

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.958 of 2008

Arising Out of Saraiya PS.Case No. -233 of 1992, District- MUZAFFARPUR, giving rise to
Sessions Trial No. 101 of 1994, G.R. No. 1393 of 1992

Chandeshwar Rai, son of late Ram Ashish Rai, resident of Village Dokara, P.S.
Saraiya, District Muzaffarpur

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Shri Ashhar Mustafa, Advocate (Amicus Curiae).

Shr. Arun Kumar, Advocate (Amicus Curiae).

For the Respondent : Sushri Shashi Bala Verma, A.P.P.

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 12-03-2015

The solitary appellant Chandeshwar Rai was put on trial after being indicted of committing an offence punishable under Section 302 of the Indian Penal Code by the learned 1st Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 101 of 1994. It appears that the judgment in the case was delivered by the learned Presiding Officer, Fast Track Court-5, Muzaffarpur on 5.8.2008 by which the appellant was held guilty of committing the offence he had been charged with. The appellant was heard on sentence on 8.8.2008

and was directed to suffer rigorous imprisonment for life and also to pay a fine of Rs. 3,000/- and in case of default in making payment of fine was directed to suffer simple imprisonment for one month.

2. The appellant has chosen to question the above said judgment of conviction and order of sentence passed upon him by the learned trial Judge through the present appeal.

3. The prosecution case, as per the F.I.R.(Ext.-3), was that at about 7.30 P.M. on 3.12.1992, this appellant intruded into the house of the informant Ram Lal Rai (P.W.7) hurling abuses upon him. When the informant and his family members raised objection to the behaviour of the appellant, he intensified his act of abusing the informant. The commotion, generated by the abusive shouts of the appellant attracted the mother of the informant (not examined) and his sister, namely, Phula Devi. Both attempted to push the appellant out of their courtyard, during which curse, it is alleged, this appellant dealt multiple blows with chhura to Phula Devi who cried and fell down injured. The appellant started running away from there.

4. The informant bandaged the injury of Phula Devi so as to shift her to the hospital and, accordingly, asked his younger brother to ready the bullock-cart for the purpose. In the meantime, the villagers who had probably been attracted to the scene of incident followed the appellant and arrested him. The informant stated that he

put his injured sister and the appellant on the same bullock-cart and started for the hospital, but Phula Devi breathed her last on way to the hospital.

5. The informant came to lodge the report and also handed over the appellant, who had been apprehended by the villagers, to the Officer-in-charge of Saraiya Police Station in the district of Muzaffarpur.

6. The Investigating Officer has not been examined. However, what we find from the record is that after having registered the F.I.R., the Investigating Officer took up the investigation of the case and during that course held inquest upon the dead body of the deceased and prepared the inquest report (Ext.1). There does not appear any doubt that the dead body was sent for post-mortem examination and the same was held by Dr. Manoranjan Kumar Srivastava (P.W.8) who prepared the post-mortem examination report (Ext.2). It also appears from the record that after close of the investigation the appellant was sent up for trial and that ended in the impugned judgment of conviction and order of sentence.

7. The defence of the appellant was that of innocence and non-participation. It was also suggested by him to the witnesses that the informant, in fact, was carrying on an illicit relationship with the wife of the appellant which had been the subject matter of some

Panchayati and due to that particular reason the appellant had been implicated falsely in this case.

8. Eleven witnesses were examined by the prosecution so as to bring the charge home to the appellant, out of whom P.Ws. 1,2,9 and 10 were declared hostile. P.W.11 was a witness of formal character who had proved the formal F.I.R. Out of the remaining witnesses, P.W. 3 Manohar Rai was the nephew of the informant whereas P.W.4 Budhu Rai was the full brother of the informant (P.W.7). P.W..5 Gangajal Devi was the Bhabhi of the informant and she was, probably, married to his cousin. P.W.6 Gopal Rai was the father of the informant and the deceased and P.W. 7 Ram Lal Rai was the brother of the deceased and the informant of the case. P.Ws. 3,4,5,6 and 7 had supported the prosecution charge in their own way

9. As regards the defence, a solitary witness Shankar Rai was examined to state that Phula Devi fell on a sharp pointed peg when she had gone to fix it and she received the injury and she succumbed to it.

10. During course of argument Shri Ashhar Mustafa, learned Amicus Curiae appearing on behalf of the appellant referred to us the evidence of P.Ws. 3 and 4 and submitted that in spite of having supported the prosecution case in their respective examination-in-chief, the two witnesses during their cross examination had stated



that, in fact, the present appellant had attempted a blow upon the informant Ram Lal Rai who withdrew from the line of attack and the blow incidentally fell upon the deceased who received the fatal injury. It was submitted, as such, that the act of the appellant was neither intentional nor it could be said within his knowledge and, as such, conviction of the appellant under Section 302 of the Indian Penal Code was not maintainable in the facts of the case. As regards the evidence of Gangajal Devi (P.W5), it was criticized by submitting that she stated that she was cooking meal in her Angan and thus she could not have seen the occurrence. Submission was that the mother of the informant, who could be the most important and competent person to depose on the manner of occurrence was not examined and, as such, there were loopholes in the prosecution case as regards proof of charge and the benefit must accrue to the appellant.

11. Sushri Shashi Bala Verma, learned Additional Public Prosecutor was submitting that P.Ws. 3 and 4 might have chosen to minimize the evidence by making statements so as to give some reason to argue that intention or knowledge was lacking on the part of the prosecution and the informant (P.W.7) might have also gone in favour of he appellant, but the fact remains that the thread of consistency running through the prosecution evidence, as regards the appellant being the assailant of the deceased, does not get disrupted or

disturbed. It was contended further that there could be some reason to hold that an offence under Section 302 of the Indian Penal Code may not be constituted and the facts may bring it to the ambit of an offence from Section 302 to Section 304 Part II of the India Penal Code.

12. P.W.5 Gangajal Devi has stated that she was married to the cousin of the informant and her house was separate from that of the informant, but there was a common courtyard. During course of her evidence she stated in paragraph 8 that she was cooking meal on an oven which was situated in Angan. Thus, the submission of the learned counsel that she may not be a witness to the real part of the occurrence, to us, appears not acceptable. If she was cooking meal in the courtyard, as appears the case from her evidence, she could have very well seen the appellant's intrusion into the courtyard hurling abuses upon the informant and his family members and further could have seen him being drafted away from the Angan by the mother and sister of the deceased. However, while considering her evidence, we found that she might have not given out the facts showing her not as an eye witness, but we could notice the facts by virtue of evidence of the witness when she stated the facts in paragraphs 12,13 and 17. It appears that she exited from the Angan a little later and by that time Phula Devi had been stabbed and when she reached near Phula Devi she found an injury in her chest. At any rate, what appears stated by



the witness and which appears acceptable from her evidence is that the deceased was stabbed and there was an incident of hurling abuses on the part of this appellant and P.W. 7 had been a witness to that part also. The witness further stated that the appellant had been drafted away from the Angan and thereafter the incident had occurred. So, there is strong co-relating evidence which appears from the evidence of P.W.5 that the preceding incident of hurling abuses and further incident of stabbing Phula Devi had occurred on that day.

13. P.Ws. 3 and 4, namely, Manohar Rai and Budhi Rai had given consistent evidence in their examination-in-chief as regards the prosecution case on all its material aspects, like, the appellant intruded into the Angan of the informant hurling abuses when the deceased and others had asked him to go out of the Angan and further that the deceased had been stabbed by the appellant with a Chhura. However, the two witnesses had minimized their evidence in their examination-in-chief by stating some facts in their cross examination. P.W. 3 in paragraphs 12 to 14 had stated that, in fact, this appellant had attempted a Chhura blow upon the informant Ram Lal Rai which had, incidentally, fallen upon the deceased and she happened to be injured. Likewise, P.W. 4 had also stated in paragraph 11 of his cross examination the same fact when he stated that the attempted blow with Chhura by this appellant fell upon Phula Devi as she came in the



line of attack accidentally and all of a sudden.. We are of the view that these evidences were of course detrimental as regards the prosecution case, but the evidence of these two witnesses is pointing out to one fact that Chhura blow given by this appellant had indeed injured Phula Devi. The initial intention of giving the blow might have been spoken to by P.Ws.3 and 4 but we are not going to be distracted as regards the value of evidence of these two witnesses in their examination-in-chief as regards initial prosecution story. Similarly, when we considered the evidence of P.W.7, the informant, we found him supporting his case in examination-in chief and then again using hammer and tong to demolish his own case when he was stating in his cross-examination in paragraph 8 that he had not indeed seen this appellant stabbing his sister Phula Devi and subsequently, he came to learn about the incident that it was this appellant who had stabbed his sister. The curious aspect of the matter was that in spite of such demolition of his own case by P.W. 7 in his evidence the learned Public Prosecutor was as hostile to his case as the witness was. It was distressing that the learned Judge who was recording the evidence of the witness was as detached towards his duty as not to do even the duty of an umpire or referee and was undermining the rules of the game set down by Sections 145 and 157 of the Evidence Act. It was expected of the learned trial Judge to pay some attention to the part of the evidence of

the witness and to put some questions as he was back-tracking from his statement made on oath on the same and similar aspect of the case. We do not approve of the manner in which the witness was allowed to go scot-free after perjuring himself. The learned Judge was assigned some duty under Sections 349/351 Cr.P.C. for summarily putting the witness to trial for intentionally making false statement on oath.

14. At any rate, we find certain reasons coming out of the evidence of P.W. 7 as to why he was so hostile to his own case. Probably, the reason was that he was having some illicit relationship with the wife of the appellant and he had, probably, had some pressures exerted upon him so as to giving up the case in order to purchase peace from that side of his social responsibility. But, we accept the evidence of the witness in his examination-in-chief that it was this appellant who had stabbed the deceased Phula Devi.

15. The father of the deceased Gopal Rai(P.W.6) is consistent as regards the prosecution case and we do not see any reason as to why he could come to depose against the appellant. He was the head of the family and nothing has been shown to us from his evidence or from the record that his presence at the scene of occurrence could be doubtful.

16. An attempt was made by the learned Amicus Curiae to challenge the veracity of the witness on the score that no



independent person had come to support the prosecution case and only the family members of the deceased had deposed in the case. But that submission appears out of context in the present case because as soon as an incident had taken place inside the courtyard of the house or out side it in the precincts of the family house, then no other person than the family members of the informant or deceased could be more competent to depose as a witness. Their presence appears to us, natural. Moreover, we have not been shown any particular reason as to why some innocent person, like, the present appellant could be implicated by exonerating the real culprit of the offence.

17. It was contended by learned Amicus Curiae that the father of the deceased Gopal Rai has stated in paragraph 20 that the appellant had dealt three blows to the deceased. It was contended that the medical evidence appears contrary to the evidence of he witness. P.W. 8 Dr. Manorajan Kumr Srivastava who had held post-mortem examination on the dead body had found a solitary incised and penetrating wound measuring 1 ½” X ½” up to heart deep on the 5th intercostals space on mid clavicular line. We see many reasons for this conflict in the medical and oral evidence. The act of the appellant was as atrocious as to intrude into the courtyard of the house of the informant hurling abuses and breaching privacy of the family members and they had to put him out of the Angan and the deceased



who had to deliver a child, as per the evidence of P.W.5, was escorting him out of the Angan, and the appellant was as annoyed as to wield the blow with Chhura to her. The situation must have created a huge confusion into the minds of the family members, besides given them severe shock who were witnesses to such deleterious behaviour coming from the appellant and in such a state of mind, one could not have been in a position to count every blow which had been given or a solitary blow which had been wielded. Such conflicts are not unnatural especially when Gopal Rai, P.W. 6, a man of sixty years when confronted with such a serious situation, firstly, of being encroached upon his privacy by intruding into his Angan by the appellant and thereafter his daughter who had to deliver a child being seen stabbed. A man of sixty years who had lost his daughter, under the circumstances we have just noticed, should not have been as calm and collected as to reproduce facts we sitting in court room could presume someone to do. We do not see the conflict as apparent as was attempted to be made by the learned Amicus Curiae.

18. Then, an issue which was raised was that the appellant had no intention of stabbing the lady. He had come to abuse the informant and if there was any intent in his mind it could have been of hurling abuses for any particular reason upon the informant. The submission was also as appears borne out on account of that reason



that while intruding into the Angan and abusing the informant the appellant did not act intentionally and when he was being pushed out of the Angan up to *Darbaja*, that he had a sudden flare up in his mind on account of being pushed out after being escorted by the lady deceased Phula Devi and he was as provoked as to bring out the Chhura and to give a blow to the deceased. The doctor, we have noted, had not stated that the blow was sufficient in the ordinary course of nature to cause death. There may not be an intention at any stage of the incident which could be attributed to the appellant as a result of which he had given the blow to the deceased. Indeed the weapon was Chhura, a dangerous weapon and also the part of the body hit was shoulder and heart. But what we could conclude is, it might be as a consequence of the act of being pushed out. Thus, the circumstances show that the appellant was never intending to kill the deceased. We find the submission on the part of the appellant fit to be uphold that it may not be a case under Section 302 of the Indian Penal Code rather it could be an offence punishable under Section 304 Part II of the Penal Code.

19. Accordingly, we modify the judgment of conviction and hold the appellant guilty of committing offence under Section 304 Part II of the India Penal Code.

20. This brings us to consider as to what sentence could

be passed upon the appellant.

21. It was, pointed out that the appellant had remained in custody for about 8 and ½ years. We find the period which had been spent by the appellant in prison almost sufficient as regards the sentence which could be inflicted upon him. However, in view of the fact that the appellant had served out the sentence sufficiently almost, as indicated above, we want to enhance the quantum of fine which could be imposed upon the appellant from Rs. 3,000/- to Rs. 50,000/- with further direction that if the fine, is realized, then the same be paid to the children of the deceased in equal part on proper identification by the authorities. In case the appellant does not pay the fine, then he shall have to suffer rigorous imprisonment for additional period of two years.

22. With the above modification in the judgment of conviction and order of sentence, we dismiss the appeal.

(Dharnidhar Jha, J)

(Aditya Kumar Trivedi, J)

Kanth/-

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