

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.261 of 2010

Arising out of PS.Case No.42 Year-1999 Thana-Hayaghat District-DARBHANGA

Vijay Kumar Singh @ Munna Singh, Son of Nawal Kishore Singh, Resident of Village Kharari, P.S. Hayaghat, District Darbhanga.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Shri Siddharth Harsh, Advocate

For the State : Shri Dilip Kumar Sinha, APP

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 19-05-2015

The solitary appellant Vijay Kumar Singh @ Munna Singh was put on trial by being indicted of committing the offence under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act by the learned 3rd Additional Sessions Judge, Darbhanga in Sessions Trial No. 306 of 2007. The learned judge handed out the judgment of conviction to the appellant on 08.09.2009 by holding him guilty of committing the offence he had been charged with and heard him on the quantum of sentence to be inflicted upon him on 10.09.2009. The appellant was directed to suffer rigorous imprisonment for life as also to pay a fine of Rs. 5,000/- for being convicted under Section 302/34 of the Indian Penal Code. He was directed further to suffer rigorous

imprisonment for five years and to pay a fine of Rs. 5,000/-, else to suffer simple imprisonment for one year on account of having committed the offence under Section 27 of the Arms Act. The sentences passed upon the appellant were directed to run concurrently. It is how the present appeal is before this Court.

2. Surji Devi (P.W.11) was the mother-in-law of the deceased Lalpari Devi who was married to Tuntun Das the son of P.W.11. It was stated that the appellant along with other accused persons, like, Bhannu Singh, Rajendra Das and one lady accused who happened to be the wife of Rajendra Das came to the house of the informant P.W.11 and abusively asked her to come out of it. The informant stated that they were frightened by the words and acts of the accused persons and she and her daughter-in-law started shivering before the accused and folded their hand before them. At that time this appellant was armed with a pistol and after having hurled abuses upon the informant, it was stated that the present appellant along with co-accused Bhannu Singh caught the deceased Lalpari Devi by the lock of her hairs and dragged her up to the house of one Naklesh Das where, it was alleged that this appellant fired a shot into the back of the deceased as a result of which Lalpari Devi fell down on the ground and died instantaneously there.

3. The informant started wailing and weeping and at that particular moment, her *Devar* Satya Narayan Das (P.W.7), Shiv Jatan Das (P.W.12) and others reached there and stated to the informant that her daughter-in-law was dead.

4. The informant stated in her *fardbeyan* that she belonged to caste *Tatma* and her husband Jarman Das and son Tuntun Das were residing in Delhi to earn their livelihood. Both the father and son used to come to their house every six months for taking stock of the welfare of their family members and it was stated that a week prior to the occurrence, i.e., on 03.07.1999 Satya Narayan Das (P.W.7) had been dragged to the house of accused persons by this appellant, Bhannu Singh and Rajendra Das and was asked to pay up a ransom of Rs. 30,000/- which was refused by P.W.7 and the accused persons had held out threats of killing the said Satya Narayan Das if the money was not paid. The informant stated that it was a sequel to the threat held out by the accused that they had committed the murder of the deceased.

5. The Investigating Officer has not been examined and, as such, we do not have any inkling as to how the investigation was carried out, but from the records available to us what appears is that the Investigating Officer of the case had held inquest upon the dead body and had prepared Ext.6, the inquest report and had

forwarded the dead body for post-mortem examination to Darbhanga Medical College Hospital, Darbhanga with the dead body *Chalan* and accordingly, Dr. P.K. Das (P.W.13) had held post-mortem examination on the dead body of Lalpari Devi and had prepared the post-mortem examination report Ext.2. It also appears that the investigation was completed and the present appellant was sent up for trial which ultimately ended in his conviction.

6. The defence of the appellant was of his non-participation and false implication. It was suggested to various witnesses including P.W.11 by the defence that one Raj Kishore who happened to be the uncle of the present appellant and who was, for some period, the *Mukhiya* of the *Panchyat* had given land to the family of the informant, i.e., the informant and other witnesses to settle down at village Kharari and in order to grabbing that particular piece of land, a false and fictitious charge had been slapped upon the appellant.

7. The prosecution examined a total number of 15 witnesses out of whom P.Ws. 14 and 15 were formal witnesses who proved the writings on different document, like, the *fardbeyan* etc. which was in the pen of the then Officer-in-Charge of Hayaghat police station, namely, S.I. Dhananjay Kumar. The *fardbeyan* was marked Ext.4 while the endorsement on Ext.4 regarding the



institution of the case was marked Ext.5. The carbon copy of the inquest report was marked Ext.6 through the evidence of P.W.15. The formal First Information Report was brought on record as Ext.3 by examining the formal witness P.W.14. Out of the remaining 13 witnesses, P.Ws. 1 to 6 were declared hostile. The support to the charge came from Satya Narayan Das (P.W.7), Shanti Devi (P.W.8) who happened to be the wife of Shiv Jatan Das (P.W.12) and Buchchi Devi (P.W.9) who was the wife of Satya Narayan Das (P.W.7). Rinku Devi (P.W.10) was the daughter of Surji Devi (P.W.11) the informant of the case and Shiv Jatan Das (P.W.12) was the brother of Satya Narayan Das (P.W.7). These relationships appear from the individual evidences of witnesses.

The defence did not examine any witness.

8. After considering the evidence of witnesses, the impugned judgment was passed by the learned trial judge.

9. Shri Siddharth Harsh, the learned counsel appearing on behalf of the appellant took us through the evidence of witnesses and submitted that no independent person had come forward to depose in support of the charges and as appears admitted by the witnesses who were the family members among themselves, they had come to depose against the appellant. Submission was that the witnesses being related among themselves were highly



interested and, as such, their evidence must be discarded. Submission was that the motive was that some money was attempted to be extorted from Satya Narayan Das (P.W.7) who had been beaten up also on 03.07.1999 but he does not give the reason as to why on account of not getting the money paid by P.W.7, an innocent lady, like, Lalpari Devi should be picked up to be shot into her head and thus, killed. Submission was that the motive which was alleged by the prosecution was not established. It was also contended, by criticizing the evidence of the witnesses, that they may not have been witnessed to the occurrence and it was lastly, contended that the non-examination of the Investigating Officer was a material defect in the prosecution case making it unsafe to sustain the judgment of conviction and order of sentence. While criticizing the individual evidence of the witnesses it was also contended that Surji Devi (P.W.11) had stated in her cross-examination in paragraph-13 that persons in the neighbourhood remained inside their houses and no one dare come out to see the occurrence. It was, as such, contended that the witnesses who were examined must not be eye witnesses to the occurrence.

10. Shri Dilip Kumar Sinha, the learned Additional Public Prosecutor drew our attention to paragraph-4 of P.W.9 and submitted that the witnesses were definitely very closely related



and it was also a fact that they were residing in houses which were in the same courtyard and each of the witnesses was in occupation of a single room and, as such, when one of the members of the occupants of one of the houses was being dragged out by the accused persons, it appears natural that they should come out and see the occurrence which fact also appears stated by P.W.9 in paragraph-4, P.W.11 in paragraph-14 and other witnesses also. Submission was that the motive was also established. If other persons of the locality or neighbourhood had not come out of their houses to see the occurrence, that did not make the evidence of natural witnesses unacceptable. It was contended that the witnesses have been consistent in narrating that it was this appellant Vijay Kumar Singh @ Munna Singh who had fired the fatal shot and that evidence is corroborated by the evidence of Dr. P.K. Das (P.W.13) and there being no fact on record indicating that the witnesses had any particular motive to implicate the appellant falsely. The Court must not draw an inference which could not be supportable by evidence specially when it is not expected of witnesses of the class examined in the case that they should substitute the real offender by an innocent person. Shri Sinha submitted that the prosecution had succeeded in bringing the charge home against the accused.

11. Great emphasis was laid upon by the learned

counsel appearing the appellant on the motive part of the prosecution story which initially also appeared to us worth considering. As such, we thought it proper to first consider as to whether the prosecution had succeeded in establishing the motive for commission of the occurrence. We may remind ourselves that in a case of direct evidence it is not always necessary that the motive even if alleged must be established. But then, the rule of prudence requires that if motive has been alleged as a fact which had impelled the accused persons to commit the offence then the prosecution is required to prove that fact also as any other ordinary fact. Here in the present case the prosecution had alleged very definite story and thus had imparted a motive to the accused which had impelled them to commit the murder of Lalpari Devi. The prosecution had stated that because the husband of Surji Devi (P.W.11) who happened to be the father-in-law of Lalpari Devi and her husband Tuntun Das were working in Delhi and earning handsomely the accused persons required P.W.7 to pay Rs. 30,000/- in cash to them. There was a date stated by P.W.11 in the *fardbeyan* that it was on 03.07.1999 when P.W.7 had been dragged to the house of the accused persons and was beaten up and then was asked to pay up or to face the consequences. The consequence which was pointed out to P.W.7 was nothing less than some one

loosing the life on account of non-payment of the required sum of money. There is extensive cross-examination of P.W.7 as also other witnesses who stated on that fact including P.W.11. Shanti Devi (P.W.8) had stated that fact in paragraph-2 and she was cross-examined in paragraph-4. Buchchi Devi (P.W.9) who happened to be the wife of Satya Narayan Das (P.W.7) had very well stated the fact in paragraph-3 and it appears that she was not cross-examined on that fact. Rinku Devi (P.W.10) who happened to be the daughter of Surji Devi (P.W.11) the informant had testified to the above fact in paragraph-2 and what we find is that she was again not cross-examined on that particular fact. We are very much conscious of the position of law that cross-examination is not the only mode of discrediting a witness, but the other view on the point is that if a witness is not cross-examined then that particular factual position is admitted by the accused persons. We must not hold that mere non-examination of a witness may render the fact stated by him as admissible, but it may present a position where the fact stated by the witnesses, remains and thus goes into the record of the case as evidence not challenge and it may not be easy and proper for the Court to say that the fact was not proved or disproved. However, even if we assume that there was some demand or even an attempt of extorting some money from P.W.7, the question

which was posed by the learned counsel for the appellant before us remains to be answered logically and satisfactorily as to why an innocent lady, like, Lalpari Devi should be picked up to be killed.

We do not have any evidence of jointness of the family but Satya Narayan Das (P.W.7) had stated in paragraph-6 of his evidence that the family did not have much landed property in excess of 15 *Kathas* and they had further some joint properties at another village Madhurapur which was situated at a distance of one kilometer from the house of the witness P.W.9 Buchchi Devi who happened to be the wife of P.W.7 has stated in paragraph-4 that P.W.11 the informant Surji Devi and she was residing as one family and the four brothers of the husband of Surji Devi were also residing in the same *Angan* or courtyard, each family being in occupation of a single room. That part of the evidence of P.W.9 does show some sort of partition or separation between the witnesses but still the commonness of interest and living is found from the evidence of P.W.7 in paragraph-6. As appears from the evidence of witnesses there were only two male members who were residing at the village and those were P.W.7 and P.W.12. The particular unit of the family of the informant Surji Devi (P.W.11) did not have any male member in it so as to looking after the affairs of the family or attending to its day to day difficulties or needs.



This is not unusual in villages that men parley with man. They deal with each other and from the part of the state the case had been reported from, it is usually the practice that male members do not interact with the female family members of the house in matters of the nature as may relate to transactions in respect of a land or property or anything like that. It was true that it was P.W.7 who had been asked to pay up Rs. 30,000/- but this Court must not overlook the demand which was made and the central theme of that demand was that the earning members were none else than the father-in-law and husband of deceased Lalpari Devi. They were the two persons who were required ultimately to meet out the demand of the accused as regards paying up to him or them an amount of Rs. 30,000/-. We find that it was a communication regarding the demand from the accused to the family members of the earning hands of the unit of the family of P.W.11 regarding the demand of paying up Rs. 30,000/- and if at all any consequences was to befall it could befall on the members of that particular unit of the family. This is how we logically find the demand being connected with the unit of the family which ultimately had to bear the loss of a family member when an innocent lady Lalpari Devi was picked up to be dragged out of the house and to be shot in her head. Facts are intricate but the inference is very direct which emerges out of these

intricate facts and we logically conclude that the prosecution had succeeded in establishing the motive which had ultimately impelled this appellant Vijay Kumar Singh @ Munna Singh to pump a bullet into the head of the deceased to annihilate her.

12. The other limb of argument of the learned counsel appearing for the appellant was that the witnesses were deeply related to each other and they were interested in deposing against the appellant. The record of the case does indicate that witnesses were related to each other and finally they were related to P.W.11 Surji Devi, the informant. We have in an earlier paragraph pointed out that P.W.7 was the husband of P.W.9 Buchchi Devi and P.W.8 Shanti Devi was the wife of P.W.12 Shiv Jatan Das and that P.Ws. 7 and 12 were brothers between themselves. P.W.10 Rinku Devi was the daughter of P.W.11 Surji Devi and thus the witnesses who came to depose in Court in support of the charges were closely related to each other. They appear to be holding interest between themselves and they must be holding interest in the affairs of each other also. We have just pointed out that in spite of occupying different rooms in the same courtyard where the house was located, P.W.7 had pointed out in his paragraph-6 that the family was still holding joint immovable properties at village Kharari and village Madhurapur. In such a situation it may be inferred that they, on



account of some psychological pressure which automatically appears acting on the minds of such interested related persons, had come into the witness box to depose against the accused persons. But we have at the same time to remind ourselves that the very cross-examination of witnesses suggest that the uncle of the present appellant Raj Kishore was the landlord on the land of whom the family had settled down in past by constructing their houses and probably they were labouring for him or his agnatic relationship. This has been a regular suggestion thrown to each and every witness, like P.W.7 to P.W.12 and the evidence of P.W.9 in paragraph-4 as we have already noted further indicates that they were residing in the same courtyard. They have been suggested that they wanted to grab the land over which their house was situated but that suggestion was a mere suggestion having no sanction of law inasmuch as on account of having already settled down on the land they could have very well been a privileged tenant under the Bihar Privileged Persons Homestead Tenancy Act. For that they could not be implicating the nephew of Raj Kishore in such a serious charge as that implication could not have brought a title deed or entitlement in their favour. Besides the above fact the defence did not bring on record anything showing that there was any serious and strong motive or reason which had compelled the



witnesses to come into the witness box to depose in the case falsely with the only motive of ensuring that their evidence was accepted by the Court and the appellant was convicted. Merely being related to a person could not be sufficient to hold him as an interested witness unless the facts of the case indicate that the witness had a particular motive for deposing in the court and that motive was to depose falsely in the court so as to ensuring that the accused was convicted and punished. While considering that aspect of interestedness as regards the witnesses, like, P.Ws. 7 to 12, we must record that we were not pointed out a single fact which could be as strongly acting in the minds of the witnesses as a reason for coming into the witness box. They were related of course. They were residing in the same *Angan*. They were holding joint properties but they did not have any reason on account of a serious enmity or other such serious reasons so as to psychological forcing them or moving them out of their houses to come to depose in the case. They were natural witnesses whose presence was very much natural as the cluster of rooms which were in occupation of the witnesses, like, the informant and others were situated in the same *Angan* and the blood relationship between the witnesses could have been enough to send alarm bells ringing for them to naturally force them to come out to see as to what was the peril which was being faced

by any of their blood relative and that too a weaker sex. It could have been a natural reaction to the alarming situation and if they had come out on account of being alarmed due to the acts of intrusion into the privacy of P.W.11 or her daughter-in-law the deceased Lalpari Devi, their presence was natural.

While perusing the evidence of the witnesses, we have already noted, we could not find out any single fact which could tell us or convince us that there was some doubt in the claim of the witnesses that they had seen the occurrence. No attention of the witness was drawn to any fact by suggesting that they were not present at the scene of occurrence. Merely because P.W.7 consciously or unconsciously in his examination-in-chief had said that her *Bhabhi*, i.e., Surji Devi (PW11) hidden herself as soon as the accused persons appeared could not be sufficient in itself to throw out the evidence of P.W.11, firstly, for the reason that we cannot read the evidence of a witness to distrust the other witness and we cannot pick up a single line of the evidence of P.W.7 to reject the evidence of another witness, like, P.W.11. The evidence of such a witness has to be evaluated on its own merits and the claim of witnesses of having seen the occurrence has also to be evaluated in the like manner.

The evidence of some of the witnesses, like, P.W.11



in paragraph-13 that after the murder had been committed persons from the neighbourhood had come and before that no one had come there. It was attempted by the learned counsel appearing for the appellant to convince us that that particular statement of P.W.11 had rendered the evidence of other witnesses unacceptable. While considering that particular line in paragraph-13 we must not lose sight of the fact that the informant was stating that the persons from 'Aros-Paros' (neighbourhood) had not reached there. In paragraph-14 in the very first line of it the lady stated that at the time of the occurrence she and her family members, i.e., the witnesses had implored the accused persons by requesting them not to do anything with the lady. The very contention of the counsel that the witnesses were related and considered in the light of P.W.9 Paragraph-4 leaves us never in doubt that the persons who could have seen the occurrence could be none else than the very persons who were residing in that very *Angan*.

13. Yet another controversy which was attempted to be raised by the learned counsel for the appellant was that non-examination of the Investigating Officer had left the place of occurrence to be established. It is true that the Investigating Officer had not been examined and it would have been an added benefit for the prosecution and to us as well if he could have come in the



witness box to depose as to what was the place where the incident had taken place, but we have still enough material on record to point out that the occurrence had taken place some where near the house of certain Naklesh Das. The inquest report Ext.6 indicates that the dead body was found in a *Gali* which was situated in between the houses of two persons one being that of the said Naklesh Das. All witnesses right from P.Ws. 7 to 12 had consistently stated that after catching hold of the deceased Lalpari Devi by hand and by her lock of hairs, the accused persons dragged her up to the house of Naklesh Das where this appellant had fired a shot into her head. The oral evidence and the recorded fact in document Ext.6 does not leave any manner of doubt to note that the occurrence had taken place anywhere near the house of Naklesh Das. In matters of criminal trial the mathematical exactitude is simply exception and impossibility. It is always on the scale of probability that we judge facts either in order to seeking the proof of the charges or the probability of the defence version. Even in matters of medical evidence the opinion of a doctor could only be a probability and never a certainty. We do not measure the evidence of witnesses which come orally by tapes and measures. We apply the logical method of appreciating the evidence and then reach a conclusion as to whether there was any probability of the assertion



of the prosecution as regards the proof of the charges or was there any other probability which could be probalizing the defence version. Witnesses appear being consistent even if someone was saying it was near the house of Naklesh Das, someone arriving it to have happened behind the house of Naklesh Das and the other stating about it near the *Darwaza* of Naklesh Das, in our opinion, point out to the same place where Lalpari Devi was fired at and that place was somewhere in the vicinity of the house Naklesh Das, may be in its proximity. Probability definitely points out that Lalpari Devi was murdered somewhere near the house of Naklesh Das.

14. It may be appropriate to consider another important argument of the learned counsel for the appellant when he was pointing out initially at the very out set of the hearing of this appeal that the occurrence had taken place at 12 A.M. on 08.07.1999 and the *fardbeyan* was recorded at 8.30 P.M. on that day and thus, there was a delay of 8.30 hours in lodging the report. In order to evaluating the above submission, we looked to the copy of the First Information Report which is available to us on the record as also on paper book and we found that it was village Kharari which was situated at a distance of 27 Kms. from police station Hayaghat which had the jurisdiction to register a case and investigate the same. The occurrence had taken place in the year



1999, when we believe still the development had not touched that particular area of Hayaghat which is still lying remote and inaccessible. Not only that, it was the month of July when the most parts of the Darbhanga district of Bihar and specially the police station area of Hayaghat in its entirety is submerged into deep water. It would have been definitely inaccessible a place to visit village Kharari from Hayaghat and we do not find it a defect in the prosecution case that the *fardbeyan* was recorded after 8 hours 30 minutes of the occurrence. It was also contended in the same breath that the lady was dead instantaneously. She was not required to be removed to any hospital for being given any treatment and, as such, the informant and her family members had no other job to do than to report the matter to the police. We want simply to point out that the informant belonged to a particular caste which is still one of the most backward castes of the state and they are the most docile persons. Each and every person who came to depose in court had put his L.T.I. over the deposition sheets and that indicates that they did not even know to write their names and, as such, were bereft of the modern fast approach to situations like this which had arisen immediately before them. The innocent lot that they are and the situation which was created in their lives, must have put them into a situation of being at loss as to what to do and



what not to do and it was probably after the police itself had arrived at the place of occurrence on account of having picked up some rumour or information that they had given the *fardbeyan*. We sitting in a Court room may not appreciate the situations prevailing in the lives of rural people specially those which had not benefited after 67 years of the democratic set up of the nation and whose plight still continues to be that of the same exploited, ignored lot as was prevailing before coming into force the Constitution of India. We do not see any reason to discard the prosecution evidence merely on this technical ground which in our opinion was not available at all under the facts and circumstances of the case.

15. The non-examination of the Investigating Officer might be material in a case, but only when his non-examination has caused prejudice to the accused. When we talk of prejudice to the accused on account of the non-examination of the Investigating Officer, we express that it could be only when material facts have been brought on record by cross-examining the witnesses so as to pointing out to the court some improvement having been injected into the prosecution case by the witnesses so as to covering up some of the lapses and those statements if not proved on account of the non-production of the Investigating Officer may create a case of prejudice as regards the defence. The other prejudice could be that



if any vital defence evidence was collected by the Investigating Officer and that could not be brought on record in absence his evidence and the prosecution had purposely withheld the witness so as to precluding the defence from brining that particular evidence on record, then it could again be a case of prejudice. The other case of prejudice could be that the investigation of the case has been one sided and there were circumstances indicating that the Investigating Officer had purposely made some investigation so as to creating a foolproof case for being presented in court with the ulterior motive of ensuring the conviction of the appellant and if he had been examined and those facts had been brought into the notice of the court requiring the prosecution charges to be rejected then again it could be a case of prejudice for the defence. There could be many such instances which could be arising out of the special facts of different cases. We cannot generalize situations, we may visualize some of them. We have put down these illustrations only to buttress our view that no such prejudice was shown caused to the defence on account of the non-examination of the Investigating Officer. As such, we do not find it a defect in proof of the prosecution charges.

16. We had seriously considered the evidence of the witnesses and we found that they were consistent and appear telling



the truth to the court that the accused persons came into the house of the informant dragged out the deceased Lalpari Devi and after dragging her out to a particular place, it was this appellant who fired a shot into her head causing her instantaneously death. The facts established the participation of the accused in the manner alleged by the prosecution and that manner of occurrence appears corroborated by the evidence of P.W.13 who had found a lacerated injury 3" behind the root of the left pinna of the ear which had exited in the form of another lacerated wound over the right side of the forehead 1" above the right eye-brow. The trajectory of the bullet had caused the laceration of the brain matter and the temporal and frontal bones were found fractured along with his occipital bone on the back of the head. It was a close range shot which is indicated by the fact that the scalp hairs were found burnt.

17. However, while convicting the appellant the learned trial judge appears erring in framing the charge and holding the appellant guilty. The appellant definitely should have been charged under Section 302 of the Indian Penal Code as he had committed the act offering the shot intentionally and knowingly into the head of the deceased to kill her. As such, we alter that part of the judgment only by setting aside the conviction of the appellant under Section 302/34 of the Indian Penal Code and hold him guilty

of committing offence only under Section 302 of the Indian Penal Code. As regards the conviction of the appellant under Section 27 of the Arms Act, we do not find any reason to modify or alter that finding. As regards the sentences passed upon the appellant, we are not required to interfere with that part of the order.

18. In view of the discussion of the evidence available to the trial court, we find that the appellant was rightly convicted and sentenced. The appeal appears of no merit and it is hereby dismissed.

(Dharnidhar Jha, J.)

(Ahsanuddin Amanullah, J.)

Sanjay/P.Kumar/A.F.R.

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