

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.261 of 2009

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Harishankar Thakur @ Harishankar Sharma, son of late Sheetal Thakur, resident of village-Barka Gaon, Keshri Nagar, Police Station-Karja, District-Muzaffarpur.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance:

For the Appellant : Shri Nachiketa Jha, Adv.

For the State : Smt. Shashi Bala Verma, APP

For the Informant : Shri Rakesh Ranjan

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE ADITYA KUMAR TRIVEDI)

Date: 18-03-2015

Challenge in this appeal is the judgment of conviction and sentence dated 21.02.2009 rendered by the Presiding Officer, FTC, IV in Sessions Trial No.430 of 2007 convicting the sole appellant Hari Shankar Thakur @ Harishankar Sharma for an offence punishable under Section 302 IPC and sentencing him to undergo R.I. for life as well as also fined Rs.30,000/- in default thereof, to undergo R.I. for three years, additionally.

2. PW.6 Uma Shankar Thakur gave his fardbeyan on 04.12.2006 at about 10:00 P.M. in the plot where dead body of his mother was lying putting an allegation that on the same day at about 06:00 P.M. his mother Girija Devi gone to ease herself. At that very moment, he also proceeded towards west to his house to meet nature's call. As soon as he reached over soling road, heard cry of his



mother whereupon he ran and found Hari Shankar Thakur, his Pattidar engaged in assaulting his mother. He also raised alarm over which his son Hemraj Kumar and others came. During midst thereof, Hari Shankar Thakur repeatedly gave *Danda* (club) blow and after throwing the same, escaped towards northern direction. He along with others reached near dead body of his mother and found the *Danda* (club) made up of palm. Meanings of the brain came out on account of fracture of skull bone due to assault inflicted by Hari Shankar Thakur. The motive for occurrence has been disclosed as Hari Shankar Thakur was suggesting his mother as a witch and in the aforesaid background, even at previous occasion had attacked upon her.

3. On the basis of the aforesaid fardbeyan Karja P.S. Case No.128 of 2006 was registered followed with investigation as well as submission of charge sheet after completion thereof, leading to trial which ultimately concluded in a manner, the subject matter of instant appeal.

4. Defence case, as is evident from the mode of cross-examination as well as from the statement recorded under Section 313 Cr.P.C. is that of complete denial as well as false implication. However, neither any DW nor any exhibit has been brought up on record on behalf of appellant / accused.



5. While assailing the judgment of conviction and sentence it has been submitted on behalf of appellant that none of the witnesses so examined on behalf of prosecution are an eyewitness to occurrence. Therefore, putting reliance thereupon while concluding against guilt of appellant by the learned trial Court happens to be wrong and illegal.

6. In order to support such plea, it has been submitted by the learned counsel for the appellant that PWs.1 and 2 suggest their status to be a chance witness. Moreover, from their cross-examination it is apparent that there was no occasion for them to have their presence during course of commission of crime, so alleged. In likewise manner, it has also been submitted that PWs.3 and 4 who happen to be the sons of PW.6, the informant themselves shown their status not to be an eye witness to occurrence. PW.6, the informant also improbabilized himself to be an eyewitness to occurrence because of the fact that he had not proceeded, even taking into account his version, towards the direction wherein deceased had gone and so, being evening of winter season as well as having no source of light, he was not at all in a position to perceive the occurrence from a distance and in likewise manner was capable to identify the assailant. Furthermore, PW.8 had himself admitted not to be an eyewitness to occurrence. Therefore, there was no legal, cogent, credible material

available on the record to suggest the appellant to be author of the crime. Consequent thereupon, holding the appellant to be guilty on the basis of in fecund nature of evidence is non-permissive in the eye of law, and is fit to be set aside.

7. Now coming to another aspect, it has also been argued that the place of occurrence as suggested by the prosecution does not happens to be the actual place of occurrence because of the fact that PW.5, the I.O. had not been able to collect blood stain from the place of occurrence nor he had, during course of inspection of place of occurrence found blood at the spot while, as per evidence of the witnesses blood had fallen from the injury. The aforesaid discrepancy is bound to affect the prospect of prosecution case and that being so, none of the witnesses are fit to be accepted as an eyewitness nor justify the conclusion of the learned trial court. So, submitted that appeal is fit to be allowed.

8. At the other end the learned Additional Public Prosecutor supporting the finding recorded by the learned trial Court has submitted that during course of appreciation of evidence of witnesses, it should not be in a piecemeal manner rather it should be taken into consideration in its totality. When the evidence of the witnesses are considered in the aforesaid background, it is apparent that all the witnesses had supported the case of the prosecution.

Hence, the judgment of conviction and sentence did not require interference.

9. PW.7 is the doctor who had conducted postmortem over the dead body of Girija Kuwar on 05.12.2006 and found following ante-mortem injuries:-

“One lacerated wound on right side of the skull extending from the frontal region to the back size was 6” x 4” x bone deep. The frontal and right parietal bones were fractured and brain tissues were protruding out.”

10. During cross-examination, it is apparent that defence could not be able to sack his testimony with regard to his finding as well as opinion. So, the death of deceased on account of injuries having over her head caused by hard and blunt substance is found duly proved.

11. Now coming to the ocular evidence, it is apparent that prosecution, in order to substantiate its case had examined PW-1 Lakshan Sahni, PW.2 Kameshwar Thakur, PW.3 Shashi Kumar, PW.4 Hemraj Thakur and PW.6 Uma Shankar Thakur. PW.8, admittedly arrived at the place of occurrence after the occurrence and apart from corroborating the prosecution case as hearsay stood as a witness of seizure as well as inquest.

12. Now coming to analyze the evidence of the witnesses, PW.1 Lakshan Sahni had stated that while he was returning from



village-Jhitkahiya and reached near the house of Rudal Thakur, he saw Hari Shankar Thakur running towards having pestle in his hand. On account thereof, he stopped his bicycle and began to see whereupon he had seen Girija Kuwar standing in a field west to him where, after arriving, Hari Shankar Thakur began to give pestle blow indiscriminately. He immediately rushed. Girija Devi raised alarm, fell down and died. Her head was completely smashed. He also raised alarm. Till then, son of Girija Devi, grand son of Girija Devi including family members as well as villagers arrived whereupon Hari Shankar Thakur after throwing pestle escaped therefrom. During cross-examination it is apparent that he had stated in para-7 that it was winter season. Darkness had fallen. There was no fog. He had further stated that he, after hearing cry, rushed towards the P.O. In para-8 he had categorically stated that he had seen the blow being inflicted over head of deceased. At that very time field was vacant. He had further stated that just after seeing the occurrence he lost his mental equilibrium.

13. Therefore, from his evidence it is apparent that neither there happens to be exaggeration nor contradiction apart from the fact that defence had escaped to cross-examine this witness on the merit of the case.

14. PW.2 is Kameshwar Thakur, who had stated that on the



alleged date and time of occurrence he was returning from the centre after supplying milk. As soon as he reached near the house of Rudal Thakur, he heard sound of cry over which he stopped there and began to see. During course thereof, he saw Hari Shankar Thakur assaulting Girija Kunwar with pestle made up of palm. He also raised alarm whereupon villagers began to arrive seeing whom Hari Shankar Thakur escaped therefrom after throwing pestle. He had also seen fracture of skull of deceased Girija Kunwar and brain matter had came out therefrom. pestle was lying there. During cross-examination, it is evident from para-7, para-8, para-9, his attention has been drawn up towards his previous statement by way of contradiction however found lost its legal identity in absence of having been confronted to the I.O. PW.5. Furthermore, from para-10 of his cross-examination he had stated that he was present at the place of occurrence. He had seen blood over soil. He had further stated that about more than hundred persons have assembled. He had talked with Uma Shankar relating to occurrence.

15. In the aforesaid background as well as taking into account non cross-examination of this PW on the point of occurrence, his evidence is also found reliable.

16. PW.3 is Shashi Kumar the son of informant who in examination-in-chief had stated that he was standing with his brother



Hemraj Kumar, they both rushed on the cry of his father. After reaching at the place of occurrence he saw Harishankar Thakur assaulting his grand mother with pestle. Subsequently thereof, he escaped therefrom after throwing the pestle. In para-7 of his cross-examination he had stated that when he reached at the place of occurrence he found blood coming out from head of his grand mother. She had fallen by back. Head was fractured. Consequent thereupon, it is found that this witness did stand over ladder of an eyewitness.

17. PW-4 is Hemraj Thakur another son of informant who had stated that on the alleged date and time of occurrence he rushed after hearing alarm raised by his father and after arriving at the place of occurrence, he saw Harishankar Thakur engaged in assaulting his grand mother by pestle over her head. He rushed in rescue till then accused escaped. His grand mother died. During cross-examination at para-5 it is evident he was confronted with his previous statement however, is not found supported with on account of own lapses on the part of the appellant as he failed to get the same from the Investigating Officer PW.5. In para-6 he had stated that head was completely smashed. Eye was not visible. Bones were broken. In para-8 he had stated that they had lifted dead body to his house. He had further disclosed the topography of the place of occurrence.

Again from this witness, the defence could not be able to squeeze any material fact in his favour. This witness not even been cross-examined over manner of occurrence as well as also failed to challenge status of this PW over his authenticity regarding an eye witness to occurrence.

18. PW.6 is the informant himself. During his examination-in-chief he had reiterated the version as stated in the fardbeyan. During cross-examination it is evident that he has not been cross-examined over manner of occurrence. In para-5 of his cross-examination, he deposed that his mother had just crossed 12-13 lagga from his house. He had further stated that after hearing cry of his mother, he rushed and found blood coming out from head of his mother. Blood had fallen over earth. In para-6 he had further stated that I.O. had come at 10:00 PM. It was only moonlit night. There was no source of light. The police officials had seized blood stain cloth, soil. Also seized *Danda*.

19. PW.5 is the Investigating Officer. He had deposed that on 04-12-2006 he received telephonic information regarding commission of murder at Barkagaon, Keshrinagar whereupon he rushed after making Sanha entry. Reached at the place of occurrence. Recorded fardbeyan of Uma Shankar. (Exhibited) Seen the dead body prepared the inquest. Exhibit. Seized *Danda*, prepared seizure list.



(Exhibited). Send the dead body for postmortem. Recorded further statement of informant, inspected the place of occurrence, which happens to be a field. Gave detailed topography. Also recorded statement of witnesses. Arrested accused at village-Bakatpur. After receiving postmortem report as well as completing the investigation submitted charge sheet. During his cross-examination at para-10 he had stated that he had not mentioned the time of inspection of place of occurrence. In para-11 he had stated that he had not mentioned the length of *Danda*. Though it was bloodstained, he had not sent it for forensic examination. In para-12 he had stated that he had not mentioned in the case diary regarding presence of blood.

20. PW.8, as stated above happens to be hearsay in nature who had simply deposed over seizure of *Danda* as well as inquest.

21. Thus, after giving our curious consideration towards the facts and circumstances of the case, it is apparent that defence could not be able to demolish the evidence of PW.1, PW.2, PW.4 and PW.6. Furthermore, the aforesaid eventualities disclosing death of deceased by means of blow given by appellant is found corroborated with the medical evidence as stated by PW.7, Dr. Ram Bishwas Yadav. Save and except some sort of deficiency persisting in the evidence of PW.5, the Investigating Officer on account of non-disclosure of blood at the place of occurrence, is nothing but appears

to be in attentiveness on his part which is itself apparent from the evidence of PW.6 whereunder he had stated that I.O. had come at 10:00 PM, recorded his statement and the other eventualities was performed by the Investigating Officer in the moon light, having no other source of light. Furthermore, the PW.5 on that very score had not been examined and on account thereof, non-mentioning regarding presence of blood at the place of occurrence, is not going to ruin the prosecution case nor is found sufficient to cause dent in the prosecution version. Moreover, on account of inefficiency of Investigating Officer will not discredit the consistent, reliable version of the witness.

22. Consequent thereupon, the appeal lacks merit and is accordingly dismissed. Appellant is under custody and will remain till saturation of the sentence inflicted against him.

(Dharnidhar Jha, J.)

(Aditya Kumar Trivedi, J.)

Sanjay /Prakash

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