

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.1287 of 2010**

(Against the Judgment of conviction dated 21.09.2010 and Order of sentence dated 22.09.2010 passed by the 3<sup>rd</sup> Additional Sessions Judge, Saran at Chapra, in Sessions Trial No.580 of 2007).

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1. Sayad Miya, son of Mokhtar Miya.  
2. Kamrul Begam, wife of Mokhtar Miya.  
Resident of village-Kateya, P.S.-Janta Bazar, District-Chapra (Saran) (Bihar).

..... Appellants.

Versus

The State of Bihar

..... Respondent.

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**Appearance :**

For the Appellants: M/s. Sanjay Kumar Singh & Ms. Prakritita Sharma, Advocates.  
For the State : Mr. A.K. Sinha, Advocate.

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**CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH**  
**and**  
**HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA**

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 27-11-2015

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Appellant No.1 has been convicted under Section 302 of the Indian Penal Code and sentenced to rigorous imprisonment for life and fine of Rs.20000/-, in default of which further rigorous imprisonment for one year and appellant no.2 has been convicted under Sections 302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life vide Judgment/Order dated 21.09.2010/22.09.2010 passed by the 3<sup>rd</sup> Additional Sessions Judge, Saran at Chapra, in Sessions Trial No.580 of 2007.

2. The case of the prosecution, according to the Informant

Kayamuddin Mian (P.W.6), brother of the deceased Ibrahim Mian, is that on 04.08.2007 at about 05.00 P.M. when the deceased was trying to covering his wall with mud and water an altercation ensued between him and the accused persons, in course of which Appellant No.2 went to her house and brought out a dagger and gave it to the Appellant No.1, who assaulted the deceased several times due to which he died. This report was given one hour later at 06.00 P.M.

3. During trial, the prosecution examined altogether 10 witnesses, out of whom, P.W.1 Nuresha Begum, the wife of the Informant, P.W.2 Khushbu, the niece of the deceased, P.W.3 Laila Begum, the mother of the deceased, P.W.4 Hazra Begum, P.W.5 Ali Hussain, the son of P.W.4, P.W.6 Kayamuddin Mian, the Informant, the brother of the deceased, and P.W.10 Guruwar Mian are eye witnesses. P.W.8 is Dr. Shambhu Nath Singh, who conducted Post-Mortem of the deceased and P.W.7 is the Investigating Officer. P.W.9 Sanjay Kumar Srivastava is a formal witness who proved the inquest report (Ext.5).

4. On going through the evidence of the witnesses, we find that P.W.1 Nuresha Begum has stated that on the date of occurrence in the evening she heard 'hulla' at which she went to the door of Appellant No.1 and saw him assaulting her brother-in-law Ibrahim alongwith the rest of the accused persons on account of which he died. In cross examination she has given contradictory statement as to whether she is

actually an eye witness.

5. P.W.2 Khushbu, the niece of the deceased, has stated that on the date of occurrence while she was at her house, she heard 'hulla' at which she went to the place of occurrence and saw that on her land Appellant No.1 was digging a hole and putting water in it and the deceased digging up the earth and putting it on the wall. Then Appellant No.1 is said to have assaulted him with 'Chhura' on account of which he died. She does not name any other accused persons. In cross examination, apart from repeating the manner of occurrence, she has not stated anything to be noted down.

6. P.W.3 Laila Begum has stated that at about 05.00 P.M. on the date of occurrence, she suddenly heard 'hulla' at which she went to the place of occurrence and saw that her deceased son was putting the earth mixed with water on the wall. While some of the accused persons caught hold of him, Appellant No.2 is said to have brought out a dagger with which Appellant No.1 assaulted her son. He was then taken to the hospital where he was treated but he died. She further stated that the Informant was also assaulted and was treated in the hospital. In cross examination, it was suggested to her that, in fact, one of the Appellants had given birth to a child, therefore, she was not present at the place of occurrence but she denied the same.

7. P.W.4 Hazra Begum has stated that on the date of

occurrence the deceased was mixing water with earth at which a 'hulla' started. She then came out of the house and saw some of the accused persons catching hold of the deceased while Appellant No.2 brought out a dagger from the house and gave it to the Appellant No.1 with which he assaulted the deceased on account of which he died. In cross examination, she also did not state anything to be noted down.

8. P.W.5 Ali Hussain has stated that on the date of occurrence at 05.00 P.M. while he was at his door, he suddenly heard 'hulla' near the house of the Appellants where he went and saw some of the accused persons catching hold of the deceased while Appellant No.2 brought out a 'Khukhari' with which Appellant No.1 assaulted the deceased several times on account of which he died. He stated that the Investigating Officer had recovered 'Khukhari' from the place of occurrence, the seizure list of which was prepared. In cross examination, he explained the relationships between himself, Hazra Begum (P.W.4) and that the Appellants were his agnates. He further stated that both the parties live at the same place and his house was adjacent to that of the Appellants and the Informant.

9. P.W.6 Kayamuddin Mian is the Informant who reiterated his statement which he had stated in the Fardbeyan that in the evening of 04.08.2007 an altercation started between the Appellant No.1 and the deceased in course of which some of the accused persons caught hold of

the deceased and the Appellant No.2 brought out a dagger and gave it to her son Appellant No.1 with which he assaulted the deceased due to which he died. He was also allegedly injured. He stated that he went to the police station where his statement was recorded. He asserted that he was treated at the Sadar Hospital but there is no medical report in this regard. We also find from his Fardbeyan it is stated to have been recorded at the place of occurrence itself which creates a certain doubt in the mind of the Court with regard to the veracity of the statement. In cross examination, surprisingly, he stated that his statement was recorded at 05.00 P.M. and whatever Darogaji had recorded had been read over to him. He stated that the statement had been given in the presence of Guruwar Mian (P.W.10) and his signature had been taken on the documents. He further stated that on the next day once again at 05.00 P.M. his statement was recorded and on both the days his signature was taken on the document which had been prepared. . In cross examination, several questions were put to him with regard to the ownership of the land where the occurrence is said to have taken place. He admits that Appellant No.2 was his Aunt whereas rest of the accused persons were also his close relatives.

**10.** P.W.7 Abhinandan Pathak stated that he was the Officer Incharge of Janta Bazar Police Station on the date of occurrence and he had recorded the Fardbeyan which is Ext.2. He then ensued the

investigation and had gone to the place of occurrence which was two yards north and four yards south to the door of the Appellants where the dead body of the deceased was found. He has recovered the dagger case from the place of occurrence. However, in cross examination, he was questioned as to the distance of the house of the witnesses from the place of occurrence which he did not write.

**11.** P.W.8 is Dr. Shambhu Nath Singh, who conducted the post-mortem examination of the deceased and found the following injuries on his person:

(A) External:-

- (i). Incised wound in left shoulder 3" X 3" X 2".
- (ii). Three stab wounds on right side of neck. All wounds approximately 3" X 3" X great vessels of right side of neck along with nerves were cut.
- (iii). One stab wound on lower part of left shoulder 3" X 1" X 1".
- (iv). Incised wound on back of neck 1" X 1/2" X 1/2".
- (v). One deep penetrating wound on left renal area 3" X 2" X cavity deep.

(B) On Exploration Dissection:- Left kidney was cut dissected incised 2½" X 1" X 1". Rest all viscera were intact and pale.

From the said injuries, we find that some of them were incised wounds whereas some penetrating wounds.

**12.** P.W.9 Sanjay Kumar Srivastava, was the Advocate's

Clerk, who proved the Ext.5, the inquest report. Evidently, the same was not prepared in his presence.

**13.** P.W.10 Guruwar Mian stated that on the date of occurrence while he was at his door, an altercation had taken place between the deceased and the Appellants at which he went there and saw the deceased putting the earth on his walls which was prevented by all the accused persons including the Appellants. Just then Appellant No.2 brought out a 'Khurkhuri' with which Appellant No.1 assaulted the deceased several times. The inquest report was prepared in his presence which was signed by him marked as Ext.5/A. He stated that he had gone to the police station with the informant. The Fardbeyan of the Informant was recorded in his presence at which he had signed as a witness. His attention was drawn to the earlier statement given under Section 161 of the Code of Criminal Procedure. He stated that Darogaji had come at 05.30-06.00 and 'Khukhari' had not found.

**14.** On going through the evidence of the witnesses, we find the consistent evidence is that an altercation had taken place between the parties in the midst of which Appellant No.2 had brought out a "Khurkhuri" which the Appellant No.1 had used for assaulting the deceased. However, most of the witnesses have not stated about the role of the Appellant No.2 and, thus, we are inclined to give her benefit of doubt. Therefore, she is acquitted of the charges.

**15.** So far as the Appellant No.1 is concerned, this Court is of the view that undoubtedly, the occurrence had taken place at the door of the Appellant No.1 and all of a sudden a fight had ensued between the parties who are agnates. Who started the fight is not known. In such circumstances, it would be difficult for this Court to speculate as to what degree the Appellant no.1 was provoked and be held responsible for the subsequent act and whether he had the intention to kill the deceased. No doubt, several injuries have been found on the person of the deceased but that alone is not indicative as to whether Appellant No.1 had intended to cause his death. The manner of occurrence suggests there was no premeditation.

**16.** Hence, in the result, this appeal is allowed in part and Appellant No.2 is acquitted of the charges. She is on bail, so she is discharged from the liabilities of her bail bonds. As for Appellant No.1, we convert his conviction, in the light of discussions above, under Section 302 of the Indian Penal Code to 304 Part-II of the Indian Penal Code and modify his sentence to the period already undergone.

**(Anjana Prakash, J)**

**(Rajendra Kumar Mishra, J)**

**Pradeep Srivastava/A.F.R.**

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