

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1028 of 2009

Arising Out of P.S..Case No. -89 Year- 1994 Thana -Harlakhi District- Madhubani

1. Ram Deo Das, Son of Late Gudari Das
2. Ram Chandra Das, Son of Late Gudari Das
Mani Chaudhary, both residents of village – Rani Patti, PS Harlakhi, District Madhubani

.... Appellants

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 1034 of 2009

Arising Out of P.S..Case No. 89 Year- 1994 Thana -Harlakhi District- Madhubani

Ram Sevak Das, Son of Gudri Das, resident of Village Bisaul Tele Ranipatti, PS Harlakhi, District Madhubani

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

(In CR. APP (DB) No. 1028 of 2009)

For the Appellants : Shri Ajay Kumar Thakur, Advocate
For the Respondent : Sushri Shashi Bala Verma, APP

(In CR. APP (DB) No. 1034 of 2009)

For the Appellant : Shri Ajay Kumar Thakur, Advocate
For the Respondent : Sushri Shshi Bala Verma, APP

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 27-08-2015

The two appeals arise out of judgment of conviction dated 11.11.2009 and order of sentence dated 13.11.2009 by which the appellant Ram Sevak Das (Cr. Appeal (DB) No.1034 of 2009) was held guilty of committing an offence under Section 302 of the Indian



Penal Code and was directed to suffer rigorous imprisonment for life as also to pay a fine of Rs.5,000/-, else to suffer rigorous imprisonment for two years. As regards the appellants of the other appeal, they were held guilty of committing the offence under Sections 302/34 of the Indian Penal Code and each of them was directed to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-, else to suffer rigorous imprisonment for two years. The judgment and order of conviction was passed by the learned Presiding Officer, Fast Track Court No.II, Madhubani in Sessions Trial No.100 of 1995.

2. PW 5 Ramjatan Das, the husband of the deceased Jiwachhi Devi, stated that both he and the deceased were coming from village-Lagama after close of the business in the *haat* and when they had crossed over river Jamuni at about 8 P.M. on 25.07.1994, he saw the seven accused persons named in his statement sitting there in an orchard. It was stated that appellant Ram Sevak Das stated that there was no reason to wait and that the couple be killed, hearing which the informant started running away but his wife could not succeed to run away from there. She was caught by the accused persons and was put on the ground. Someone had caught her hands, someone had caught her feet and the other held her head or the other part of the body, like, waist etc., whereafter appellant Ram Sevak Das is said to have slit her

throat as a result of which she died.

3. The informant stated that he continued running and reached village-Birta (or Birsa as appears from his evidence) in Nepal and only when it was morning time the next day, he came to his house and then being accompanied by the *Chowkidar* came to the police station for informing the police but the Officer-in-Charge of the police station had already arrived there at the place of occurrence and PW 5 gave his statement to him which was reduced into writing by S.I. K.C.Singh, the Officer-in-Charge of Harlakhi police station in the district of Madhubani on 26.07.1994 at 9.30 A.M.

4. The reason for committing the murder of the wife of the informant, as stated by PW 5 Ramjatan Das, was that there was a land dispute between the parties and the accused persons felt harassed at the hands of the informant on that account.

5. On account of the non-examination of the investigating officer, we do not have any inkling as to how the case was investigated into but we find from the records that the inquest was held upon the dead body of deceased Jiwachhi Devi at 9 A.M. on 26.07.1994 and the inquest report was prepared in presence of the witnesses by S.I. Krishna Chandra Singh. Needless to say that the dead body was also transmitted to the hospital for felicitating autopsy on it and that appears held by PW 9 Dr. Naresh Prasad Singh.

6. It appears that finding materials sufficient against the accused persons, the police had sent them up for their trial which ended in the impugned judgment.

7. The defence of the appellants was that they had not committed the murder of deceased Jiwachhi Devi and that PW 5 Ramjatan Das, the informant had not seen the lady being murdered and probably after having come to know about the murder of his wife, he had spun out a story to tell the police quite belatedly, implicating the appellants on account of admitted land dispute and ill-will.

8. Nine witnesses were produced by the prosecution in support of charges, out of whom, PW1 Ram Pragas Yadav claimed having learnt about the incident from Md. Zakaria, (PW 6), and PW 2 Deochandra Yadav claimed having learnt about the occurrence from PW 5 the informant himself. PW 3 Ram Bilas Das was a witness to inquest and seizure of the blood stained earth from the place of occurrence and had also identified the writings of S.I. K.C.Singh who had scribed the fardbeyan. PW 4 Pradeep Kumar Jha stated that he did not know anything about the occurrence and had identified the writings of the FIR (Ext-4). PW 5 Ramjatan Das was the informant of the case and the husband of the deceased, whereas PW 6 Md. Zakaria, who as per the evidence of PW 5, was accompanying him and his wife while they were coming back from village-Lagama (Nepal) after



attending the village *Haat*. PW 7 Ram Briksha Das was again a witness who had learnt about the incident from PW 5 Ramjatan Das and he stated that he went with the informant to the *Chowkidar* and then to the police station in Harlakhi to report the matter to the police station upon which the investigating officer had come and had taken down the statement of PW 5 Ramjatan Das. PW 8 Maksood Das was tendered for cross-examination. We have already noted that Dr. Naresh Prasad Singh (PW 9) had held autopsy on the dead body of deceased Jiwachhi Devi.

9. We were taken through the evidence of witnesses and it was contended by Shri Ajay Kumar Thakur, learned counsel appearing on behalf of the appellants that PW 5 Ramjatan Das also does not appear an eye witness to the occurrence and there could not be any dispute about PW 6 Md. Zakaria that he had never been present at the scene of occurrence. The fabrication of the story so as to implicating the accused persons falsely is apparent from the every evidence adduced by the prosecution and the nature of evidence which was available could not be said to be sufficient to uphold the judgment of conviction and order of sentence.

10. Sushri Shashi Bala Verma, the learned Additional Public Prosecutor, has also not controverted the submissions of Shri Thakur in the light of the evidence available on the record.

11. The main contention of Shri Thakur is to impress upon us that neither PW 5 Ramjatan Das nor PW 6 Md. Zakaria could be an eye witness to the occurrence. We have examined the submission and in that light, we have also scrutinized the evidence of the two witnesses. While so doing, we found that both PWs 5 and 6 claimed moving together with the deceased Jiwachhi Devi while coming back from the village *Haat* of *Lagama* in Nepal to their respective houses. Both PWs 5 and 6 were the co-villagers and it may not appear unusual that they could be moving together while coming back from the village *Haat*. PW 5 the informant stated that as soon as he saw the accused persons in the *Seesam* grove, he started running to save himself and in that attempt he reached village Birta (or Birsra) in Nepal but he does not say that PW 5 Md. Zakaria had also run with him. While giving his fardbeyan to the police, PW 6 had not mentioned in it that he had ever been accompanied by PW 6 Md. Zakaria, rather he admitted in cross-examination in paragraph-4 that he had not stated to the police that he was accompanied by PW 6 Md. Zakaria. This fact that Md. Zakaria was not accompanying him appears proved from other circumstance also. We have already noted above that when PW 5 Ramjatan Das had started running away after seeing the accused persons emerging from the *Seesam* grove, had asked his wife also to run away for safety and he came to village *Birta*



in Nepal. He stated further that he stayed at the house of one Nandu Sah, one of his relatives, as appears from paragraph-4 of his cross-examination. But, when we were considering the evidence of PW 6 Md. Zakaria, he was stating in the very examination-in-chief of his evidence that while the deceased Jiwachhi Devi was being murdered by cutting her throat, both PWs 5 and 6 were very well standing there to see the occurrence, and after the act of murder had been completed, both he and Ramjatan Das (PW 5) came together to their respective houses. PW 5 was very seriously cross-examined as was cross-examined PW 6 also, and both of them were suggested that they had never accompanied each other on the day of occurrence while coming back from the village *Haat of Lagma*. We have already referred to the evidence of PW 5 in the same paragraph-4 of his cross-examination dated 26.09.2002 when he stated that he had not stated to the police that Md. Zakaria had also accompanied him. We find it as the ultimate truth that on account of being the solitary eye witness to the occurrence with PW 5 and also being the co-villager of PW 5, if PW 6 had ever been present or had ever accompanied PW 5 as claimed by him and PW 5 both, then we do not see any reason as to why his name should not appear in the very statement of the informant which was given on 26.07.1994.

12. Thus on the above reasons, we do not have any

hesitation in recording that PW 6 had definitely not accompanied the deceased Jiwachhi Devi or PW 5 and was definitely not present at the scene of occurrence.

13. As regards the claim of PW 5 Ramjatan Das of being an eye witness to the murder of his wife, we have many reasons not to accept his claim as well. Village- *Birta* or *Birsa* as appears stated in the fardbeyan as also in the evidence of PW 5 where he stayed in the house of one Nandu Sah, one of his relatives, was at a distance of three kilometers from police station Harlakhi and his own village- Ranipatti was further away by one kilometer from Harlakhi. Thus, what appears is that if the informant was to come to his village- Ranipatti in the morning on 26.07.1994, after having spent the fateful night at the house of Nandu Sah, he was to cross Harlakhi so as to accessing his own house. He had reached his village and he had conveyed the story of murder of his wife to different persons including Ram Briksha Das (PW 7), who happened to be the *Mukhiya* of the *Panchayat*. PW 7 Ram Briksha Das stated that he went to the *Chowkidar* with the informant and then the *Chowkidar* accompanied him (PW 5) for going to the police station. We do not see any reason as to why in spite of having seen his wife being brutally murdered, he should avoid going to the police station early in the morning when he was coming to his village and house from that particular village *Birta*



in Nepal by passing through Harlakhi. The other reason which has perturbed us is as to why in spite of having canvassed his story upon the villagers of village *Birta* in Nepal, no one was moved by his story to accompany him to go to the place of occurrence first and then to accompany him up to the police in the very night itself. PW 5 Ramjatan Das has stated in paragraph-4 in cross-examination dated 06.09.2002 that as soon as he narrated the story of his wife's murder after having reached village *Birta* in Nepal, a huge number of persons, so much so 60 in number, assembled there and he stated the story and also requested them to accompany him in going to the place of occurrence where the dead body of his wife was lying, but no one was moved by his request and no one took any steps. The defence had pursued him further and during that course, he stated that he neither approached the *Mukhiya* nor the *Sarpunch* nor also the *Chowkidar* of the village and did not take any steps for approaching the police to tell the story to any of them or all of them and after getting up at 5-6 A.M. in the next morning, he again did not choose to go to the police station and straightway went to his house at village- *Ranipatti* and it was only 45 minutes that he took in reaching his village. He narrated the incident to his family members. We could not find any reason as to why in spite of having seen the occurrence, he was not moving to the police station for reporting the case so much so that the police could



not find any report coming from any source and ultimately, it reached the place of occurrence out of its own to hold inquest upon the dead body at 9 A.M. on 26.07.1994 as appears from the inquest report, a copy of which is part of the record available at page-41 of the paper book. The informant could appear before the Sub Inspector of Police, namely, K.C.Singh only at 9.30 A.M. for giving his statement, that, after half an hour of holding of inquest and creation of the document in that behalf. These are some of the circumstances which are very suspicious. As regards the conduct of the informant, we find it is highly suspicious.

14. Then, in addition to the above, what we further find is that in his fardbeyan which he was alleging one act or the other against each of the accused persons by generalizing his accusation against them by telling the police that some of them had caught the hands of the deceased Jiwachhi Devi, some her feet, the other had held her head and the rest had caught other parts of her body when appellant Ram Sevak Das had slit her throat with the help of a *Chhura*. There was a serious enmity between the brothers who were the accused persons. This is admitted in paragraph-3 of his evidence in the first line by PW 5. There were criminal cases besides civil suit also, and a partition suit was pending as appears from paragraph-3 of the cross-examination dated 26.09.2002 which is available at page-23



of the paper book. It appears that the informant had struck some deal with some of the accused persons who probably, had bartered their interest so as to getting exonerated from the criminal case. This appears from the fact that the very first line of cross-examination in paragraph-2 of his deposition, he was stating to the Court that appellants Ram Chandra Das and Ram Deo Das, who were also his full brothers and who were the accused, were no longer his enemies and he had not seen either of the two committing the murder of his wife. This line of evidence further creates doubt about the honesty of PW 5 Ramjatan Das in coming clearly and truly to state facts as regards other accused persons.

15. In our opinion, it appears as if the deceased Jiwachhi Devi who as per the evidence of PW 5 always attended the village- *Haat* in Lagma alone, was probably murdered by some unknown hands and no one could see as to how and by whom she was done to death. It was after the arrival of the police on 26.07.1994 and holding of the inquest report that the informant had reached there and he had narrated the false story implicating the accused persons as accused for reasons which are apparent from the record of the case. The informant had never seen the occurrence.

16. For reasons which we have just assigned after scrutinizing the evidence of the prosecution, we find that the

prosecution had not succeeded in bringing the charge home to the accused and appears guilty of presenting a distorted and false set of facts implicating innocent persons out of enmity as a result of which, we allow the two appeals by setting aside the judgment of conviction and order of sentence passed upon the appellants. All appellants except appellant Ram Sevak Das are on bail. They shall stand discharged from the liabilities of their respective bail bonds. Appellant Ram Sevak Das is in custody, he shall be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J)

(Gopal Prasad, J)

Brajesh Kumar/mrl.

U		T	
---	--	---	--