

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1002 of 2009

Arising out of PS.Case No.-33 Year-2008 Thana-Purnahiya District-SITAMARHI

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Rajesh Kumar Thakur @ Rajesh Thakur, Son of Devendra Thakur, Resident of
Village Basant Jagjivan, P.S. Purnahiya, District Sheohar.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Shri V.R.P. Singh, Advocate

Shri Rajan, Advocate

For the State : Shri Abhimanyu Sharma, APP

For the Informant : Shri Devendra Kumar, Advocate

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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 solitary appellant, Rajesh Kumar Thakur @ Rajesh Thakur after being indicted of committing offence under Section 302 IPC was put on trial by the learned Sessions Judge, Sitamarhi in Session Trial No.502 of 2008. The appellant was held guilty of committing the offence by judgment dated 05.11.2009 and was heard on sentence on the same day so as to be directed to suffer rigorous imprisonment for life. Being aggrieved by and dissatisfied with the correctness of the findings as regards his guilt and the appropriateness of the sentence, the appellant preferred the present appeal.

2. Leela Devi (PW5), wife of deceased Indrajit



Thakur was not an eye witness to the occurrence. She has stated that it was her son Kumar Raushan (PW6) who had seen the occurrence and had narrated the same to her. Leela Devi (PW5) stated that her husband Indrajit Thakur had picked up some dung in a basket and had left his house for throwing the same in his land as also to attend to the call of nature. When he had reached the place in front of the house of Nanhku Sahni, this appellant, who was on a wait, came around and dealt a blow with *dabiya*, used in tapping toddy, on his neck causing cut injury on the front of it. The deceased moved a few steps and thereafter fell down in front of the house of the said Nanhku Sahni and died instantaneously.

3. The incident was witnessed by Kumar Raushan (PW6) and he attempted to catch the appellant, but he made good his escape. PW6, thereafter, came running to his house to inform the informant and others whereafter the whole family rushed to the place of occurrence to find that the dead body of Indrajit Thakur was lying in front of the *darwaza* of the said Nanhku Thakur with his throat slit and it had bled heavily from there.

4. It was stated by the informant Leela Devi (PW5) that there was some dispute between the appellant and the deceased regarding the dumping of dung on a public land. The appellant was objecting to the dumping by telling the deceased that

by so doing, he was obstructing his path way to his house and that the deceased shall have to face the consequences in the manner indicated in the *fardbeyan*. It was stated that only on 03.08.2008 that's, one day prior to the incident, the appellant had abused and held out threats to her husband of the nature and for the reason as stated above.

5. As may appear from the evidence of PW8 S.I. Anant Ram who was the officer-in-charge of Purnahiya police station that a telephonic message was received about the murder of a man at village Basant Jagjivan and accordingly, he made a station diary entry vide no.46 of 2008 and left his police station with Sub-Inspector of Police Praveen Kumar Singh and armed constables. He reached village Basant Jagjivan and in front of the house of the said Nanhku Sahni and found people assembled there. He also found the dead body lying there which was pointed out to be that of the deceased Indrajit Thakur. The family members of the deceased were also found present there and he, as such, recorded the statement of Leela Devi (PW5) which was reduced into writing by S.I. Praveen Kumar Singh. The contents of the written statement were read over to the informant who signed it after finding it correctly recorded. The *fardbeyan* was marked Ext.4. He thereafter held inquest upon the dead body of Indrajit



Thakur and prepared the inquest report in presence of witnesses which has been marked Ext.6. The Investigating Officer inspected the place of occurrence and found that the dead body was lying in front of the house of Nanhku Sahni which house was situated on the eastern side of the road running from north to south. It was the road which was going from Ashogi to Purnahiya and 50 yards away from that place where the dead body was found, he found the field of the deceased in one half of which was standing paddy crop while in the other half were planted banana plants. Almost at the same place, he found the dumped-dung and another field of the informant was also situated there. He found copious blood fallen at the place of occurrence and he recorded the statement of other witnesses and sent the dead body for post-mortem examination after having taken over the investigation himself.

He learnt that the present appellant had surrendered himself to the custody of the court on 08.08.2008. S.I. Anant Ram (PW8) obtained the appellant on police remand for 48 hours and questioned him during which course he confessed to his guilt and had also led the police to recover a *tenguri* (a small axe) which was seized after recovery of the same from a banana orchard from a bush as per seizure memo Ext.8. He obtained the post-mortem examination report and after closing the investigation sent up the

present appellant for trial.

6. The defence of the appellant was of false implication and also of his non-participation. It was further suggested to the witnesses that none had seen the occurrence and the deceased had been murdered by someone else for any other reason.

7. The prosecution examined eight witnesses in support of the charges. Dr. Nishith Kumar Gami had held post-mortem examination on the dead body and had prepared the post-mortem examination report Ext.1. Bibha Devi (PW2), Khusbu Kumari (PW3) were the daughters of the deceased and Leela Devi (PW5) and sisters of Kumar Raushan (PW6) the only eye witness to the occurrence. Bhikhari Thakur (PW4) as also Leela Devi (PW5) the informant were also not eye witnesses to the occurrence and they had also learnt about the murder of Indrajit Thakur from Kumar Raushan (PW6). Shankar Rai (PW7) was the *Choukidar* and he had produced the seized *tenguri* which was marked material exhibit in the case.

8. Shri V.R.P. Singh, the learned counsel appearing on behalf of the appellant took us through the evidence of the witnesses and submitted that there was no basket or dung found at the place of occurrence and, as such, the prosecution story to that



extent that the deceased had started from his house with a basket full of dung for dumping it into his field does not appear established. By referring to the medical evidence, it was contended that the deceased might have been murdered sometimes around 4.00 A.M. on that day and there could not have been any witness to that murder and the present appellant had been falsely implicated by the witnesses. Submission was that the evidence of PW6 was also not trustworthy. On these submissions it was contended that the present appellant deserved to be acquitted.

9. Susri Shashi Bala Verma, the learned counsel appearing on behalf of the State, has submitted that the prosecution story as narrated by PW5 in her *fardbeyan* was supported by Kumar Raushan (PW6) and all other witnesses and that there was no reason to discard their evidence. Submission was that the medical evidence was also supporting the proximity of the occurrence having taken place at 6.15 A.M. It was further contended by Susri Verma that there was consistency in the evidence of Kumar Raushan (PW6) and that of the other witnesses, like, PWs. 2,3,4 and 5 who were told about the manner of killing of deceased Indrajit Thakur.

10. The motive for the occurrence was that there was some dispute between the deceased Indrajit Thakur and the



appellant Rajesh Kumar Thakur @ Rajesh Thakur regarding the dumping of dung at a particular place. Leela Devi (PW5) the wife of the deceased who could have the knowledge about the dumping of dung stated in her evidence in paragraph-2 that for last three years the deceased was dumping dung over the land which was in front of his own house and which was also in front of the house of the appellant. The appellant had started objecting to the dumping of the dung for last 3-4 days and had very well stated to the deceased in presence of PW5 that if he did not stop dumping the dung then he will be killed by cutting his throat with the *dabiya*. One day prior to the incident as well, stated PW5, the present appellant had threatened the deceased of dire consequences. This evidence of PW5 gets support from Bhikhari Thakur (PW4) who happened to be the father of the deceased and who was very well residing in the same house with his son. PWs. 2 and 3, i.e., Bibha Devi and Khusbu Kumari, the daughters of the deceased were also stating on the above fact that there was some dispute in between the deceased and the present appellant in respect of dumping of dung and the present appellant had been objecting to the storage of dung on the ground that it was obstructing his access to his house and on that account had threatened the deceased of dire consequences. The only eye-witness PW6 Kumar Raushan has



also supported the above witness on the motive part of the incident and his cross-examination by the defence indicates the same details of that part of the prosecution story. Thus, what we find is that the real reason behind the incident which was alleged by the prosecution through the *fardbeyan* (Ext.4) of PW5 stands corroborated by the evidence of witnesses. While considering the evidence of witnesses on that particular part of the prosecution story we could not come across any line in cross-examination or even by way of suggesting anything to these witnesses that there had never been any threat from the side of the appellant and further that the appellant had not objected to the dumping of the dung at the particular place which was causing some discomfort to him in accessing his house. On a reappraisal of the evidence of the prosecution on that part of the prosecution story, what we find is that the reason behind the occurrence had duly been established by the prosecution.

11. Kumar Raushan (PW6) is the solitary eye witness. He has stated in his evidence that while his father was going with a basket full of dung and in that process had reached in front of the house of Nanhku Sahni in Kanu Tola so as to dumping it in his own land, this appellant had given a blow with *dabiya* on his neck as a result of which a cut injury was caused to him. His



father put one of his hands over the wound and moved for a few steps but subsequently fell down on the ground in front of the house of said Nanhku Sahni where he died. Kumar Raushan (PW6) saw the occurrence and he attempted to catch the present appellant but could not succeed in his attempt as the appellant rushed away from there through the paddy fields situated there. He thereafter came to his house weeping and wailing to narrate the incident to his grand parents, mother and sisters who all came to the place of occurrence to find the dead body lying there. During cross-examination, PW6 stated as appears from paragraph-8 that he could not hold his father in injured condition and that he also did not call any doctor. PW6 further stated that he saw the dead body after turning it from one side to the other and found that his father was dead and there was no more bleeding from the injury. PW6 had stated that he had turned the dead body of his father ten minutes after returning from his house. PW6 also stated that he was given the blow when he was holding the basket by both his hands and was facing east. The blow was given from his back side and no sooner the blow had landed on his throat, the basket had rolled down his head.

It was contended by the learned counsel appearing for the appellant that the blow was given on the neck of the deceased



but PW6 stated that the blow was wielded while the assailant was standing on the back of the deceased. Thus, what was attempted to be impressed upon us was that the two lines of evidence coming from PW6 were contrary and making the examination-in-chief evidence improbable as regards the manner of occurrence. We do not see any improbability in the evidence. In examination-in-chief, PW6 did not state as to what was the position of the assailant, when he dealt the blow with *dabiya* to the deceased. It was only in cross-examination in paragraph-11 that the position of the assailant was elicited from PW6 and in that course he stated that the blow was wielded by the assailant while he was standing behind his father. The blow was given by a *dabiya* which is used in tapping toddy. The injury which was found by PW1, was (i) a cut wound in front of neck of size 4"x2" deep up to vertebral column. The other wound was a linear abrasion over left arm of size 4"x1/6". In our opinion, injury no.1 does not render the manner of occurrence improbable rather the manner of assault appears more probabalized by the discussion of the injury. We do not see it impossible to give a blow on the front of the neck by a weapon like *dabiya* if it had been attempted by a man standing at the back of the deceased. We feel that it could have been more convenient for the appellant to give the blow as his attempt from the front of the deceased might

have invited resistance from the deceased.

12. The other limb of argument was that the police had recovered a *tenguri* that's the small axe, but the oral evidence was that the blow was given by a *dabiya*. The police might have recovered the *tenguri* as appears from the evidence of S.I. Anant Ram (PW8) but we do not find that the *tenguri* had any streak of blood or such stain on it which had been detected to be human blood and ultimately belonged to the blood group of the deceased. The oral evidence is consistent that it was a *dabiya*, used in tapping toddy, which was used in giving the blow to slit the neck of the deceased in order to kill him. The mere recovery of the *tenguri* does not distract the value of the evidence of the prosecution witnesses, more so when it is nobody's case that any such weapon like a *tenguri* had been wielded by the assailant. The police might have created an evidence in order to pat itself on its back claiming that it had ultimately unearthed the weapon which was used in giving the blow. But the very recovery memo does not support the recovery as regards the weapon having been used in giving the blow as we have already pointed out that there was no stain of blood, least to talk of finding any such substance. Moreover, what we find is that place from where the police had claimed to have recovered the *tenguri*, appears no where near the place of

occurrence and none of the witnesses deposed that they had even an inkling of such recovery. Mere recovery of *tenguri* without being valuable evidence as regards the manner of occurrence, to us, appears of no consequence.

13. It was contended next by the learned counsel appearing for the appellant that the doctor had stated in his cross-examination that the injury caused to the deceased might have been caused within 12 to 24 hours of holding of the post-mortem examination as such, the deceased would have been killed sometimes around 4.00 A.M. We want to point out that in examination-in-chief, the doctor PW1 had stated that time elapsed since death and post-mortem held was within 24 hours. After having a look at the document (Ext.1) the post-mortem report, what we find is that the same time period had been expressed by PW1 in the document as regards the period elapsed since post-mortem held and death having occurred. The learned counsel was pointing out that the post-mortem examination was held at 4.10 P.M. on 04.08.2008 and 12 hours to be counted backwards from that time, we could obtain 4.10 A.M. and, as such, the death could have occurred somewhere around 4.00 A.M. We simply do not find ourselves in agreement with the learned counsel as regards his submission. Even if we had accepted the countdown of time as



suggested, we would be reaching 4.10 A.M. and 6.15 A.M. would be after 4.00 A.M. and thus with the 12 hours. Moreover, the medical evidence does not have the precision in spite of being the most scientific evidence. It is an opinion evidence which is generally used and accepted in finding out as to whether the manner of occurrence which is alleged by the prosecution was corroborated by it. The medical evidence definitely corroborated the manner of evidence that it was a weapon like *dabiya*, as stated by PW1, which could have caused the death of the deceased Indrajit Thakur.

14. The evidences of PWs. 2,3,4 and 5 are all relevant as they were conveyed about the incident of murder by this appellant of Indrajit Thakur within no time by PW6. All these witnesses stated before the trial court that they had been conveyed the news of Indrajit Thakur being murdered by Kumar Raushan (PW6). The evidence of these three witnesses become relevant as the fact of Indrajit Thakur being murdered by this appellant was stated by PW6 immediately after the incident. Their evidence also lends credence to the prosecution story as they appear having rushed to the place of occurrence to find the dead body lying in front of the house of Nanhku Sahni and the inquest also appears confirming that evidence that the dead body was lying there. The

evidence of those witnesses on parts of the prosecution story, like, the reason for which the deceased Indrajit Thakur had been murdered also lends corroboration to the story.

15. Having regard to the evidence available on record and considering its merit in the light of the criticism made of it by the learned counsel appearing for the appellant, we find that there is no demerit in the judgment of conviction and order of sentence. The learned judge had passed the judgment appropriately under the facts of the case. The appeal, as such, lacks merit and the same is dismissed.

(Dharnidhar Jha, J.)

(Gopal Prasad, J.)

Sanjay/N.A.F.R.

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