

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.75 of 2009

Arising out of PS.Case No.-135 Year-2001 Thana-Madhepura District-MADHEPURA

Chandeswari Rishideo, Son of Tanik Rishideo, Resident of Village Bhirkhi, P.S. & District Madhepura.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Sri Arun Kumar Tripathi, Amicus Curiae

For the State : Sri Dilip Kumar Sinha, APP

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL)

Date: 27-03-2015

This jail appeal has been preferred against the judgment of conviction dated 21.05.2005 and the order of sentence dated 24.05.2005, passed by the learned Additional Sessions Judge, Fast Track Court No.-II, Madhepura in Sessions Trial No. 83 of 2002 by which the sole appellant has been convicted and sentenced to imprisonment for life under Section 302 of the Indian Penal Code.

2. The prosecution case, in brief, is that on 29.06.2001, the informant Bhumi Rishideo (P.W.7) had gone to purchase some articles from the market and his son Pradeep Rishideo (deceased) aged about 18 years was at the shop of the informant and when he returned to his shop, he saw the appellant armed with a knife, stained with blood, and he was escaping from

there and his son Pradeep Rishideo (deceased) was lying on the ground in a pool of blood. Sona Rishideo (P.W.6), Anirudh Rishideo (P.W.2), Shrawan Yadav (P.W.1) and Binda Yadav @ Bindeshwari (P.W.5) out of the persons assembled there, told the informant that Chandeshwari Rishideo, the appellant was demanding *Naasta* from his son on credit and when his son (deceased) refused to give *Naasta* on credit, the appellant killed Pradeep Rishideo (deceased) by knife blow. The *fardbeyan* (Ext.3) was recorded on 29.06.2001 at about 17.10 hours by S.I. Arun Kumar (not examined). After instituting of the case investigation was conducted, charge sheet was submitted and the case was committed to the court of sessions and after the trial the appellant has been convicted and sentenced as aforesaid.

3. The prosecution has examined the following witnesses:-

Shrawan Prasad Yadav (P.W.1), Anirudh Rishideo (P.W.2), Shyam Sundar Rishideo (P.W.3), Kari Rishideo (P.W.4), Binda Prasad Yadav @ Bindeshwari (P.W.5), Sona Rishideo (P.W.6), Bhumi Rishideo (P.W.7), Anil Kumar Yadav (P.W.8) and Md. Hafiz (P.W.9).

4. It appears from the trend of cross-examination that the defence of the appellant is that he has been falsely implicated in

this case due to enmity. The deceased was addict of liquor and the persons taking liquor killed him.

5. The defence has not examined any witness.

6. The learned Amicus Curiae appearing on behalf of the appellant has submitted that there is no eye witness to the occurrence including the informant. The occurrence has not taken place in the manner as suggested by the prosecution. The ocular evidence is not supported by the medical evidence rather the medical evidence suggests that the occurrence has not taken place in the manner as propounded by the prosecution.

7. Learned counsel for the State submits that P.W.1, P.W.2, P.W.5 and P.W.6 are the eye-witnesses to the occurrence and the informant has also come to the place of occurrence when the appellant was escaping from the place of occurrence.

8. After hearing both the learned Amicus Curiae for the appellant and the learned counsel for the State and on perusal of the records, it appears that P.W.1 has stated that it was evening, he was sitting near a tree adjacent to the *Nasta* shop of Pradeep (deceased). The appellant came to the shop and demanded *Nasta*. Pradeep asked him to clear his dues. Pradeep refused to give him *Nasta*. After refusal, the appellant slapped Pradeep Rishideo (deceased) and stabbed knife in his neck and belly. Pradeep

Rishideo fell down and succumbed to his injuries. After assaulting, the appellant was escaping in the meantime the informant (P.W.7) reached there and saw the appellant escaping.

9. Anirudh Rishideo (P.W.2) has also stated that he saw Pradeep selling *Nasta*. There was altercation between the appellant and the deceased. He has also narrated the occurrence as P.W.1.

10. P.W.5 Binda Prasad Yadav @ Bindeshwari has stated that the appellant gave one knife blow near the neck of the deceased and after seeing the injury, he became unconscious. Thereafter the villagers took him to his village. In his cross-examination, he has stated that he had no talk to the informant or the members of his family on that date. He came to know about the occurrence from his co-villagers.

11. Sona Rishideo (P.W.6) has stated that there was altercation with the deceased and the appellant on account of giving *Naasta* on credit. Thereafter the appellant gave knife blows to the deceased and the deceased fell down and appellant Chandeswari Rishideo escaped from there. The injury was in the abdomen and below the neck of the deceased.

12. Bhumi Rishideo (P.W.7) is the informant of this case. He has supported the case but after perusal of his evidence it

appears that he has not seen the occurrence. He is a hearsay witness. In his cross examination he has admitted that there was country made liquor shop adjacent to his shop where people consume liquor and in the stage of intoxication there was occurrence of assault. He did not see the appellant assaulting with knife. The appellant works in the F.C.I. godown where he goes there at 10 O'clock and returns to his house by the evening.

13. Shyam Sundar Rishideo (P.W.3) and Kari Rishideo (P.W.4) are the witnesses to the inquest report. Their signatures on the inquest report are Ext. 1 and 1/1. P.W.4 is also witness to the seizure of blood stained soil. His signature is Ext. 1/2.

14. Anil Kumar Yadav (P.W.8) and Md. Hafiz (P.W.9) are the formal witnesses. P.W.8 has proved the post-mortem report (Ext.2) and P.W.9 has proved the *fardbeyan* (Ext.3).

15. The doctor and the Investigating Officer have not been examined in this case. The non-examination of the investigating officer and the doctor has caused prejudice to the appellant. The place of occurrence has also not been proved. However, on perusal of the post-mortem report (Ext.2), it appears that the deceased had as many as seven sharp cutting ante mortem injuries:

- i) Sharp cutting injury of 1¼" x ½" x muscle deep over left forearm medially.

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- ii) Sharp cutting injury of 3" x 1½" x skin deep over left side neck.
 - iii) Sharp cutting injury of 1" x ½" x over left side praclanicular area.
 - iv) Sharp cutting injury of 2" x 2/3" x skin deep over chest.
 - v) Sharp cutting injury of 1" x 1/3" x skin deep over left side chest.
 - vi) Sharp cutting injury of 1" x 1/3" x abdominal deep over left side chest.
 - vii) Sharp cutting injury of 2" x 2" x abdominal deep and hanging of guts at left side of abdomen.

In the opinion of the doctor the death was caused by haemorrhage and shock due to above injuries which were caused by any sharp cutting weapon. The time elapsed since death within three hours.

16. It appears that the ocular evidence is contradictory to the medical evidence. The ocular evidence is not supported by the medical evidence. From perusal of the prosecution evidence it appears that none of the witnesses has seen the occurrence and the occurrence has not taken place in the manner as stated by the prosecution witnesses.

17. Considering the facts and circumstances of the case, we find and hold that the impugned judgment dated 21.05.2005 and the order of sentence dated 24.05.2005, passed by the learned Additional Sessions Judge, Fast Track Court No.-II, Madhepura in Sessions Trial No. 83 of 2002 are not fit to be sustained. Accordingly they are hereby set aside. The appellant is acquitted of

the charge, he had been held guilty of. He is directed to be released forthwith, if not wanted in any other case.

18. In the result, the appeal is allowed.

19. We have been assisted by Sri Arun Kumar Tripathi, who was appointed Amicus Curiae to assist this Court. We direct that Sri Tripathi be paid the prescribed fee of one hearing by the Patna High Court Legal Services Committee for assisting the Court. Let the first and the last pages of the judgment be handed over to him.

(Dharnidhar Jha, J.)

(Amaresh Kumar Lal, J.)

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