

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.606 of 2007

AGAINST THE JUDGMENT OF CONVICTION, DATED 30.03.2007, AND THE ORDER OF SENTENCE, DATED 31.03.2007, PASSED BY SESSIONS JUDGE, JAMUI IN SESSIONS TRIAL NO.148 OF 2004, GR NO.856 OF 2002, ARISING OUT OF JHAJHA POLICE STATION CASE NO. 104 OF 2002.

MD.IMTIYAZ ANSARI, SON OF LATE MD. SAMID, RESIDENT OF VILLAGE BARAJOR, POLICE STATION JAMUI, DISTRICT JAMUI Appellant

Versus

State of Bihar Respondent

Appearance :

For the Appellant : Mr. Girja Prasad, Advocate and
Mr. Jitendra Pd.Shaha, Advocate

For the Respondent : Mr. Abhimanyu Sharma, APP

Amicus Curiae : Mr.Neeraj Kumar @ Sanidh, Advocate

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 10-03-2015

Since none has appeared on behalf of the appellant, we hereby appoint Mr. Neeraj Kumar @ Sanidh, who is present in the court, as the *Amicus Curiae*, in this appeal.

2. The appeal is directed against judgment of conviction dated 30.03.2007 and order of sentence dated 31.03.2007, by learned Sessions Judge, Jamui, passed in Sessions Trial No. 148 of 2004 by which the sole appellant has been convicted under section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. The appellant has also been fined to Rs.4,000/- and in default of payment further to undergo Simple

imprisonment for six months.

3. The prosecution case, as made out in the fardbeyan of Rashida Khatoon (PW 7) wife of the deceased, Md. Nazir Ansari recorded by the Officer-in-charge of Jhajha police station, on 25.9.2002 at 02.45 PM, at village Barajore, police station Jhajha at the house of the appellant Md. Imtiyaz Ansari, in short, is as follows:-

4. On 25.9.2002 at about 11 AM Md Nazir Ansari, the husband of the informant, sent his son, Md. Hayat @ Phantoos (PW 2) to collect the dues from the accused, Imtiyaz Ansari. After some time, informant's son, Md. Hayat returned and informed him that accused, Imtiyaz Ansari did not pay the dues, and used filthy language. Thereafter, Md. Nazir went to the shop of accused Imtiyaz in anger. Noticing the given situation, the informant followed her husband. On reaching his shop, Md.Nazir asked the accused Imtiyaz as to why he did not pay the dues and instead abused his son. An altercation ensued between Md.Nazir and the accused Imtiyaz. In the meantime, accused Imtiyaz started pressing the neck of her husband (Md.Nazir). Md. Nazir shouted for help, whereupon Md. Ainul (PW 1) and Abdul Hassan (PW 8) rushed to the place, but by this time her husband became unconscious and fell outside the door, just near the tailoring shop of accused,

Imtiyaz Ansari. The informant claims to have witnessed the incident from the house of one Rauf. She states that her husband has been killed by the informant by pressing his neck.

5. On the fardbeyan of the informant, Jhajha Police station Case No. 104 of 2002 was instituted against the sole accused Md.Imtiyaz Ansari under section 302 of the IPC. After investigation police submitted charge sheet under section 302 of the IPC and cognizance was taken accordingly. Thereafter, the case was committed to the court of session and charges under section 302 of the IPC was framed against the appellant, to which he pleaded not guilty and claimed to be tried.

6. The prosecution, in support of its case examined altogether 8 witnesses, namely, Md.Ainul (PW 1), Md.Hayat (PW 2), Jarikha khatoon (PW 3), Bibi Tabassum(PW 4), Abul Hassan (PW5), Dr.Syed Md.Naushad Ahmad (PW 6), Rashida khatoon (PW 7) and Brajesh Prasad (PW 8).

7. Out of these 8 witnesses, PWs 3 and 4 have turned hostile and PW 7 Rashida Khatoon, the wife of the deceased has been gained over. PW 6 is the doctor, who conducted the post mortem examination and PW 8 is the Investigating officer of the case. PWs 2 and 5 have claimed to be the eye witness.

8. The defence, however, did not choose to adduce any



evidence. The case was one of complete denial of occurrence in his statement under section 313 of the Code of Criminal Procedure. The trial court on consideration of materials on record convicted the sole accused/appellant under section 302 and sentenced him to life imprisonment as already noticed and a fine of Rs.4000/-, in default of which, he was to undergo simple imprisonment for further six months.

9. Being aggrieved by the judgment of conviction and sentence passed by the trial court, the appellant has preferred the instant appeal.

10. The case of the appellant, in short, is that the prosecution has failed to establish charge under section 302 of the IPC. The informant (PW 7) who is wife of the deceased has not supported the prosecution case in her deposition. The statement of PW 5 is self contradictory, in so much so, in paragraph 1, he has claimed to have seen the occurrence whereas in the cross examination he states that when he reached near the deceased, he found him dead. PW 1 has suppressed the fact that he is closely related to the deceased. Furthermore, PW 1 does not state that any altercation took place before the appellant pressed the neck of the deceased.

11. The prosecution in order to establish its case examined

doctor (PW 6), the IO of the case (PW 8) besides the witness on point of occurrence.

12. First of all we would examine PW 6, the doctor who conducted post mortem examination on the dead body of the deceased on 25.9.2002. The doctor found following ante mortem injuries on the persons of the deceased:-

“External face was blue and puffy with petecical haemorrhage. Lip was blue. Eyes were closed, and petecical sub-conjunctival haemorrhage was present. Neck veins were enlarged and prominence. Bruises ½” in diameter were present on both sides of neck.

On dissection, haematoma was present on both side of trachea. Three upper tracheal rings were fractured, and inside of trachea was congested with haemorrhage. These injuries were eantemortem in nature, caused by hard blunt substance.”

13. The doctor, in his cross examination, stated that the deceased died due to asphyxia, on account of use of excessive force with hard and blunt substance or by throttling. He has proved the post mortem report (exhibit 1). The post mortem report and the evidence of the doctor duly establish that the death was homicidal and not accidental or natural.

14. The issue before the court is whether the prosecution has been able to prove that it is the appellant who has committed the murder of deceased. As such, it becomes necessary to examine the ocular evidence produced by the prosecution in support of his



case. Md Ainul has been examined as PW 1. He states that on the fateful day at about 11 to 11.15 AM, he saw Md. Nazir Ansari going to the shop of Md. Imtiyaz Ansari. Md. Imtiyaz Ansari pressed his neck on account of which he fell down and died. The police prepared inquest report in his presence on which he put his signature. PW 2, Md. Hayat is the son of the informant. He stated that on the fateful day at 11 PM, he saw Md. Imtiyaz Ansari pressing the neck of the deceased. In the cross examination, he stated that earlier, an altercation took place with Md. Nazir Ansari and the appellant's shop is not far off house of deceased.

15. PW 5 (Abul Hassan) stated that on the fateful day at 11 AM he was at his house. He heard cry of Md. Nazir Ansari that Md. Imtiyaz was pressing his neck. When he reached near the place of occurrence, he saw Md. Nazir Ansari somehow managing to stand with the aid of wall. Md. Imtiyaz was holding out his hand towards him. Md. Nazir Ansari soon fell down and died. PW 7 (Rashida khatoon) however has retracted from her earlier statement that she was an eye witness to the occurrence. She stated in her examination-in-chief that she could not know the reason for his killing. In the cross-examination, she stated that she did not see PW 1 (Md. Ainul) and PW 5 (Abul Hassan) at the place of occurrence. This witnesses stands gained over by the defence.



16. IO (Brajesh Prasad Singh) of the case has been examined as PW 8. He stated that around 12 PM on 25.9.2002, he learnt that some one has been killed at village Barajore. He found the dead body of Md. Nazir Ansari in front of tailoring shop of Md. Imtiyaz situated in Maszid Gali. He prepared inquest report on which PW 5 had made his signature. He proved the inquest report as exhibit 2. He sent the dead body for the post mortem examination. He subsequently took the statements of witnesses.

17. The evidence of PW 5 establishes that the deceased was done to death near the tailoring shop of accused Md. Imtiyaz on 25.09.2002 much prior to 2 PM. The doctor's report also corroborates the time of occurrence as mentioned in the prosecution case.

18. Mr. Neeraj who has been appointed as Amicus Curiae submits that PW 7 has not supported the prosecution case as narrated in the fardbeyan. He next submits that the evidence of other eye witnesses i.e. PWs. 1, 2 and 5 at in variance with the dates of each other. Furthermore, he states that PW 1 in his examination in chief stated that he saw Md. Nazir Ansari going to the shop of Md Imtiyaz for money. He stated that immediately Md. Nazir Ansari pressed his neck with both hands causing his death. Learned counsel appearing as Amicus Curiae stated that this



witness cannot be believed as he did not state that any altercation took place between the deceased and the appellant before the latter pressed the neck of the deceased. He also contended that PW 1 suppressed the fact that he was related to the deceased which fact has come to light in the statement of PW 5. He submits that PW 1 could not have seen the occurrence as in his cross examination, he stated that when he came near the deceased he found him dead.

19. It is true that as per the FIR and the evidence of son of the deceased an altercation started between the deceased and the appellant and thereafter the latter pressed the neck of the deceased. We further find that PW 1 has suppressed the fact that he is related to the deceased being married to his sister. In this view of the matter, we do not find it safe to rely on the evidence of this witness for convicting the appellant. However, we find that PW 2 in his evidence has supported the prosecution case. Even PW 7 in the cross examination stated that PW 2 was present at the time of commission of the crime. PW 2 in his statement stated that there was a prior altercation between the appellant and his father.

20. It has been argued by the defence that attention of the witness was drawn to his statement before the police, wherein he stated that he reached the place of occurrence only after hearing that the deceased is dead. PW 2 has denied of having made such

statement.

21. We find that attention of the Investigating officer was not drawn to the statement of PW 2 said to have been made before him by the defence. In such circumstances, the defence cannot draw any benefit by drawing the attention of the witness alone, to his alleged statement before the IO. The defence in our opinion has not been able to shake the evidence of this witness.

22. Besides this, the evidence of PW 2(Md Hayat), PW 5 (Abdul Hassa) has also corroborated the prosecution case. PW 5(Abdul Hassan) in examination-in-chief stated that on the relevant date at 11 AM, he was at his house and on hearing cry of Md. Nazir Ansari, he went towards the place of occurrence. He saw Md. Nazir Ansari somehow trying to stand with support of wall. Md. Imtiyaz was pressing the neck and as soon as he released him, the latter fell and died.

23. PW 5 very fairly has admitted that PW 1 is related to the deceased. The defence has not been able to elicit any major contradictions in evidence of PW 5 so as to completely discredit him. As such, even we disbelieve the evidence of PW 1, and discard evidence of PW 7, still we find that PW 2 and 5 have withstood the test of cross examinations and remain unshaken.

24. It is well settled that the conviction can be sustained on

the evidence of even solitary witness, if it is unambiguous and free from doubts. Learned counsel for the defence argued that the doctor did not find any finger marks on the neck of the deceased, which cuts at the root of the prosecution case that the deceased was done to death by pressing the neck. We find that the doctor has not overruled that the death could have been caused by throttling also. In view of the testimony of PW 2 and 5 as well as the post mortem report and the evidence of the IO, we are of the considered view that the prosecution has been able to establish the guilt against the appellant beyond all reasonable doubt.

25. In the result, the appeal fails and is accordingly dismissed. The appellant would continue to remain in prison to serve the rest part of the sentence.

26. Before parting with the judgment, we would record our appreciation for Mr. Neeraj Kumar @ Sanidh. He is allowed the prescribed fee for appearing as Amicus Curiae and assisting the court.

(Samarendra Pratap Singh, J)

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(Kishore Kumar Mandal, J)

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