

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.785 of 2006

Arising out of PS.Case No.-85 Year-2001 Thana-Bhairabh Asthan District- MADHUBANI

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Sudin Thakur, Son of Hanumanji Thakur of Village Haithibali, P.S. Bhairabsthan,
District Madhubani.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Sri Rajesh Kumar, Amicus Curiae

For the State : Sri Abhimanyu Sharma, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 10-02-2015

The present appeal is directed against judgment dated 12.06.2006, passed by the learned Presiding Officer of Fast Track Court No.-I, Madhubani in Sessions Trial No. 70 of 2002/02 of 2005 by which the solitary appellant Sudin Thakur was held guilty of committing offence under Section 302 of the Indian Penal Code. The appellant was heard on sentence on 15.06.2006 and was directed to suffer rigorous imprisonment for life.

2. The prosecution case is contained in Ext.-2, the *fardbeyan* of Abdul Shakoor (P.W.3) who stated that about ten days prior to the incident, deceased Md. Sabdul had gone to scrap grass from the ridge of the field of this appellant and there had been some scuffle between the appellant and the deceased on that account

during which this appellant had succeeded in snatching the scraped grass from the deceased and had further warned him not to pass by the *Darwaza* of the appellant, else he would be killed.

3. It was alleged in the above context that on 16.10.2001 at about 10.30 A.M. the deceased Md. Sabdul was going to bring medicine and when he reached near the *Darwaza* of this appellant, he along with one Sudeshwar Thakur surrounded the deceased and this appellant Sudin Thakur dealt *Kulhari* blow on the head of the deceased as a result of which he fell down unconscious. The deceased also raised cries which attracted villagers who brought him to Bhairava Asthan hospital for treatment where he died.

4. On the basis of Ext.2, the First Information Report of the case was drawn up by Officer-in-Charge Narendra Nath Jha of Bhairava Asthan out post of Jhanjharpur Police Station and he handed over the investigation to S.I. Niraj Kumar who was not examined during the course of trial. However, what we find from the records of the lower court is that the inquest was held upon the dead body and the same was transmitted for post-mortem examination which was held by Dr. Sheodani Choudhary (P.W.4) and he issued the post-mortem report (Ext.1). After close of the investigation, the appellant was sent up for trial and that ended in the impugned judgment.



5. We were taken through the evidence of the witnesses and we find that out of six witnesses examined by the prosecution, no witness appeared to be the eye witness of the occurrence. Md. Sukhal (P.W.1) as also Md. Fakir (P.W.2) and the informant Abdul Shakoor (P.W.3) stated that they had been attracted to the scene of occurrence on *Hulla* and when they reached there, they found that Md. Sabdul was lying injured there and he was bleeding. P.W.1 stated in paragraph-4 that he also saw the appellant going away from the place of occurrence with blood stained *Kulhari*. P.W.1's evidence in paragraph-11 indicates as if when he had reached at the place of occurrence, there was none present there and Md. Fakir (P.W.2) and Abdul Shakoor (P.W.3) had arrived there subsequent to his arrival. Thus, as may appear from the evidence of P.W.1, when Md. Fakir (P.W.2) and Abdul Shakoor (P.W.3) had arrived at the scene of occurrence, the appellant must have moved away from the place of occurrence.

6. Apart from the evidence of P.W.1, we still considered the evidence of P.Ws. 2 and 3 independently and we find that Md. Fakir (P.W.2) stated that when he reached there at the place of occurrence, he found Md. Sabdul lying on the ground and that this appellant Sudin Thakur was wiping blood from his head and as may appear from his cross-examination in paragraph-3 he wiped blood

from the head of the deceased with his own *Gamchha*, though he stated in examination-in-chief that the appellant was simultaneously holding the axe also. As per P.W.2 also Md. Shakoor and another Md. Tabir (sic) had arrived at the place of occurrence subsequent to the arrival of P.W.2.

7. P.W.3 also stated that he was at his house when he heard Hulla coming from the side of this appellant's house and he went there to find that his uncle Md. Sabdul was lying unconscious in a pool of blood. Villagers came there and this appellant left the place of occurrence with his axe. While deposing in court, P.W.3 appears giving the same story which was narrated by him in the First Information Report that there was two persons who had surrounded the deceased and this appellant had dealt blows with axe. In fact when we were perusing the First Information Report, what we found was that P.W.3 was making a statement as if he was an eye witness to the occurrence, but during his deposition in court, he appears having not seen the part of the occurrence during which this appellant had given blows to the deceased.

8. There is no doubt in it that the deceased was bearing injuries which proved fatal as may appear from the evidence of Dr. Sheodani Choudhary (P.W.4), but as we have already noted after considering the evidence of the witnesses, none of them was an eye



witness. Three witnesses gave two types of statements as regards the complicity of the present appellant. While they stated that the appellant was there at the place of occurrence and were carrying an axe, P.W.2 stated that while the appellant was carrying an axe, he was also doing some sort of nursing by wiping out the blood from the wound of the deceased. We could not reconcile this statement of P.W.2 with the allegation that this appellant had really killed the deceased by dealing blows to him with axe. One of the wounds which was found by P.W.4 on the dead body was a stitched wound and there is no evidence from the doctor who had attended first on the deceased in *Bhairava Asthan* hospital, as to what was the nature of that particular injury and that could have been caused by which weapon. P.W.4 had rightly stated that as regards the weapon which had caused injury no. 1, the opinion of the doctor who had first attended on the deceased was relevant. The other injury which was found on the dead body was a lacerated wound over left mastoid region 1" and up to bone deep. The third injury was also lacerated in nature on the left cheek of the deceased measuring 2"x1/4". The witnesses have consistently stated that the present appellant was carrying an axe and had given blows with it to the deceased on his head. The stitched wound was of course there on the perital region of the head which had caused the fracture of the left perital bone into



two pieces with further laceration of the brain matter which was also coming out of the injuries and that also suggested as if the blow could have been given by some hard and blunt substance. The injury which was recorded by P.W.4 on the dead body, in our opinion, does not go hand in hand with the allegations appearing from the evidence of the witnesses, who might not have stated that the deceased had been given blows with the sharp cutting part of an axe, but appeared definitely pointing out some inkling that an axe was used in giving the blows. Then, the question as to why he should wipe out the blood from the wound of the blood also creates some serious doubt in the narration of the story by the witnesses.

9. The Investigating Officer has not been examined and that appears creating some serious prejudice to the defence inasmuch as if at all the appellant was the person who had dealt blows and had retreated from the place of occurrence with a blood stained axe, it was pertinent to elicit from the Investigating Officer as to whether he made any attempt to recover the weapon and had he really recovered the same and had further sent the weapon for chemical analysis to the Forensic Science Laboratory. Oral evidence and that too contradictory to the conduct of the appellant appears not acceptable so as to convicting that it was the appellant who had committed murder of Md. Sabdul. The evidence appears not sufficient to hold

that it was definitely this appellant who had caused injuries to the deceased by using an axe. The other reason for not acting upon the oral testimony of the witnesses is that if an axe was used by the appellant in giving blows then in ordinary circumstances we have to presume that injuries were caused by sharp cutting part of the weapon. But, in absence of any direct evidence coming from anyone, we again find ourselves in a situation of uncertainty so as to upholding the conviction. The evidence appears presenting a perplexing situation as a result of which the appellant deserves to be acquitted on being accredited the benefit of doubt.

10. In the result, the appeal succeeds and the same is allowed by setting aside the judgment of conviction dated 12.06.2006 and the order of sentence dated 15.06.2006, passed in Sessions Trial No. 70 of 2002/02 of 2005, by the learned Presiding Officer of Fast Track Court No.-I, Madhubani. The appellant is acquitted of the charge, he had been held guilty of. The appellant is in jail, he shall be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J.)

(Gopal Prasad, J.)

Sanjay/N.A.F.R.

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