

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.842 of 2012

Arising Out of Judgment and order of sentence dated 27/29.6.2012 passed by the Adhoc Additional Sessions Judge-I, Sitamarhi, in connection with Sessions Trial No. 35 of 2009/17 of 2009 arising out of Pupri P.S. Case No. 140 of 2008.

Sanjay Sah, S/O Raghunath Sah, resident of village- Garha, Police Station- Pupri, District- Sitamarhi

.... Appellant/s
Versus

The State of Bihar

.... Respondent/s
with

Criminal Appeal (DB) No. 692 of 2012

Arising Out of Judgment and order of sentence dated 27/29.6.2012 passed by the Adhoc Additional Sessions Judge-I, Sitamarhi, in connection with Sessions Trial No. 35 of 2009/17 of 2009 arising out of Pupri P.S. Case No. 140 of 2008.

Amar Sah, S/O Ram Chandar Sah, resident of village- Singhari Road, Police Station- Pupri, District- Sitamarhi.

.... Appellant/s
Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 842 of 2012)

For the Appellant/s : Mr. Ram Kishun Prasad, Adv.
For the State : Mr. Nawal Kishore Prasad, A.P.P.

(In CR. APP (DB) No. 692 of 2012)

For the Appellant/s : Mr. Ram Kishun Prasad, Adv.
For the State : Mr. Nawal Kishore Pd., A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 18-09-2015

Heard learned counsel for the Appellants and learned counsel for the State.

2. Both the Appeals have been heard together since they arise out of the same occurrence.

3. Both the Appellants have been convicted under Sections 302/34 of the Indian Penal Code passed by the Adhoc Additional Sessions Judge, Sitamarhi, vide Judgment and order of sentence dated 27/29.6.2012 in Sessions Trial No. 35/17 of 2009 and awarded sentence under Sections 302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life and fine of Rs.5,000/- in default of which further rigorous imprisonment for one year.

4. The case of the Informant according to Sandip Kumar, (PW-5), grand son of the deceased is that on the night of 26.8.2008 at about 9.00 P.M. he got information from his uncle Amar Nath Prasad, (PW-3), that his grandfather Ram Chandar Sah inside a shop was groaning and the door was locked from inside. On this information, he and his father Sita Ram Sah immediately proceeded towards Pupri Bazar, where he learnt that his grandfather who was residing in the shop-cum-residence of jewelry had been killed by Gopal Sah an employee of the said shop after having hatched a conspiracy with the present Appellants with a view to commit



robbery. However, the robbery attempt was foiled but the grandfather was killed by the accused persons by knife. He, then immediately, informed the Police Station from where the Police Personnel came and broke open the door where his grandfather was found dead and accused Sanjay Sah, Amar Sah and Dasrath Sah were found inside and arrested. He stated that Gopal Sah used to work with the grandfather as an artisan and he had ready information with regard to the key and lockers of the jewelry shop inside. This information was given on 26.8.2008 at 9:45 P.M. before the SHO, Pupri.

5. During Trial, the Prosecution examined 14 witnesses out of whom PW-2 Nand Lal Mahto and PW-6 Kailash Sah are not important because they have spoken about the complicity of Gopal Sah as a Conspirator who has been acquitted by the Trial Court.

6. PW-1 Satish Kumar, PW-3, Amar Nath Prasad, PW-4 Dinesh Bharti, PW-5 is the Informant Sandip Kumar, PW-6 Kailash Sah, PW-7, Md. Tabrez, PW-8 Ramanand Chaudhary, PW-9 K.C. Gupta, PW-10 Sitasaran Sah are the material witnesses. PW-12 is Dr. Naresh Prasad who had held the postmortem examination report.

7. PW-14 Lalu Mehra is a formal witness who produced the material Exhibits before the Courts.



8. PW-1 Satish Kumar is the brother of the Informant who stated that on 26.8.2008 while he was in Janakpur, he received information from Pupri that his grandfather Ramchandra Sah was locked inside the house and was heard groaning. Such a phone call was made by his uncle Amar Nath Sah, PW-3, who stated that a crowd had gathered around the shop and that he should come immediately. He then arrived there and saw that Sanjay Sah, Dasrath Sah, Amar Sah and Gopal Sah had been caught by the Police in the courtyard and detained there while his grandfather's dead body was lying there and blood was oozing from his nose and stomach. He also found blood stained knife and blood stain on the cloths of Dasrath Sah and Sanjay Sah and the broken glasses of his grandfather. He stated that acquitted Gopal Sah used to work as an artisan with the grandfather and he suspected that he was the one who got executed the murder. He had seen blood stains outside the room i.e. in the Gali. His attention was drawn to the time he would have taken in travelling from Janakpur to Pupri, from which, it appears that he could not have arrived immediately. His attention was also drawn to the earlier statement that he had given before the Investigating Officer about the presence of knife and the blood stained clothes of Dasrath Sah and Sanjay Sah.

9. PW-3 Amarnath Prasad stated that on the date of



occurrence at about 7-8 P.M one Shambhuji informed him on his Mobile that outside the shop of his uncle-in-law Ramchandra Sah, deceased, a number of persons had gathered and they were groaning sound coming from inside the house. On this information, he went there and informed the Pupri Police State. He saw Gopal Sah accused in front of the shop. Police on his information, reached the place of occurrence and broke open the gate and the door and on his calling after 10-15 minutes, he entered the house. He found inside the house that Amar Nath Sah, Dasrath Sah and another person Sanjay Sah had been caught by the Police. He stated that Gopal Sah was an artisan of the deceased and used to manage everything. In Paragraph-13, he conceded that he gave a statement after 4-5 minutes and, hence, in our view his evidence is not worth reliance.

10. PW-4 Dinesh Bharti stated that on the date of occurrence at about 9:00 to 9:30 P.M., while he was in Janakpur Road Railway Station, he heard that there was some Hungama had taken place at the shop of Ramchandra Sah at which, he went there and found a big crowd which was saying that robbery was taking place inside the shop. Later, the Police came and broke open to door and entered in and caught three persons as also recovered dead body. He clarifies that three persons who had been caught by the Police was Dasrath, Sanjay and Amar. There was also a blood stained knife and



a broken pair spectacles of which seizure was made and he was a signatory to it. He proved the same as Exhibit-1. He stated that Gopal Sah standing outside was also immediately caught. In his cross-examination, he stated that two knives and one spectacle was recovered there but at the time of preparation of seizure list, none of the accused persons were present. He stated that the relatives of the deceased arrived only around mid night. He stated that he did not know the name of Sanjay, Dasrath and Amar before the occurrence. He learnt the names only from the crowd. He further stated that the Police had recovered one knife from the Gali of deceased which was running East-West.

11. PW-5 Sandeep Kumar is the Informant himself who stated that on 26.8.2008 at around 9:00 P.M., while he was in Sursand, he got information from PW-3 about the occurrence at which he went there along with his father PW-10. When he reached the place of occurrence, he learnt that Gopal Sah who used to work in his shop, had conspired with his brother Dasrath Sah and two other persons namely, Amar Sah and Sanjay Sah, and entered inside the shop with an intent to commit robbery but they could not succeed and killed his grandfather and they were arrested by the Police and SAP Jawans. A number of persons were present there. The arrested persons were seen by him in his house. When he reached the place of



occurrence, he found his grandfather dead with injuries on his face. His spectacles broken, blood stains, blood stained knife and his blood stained clothes. He suspected accused Gopal Sah of having committed this occurrence. In cross-examination, he has clarified that when he reached the place of occurrence, the accused persons had already been detained by the Police. In further cross-examination, he stated that when he reached the place of occurrence, he saw Dasrath Sah who was the brother of Gopal Sah and the rest two accused who are said to have often come to meet him. He found the keys and locker fallen near the Chowki where his grandfather was found dead.

12. PW-7 Md. Tabrez has stated that on the date of occurrence, he heard hulla from the shop of Ramchandra Sah Swarnkar, and went there where the Police also came and broke open the door and found the dead body. The inquest report was prepared in his presence upon which he signed which is marked as Exhibit-‘X’ for identification.

13. PW-8 Ramanand Choudhary stated that on the date of occurrence, there was hulla from outside the house of the deceased at which he went there. In his presence, the Police came and started to open the door, entered the house and then somebody from the crowd said that Ramchandra Sah had been murdered. The Police said that three persons have been caught inside and were taken away



by them. A seizure list was prepared and the articles found there in his presence which he proves as Exhibit-3, 3/1, 3/2, 3/3 and 3/4. He stated that broken spectacles, two knives, blood stained shirt paint had been recovered there. He stated that the deceased was an old person and it is quite possible that the Spectacles may have broken when it fell down.

14. PW-9 Krishna Chandra Gupta stated that on the date of occurrence he learnt that a dacoity was taking place at which he rushed to the place of occurrence where he saw a huge crowd in the house of Ramchandra Sah. Thereafter, the Police came and when no one replied from inside, it broke open the lock and found blood stained dead body. From the same room, three accused were also caught and arrested by the Police. A seizure list of blood stained full paint in his presence was prepared which is marked as Exhibit-4.

15. PW-10 Sita Sharan Sah, the father of the Informant (PW-5) and son of the deceased stated that on the date of occurrence, while he was in Sursand, he got an information from his cousin brother-in-law, so they immediately rushed to the place of occurrence where he found the dead body of his father and three accused persons namely, Dasrath Sah, Sanjay Sah, Amar Nath Sah having been detained. He stated that Gopal Sah had planned a dacoity but when it could not succeed, his father had been killed. He stated

that he used to live in Nepal with his children and from his cross-examination, it appears it took some time to travel from Sursand to the place of occurrence.

16. PW-12 Dr. Naresh found the following injuries on the persons of the deceased:

External findings:

- i) Sharp cut wound of size about 3" x ½" Scalp deep over right parietal bone of skull.
- ii) An incised wound of size about 1" x ¼" x bone deep over nasal bridge.
- iii) An incised wound of size about 1" x ¼" x bone deep over nasal bridge.

Internal findings:

- i) On opening of skull there was fracture of right parietal bone of skull. Brain matter lacerated Cranial cavity fill with blood & blood clots.
- ii) On opening of neck – NAD
- iii) On opening of Thorax – both lungs intact & pale. Heart intact and Chambers empty.
- iv) On opening abdominal Cavity – An abdominal viscera pale. Stomach contains – gastric juice only urinary bladder full

Time elapsed since death and P.M. held within 24 hours.

- v) In my opinion, the cause of death due to hemorrhagic shock on a result of about noted injuries caused by sharp cutting object.
- vi) This P.M. report is in my pen & signature. This is mark as Ext. – 5.

17. PW-13, the Investigating Officer Man Mohan Prasad proves the First Information Report as Exhibit-5 and states that on 26.8.2008 at about 9.00 P.M., somebody informed him on the



phone that sound of groaning were heard from inside the shop-cum-residence of Ramchandra Sah and the door was locked from inside. He then made a Sanha entry and proceeded to the place of occurrence along with the Police team. He found a number of persons had gathered around the house and the door was closed. The door was then broke open since nobody had opened it from inside. When they entered inside the house the inner door was also found locked and on challenge, the miscreants raised their alarm that they were ready to surrendered and lastly, by raising their hands came out. They were Dasrath Sah, Sanjay Sah and Amar Sah. He then found the dead body of the deceased. About the place of occurrence, he stated that the main door was made of wood and near the door a lot of blood and broken spectacles were found. Just next to the Verandah was a room where the shop used to be run and a locker was found. The main door which was on the north side opened into a small Gali, where again blood was found. The Gali was about 12'. On the south of the Gali was a door with an iron rod and two locks on it which led to the staircase on the East side. The door which opened into the Gali was about 10'. Then there was a courtyard, where on the verandah, a blood stained knife was found. From the place of occurrence which has been described by the Investigating officer, one thing is certain that there is no sign of any robbery or attempt to a robbery. He stated

that from the person of Appellant Dasrath Sah, blood stained cloths were recovered of which a seizure list was prepared and from the person of Sanjay Sah, a blood stained full paint was recovered which also a seizure list was prepared. From the cross-examination, one cannot find anything notable which would be in favour of the accused persons.

18. The defence also examined four witnesses mainly on the point of good conduct of Gopal Sah and Amar Sah.

19. From the evidence discussed above, it is noteworthy that there is no direct evidence adduced by the Prosecution in this case in regard to attempt to robbery or murder. The circumstances which are sought to have proved against the Appellants are;

- a) that Appellants were caught inside the house
- b) their clothes were blood stained
- c) blood stained knives were recovered.

19. However, we find that even though, PW-3 Amar Nath Prasad stated about recovery of the Appellants at the place of occurrence itself, he was examined 4-5 months later and, hence, his evidence cannot be taken into account.

20. PW-4 Dinesh Bharti, no doubt stated about the factum of detention of Appellants but, there is no positive evidence

that they had been apprehended in front of him. In fact, he stated that when the seizure list was prepared in his presence, the Appellants were not there.

21. PW-8 Ramanand Chaudhary stated that it was the Police who stated that three persons had been caught but no names have been taken by him. PW-9 Krishna Chandra Gupta also stated about the factum of three persons having been caught but he does not disclose any name nor they were arrested in his presence.

22. In such circumstances, we think that the evidence of only the investigating officer, PW-13, simplicitor on the point of arrest of the Appellants inside the house is not beyond reasonable doubt. Moreso because we find from the order sheet of the Chief Judicial Magistrate, Sitamarhi, that the F.I.R. was forwarded to the Court at 5:20 P.M. i.e. next evening but no accused were produced before him. He notes in the order sheet that later they were produced. This makes the case of the Prosecution with regard to arrest of the Appellants at the place of occurrence even more doubtful, is not worth reliance.

23. We also aforementioned find that the circumstances were not put to the Appellants at the stage of Section 313 Cr. P.C. which makes it impossible for this Court to rely upon these two circumstances, even if they were corroborated.

24. In the result, We allow both the Appeals by setting aside the Judgment of conviction dated 27.6.2012 and order of sentence dated 29.6.2012 passed by the Adhoc Additional Sessions Judge, Sitamarhi, in Sessions Trial No. 35/17 of 2009. The Appellant Sanjay Sah of Cr. Appeal (DB) No. 842 of 2012, who is in jail custody, shall be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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