

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1233 of 2010

Against the judgment of conviction, dated 25.08.2010, and order of sentenced dated 26.08.2010, passed by Mr. Prem Kumar Sharma, Additional Sessions Judge, Fast Track Court, IV, Kishanganj, in Sessions Trial No. 1007 of 2008, arising out of Kishanganj P.S. Case No. 134 of 2008, G.R. No. 499 of 2008

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Ajeet Paswan @ Ajeet Kumar Paswan, son of Ratan Paswan, resident of Naya Tola, Khagra, P.S. + District Kishanganj Appellant

Versus

The State of Bihar Respondent

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Appearance :

For the Appellant : Mr. Vikramdeo Singh, Adv.

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

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 24-11-2015

Heard the learned counsel for the Appellant and the State.

2. The Appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to rigorous imprisonment for life and a fine of rupees twenty thousand by the Additional District and Sessions Judge, Fast Track Court, IV, Kishanganj, in Sessions Trial No. 1007 of 2008.

3. The case of the prosecution, according to the informant, Nirmal Kumar Rai, P.W. 7, is that on 18.05.2008 at about 07.00 P.M. the Appellant and his other friends were roaming around outside the school and had asked some school children as to when the Headmaster would come out and, thereafter, left. Around 07.00 P.M. when the Headmaster had finished serving meals to the children and left for his home, on the way, suddenly, the Appellant and two others caught hold of the deceased and assaulted him with chhura (dagger). The Headmaster started crying for help on which the students gathered there and tried to catch the boys, but, they escaped. They also threatened that if any one gave evidence they would also be killed. The reason for the occurrence was that the father of the Appellant was a chaprasi (peon) in the school, who had

been suspended by the Headmaster at which he had also assaulted the previous Headmaster and had got instituted a case of rape by his wife against him and, thus, he speculated that he had got the deceased killed by his sons and others.

4. During the trial the prosecution examined twelve witnesses. P.W. 1, Manoj Kumar Das, has stated that the father of the Appellant was a chaprasi (peon) in the school who had been suspended by the previous Headmaster. He had also misbehaved with the earlier Headmaster on account of which he had been transferred to another place. Before his transfer he was aggrieved with the deceased and had attempted to get his suspension revoked and was altercating with the deceased over payment of his salary and was aggrieved on account of the deceased not bending to his demands. He, then, hatched a conspiracy and got the deceased eliminated. He had himself seen miscreants running away and had learnt about the occurrence from other students. In cross-examination several questions were put to the witness with regard to the suspension of the Appellant, but, it has no bearing on the present case since it only pertains to presence or lack of motive which is not important in the present case.

5. P.W. 2, Bachendra Kumar Rai, is an eye witness to the occurrence and has stated that after his dinner he was washing his hands when he heard the deceased screaming and then he saw the accused Sumit and Vijay having caught hold of the Headmaster while the Appellant was stabbing him. They then ran away. He stated that it was Ratan Paswan, chaprasi (peon) and father of the Appellant, who had got executed this work because of the dispute over his suspension. In cross-examination he had stated that he is a Class X student and used to stay in the hostel. He also stated that there was sufficient light arrangement at the place where the occurrence had taken place. There does not appear anything of further relevance in his cross-examination.

6. P.W. 3, Sharavan Kumar Rai, stated that at about 06.30 P.M. he had seen the Appellant along with his other friends roaming around and they had asked him as to when Headmaster would come out,

but, he had not given any reply. At about 07.30 P.M. while he along with others were having food on the verandah he saw the co-accused having caught hold of the Headmaster and the Appellant assaulting him with a dagger. The miscreants then ran away scaling the boundary wall in which course the sandal of one of the accused was left at the spot. He, further, stated that the accused, Ajit and Sumit, were sons of Ratan Paswan. In cross-examination he state that dinner was served in the hostel around 07.15 P.M. to 07.30 P.M. and that he had been examined by the police. His attention was drawn to the earlier statement and that he had stated earlier that when they were eating they saw the deceased running out in an injured condition and having fallen near the volley ball net. There does not appear anything of importance in his cross examination.

7. P.W. 4, Bhagwan Kumar Rai, is that he had seen the Appellant and Vijay outside the hostel, while they were eating. When he had finished food and had gone to wash hand near the tube-well, he had heard some screaming of the Headmaster at which he went there and saw that accused, Vijay and Sumit, having caught hold of Headmaster whereas the Appellant was assaulting with dagger. He stated that the Vijay and Sumit were sons of Ratan Paswan, the chaprasi (peon) of the school, who had some differences with the deceased. In cross-examination he asserted that he was in the school on the date of occurrence and had ran out towards the Headmaster along with some other boys, who had reached earlier and had also chased the miscreants.

8. P.W. 5, Babu Ram Das, stated that on the date of occurrence some boys came and informed him that the Appellant along with others had assaulted the deceased. He, further, stated that the chaprasi (peon), Ratan Paswan, had got executed this work on account of the dispute in a well planned conspiracy. He stated that he was an office functionary of the school and the dispute between the deceased and Ratan Paswan was over payment of wages during the suspension period. He had singed on the inquest report, which is Exhibit 2. His attention was drawn to the earlier statement which is of no consequence and has

no bearing on the credibility of the present case. In cross-examination, he once, again, stated that he was not an eye witness, but, had heard about the occurrence.

9. P.W. 6, Ashok Kumar Paswan, stated that when he was closing the store he heard the boys screaming that Baba had been killed. He, then, ran towards the place of occurrence and saw Ajit Paswan and Sumit Paswan running away after assaulting. The police then came at about 11.00 P.M. and collected blood stained dagger, a letter and a pair of chappal, the seizure list of which were prepared on which he signed. He stated that he did not know the contents of the letter which had been recovered from the place of occurrence and that 25 ft away from the place of occurrence the dagger had been recovered which was about 11" long. He was examined the same night about 11.00 P.M. There is nothing notable in his cross-examination.

10. P.W. 7, Nirmal Kumar Rai, was an occupant of the hostel and the informant who stated that on 18.05.2008 at about 07.30 P.M. while he was having his dinner in the mess in the presence of the deceased who was supervising the distribution of the meals and soon after when he was leaving towards his hostel and reached the verandah, he saw the deceased being surrounded by the accused persons. Then, Sumit Paswan and Vijay Paswan caught hold of the deceased while the Appellant wielded dagger blows on the head and neck of the deceased on which he started screaming. They, then, left their food and ran outside and saw that accused still assaulting the deceased. On seeing them approaching the accused persons started to run threatening them of dire consequence if they reported the matter. The deceased was then taken to the hostel where he was declared dead. He stated that the motive for the occurrence was that the father of the Appellant, who was a chaprasi (peon) in the school, was demanding some illegal favors from the Headmaster which was being refused by him and, hence, he had got committed this occurrence. He proved his fardbeyan, Exhibit 4/8. About the place of occurrence he stated that the mess ground was on the ground floor and the Headmaster's room was also on the ground floor.

In cross-examination he stated that the police had stayed in the hostel for about half an hour, after information given to it at 07.40 P.M. on telephone. There is no other notable point in the cross-examination.

11. P.W. 8, Dr. Md. Manzar Alam, conducted the post mortem and found the following injuries on his person :

(i) An incised wound of size about 1½" x ½" x 1" deep present above thyroid cartilage placed transversely. This wound is covered with blood clot. Edge of wound is sharp. On dissection of the wound external jugular vein on left side is cut through and through, partial nick in external carotid artery of left side. Underlying structures, lower end of larynx and upper two rings of trachea are cut. There is nick in anterior portion of esophagus.

(ii) An incised wound 1" x ¼" skin depth, placed vertically just above injury no. (i).

(iii) An incised wound 1" x ¼" skin depth placed obliquely just below and left lateral to injury no. (i)

12. From the above, it appears that the injuries sustained were caused by sharp cut weapon.

13. P.W. 9 Dr. J.P. Pandey and P.W. 10 Dr. Satya Swaroop, were also members of the Medical Board, which had conducted the post mortem.

14. P.W. 11, Akhilesh Kumar, is a formal police officer, who merely submitted the charge sheet.

15. P.W. 12, Rizwan Khan, was the investigating officer, who proved the fardbeyan, Exhibit 7, the first information report Exhibit 8 and inquest Exhibit 9. He describes the place of occurrence being the residential premises of the deceased, which had two small rooms, ten feet away was the otherwise backward class (OBC) hostel and in between them was about 2½ feet high boundary wall, which was partly broken. On the south was the store room and east about 25 feet away was the hostel which was bounded by 6 feet high boundary wall. On the



back was a road and a maidan (field). In front a volley ball net was tied. The place of occurrence was the outer verandah and the maidan of which a map was prepared. Near the door a blood stained dagger and a letter was found which was written in red ink. A pair of chappal was also found near the boundary wall of which seizure list was prepared which he proved as Exhibits 11/1 and 11/2. In cross-examination some questions were put to him about the place of occurrence, but, they also do not appear very relevant.

16. We find that his attention has not been drawn to the statement of the witnesses of whose contradiction had been taken by the defence.

17. On an analysis of the evidence of the eye-witnesses reproduced above for reference, i.e., P.W. 2, P.W. 3, P.W. 4, P.W. 7 and corroborative witnesses, i.e., P.W. 1, P.W. 5 and P.W. 6, we find that there is consistent evidence with regard to the role of the Appellant, his presence at the time stated and wielding repeated dagger blows upon the deceased. No contradictions worth mentioning which could dent the credibility of the witnesses was elicited by the defence which makes their evidence completely unimpeachable. One of the witnesses clarified that there was sufficient light which rules out the possibility of mistaken identification. Further, we find that a Board of Doctors had conducted the post mortem examination which supports and validates the prosecution case. No doubt motive has not been established by the prosecution, but, in a case of direct evidence it is of no consequence.

18. In view of such discussion, finding no merit in the appeal, the same is **dismissed**.

(Anjana Prakash, J)

(Gopal Prasad, J)

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