village. The other witnesses, like, Sumina Devi who

happened to be the wife of the deceased other related persons to the deceased and appear also not supporting the charges and that was the reason that P.Ws.2,3,4,5,6 and 7 were declared hostile. The nature of the offence which is available to us is so shaky and infirm as not to raise any concrete inference so as to enabling us to sustain the judgment of conviction and order of sentence. In the nature of evidence which is available on record, we are of the opinion that the charge has not been proved.

12. In the result, the appeal succeeds and the same is allowed. The three appellants are acquitted of charge they had been held guilty of. Appellant Nand Kishore Sah is in custody, he shall be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J)

(Ahsanuddin Amanullah, J)

Brajesh Kr./-Saif.

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