

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.993 of 2009

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(AGAINST THE JUDGMENT OF CONVICTION, DATED, 21st OCTOBER, 2009, AND THE ORDER OF SENTENCE, DATED, 23TH OCTOBER, 2009, PASSED BY SHRI RAVINDRA PATWARI, ADDITIONAL SESSIONS JUDGE, F.T.C. NO.IV, BHOJPUR, ARA, IN SESSIONS TRIAL NO. 312 OF 2001, ARISING OUT OF SAHAR POLICE STATION CASE NO. 17 OF 2001).

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Anil Rai @ Anil Kumar Rai, son of late Sant Rai, resident of village- Karwasin, Police Station- Sahar, District- Bhojpur.

.... Appellant

Versus

The State of Bihar Respondent

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Appearance:

For the Appellant : None

For the Respondent: Mr. Ajay Mishra, APP

Mr. Ravi Bhardwaj, Advocate, appearing as *Amicus Curiae*

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
and
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 20-07-2015

By the judgment, dated 21.10.2009, passed, in Sessions Trial No. 312 of 2001, by learned Additional Sessions Judge, Fast Track Court No. IV, Bhojpur, Ara, the accused-appellant, Anil Rai @ Anil Kumar Rai, stands convicted under Sections 302 and 323 of the Indian Penal Code. In consequence of his conviction under Section 302 of the Indian Penal Code, the accused-appellant stands, under the order, dated 23.10.2009, sentenced to suffer imprisonment for life.

However, no separate sentence has been passed for the offence under Section 323 of the Indian Penal Code.

2. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:

(i) On 07.01.2011, at about 9.00 A.M., when PW 1 (Subhas Rai) and PW 2 (Sheoraj Raj) were sitting and talking near the government well, PW 4 (Ashok Rai) also arrived there. After a while, Dharmaveer (since deceased) too came there, sat down and started talking with them. When PW 1, PW 2, PW 4 and Dharmaveer were talking to each other, as described hereinbefore, accused Anil Rai @ Anil Kumar Rai came and started slapping Dharmaveer. As Dharmaveer tried to run away, accused Anil Rai @ Anil Kumar Rai put forward his foot and Dharmaveer stumble over. When Dharmaveer fell down on the ground, accused sat on his chest and started giving blows by means of a knife causing multiple injuries on the person of Dharmaveer.

(ii) As Dharmaveer cried out, PW 5 (Kanti Devi), mother of the deceased, and PW 6 (Sarpato Devi), aunt of the deceased, came running to the place of occurrence and both of them tried to save Dharmaveer from the assaults at the hands of the accused, but the accused, apart from pushing away and throwing both of them to the ground, gave a blow,



by means of knife, on the hand of PW 6. On hearing *hulla*, so raised, Dharmaveer's father, Basant Rai (PW 7), who was present at the house of one of his neighbours, came running towards the government well and saw the accused fleeing away. Dharmaveer, who was lying injured on the ground, was, then, taken to Sadar Hospital, Ara, where the doctor (PW 12) declared him dead.

(iii) On being informed about Dharmaveer's death, PW 13 (Pankaj Kumar Das), Officer-in-Charge, Sahar Police Station, arrived at Sadar Hospital, Ara, on 07.03.2001, at about 1.30 P.M., and recorded the statement of Basant Rai (PW 7), father of the deceased, as his *fardbeyan* and treating the said *fardbeyan* as the First Information Report, Sahar Police Station Case No. 17 of 2001, under Section 302 of the Indian Penal Code, was registered, against accused Anil Rai @ Anil Kumar Rai.

(iv) During investigation, inquest was held over Dharmaveer's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, a *charge sheet* was laid, under Sections 302/324/323 of the Indian Penal Code, against accused Anil Rai @ Anil Kumar Rai.

3. At the trial, charges, under Sections 302 and 324 of the Indian Penal Code, were framed against accused Anil Rai @ Anil Kumar Rai. To the charges so framed, the

accused pleaded not guilty.

4. In support of its case, prosecution examined altogether 14 (fourteen) witnesses. The accused was, then, examined under Section 313 (1)(b) of the Code of Criminal Procedure, 1973, wherein the accused denied that he had committed the offences, which were alleged to have been committed by him, the case of the defence being that of denial. In support of its case the defence has also examined one witness.

5. Having, however, found accused Anil Rai @ Anil Kumar Rai guilty of the offences, which he stood charged with, learned trial Court convicted him accordingly and passed sentence against him as mentioned above.

6. Aggrieved by his conviction and the sentence, which has been passed against him, Anil Rai @ Anil Kumar Rai, as a convict, has preferred this appeal.

7. We have heard Mr. Ravi Bhardwaj, learned Counsel, appearing as *Amicus Curiae*, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

8. In order to correctly appreciate the evidence, which has been adduced by the prosecution, it is imperative that we take note of what Dr. Ram Raj Ravi (PW 11) has deposed. According to the evidence of the doctor (PW 11), who

had, admittedly, conducted, on 07.03.2001, at about 02.55 P.M., *post mortem* examination on Dharmaveer's dead body, he found following *ante mortem* injuries:

"External Examination:

"(i) *Incised wound at right motuory region 4" x 2" x chest cavity deep.*

(ii) *Incised wound left forearm 3" x ½" x skin deep.*

(iii) *Incised wound above umbilics 1" x ¼" x skin deep.*

(iv) *Incised wound over forehead 3" x ¼" x skin deep.*

(v) *Incised wound left shoulder joint 1" x ½" x 1".*

(vi) *Incised wound left side of lower abdomen 3" x ½" x cavity deep and intestine coming out.*

(vii) *Incised wound on right leg 1" x ¼" x skin deep.*

(viii) *Incised wound left side of back of chest 1" x ¼" x cavity deep.*

(ix) *Incised wound right side of buttock 1" x ¼" x skin deep.*

9. On dissection, the doctor (PW 11) found as follows:

"Skull, brain matter pale. Chest-cavity full of blood. Heart- right chamber full and left empty. Abdomen- cavity full of blood. Liver, spleen and kidney- pale. Stomach contained 350 ml of semi-digested food

materials. Urinary bladder contained 250 ml urine."

10. In the opinion of the doctor (PW 11), death was caused due to massive bleeding caused by sharp cutting weapon, which may be a *Chhura* (knife) also.

11. Neither the findings of the doctor nor his opinion, with regard to cause of death of the said deceased and/or his opinion with regard to the nature of weapon, which might have been used for causing assault on, and death of, the said deceased, were disputed either by the prosecution or by the defence. This apart, we, too, do not notice anything inherently incorrect or improbable in the evidence given by the doctor (PW 11).

12. Situated thus, it becomes clear that Dharmaveer's death was *homicidal* in nature.

13. Considering the fact that the learned trial Court has itself disbelieved PW 7 (informant) that he had witnessed the occurrence of assault on Dharmaveer at the hands of the accused-appellant and that he (PW 7) can, at best, be said to have seen the accused fleeing away from the place of occurrence, let us, now, consider the evidence of PW 1, PW 2 and PW 4, all of whom have been examined as eyewitnesses to the occurrence.

14. Broadly in tune with each other PW 1, PW 2 and PW 4 have deposed that on the day of occurrence, at



about 9.00 A.M., when both, PW 1 and PW 2, were sitting near the government well and talking to each other, PW 4 joined them and when all three of them were talking to each other, Dharmaveer (deceased), too, came there and started talking with them. Shortly thereafter, the accused came and started slapping Dharmaveer and as Dharmaveer tried to run away, the accused-appellant put his foot forward and as a result thereof, Dharmaveer stumbled over the foot of the accused and fell down and, thereafter, the accused sat on the *chest* of Dharmaveer and started giving him blows by means of a knife. It is in the evidence of PW 1, PW 2 and PW 4 that PW 5, mother of the deceased, PW 6, aunt of the deceased, too, arrived there and though both the women tried to save Dharmaveer, both of them were pushed away. PW 1 also adds that PW 6 was given a blow, on her hand, by means of a knife, which the accused-appellant was holding, and she sustained injury. To the same effect is the evidence of PW 4 and PW 6.

15. However, a careful reading of the findings recorded by the doctor (PW 12), who had examined PW 4 and PW 6 on 07.03.2011, at about 11:30 A.M., show that PW 6 did not suffer any injury caused by a weapon, such as, knife inasmuch as the evidence of the doctor (PW 12) is that on examining PW 6, he found abrasion on her right arm measuring 2" x ¼" and abrasion on her left arm measuring 1" x ¼" and as

far as PW 5 is concerned, she was found to have sustained bruises on the front of her chest measuring 2" x ½" and abrasion on her right arm measuring of 2" x ¼".

16. No wonder, therefore, that it is the opinion of the doctor (PW 12) that PW 5 and PW 6 had sustained injuries by some blunt object. There is nothing to disbelieve the evidence of the doctor (PW 12).

17. Clearly, therefore, it follows that evidence, given by PW 12, PW 5 and PW 6 to the effect that PW 6 was given a blow by the accused-appellant by means of knife and sustained injury on her hand, is wholly untrue.

18. Coming to the question as to whether Dharmaveer had been assaulted by the accused-appellant in the manner as has been described by PW 1, PW 2, PW 4, PW 5 and PW 6, it is necessary to note that these witnesses have deposed in tune with each other that the accused-appellant sat on the chest of Dharmaveer and gave multiple blows on Dharmaveer by means of knife. The medical evidence on record, as given by the doctor (PW 11), which we have already discussed above, however, show that apart from chest, forearm and shoulder, Dharmaveer had sustained incised wounds on his abdomen, on his right leg, on the left side of the back of his chest and also on the right side of his buttock.

19. It is, therefore, not only difficult, but also

impossible to implicitly rely upon the evidence of PW 1, PW 2, PW 4, PW 5 and PW 6 that the accused-appellant had given multiple blows on Dharmaveer while sitting on the latter's chest.

20. Coupled with the above, if the evidence of PW 1, PW 2, PW 4, PW 5 and PW 6 were to be believed, then, the said deceased ought to have sustained multiple punctured wounds; but he sustained, as the *post mortem* examination disclosed, multiple incised wounds. Thus, the ocular description of the occurrence does not tally with the medical evidence on record.

21. It is true that if the Court believes the ocular evidence given by eyewitnesses, an accused can be convicted even if the medical evidence points to the contrary. In the case at hand, however, ocular evidence on record is not beyond doubt and, therefore, the medical evidence cannot be ignored and in the face of the medical evidence on record, the description of the occurrence, as given by the eyewitnesses, stand wholly belied.

22. Because of what have been discussed and pointed out above, we are clearly of the view that the evidence, given by PW 1, PW 2, PW 4, PW 5 and PW 6, cannot be safely relied upon. This apart, the evidence of the informant (PW 7), as concluded by the learned trial Court, had not seen

the accused-appellant fleeing away from the place of occurrence.

23. Considering further the fact that PW 7 projected himself to be an eyewitness, but has been disbelieved by the learned trial Court, we do not find it safe to place reliance on the evidence of PW 7 either.

24. Situated thus, there is no escape from the conclusion that the evidence, adduced by the prosecution, falls short of the standard of proof, which is insisted in a criminal trial. The learned trial Court ought to have, therefore, acquitted the accused-appellant.

25. What crystallizes from the above discussion is that none of the incriminating circumstances, which the learned trial Court has relied upon, could have been held to have been proved legally and convincingly. In the face of such a state of evidence on record, the accused-appellant ought to have been acquitted by according, at least, benefit of doubt.

26. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellant and the sentence passed against him, by the judgment and order under appeal, are hereby set aside. The accused-appellant is held not guilty of the offence, which he stands convicted of, and he is hereby acquitted of the same by according him, at least, benefit of doubt.

27. As the accused-appellant, Anil Rai @ Anil Kumar Rai, is in custody, he is directed to be released forthwith if not required to be detained in connection with any other case.

28. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J.)

(Vikash Jain, J.)

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