

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.578 of 2010

Arising Out of P.S.Case No. 36 Year- 2003Thana –Nardiganj District- NAWADA

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Pintu @ Madhu Lal son of Shri Mahanand @ Naresh @ Madho Lal, resident of
village-Naseeb Chak, P.S.Barbiga, District-Sheikhpura.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Smt. Rina Sinha, Amicus Curiae.
For the Respondent : Shri Dilip Kumar Sinha, APP.

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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: 24-06-2015

The present appeal is directed against the judgment dated 04.03.2008 and order of sentence dated 05.03.2008 passed by the learned Presiding Officer, Fast Track Court No.1, Nawadah in Sessions Trial No.351 of 2003/304/2005 by which the sole appellant was held guilty of committing offences under Sections 302 and 324 Indian Penal Code and after being heard on sentence, was directed to suffer rigorous imprisonment for life as also for one year under the two respective counts. The sentences passed upon the appellant were directed to run concurrently.

2. The prosecution was launched by P.W.8 Krishna Nandan Lal who happened to be the father of the deceased Diwakar Lal. In his fardbeyan Ext-5 recorded by S.I. Abhay Kumar Singh of



Nardiganj police station, P.W.8 stated that while he was at his house his son Diwakar Lal came running and fell down. He was bleeding from his chest and he stated to his father P.W.8 that while he had gone towards the river to attend to the call of nature, there was some quarrel on the point of sharing tobacco with this appellant Pintu @ Madhu Lal and he stabbed the deceased Diwakar Lal as also one Tinku Lal (P.W.5) who also came running from the river side and fell injured and bleeding.

3. The informant stated that he and others picked up the two injured and brought them to Nawada hospital, but his son Diwakar Lal died in the way and P.W.5 Tinku Lal was admitted for treatment.

4. It appears from the evidence of P.W.10 S.I. Abhay Kumar Singh that he picked up a rumour that some one had been stabbed in village-Krishnapuri Parpa came to the village of incidence and to the house of the informant to record the fardbeyan (Ext-5) and on that basis took up the investigation himself. He stated that he found the two injured in the Nardiganj market while being transported by a vehicle for treatment to Sadar hospital, Nawada. P.W.10 himself came to the hospital and recorded the fardbeyan of the informant and took up the investigation. He held inquest on the dead body of deceased Diwakar Lal. The inquest report has been marked Ext-4. He handed over the dead body to the hospital for postmortem

examination and inspected the place of occurrence and after closing the investigation, sent up the solitary appellant for his trial which ended in the impugned judgment.

5. Smt. Rina Sinha, learned Amicus Curiae appearing on behalf of the appellant took us through the evidence of witnesses and submitted that there was no eye witness to the occurrence except P.W.5 Tinku Lal who was also injured in the same incident. Submission was that there was no motive for the appellant to stab the deceased and the evidence of witnesses does not inspire confidence. Submission further was that as per the FIR and as per the evidence of the informant P.W.8 Krishna Nandan Lal deceased Diwakar Lal had come running and had fallen at his house while the witnesses stated that he had fallen near a *Nala* in the very village and this vital conflict renders the prosecution story doubtful. Smt Sinha also submitted that of course, P.W.5 Tinku Lal had claimed being injured but no doctor was produced nor any injury report was brought on record.

6. Shri Dilip Kumar Sinha, learned Additional Public Prosecutor appearing on behalf of the State also referred to the evidence of witnesses to submit that the eye witness account has been given by P.W.5 who was also undisputedly injured and the father of the deceased along with P.W.6 Sharwan Lal and others have stated that deceased Diwakar Lal was speaking and he told his father that it was this appellant who had stabbed him. The support to the oral

evidence was coming from the medical evidence, and as such, the judgment of conviction does not appear suffering from any illegality.

7. Out of ten witnesses, P.W.1 Ajit Lal was a witness to inquest. P.W.2 Baidyanath Lal had claimed to have seen the two injured lying near a *Nala* in an injured condition and he also stated that it was this appellant who was named by the two injured as the person who had assaulted them. P.W.3 Akhilesh Prasad was not an eye witness with P.W.2 Baidyanath Lal. Both of them had stated that they had not seen this appellant stabbing either the deceased or P.W.5 Tinku Lal, the injured. However, they stated that they had found the deceased and P.W.5 Tinku Lal injured. Both of them pointed out to them that it was this appellant who had stabbed them. Similar was the evidence of P.W.4 Vinod Kumar, P.W.6 Sharwan Lal and P.W.7 Mahesh Lal.

8. Likewise, the informant of the case also stated that while sitting at his *Darwaza*, his son Diwakar Lal came running in an injured condition and fell down. He was bleeding. On enquiry, he told him that it was this appellant who had stabbed him. P.W.5 Tinku Lal also came running and fell down in the same condition and he was bleeding from the abdomen and he also stated that it was this appellant who had stabbed him as well. P.W.8 Krishna Nandan Lal, thereafter arranged for the shifting of the two injured to hospital but his son unfortunately died on way to the hospital while P.W.5 Tinku

Lal was admitted there who was subsequently referred to Patna for better treatment.

9. The most important witness is P.W.5 Tinku Lal who was undeniably injured and was injured in the same incident. P.W.5 Tinku Lal was related to the informant Krishna Nandan Lal on account of being the son of his *Sala* P.W.5 Tinku Lal had stated that deceased Diwakar Lal was his *Phuphera* brother and that the deceased Diwakar Lal was the son of the sister of his father. He had come to participate in a marriage ceremony and both of them had gone to attend the call of nature towards the river where there was altercation with this appellant on sharing tobacco and this appellant pulled out a *Chhura* and stabbed the deceased Diwakar Lal and P.W.5 Tinku Lal both.

10. It is true, that the doctor has not been examined to say that P.W.5 Tinku Lal was bearing an injury, but while considering the evidence of prosecution, we did not find any resistance or denial from the defence that Tinku Lal was injured. Witnesses who were examined and who were not eye witnesses even, were also deposing to the fact that Tinku Lal was found bearing bleeding injuries and both Tinku Lal and deceased Diwakar Lal were shifted to the hospital and Diwakar Lal died on way to the hospital while P.W.5 Tinku Lal was referred to Patna Medical College Hospital, Patna for treatment. Thus, we do not have any doubt in accepting the prosecution story



that deceased Diwakar Lal and P.W.5 Tinku Lal were both injured in the same incident and the non-examination of the doctor who had attended on the injuries of Tinku Lal does not make much difference. The evidence of Tinku Lal inspires our confidence and his evidence gets corroboration from other witnesses who had seen him and the deceased Diwakar Lal bearing bleeding injuries. P.W.5 Tinku Lal was the solitary eye witness who had seen the incidence of his own stabbing as also of the deceased Diwakar Lal. He was injured and, as such, his evidence bears a ring of credibility on that account also. There is an eye witness account in addition the account of P.W.5. The other witnesses, like, P.W.8 Krishna Nandan Lal stated that on enquiry deceased Diwakar Lal stated to him and others that it was this appellant who had stabbed him. Section 32 of the Evidence Act makes the above statement of the deceased to his father admissible as it was pointing out the cause of his death and the circumstances of the transaction which had resulted in his death. Thus, the statement of P.W.8 Krishna Nandan Lal and others that deceased Diwakar Lal had stated to them that it was this appellant who had stabbed him is yet another strong evidence against this appellant which established beyond doubt that the appellant was the author of the injury which was found by P.W.9 Dr. Jitendra Kumar on the dead body of the deceased.

11. Section 313 Cr.P.C. provides for the questioning of



the accused generally on the circumstances appearing against him from the evidence after the prosecution evidence had been closed. Sub-section 4 (2)Section 313 reads that the answers given by the accused might be taken into consideration in such enquiry or trial. Thus, while we were examining the records, we found that in answer to a very definite question which was put to him by the learned trial Judge, the appellant was stating that it was he who had stabbed the deceased as also P.W.5. Taking that statement of the accused in consideration, we find that it is yet another material fact which comes to reinforce the evidence led by the prosecution during the trial which further establishes the culpability of the appellant as regards stabbing the deceased Diwakar Lal.

12. In the result, what we find is that the learned trial Judge, while holding the appellant guilty of committing the murder of deceased Diwakar Lal was perfectly reading the evidence and raising the correct inference.

13. So far as the conviction of the appellant Pintu @ Madhu Lal under Section 324 Indian Penal Code is concerned, it is true that the doctor had not been examined but the very evidence of P.W.5 Tinku Lal and his immediate statement made to persons whom he had met just after the incident that it was this appellant who had stabbed him appears admissible under Section 6 of the Evidence Act as a fact which was relevant in respect of an incident which had

occurred in the course of the same transaction. Besides, we have already held that the witnesses had found bleeding injuries on his person. The convincing evidence was there that it was this appellant who had used a *Chhura* in giving blow to the deceased and P.W.5 Tinku Lal. Thus, the conviction of the appellant under Section 324 Indian Penal Code also appears justified in the light of the evidence which was produced before the learned trial Judge.

14. In the result, we find that the conviction of the appellant Pintu @ Madhu Lal for offences punishable under Sections 302 and 324 Indian Penal Code and the sentences passed upon him require no interference as they were appropriately passed. For the foregoing reasons, the appeal appears lacking merit and the same is dismissed.

15. Smt. Rina Sinha, learned Amicus Curiae has assisted the Court and we direct that she be paid one fee of arguing the appeal by the Patna High Court Legal Services Committee.

(Dharnidhar Jha, J)

(Ahsanuddin Amanullah, J)

Brajesh Kumar/Saif.

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