

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.581 of 2007

Arising Out of PS.Case No. -71 Year- 2001 Thana -Laukahi District- Madhubani.

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Gunjeshwar Yadav Son of Munga Lal Yadav R/o village Amarpura, P.S. Laukahi,
Distt. Madhubani

.... Appellant

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant : Mr. Manoj Kumar Jha, & Mr. Kumar Chandra Shekhar,
Advocates.

For the State : Mr. Abhimanyu Sharma, APP

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH**

and

HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 26-02-2015

The sole appellant stands tried and convicted under
Section 302 of the Indian Penal Code by the judgment and order dated
27th February, 2007 passed by Additional Sessions Judge, Fast Track
Court No. III, Madhubani in Sessions Trial No. 421 of 2001/100/2006
and sentenced to undergo imprisonment for life.

The factual score, as has been undraped, is that the wife
of the appellant, namely Shanti Devi (informant) lodged the First
Information Report alleging that she was married to the appellant
after the death of her husband who was elder brother of the appellant.
His first marriage produced a daughter, namely, Sunita Kumari. The
second marriage with the appellant produced two sons and one



daughter. After the birth of the last son, Sandeep Kumar (the deceased) the accused-appellant started suspecting that the deceased was not his son and used to often utter that he would not spare him. At times he used to assault the deceased with intention to kill. The younger brother of the appellant was separate and residing in rear part of the backyard after putting up a hut which was set on fire earlier by the appellant. He started pretending in a manner that the villagers may treat him as mad. On the fateful night of 11/12th July, 2001, when the informant was sleeping in osara (verandah of the house) with her daughter Sunita and son at about 10 PM she woke up and saw her husband (the appellant) sitting by the side of her son with a blood stained knife in his hand and her son having received knife injury was oozing blood from the forehead. When questioned as to why he killed her son the appellant stated that it was right that he died. The matter was informed to the father-in-law and other villagers, namely Ramdeo Yadav, Kaila Yadav, Asharfi Yadav. The injured son of the informant died of the injuries. The informant carried the dead body of her son to the police station and recorded her *farbeyan* on the following day at 6.30 AM. Accordingly, Laukahi P.S. case no. 71 of 2001 dated 12.7.2001 was registered and investigation commenced. Inquest report of the dead body was prepared in presence of Chunnu Sharma (PW1) and Shibu Yadav



(PW-6) and sent to the Sadar Hospital for post mortem which was conducted by Dr. A.K. Ojha (PW-8) who found ante- mortem incised injuries on the body of the deceased. On conclusion of investigation the charge sheet was submitted under Section 302 of the Indian Penal Code against the appellant on the basis whereof cognizance was taken and later the case was committed to the Court of Session on 31.08.2001. The case, on transfer, came to the file of the learned trial Judge where charges were framed. The statement of the appellant under Section 313 of the Cr. P.C. was recorded in which he refuted the charge and claimed to be tried. The defence was total denial of the prosecution case and false implication. A further plea was taken that the informant was of bad character herself and she killed the deceased and falsely implicated the appellant.

At the trial, the prosecution, with a view to bring home the charges, examined 09 (nine) witnesses out of whom PW-3 is the informant herself, whereas PW-2 Sunita Kumari is the daughter of the informant born from the first husband. PWs 1, 4, 5 and 6 have been declared hostile. Be it noted that PWs- 1 and 6 are the witnesses on the inquest report which was prepared by the Investigating Officer. PW-7 is another witness who went to the place of occurrence after hearing the cry of the informant. PW-8 Dr. A.K. Ojha conducted

the post mortem on the cadaver and submitted the post mortem report (Ext.1). PW-9 has proved the signature of the Officer-in-charge on the formal F.I.R. (Ext.2).

PW-8, in his examination-in-chief, has stated that he conducted the post mortem on the dead body of the deceased Sandeep Kumar who was one year old son of the informant and found the following ante-mortem injuries:-

“Incised wound 1” long on upper portion of left frontal region. Injury found to be bone deep ½” long corresponding to the skin injury found.

On dissection blood under scalp found under the cut bone dura meninges and brain matter is cut about ½” deep about, 1oz. of clotted blood found under dura. Both chambers of heart empty. Both lungs pale. Liver spleen. Kidney pale. Stomach empty. Intestine containing faecal matter and gasses. Urinary bladder empty.”

The cause of death, according to him, was due to haemorrhage and shock as a result of the above mentioned injuries caused by sharp pointed weapon. He further stated that after receiving such injury the patient would die at once and/or it may take some time. The evidence of the Doctor unerringly proves that the death of the deceased was homicidal in nature. It was not natural or accidental. The question is whether the appellant has committed the said offence or not. With a view to examine the same, this Court would scan the relevant evidence which has been brought on record in the shape of evidence of PWs 2,3 and 7.

PW-3, the informant, in her deposition supported the allegations she levelled in the '*fardbeyan*' made before the Officer-in-charge which formed part of the formal FIR (Ext.2). In Court she has stated that on the fateful night she was sleeping on '*osara*' of the house along with her son (the deceased) and daughter Sunita Kumar (PW-2). At about 10 O'clock in the night the appellant came by the side of the bed on which they were sleeping and inflicted knife blow on the forehead of her son. She woke up on the cry and saw him standing by the side of the deceased with knife in his hand and she started crying which awoke Sunita (PW-2) who was also sleeping by the side of the deceased. The son had received knife injuries on his forehead. She carried the injured to the nearby block hospital but she died on way. She returned home and thereafter in the morning went to the police station and lodged the case. In her cross-examination, this witness stated that the appellant was harbouring a suspicion that the deceased was not born from him. He had earlier uttered to kill him and had made some attempts. As soon as the knife blow was inflicted the victim (boy) raised a cry and she awoke to find her husband by the side of the deceased with knife in his hand. She raised an alarm which attracted amongst others PWs 5 and 7 to the place of the occurrence. The appellant stayed inside the house and did not make an attempt to flee therefrom. In fact, he accompanied



her to the hospital where the injured was carried and thereafter to the police station when the '*fardbeyan*' was lodged and he was taken into custody. From the cross-examination of this witness it does not appear that any material contradiction has been elicited to discredit her. In fact she remained unshaken. The evidence of this witness appears to be intact. Similar is the evidence of PW-2 who was also sleeping on the same bed when the victim was assaulted by the appellant. According to her deposition in Court, on hearing cry of her mother she woke up only to find her father standing with a knife in his hand near the head of the victim. She could see the victim in a pool of blood lying on the bed after receiving the knife injury. Nothing has been elicited from her evidence by the defence in order to discredit her evidence. No suggestion was even given that her version in Court is at variance.

PW-7 Asharfi Yadav is another witness, who, in his evidence before the Court, has stated that on hearing alarm /cry from the house of the appellant he went there and found the deceased lying in a pool of blood on the bed. The informant disclosed to him that the appellant had committed murder of his son by inflicting knife injuries on his head/forehead. This witness was cross-examined at length by the defence wherefrom it reveals that there was a dispute going on between the husband and the wife over the birth of the

victim. The appellant strongly suspected that the victim was not born from him. We have carefully perused the entire evidence of this witness. It appears to us that his evidence supports the case of the prosecution that on the date and time of occurrence the appellant with a knife in his hand had entered the 'osara' and the victim was inflicted knife blows on his forehead.

The learned counsel for the appellant has submitted that the presence of the appellant throughout inside the house inasmuch as accompanying the informant to the hospital and thereafter to the police station is a circumstances which would demonstrate his innocence and false implication. Even from the evidences of PW-3 and PW-2, it would not appear that those two witnesses had actually seen the appellant inflicting the knife injury on the deceased. There is evidence on record in the shape of deposition of PWs- 2 and 3 that at times the appellant used to act in insane manner. It is, thus, a case where nobody actually saw the appellant inflicting the knife blow on his son and committing filicide.

Learned Additional Public Prosecutor, on the other hand, has contended that presence of the appellant inside the house with the victim and the informant is not unnatural as the appellant is the husband of the informant and father of the victim (deceased). No evidence has been brought on record by the defence to demonstrate

that at the time when the occurrence had taken place the appellant was suffering from any insanity.

We have carefully considered the rival contentions of the parties and perused the material on record. We find that the evidence of PW's 2, 3 and 7 in the light of evidence of PWs-8 conclusively prove the guilt of the appellant. From the evidence of PW-3, this Court finds that earlier also the appellant had made an attempt to do away with the life of the deceased. A strong motive was there for the appellant to do away with the life of the deceased as he strongly suspected that the deceased was begotten by the informant not from him. PW-3 in her deposition has painted the entire circumstances which unerringly prove the guilt of the appellant. He was found sitting near the head of the victim/deceased with a knife in his hand and the victim suffered knife injuries on his forehead. PW-2 has supported the versions of the informant in toto. The Doctor (PW-8) in his post mortem report (Ext.2) found the injuries caused by knife which proved fatal. As already noticed above, no contradiction much less material contradiction in their evidence has been elicited by the defence to discredit their evidence. PW-7 is the neighbour of the appellant who rushed to the place of occurrence after hearing the cry of the informant and was narrated the incident immediately by the informant. The appellant was seen with knife in his hand standing

there. Taking into account the aforesaid facts manifesting from the records this Court finds that the evidence on records prove the guilt of the appellant beyond shadow of all reasonable doubts.

This Court, in view of the discussions made hereinabove, finds no legal flaw in the judgment and order of conviction and sentence recorded by learned trial Court. The appeal fails.

It is, accordingly, dismissed.

(Samarendra Pratap Singh, J)

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(Kishore Kumar Mandal, J)

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