

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.475 of 2006

(Against the Judgment of Conviction and Order of Sentence dated 11.05.2006 passed by the Additional Sessions Judge-cum-Fast Track Court No.2, Siwan, in Sessions Trial No.384 of 1998).

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Sobрати Mian, son of Late Dhoda Mian, resident of village-Saraia, P.S. Hussainganj,
District-Siwan.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant : Mr. Ramadhar Shekhar, Advocate.

For the State : Mr. S.N. Prasad, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 27-10-2015

The sole Appellant Sobрати Mian has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life vide Judgment and Order dated 11.05.2006 passed by the Additional Sessions Judge-cum-Fast Track Court No.2, Siwan, in Sessions Trial No.384 of 1998.

2. The case of the prosecution, according to the Informant Sabir Hussain (P.W.5), is that on 16.07.1998 at about 02.00 P.M., he saw the Appellant having 'Garasi' in his hand assaulting his uncle Tayeb Hussain, who was sleeping on a cot in the courtyard under the 'Neem' tree. Thereafter, the Appellant washed off the 'Garasi' nearby the hand-pump

and on 'hulla' he was caught by the co-villagers Nasirullah and Khatuullah. Thereafter, police arrived and recorded the statement of the Informant.

3. During trial, the prosecution examined altogether seven witnesses.

4. P.W.1 Jabir Hussain stated that he saw the deceased dead under the 'Neem' tree and heard that the Appellant had assaulted the deceased with a 'Garasi', which was recovered from his house. He was also a seizure list witness.

5. P.W.2 Md. Ali stated that on the date of occurrence, he took his son-in-law to a hotel to get the breakfast, where he heard 'hulla' that the Appellant had assaulted the deceased on account of which he died. We, thus, find that he is also a hearsay witness, who has supported the factum of the occurrence.

6. P.W.3 Jainab Khatoon is the mother of the Informant and sister-in-law of the deceased. She claimed to be an eye witness to the occurrence and stated that on the date of occurrence while she was sitting at the door, she saw the Appellant assaulting the deceased with a 'Garasi' on his neck on account of which he died. She confirmed the presence of rest of the eye witnesses, i.e., P.W.4, Jinat Khatoon and P.W.5 Sabir Hussain, the Informant. There is nothing in her evidence to discredit it in regard to the manner of occurrence.

7. P.W.4 Jinat Khatoon is the wife of the deceased, who stated

that on the date of occurrence while she was sitting at the door alongwith P.W.3 and P.W.5, she saw the Appellant arriving with a 'Garasi' and assaulting the deceased. We do not find any discrepancy in her evidence with regard to the manner of occurrence or the complicity of the present Appellant in the alleged occurrence.

8. P.W.5 Sabir Hussain, the Informant, has supported the statement given in the First Information Report and stated that on the date of occurrence while he was sitting at his door, Appellant with a 'Garasi' arrived and assaulted his uncle thrice on the neck on account of which he died. The police arrived after the occurrence and recorded his statement and prepared the seizure list. In his cross examination, he supported the factum of occurrence. We are inclined to place full reliance on his statement.

9. P.W.6 is Dr. Jai Narayan Prasad, who conducted post-mortem examination of the dead body of the deceased found the following ante mortem injuries over his person. Rigor mortis were present in his limbs. Externally there were:

- (i). Sharp cutting wound of 6" X 1" X 3" on the nape of the neck obliquely cutting through the subcutaneous tissues, muscles and vertebra.
 - (ii). Sharp cutting wound of 6" X 2" X 3" on the front part of the neck cutting neck vessels, muscles and trachea.
- II. On internal examination all the viscera were pale, the heart chamber empty, stomach and urinary bladder were empty.

III. Cause of death hemorrhage and shock caused by sharp cutting instrument like 'Garasi' as a result of above said injuries. Time since death approximately 18 hours.

His evidence thus further supports the prosecution case as to the manner of occurrence inasmuch as he found sharp cutting injuries on the neck of the neck of the deceased caused by sharp cutting weapon like 'Garasi'.

10. P.W. 7 Md. Ibrahim is a formal witness in regard to the seizure of 'Garasi' which had been recovered from the house of the Appellant.

11. On going through the evidence of the witnesses, discussed above, we find that there is complete consistency and corroboration in regard to the time and manner of occurrence and the presence of the eye witnesses, who have disclosed the complicity of the Appellant, is well proved and, hence, finding no merit in this appeal the same is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

P.S./-N.A.F.R.

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