

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 567 of 1993

AGAINST THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE, DATED 13.12.1993, PASSED, BY SHRI AKHILESH CHANDRA, 11TH ADDITIONAL SESSIONS JUDGE, GAYA, IN SESSIONS TRIAL NO. 439 OF 1991/81 OF 1992, ARISING OUT OF GURUA POLICE STATION CASE NO. 29 OF 1990

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Arjun Paswan, Son of Mahesh Paswan, resident of village – Morahar, P.S. – Guraru, District - Gaya

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : None

For the Respondent : Dr. Mayanand Jha, A.P.P.

Mr. Bharat Lal, Advocate as *Amicus Curiae*

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 19-03-2015

Under the judgment, dated 13.12.1993, passed, in Sessions Trial No. 439 of 1991/81 of 1992, by learned 11th Additional Sessions Judge, Gaya, the appellant, Arjun Paswan, stands convicted under Section 302 of the Indian Penal Code. Following his conviction, the accused-appellant has been sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- and, in default of payment of fine, undergo rigorous imprisonment for six months.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be set out as under:

(i) On 23.05.1990, at about 10:00 A.M., having seen off the sister of her husband, when the informant, Basanti Devi (P.W. 2), returned home, accompanied by her husband, Balendra Singh (since deceased), and started cooking, her husband, Balendra Singh, sat down at the *varandah* of the house awaiting meals. While the informant was cooking, accused Arjun Paswan came to her house and called her husband from outside the house. Though the informant asked her husband to leave the house after taking his meal, accused Arjun Paswan told them that he had some urgent work and would send his uncle (i.e., the husband of the informant) soon. The informant, too, followed her husband, saw accused Arjun Paswan taking her husband, Balendra Singh, to the house of Baloon Pasi and, on reaching the house of Baloon Pasi, the accused took out a pistol from his waist and fired at the informant's husband on his neck and, then, started assaulting the informant's husband by means of a sickle. When her husband was writhing in pain, the informant moved forward to save her husband, but accused Arjun Paswan drove her out of the house, locked the main gate of the house and fled away.

(ii) Jamanti Devi (P.W. 1), wife of the uncle of Balendra Singh (since deceased), too, witnessed accused Arjun Paswan taking Balendra Singh to the house of Baloon Pasi and, then, she (PW 1) heard the sound of firing and, on coming out of her house, saw accused Arjun Paswan assaulting Balendra Singh by means of a sickle.

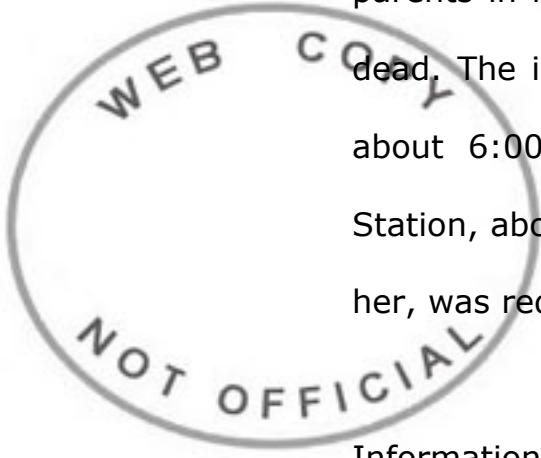
(iii) On hearing the informant's cries, her parents-in-law and many others came and found her husband dead. The informant, then, on the same day, i.e., 23.05.1990, at about 6:00 P.M., orally informed the police, at Guraru Police Station, about the occurrence and the oral information, so given by her, was reduced into writing in the form of her *fardbeyan*.

3. Treating the said *fardbeyan* as the First Information Report, Guraru Police Station Case No. 29 of 1990 was registered, under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959, against accused Arjun Paswan. When the police arrived at the place of occurrence, they did not, however, find the house of Balendra Paswan locked from outside; rather, the house was open and when they entered into the house, they found Balendra Singh, husband of the informant, lying dead with injuries on his body.

4. During investigation, police visited the place, where the said dead body was found, and held *inquest* over Balendra Singh's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, a *charge sheet* was laid, under Sections 302 of the Indian Penal Code, against accused Arjun Paswan.

5. At the trial, when a *charge*, under Section 302 of the Indian Penal Code, was framed against the accused, the accused pleaded not guilty thereto.

6. In support of their case, prosecution



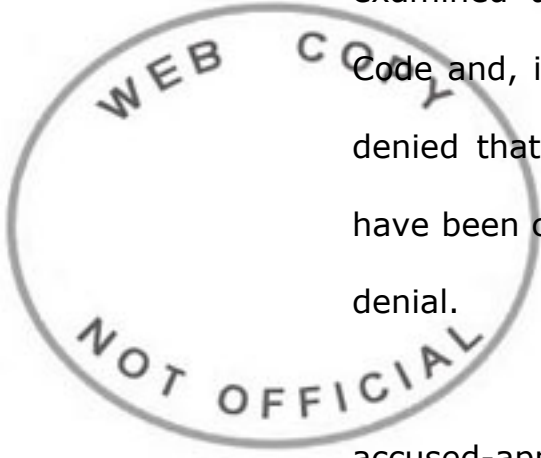
examined as many as 7 (nine) witnesses. The accused was, then, examined under Section 313 (1) (b) of the Criminal Procedure Code and, in his examination aforementioned, the accused person denied that he had committed the offence, which was alleged to have been committed by him, the case of the defence being that of denial.

7. Having, however, arrived at the finding that accused-appellant, Arjun Paswan, had been proved guilty of the *charge* under Section 302 of the Indian Penal Code, the learned trial Court convicted him accordingly. Following his conviction, sentence has been passed against the convict, Arjun Paswan, as mentioned above.

8. Aggrieved by his conviction and the sentence passed against him, the convict, Arjun Paswan, has preferred this appeal.

9. We have heard Mr. Bharat Lal, learned Counsel, appearing as *Amicus Curiae*, and Dr. Mayanand Jha, learned Additional Public Prosecution, appearing for the State.

10. While considering the present appeal, we notice that out of 7 (seven) witnesses were examined by the prosecution, P.W. 1 (Jamanti Devi) and P.W. 2 (Basanti Devi), the informant, are the only two eye-witnesses to the occurrence inasmuch as P.W. 3 (Alakh Deo Singh) is, admittedly, hearsay witness, P.W. 4 (Chandrika Singh) has been tendered, P.W. 5 (Parshuram Prasad) is the Investigating Officer of this case, P.W. 6



(Dr. Arbind Prasad) is the doctor, who had conducted the *post mortem* examination, and P.W. 7 is a formal witness, who has proved the seized materials.

11. To our mind, medical evidence being of great relevance in the present appeal, we, first, take note of the medical evidence on record. We notice that the doctor (P.W. 6) had, admittedly, conducted *post mortem* examination on the dead body of Balendra Singh on 24.05.1990, at 10:00 A.M. and found following *ante mortem* injuries:-

"(1) A tiny semilunar abrasion was found of $\frac{1}{2}$ "x $\frac{1}{4}$ " over the right arm 1" below the axillary anterior fold.

(ii) Two tiny semilunar abrasions of $\frac{1}{2}$ " x $\frac{1}{4}$ " were found over the front of the lower left arm 2" above the left elbow joint.

(iii) Incised wounds of 1"x $\frac{1}{2}$ "x3" deep was found in the front of the neck just above the right side of jugular notch. The intervening muscles and soft tissue were also sharply cut. The external jugular vein was sharply cut along with associated blood vessels and nerves, blood and blood clots were present in and around the wound.

(iv) Incised wound of $1\frac{1}{2}$ " x $\frac{1}{2}$ " x $\frac{1}{2}$ " was found over the right shoulder just below the lateral half of the right clavicle. Blood and blood clots were present in and around the wound."

12. In the opinion of the doctor (P.W. 6), the cause of death was shock and hemorrhage resulting from the

injuries sustained by the said deceased, which were caused by a sharp cutting weapon sustained on the neck of the said deceased, Balendra Singh.

13. The doctor (PW 6) has also found that the injury Nos. (i) and (ii) might have been caused by a semilunar blunt object, such as, nail, but injury Nos. (iii) and (iv) aforementioned were caused, according to the doctor (PW 6), by sharp cutting weapon.

14. Coupled with the above, we do not notice, in the findings of the doctor (P.W. 6), that the deceased had sustained any injury by a bullet fired from pistol. Far from this, the doctor has asserted that no bullet injury was sustained by the said deceased.

15. Bearing in mind the above medical evidence on record, which belies that the said deceased had been put to death by shooting him by means of a pistol, when we turn to the evidence of P.W. 2, who is the widow of the said deceased and also the informant of this case, we notice that according to her evidence, on the day of the occurrence, at about 10:00 A.M., she was cooking food and, at that time, accused Arjun Paswan came to the courtyard of her house calling her husband and asked her husband to come outside the house for some urgent work and though she (P.W.2) asked her husband to leave the house only after having his meal, the accused told them that they would return back soon. It is in the evidence of P.W.2 that when her

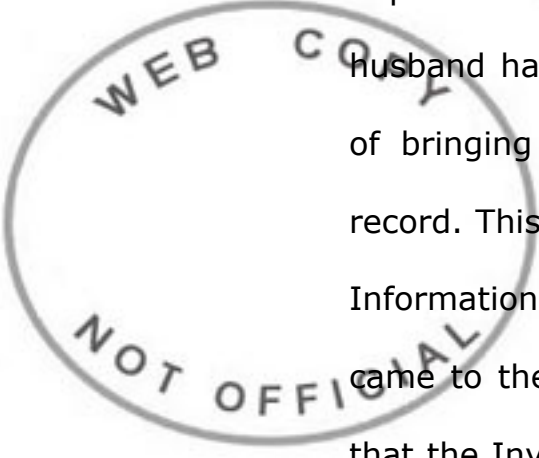
husband started proceeding with the accused, she, too, followed them. It is also in the evidence of P.W. 2 that the accused took her husband inside the house of Baloon Pasi, took out a pistol from his waist and shot her husband on his neck and also started assaulting him continuously by means of a sickle, her husband fell down and, in the meanwhile, her mother-in-law, Jamanti Devi (PW 1), one Ram Rati Devi and some other co-villagers came there, but accused Arjun Paswan fled away after locking the gate.

16. Keeping in view the above aspect of the evidence of P.W. 2, we, now, turn to the evidence of P.W. 1 (Jamanti Devi). According to this witness's evidence, at the time of occurrence, she was at the door of her house and she noticed accused Arjun Paswan coming to the house of the said deceased, calling the said deceased and asking him to accompany him and, at that time, though the wife of the said deceased asked her husband to go after having his meal, the accused took her husband to the house of Baloon Pasi. It is in the evidence of PW 2 that she (P.W. 2) did not follow them, but and as the house of Baloon Pasi was visible from her (P.W.1's) house, she heard the sound of firing and, on rushing to the house of Balloon Pasi, she saw Arjun Pawan assaulting Balendra Singh continuously by means of a sickle and Balendra Singh died on spot. It is in the evidence of P.W. 1 (Jamanti Devi) that the accused drove them out of their house and fled away towards west after locking the room.

17. If the evidence of P.W. 1 and P.W. 2 are

kept in mind, what attracts our attention, most prominently, is that both of them, in unison with each other, have deposed that bullet was fired and while P.W. 1 merely heard the sound of firing, P.W. 2's categorical assertion is that she had seen the accused taking out a pistol from his waist and shooting Balendra Singh on his neck. The medical evidence does not, however, record any finding indicating that the said deceased had been fired at by means of a pistol. Far from this, the medical evidence on record completely rules out the possibility of Balendra Singh having been fired at by means of a pistol. Interestingly enough, First Information Report, which stands proved as Exhibit 3, does not mention that the accused had assaulted the said deceased by means of a sickle, on the neck, whereas it was, later on, claimed, at the stage of evidence, by the informant (PW 2) as well as PW 1 that the said deceased was given multiple blows by means of a sickle.

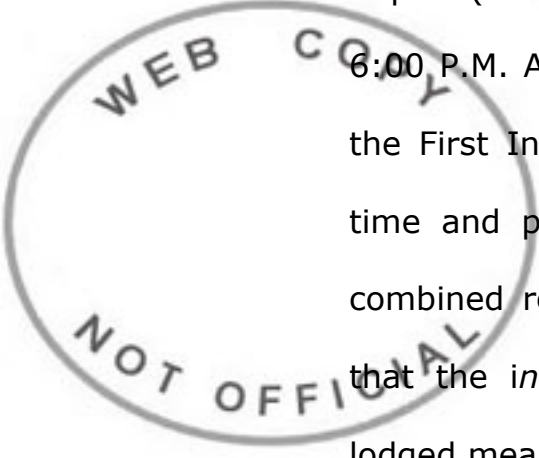
18. While, thus, the First Information Report mentioned only one bullet injury having been sustained by the said deceased on his neck, and does not mention of any assault taking place on the said deceased by means of sickle, the informant (P.W. 2) has, later on, deposed, at the trial, that the said deceased had been assaulted by means of sickle too. Though PW 2 has claimed that she had stated, in her statement recorded by the police, that her husband had been assaulted by means of sickle, the Investigating Officer (P.W. 5) has confirmed that no such statement was made by P.W. 2, when her statement was recorded



during investigation. This shows that P.W. 2 has made substantial improvement on her previous statement by adding that her husband had been assaulted by means of a sickle with the object of bringing her evidence in tune with the medical evidence on record. This apart, as we have already indicated above, in the First Information Report, there is absolutely no indication that P.W. 1 came to the place of occurrence. In this regard, it is noteworthy that the Investigating Officer has confirmed that except P.W. 2, no one else claimed to be an eye-witness, though we, now, find that P.W. 1, too, has claimed to be an eye-witness.

19. Coupled with the above, what can also be not ignored is that P.W. 2 has claimed, as we have also indicated above, that the accused drove her out of the house and locked the door from outside and fled away. It is the categorical assertion of P.W. 2 that until the time police arrived, the door of the house remained closed and to the same effect is the evidence of P.W. 1 inasmuch as PW 1 has also asserted that the door had been locked by the accused before he fled away, but the Investigating Officer (PW 5) has, however, deposed that when he reached the place of occurrence, he found the door of the house locked; rather, Investigating Officer's clear evidence is that he found the house open and police did not enter into the house by breaking open any lock.

20. What can also not be ignored is that the *inquest report* (Ext. 2) shows that *inquest* was held, on



23.05.1990, at about 5:30 P.M., whereas the First Information Report (Ext. 3) is claimed to have been lodged, on 23.05.1990, at 6:00 P.M. Apart from the fact that there is distinct overwriting, in the First Information Report (Exhibit 3), at the place, where the time and place have been mentioned, it becomes clear from a combined reading of *inquest report* and First Information Report that the *inquest* was held before First Information Report was lodged meaning thereby that the First Information Report could not have been treated as the First Information Report inasmuch as the oral statement of P.W. 2, which has been reduced, in writing, in the form of *fardbayan*, and which has been treated as the First Information Report of the case was, in law, in the face of the facts of the case, nothing, but a statement made by P.W. 2 during the investigation of the case.

21. The question, therefore, which naturally arises, is as to what was the information, first in point of time, which had been received by the police and what had made the Investigation Officer visit the place of occurrence, where the police, according to the evidence on record, held *inquest* over the said dead body and, then, the statement of the informant was recorded. The initial information, received by the police, was, thus, clearly withheld from the Court.

22. Because of what have been discussed and pointed out above, we do not find that the prosecution's evidence, adduced at the trial, can be held to be reliable and trustworthy. In

fact, we are clearly of the view that the prosecution failed to prove the case beyond reasonable doubt and the accused-appellant, therefore, was entitled to, at least, benefit of doubt.

23. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellant and the sentence passed against him by the judgment and order, under appeal, are hereby set aside. The accused-appellant is held not guilty of the offence, which he stands convicted of, and he is hereby acquitted of the same under benefit of doubt.

24. Since the accused-appellant is on bail, his bail bond is hereby cancelled and his sureties shall stand discharged.

25. Let the Amicus Curiae be paid a fee of Rs. 5,000/-.

26. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court, along with the Lower Court Records.

(I. A. Ansari, J.)

(Gopal Prasad, J.)

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