

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 832 of 2007

Arising Out of PS. Case No. -35 Year- 1992 Thana -Dhansoi District- BUXAR

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Shyam Narain Sah son of Ram Dayal Sah, resident of village Moharia, Police Station Dhansoi, District-Buxar.

.... Appellant.

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (DB) No. 1015 of 2007

Arising Out of PS. Case No. -36 Year- 1992 Thana -Dhansoi District- BUXAR

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Daya Baitha son of Late Ram Sewak Baitha, resident of village-Moharihan, P.S.- Dhansoi, District-Buxar.

.... Appellant/s

Versus

The State of Bihar

.... Respondent

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Appearance :

(In CR. APP (DB) No. 832 of 2007)

For the Appellant : Shri Sumeet Kumar Singh, Adv.

For the Respondent : Mrs. Shashi Bala Verma, APP

(In CR. APP (DB) No. 1015 of 2007)

For the Appellant : Shri Sumeet Kumar Singh, Adv.

For the Respondent : Mrs. Shashi Bala Verma, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 11-03-2015

The two appellants, one in each of the two appeals, were tried by the learned Presiding Officer of Fast Track Court No.II, Buxar in Sessions Trial No.16 of 1994 for committing offences under Section 302/34 Indian Penal Code and 27 of the Arms Act. By judgment dated 22.05.2007 they were held guilty of committing the two offences and after being heard under Section 235 Cr.P.C., each of them was directed to suffer rigorous imprisonment for life under Section 302/34 and rigorous imprisonment for three years under

Section 27 of the Arms Act. The learned trial Judge directed the sentences to run concurrently. The two appellants have appealed to this Court against the judgment of conviction and order of sentence as noted above

2. Some of the facts are not denied. Ramji Baitha @ Ramji Chaurasiya was the full brother of PW.4 Laxman Chaurasiya, the informant of the case and he was requested by appellant Daya Baitha on 06.07.1992 to accompany him up to Dhansoi village market. The deceased was initially reluctant to accompany the appellant Daya Baitha, but the appellant Daya Baitha came again to his house around 03:00 PM on 06-07-1992 and persuaded him to accompany him for having a round of the village market.

3. The story proceeds as the deceased accompanied the appellant Daya Baitha and left his house and the informant claimed that he found another man standing near a *Mahua* tree who also accompanied the deceased and appellant Daya Baitha. The person who was standing near the *Mahua* tree had put on a white *pyjama* and a *Kurta* and was of dark complexion.

4. The deceased did not return till 08:30 P.M. The informant, thereafter, went to the house of appellant Daya Baitha to make enquiry from him as to why his brother had not come. The appellant Daya Baitha is said to have replied that he had remained behind and he may arrive a little later. The deceased did not come up

to 02:00 AM in the night intervening in the 6/7th July, 1992 and the informant and his family members thinking that he might have strayed into the house of some of his relatives, slept down.

5. It was stated that on 07-07-1992 at about 10:00 AM, the informant could pick up a rumour that a dead body was lying in the western fields of the village and he, accordingly, went there to find that it was the very dead body of his brother and a lot of persons had assembled there. The dead body of deceased Ramji Baitha @ Ramji Chaurasiya was bearing gun shot injuries on his head, temple and belly and the same was lying in the field of certain Saroj Bharate.

6. The informant claimed that it was this appellant Daya Baitha who had committed the murder of his brother.

7. The defence of the appellants was that it was a case of false implication on account of having suspected the two appellants of committing the murder and further that the deceased might have been killed by some one else for any particular reason.

8. The FIR was lodged by PW-4 Laxman Chaurasiya on 07.07.1992 at 12:30 PM and in absence of the evidence of the Investigating Officer we do not find ourselves in a position to note as to how the investigation had proceeded. However, what appears from the paper book is that after drawl of the FIR, the inquest proceeding on the dead body of deceased Ramji Baitha @ Ramji Chaurasiya was held and inquest report was prepared and the dead body was

transmitted for postmortem examination which was held by Dr. Ambika Prasad Mandal (PW.9) who prepared the postmortem examination report Ext.2. At any rate, the investigation was brought to a conclusion and the two appellants were sent up for trial which ended in the impugned judgment.

9. Out of 11 witnesses, PW.10 Madan Pandey and PW.11 Shambhunath Choudhary were witnesses of formal character. PW.1 Hare Ram Rai, PW.2 Dayanand Sah, PW.5 Jamuna Rai, PW.6 Sheo Kumar and PW.7 Kesho Paneri were declared hostile as they did not support the prosecution case. Each of them gave a single line evidence that he did not know anything about the occurrence. PWs. 3, 4 and 8, i.e., Radhika Devi, the wife of Ramlal Chourasiya, the informant and Bharat Chaurasiya, the other brother of the deceased had given evidence on deceased having left his house in the company of appellant Daya Baitha. While we were considering the evidence of witnesses what we found was that PW.3 Radhika Devi had stated that when her husband did not come and the appellant Daya Baitha had come back, she had the occasion of looking at his body and she had found stains of blood as also his *Gamchha* missing from his person. This evidence at page-9 of the paper book further points out that these two important facts were stated by PW.3 Radhika Devi to PW.4 Laxman Chaurasiya. The dead body was found on the next day. It was such an important circumstance that if the lady had indeed found



the blood stains on the cloth of appellant Daya Baitha and had also found his *Gamchha* missing, we assume that these important facts ought to have been stated by the informant in his FIR. Not only that this is an evidence coming for the first time through the witnesses and in absence of the evidence of the Investigating Officer, we find ourselves extremely disinclined to act upon the above line of evidence, because the defence had not been able to cross-examine the Investigating Officer so as to testing as to whether that particular line of statement was made by PW.3 before him. This was necessary in our opinion as the attention of PW.3 was drawn as regards that the above facts and it went unproved on account of non-examination of the Investigating Officer.

10. The other witnesses had merely stated that appellant Daya Baitha had taken the deceased with him on the pretext of visiting the village market and he did not return. It also appears from the evidence of witnesses that they had questioned the appellant Daya Baitha by meeting him at his house and the appellant had given an explanation as to why deceased Ramji Baitha @ Ramji Chaurasiya could not accompany him back to the village. This appears very much the initial story of the prosecution that the informant was satisfied along with his family members that the deceased had lagged behind while coming from the village market and was assumed to have stayed in some relative's house which was noted down in the

FIR. If there was a plausible explanation and that was accepted by the informant and his family members, then in our opinion the circumstance of being seen last in the company of the appellant appears disappearing creating no link in the circumstance.

11. Moreover, the dead body was found at about 10:00 AM on 07.07.1992 and disappearance was alleged in the early part of the evening of 06.07.1992. The explanation we have just noted was acceptable to the informant and on this score the link appears missing than creating any circumstances. It is very much clear from the evidence that the deceased was never seen after the return of appellant Daya Baitha with him or at any time before his dead body was recovered in of the village or around the *Mela* place.

12. The FIR did not contain any motive as to why this appellant would kill the deceased. However, during evidence, the witnesses started giving out a story that the daughter of certain Jaggu Paneri was carrying on an illicit relationship with appellant Daya Baitha which was objected to by deceased Ramji Baitha @ Ramji Chaurasiya. It appears from the evidence that the houses of appellant Daya Baitha and that of Ramji Baitha @ Ramji Chaurasiya were situated side by side and, as such, the deceased had the reason to object to the illicit relationship with the appellant Daya Baitha. We find that Jaggu Paneri had not come forward to state the above facts nor the lady who was carrying on an illicit relationship with the

appellant Daya Baitha was examined by the prosecution. The evidence which has come on the motive part of the prosecution story appears more an ipse dixit than real story based on some admissible material. It is mere an imagination upon which the prosecution had attempted to build a false story. There was no motive alleged in the First Information Report, but the subsequent motive also does not appear proved to the hilt, which further disproves the prosecution charges which were framed against the two appellants.

13. In the result, the two appeals succeed and they are allowed by setting aside the judgment of conviction and order of sentence. Appellant Daya Baitha is in custody, he shall be released forthwith, if not wanted in any other case. As regards appellant Shyam Narain Sah, he is on bail. He shall stand discharged from the liabilities of his bail bonds.

(Dharnidhar Jha, J.)

(Aditya Kumar Trivedi, J.)

Brajesh Kr./Prakash

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