

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.177 of 1993

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Against the judgment of conviction and order of sentence dated 11th February, 1993 passed by Shri Mudrika Prasad, Sessions Judge, Sitamarhi in Sessions Trial No. 207 of 1990

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Rahmat Mian son of Bilat Mian of village- Korakhargi, P.S.- Parsouni, District- Sitamarhi..... Appellant

Versus

The State of Bihar..... Respondent

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Appearance :

For the Appellants : Mr. Birendra Singh, Advocate
Mr. Rudal Singh, Advocate

For the Respondents : Mr. A. K. Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 24-07-2015

The sole appellant has been convicted for the offence under Section 302 of the Penal Code and sentenced to suffer rigorous imprisonment for life. By filing this appeal he has challenged the said judgment which is dated 11.02.1993, passed by Sessions Judge, Sitamarhi in Sessions Trial No. 207 of 1990.

2. Prosecution story, as set out in the first information report of informant Jalim Mian (PW 12) recorded by Officer In-charge, Parsouni Police Station in the night of 18.04.1990 around 11:45 pm, is that informant's brother-in-law Kamruddin Mian came to his house in the evening at 4:00 pm. Around 10:00 pm, in the same night, he went to ease out on river bank, the informant and his brother Jalil Mian (PW 7) were waiting for him in the



courtyard. After some times informant, his brother heard alarm raised by their brother-in-law from the river side. Both the brothers leaving their meal ran towards the brother-in-law and found him fallen on the ground, tossing, he has also suffered injury on occipital region, blood was oozing out. The informant and his brother also saw in the torch light sole appellant crossing the river. Informant took his brother-in-law in lap and PW 7 raised alarm, co-villagers Dorik Sahni (PW 3), Ram Swaroop Sahni (PW 6), Mahesh Sahni (not examined), Ram Swarath Sahni (PW 10) and many other co-villagers also arrived on the river bank. In presence of the villagers, brother-in-law of the informant also confirmed that he has been assaulted by the appellant. Injured brother-in-law was carried to the residence with the help of the co-villagers and as per the advice of the co-villagers, Md. Hadis (PW 1), Md. Hanif (PW 4), Safi Ahmad (PW 5) and Wali Mohammad (not examined) informant along with his brother (PW 7) and the injured proceeded towards Police Station, in the way, brother-in-law, however, succumbed to the injuries. Informant further stated that two days earlier accused Rahmat Mian had informed co-villager Mahmood Mian that the deceased used to abuse his sister who also happens to be his nephew's wife and he will not spare the deceased. Informant recorded his first information report in presence of PW 1 Hadis Mian and PW 4 Md. Hanif. In the light of the first information report, the Officer In-charge took up the investigation of the case



and conducted inquest proceeding on the dead body of deceased Kamaruddin Mian near the gate of the Police Station on 19.04.1990 at 12:30 am. From perusal of the inquest report, it appears that deceased has suffered one cut injury in the temporal region. Having performed inquest, the dead body of Kamruddin Mian was sent for post mortem to Sadar Hospital, Sitamarhi where the same was received on the same day at 10:00 am and post mortem was conducted at 11:00 am. The Autopsy Surgeon has also found cut injury on the temporal region from the centre of the neck. In the light of first information report, the Police took further statement of the informant, statement of the brother of the informant and his other family members including co-villagers who reached the river bank soon after the occurrence as also those who came along with the dead body to the Police Station. The Investigating Officer having completed the investigation and finding the offence alleged to be true, submitted chargesheet. In the light of chargesheet, cognizance was taken and the case was committed to the court of Sessions. Charge against the sole appellant was framed under order dated 14.05.1991 to which he pleaded not guilty and claimed to be tried.

3. In support of prosecution case, the prosecution examined as many as 14 witnesses. PW 1 Md. Hadis, PW 3 Dorik Sahni, PW 4 Hanif, PW 5 Safi Ahmad, PW 6 Ram Swaroop Sahni, PW 8 Shamshul Haque, PW 10 Ramswarath Sahni and PW 11



Hamid Sah are co-villagers with whose assistance the injured while being carried to the Police Station succumbed to the injuries. PW 12 Jalim Mian the informant and his brother PW 7 Jalil Mian were taking meal in the courtyard when the deceased had gone to river bank for easing out. On hearing alarm, raised by the deceased, both came to the river bank and saw their brother-in-law in injured condition, they also saw in the torch light sole appellant running towards the river. PW 9 Rahiman Khatoon is the mother of informant PW 12 and PW 7. She is also mother-in-law of the deceased. PW 13 Dr. J. P. Gupta is the Medical Officer posted in Sitamarhi Sadar Hospital who conducted autopsy on the dead body of Kamruddin Mian. PW 14 Devendra Prasad is the Investigating Officer of the case. PW 2 Md. Juli is the co-villager who has been tendered.

4. On behalf of appellant it has been submitted that from the prosecutions story, as set out in the first information report, it will appear that while the deceased came to the bank of the river for easing out, informant PW 12 and his brother PW 7 were taking their meal in the courtyard. The deceased raised alarm and on hearing alarm, PW 12 and PW 7 rushed to the river front and saw the deceased injured. In the torch light both the witnesses also noticed sole appellant crossing river bed. The other villagers, though many of them have been examined as eye witnesses, but from the version as unfolded by the informant and



his brother it is quite evident that other co-villagers arrived on the river bank much after the assailant made good his escape, had no occasion to identify him. It is submitted that informant and his brother being the only eye witness of the occurrence and they having become hostile to the prosecution, it may not be appropriate to maintain the conviction of the appellant, as from the appraisal of the evidence of remaining prosecution witnesses, it cannot be said that they had the opportunity to identify the assailant. The other prosecution witnesses having no opportunity to identify the appellant, as they came to the place of occurrence much after the time the assailant had disappeared, no reliance can be placed on their evidence. It is also submitted that as per the prosecution story, unfolded in the first information report, the deceased was alive when they proceeded from the village but for reasons best known to the informant and his co-villagers instead of rushing to the hospital, they chose to go to Police Station and in the way deceased succumbed to the injuries. It is submitted that perhaps, such conduct was under taken only because the deceased was not in a position to name the assailant. From the injury found by the doctor, it is to be noticed that there is a cut injury right from the middle of the neck up to temporal region, as such, it may not have been possible for the deceased to have named the appellant. The informant and his brother, two eye witnesses of the occurrence, having become hostile and the evidence of other co-

villagers being not satisfactory, it is difficult for us to maintain the conviction and we grant benefit of doubt to the appellant.

5. The impugned judgment of conviction and order of sentence is accordingly, set aside. This appeal is allowed and the appellant is discharged from the liability of his bail bond.

(V.N. Sinha, J)

(Jitendra Mohan Sharma, J)

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