

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.37 of 2008

Against the judgment of conviction, dated 20.11.2007 and order of sentence, dated 22.11.2007, passed by the Additional Sessions Judge, Fast Track Court, III, Begusarai, in Sessions Trial No. 268 of 2004 arising out of Bachhwara P.S. Case No. -77 of 2007

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Parmanand Paswan, son of late Ram Pratap Paswan, resident of village Ganga Prasad, P.S. Brauni, district Begusarai	 Appellant
Versus	
The State of Bihar	 Respondent

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Appearance :

For the Appellant : Mr. Ravindra Kumar, Adv., *Amicus Curiae*
For the State : Mr. Dilip Kumar Sinha, A.P.P

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
and
HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 26-02-2015

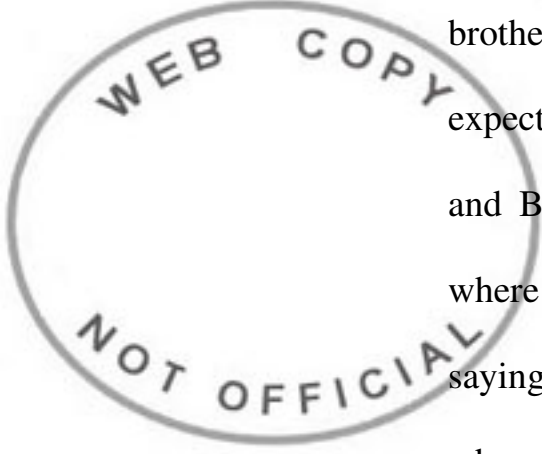
Under challenge, in the present appeal, is the judgment, dated 20.11.2007, passed in Sessions Trial No. 268 of 2004, by learned Additional Sessions Judge, Fast Track Court, III, Begusarai, whereby sentence has been passed against the accused-appellant.

2. By the impugned judgment, learned trial Court has convicted the accused-appellant under Section 302 of the Indian Penal Code. Following his conviction the accused-appellant has been sentenced to undergo rigorous imprisonment for life and also pay fine of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment for two years.

3. The case of the prosecution, as unfolded at the trial, may, in brief, be set out as under :

4. The accused, Parmanand Paswan, who used to work as a *Khalasi* in the Railways, had been staying, for about ten days preceding the day of occurrence at the house of his

maternal uncle, Jogi Paswan. On 26.09.2003, at about 07.00 P.M, Jogi Paswan, father of Rajesh Kumar Paswan, who is informant (P.W. 7), came home accompanied by his younger brother, Birendra Paswan (P.W. 1). As the informant (P.W. 7) expected accused Parmanand Paswan to be with Jogi Paswan and Birendra Paswan, he made a query from his father as to where Parmanand Paswan was and Jogi Paswan replied by saying that Parmanand Paswan had left them at Sooro Chowk, whereafter informant served food to his father and administered medicine in his eyes. Jogi Paswan, then, slept on the bench kept at there courtyard and the informant went to the roof of the house and slept there with some other members of his family. It was at about ten o'clock at night that accused Parmanand Paswan came to the roof and slept nearby without having his meals. On the following day, i.e., 27.09.2003, in the morning, the informant woke up on hearing hulla and saw his father hacked to death by cutting his neck with the help of a sharp edged weapon and huge quantity of blood had come out and fallen on the ground. On a query made by the informant, informant's uncle, Birendra Paswan (P.W. 1), told the informant (P.W. 7) that on the previous day in the evening, Parmanand Paswan had asked for some money from the informant's father, Jogi Paswan (since deceased), at the Sooro Chowk, but Jogi Paswan had told the accused that since he had already given rupees six thousand to Parmanand Paswan and the said sum of money had not yet been



returned, he was not in a position to give any more money as he had been maintaining his family with great difficulty and this made accused Parmanand Paswan angry and he left the company of Jogi Paswan. After the informant woke up, as indicated hereinbefore, he did not find the accused and, therefore, suspected that the accused was the one, who had put to death Jogi Paswan, because of Jogi Paswan's refusal to give any money to the accused.

5. Based on the information, as indicated above, and treating the same as First Information Report, Bachhwara P.S. Case No. 77 of 2003 was registered, under Section 302 of the Indian Penal Code, against the accused Parmanand Paswan.

6. During the course of investigation, inquest was held over the dead body of Jogi Paswan, which was also subjected to *post mortem* examination and, on completion of investigation, a *charge sheet* was laid, under Section 302 of the Indian Penal Code, against the accused Parmanand Paswan.

7. At the trial, when a charge, under Section 302 of the Indian Penal Code, was framed against the accused, he pleaded not guilty thereto.

8. In support of its case, prosecution examined altogether 7 witnesses. The accused was, then, examined under Section 313(1)(b) of the Code of Criminal Procedure, and in his examination aforementioned, the accused denied that he had committed the offence, which was alleged to have been

committed by him, the case of defence being of denial. No evidence, however, was adduced by the defence.

9. While considering the present appeal, let us first take into the account the evidence of the Doctor (P.W. 5), who had admittedly conducted, on 27.09.2003, *post mortem* examination on the dead body of Jogi Paswan and found following *ante mortem* injuries on the said dead body :

“(i) Incised wound on left side of neck measuring 6” x 2(1/2)” x cervical bone deep.

On dissection :

- (1) Scalp brain matter pale,
- (2) Neck incised wound with cut of skin, muscles, major vessels, cervical bone of left side neck,
- (3) Thoracic cavity lungs congested. Heart, both sides, empty
- (4) Abdominal cavity – liver congested, spleen congested, kidney pale, stomach semi digested food materials. Bladder full.”

10. In the opinion of the Doctor (P.W. 5), the death was caused due to haemorrhage and neurogenic shock as a result of cut injuries sustained by the said deceased on the left side of his neck, which had been caused by sharp edged weapon.

11. In the cross-examination, the Doctor (P.W. 5) has also deposed that *semi digested* food is found in the stomach of a deceased person within four hours of consumption of food and

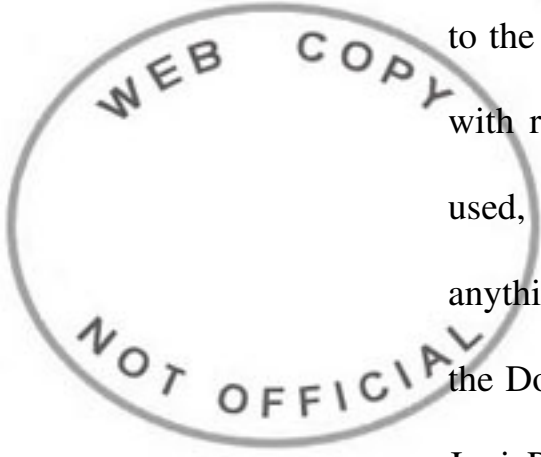


that *rigor mortis* was present in all the four limbs of the said deceased.

12. The findings of the Doctor (P.W. 5), with regard to the injuries sustained by the said deceased and/or his opinion with regard to the cause of death and/or the nature of weapon used, were not disputed at the trial. We, too, do not find anything inherently, incorrect and improbable in the evidence of the Doctor (P.W. 5). We are, therefore, clearly of the view that Jogi Paswan met homicidal death and, therefore, the question arises as to whether it was the accused-appellant, Parmanand Paswan, who had put to death Jogi Paswan.

13. However, quest for an answer to the above question brings us to the evidence of P.W. 1 (Birendra Paswan), whose evidence, we find, is that on the night of the occurrence, he woke up, at about 11-12 o'clock, on hearing *hulla*, the *hulla* having been raised by Fulwati Devi (P.W. 2) and saw accused, Parmanand Paswan, fleeing away and though he (P.W. 1) tried to catch hold of the accused, the accused fled away. It is in the evidence of P.W. 1 that he found his brother, Jogi Paswan, dead with cut injury on his neck.

14. Close on the heels of the evidence of P.W. 1 is the evidence of P.W. 2 (Fulwati Devi), wife of younger brother of Jogi Paswan, whose evidence is that it was Parmanand Paswan who had murdered Jogi Paswan and that accused Parmanand Paswan was present in their house on the night of



occurrence and had demanded some money from Jogi Paswan, which Jogi Paswan had declined to give on the ground that accused had not returned the money, which he had taken earlier.

It is also in the evidence of P.W. 2 that the accused fled away after murdering Jogi Paswan.

15. When the evidence of P.W. 1 and P.W. 2 are read together, what become impossible to ignore is that while P.W. 1 claims that he woke up on hearing *hulla*, raised by P.W. 2, and saw the accused running away, P.W. 2 does not even whisper, in her evidence that she had seen the accused either assaulting the deceased or fleeing away. P.W. 2 does not even claim that she raised any *hulla*. In fact, her evidence that the accused had asked for some money from the deceased and the deceased had declined, are only narration of an incident and, that is, strictly speaking, therefore, no evidence *stricto sensu* in the eyes of law inasmuch as there is nothing to indicate in the evidence of P.W. 2, as to how she had come to learn that the accused had asked for money and Jogi Paswan had declined to give the same. Obviously, P.W. 2 was neither present at the place where Jogi Paswan was asked by the accused to lend him (the accused) money nor was she present, at the time, when Jogi Paswan had declined to give the money.

16. Thus, the evidences of P.W. 1 and P.W. 2 are mutually destructive of each other and no reliance can be placed at all on their evidence.

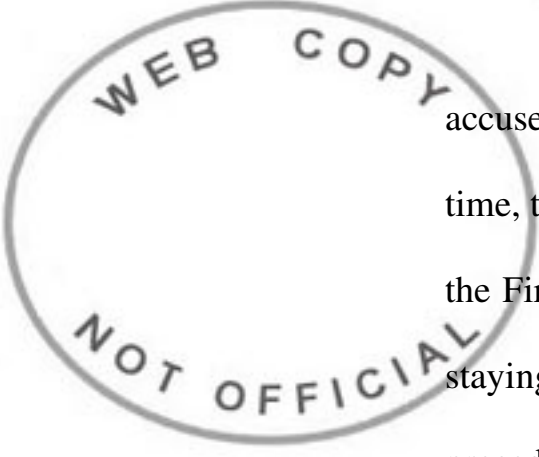
17. The above impression gets reinforced from the fact that P.W. 2 has deposed, in her evidence, that when she reached the place, where Jogi Paswan was lying, Jogi Paswan was not dead and she had, in fact, talked to him and at that point of time, the sun was about to rise. The evidence of P.W. 2, thus, further belies the evidence of P.W. 1 that P.W. 2 had raised *hulla* in the middle of the night and attracted by the *hulla*, when he (P.W. 1) woke up, he saw the accused fleeing away.

18. So far as P.W. 3 is concerned, his evidence gives no indication that he had seen the accused on the night of the occurrence at the house of the said deceased and/or he had seen the accused fleeing away from the place of occurrence.

19. Coming to the evidence of the informant (P.W. 7), we notice that according to him, after making his father sleep, he went to the roof for sleeping and he had not taken meals and that accused woke him up in the night and slit throat of Jogi Paswan and fled away. The evidence, so given by P.W. 7, is nothing but presumptuous in nature as his clear evidence is that it was in the morning that he had found his father lying dead with his neck slit. There is no indication at all from the evidence of the informant (P.W. 7) that any *hulla* was raised on the night of the occurrence by P.W. 2 and/or P.W. 1 had seen the accused fleeing away on the night of the occurrence.

20. Situated, thus, it becomes clear that the evidences of P.Ws. 1, 2 and 7, when read together, clearly shows that

evidence of each of them belies the evidence of the other and no reliance can, therefore, be safely placed on the evidence of any of these witnesses.



21. With regard to the prosecution's case that the accused had been staying at the house of Jogi Paswan for some time, there is, again, we find, no consistent evidence inasmuch as the First Information Report indicates that the accused had been staying at the house of the said deceased for about ten days preceding the night of the occurrence, whereas the evidence of P.W. 1 is that the accused had been staying there for the past about 3 to 4 days.

22. Apart from the fact that it is very doubtful if the accused had been staying at the house of the said deceased, what becomes evident is that even if it be believed that the accused had been staying at the house of the said deceased, it cannot be confidently held that the accused was one, who had killed the said deceased. Abscondence of the accused-appellant, if true, can raise an element of suspicion against the accused. However, mere suspicion cannot be made basis of conviction; whereas in the case at hand, the suspicion does not acquire the shape of proof inasmuch as there is no other evidence of any kind, which can make this Court confidently to hold that it was none but the accused, who had put to death Jogi Paswan.

23. We are clearly of the view that in the facts and attending circumstances of the present case the accused-

appellant deserves to be granted, at least, benefit of doubt.

24. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellant and the sentences passed against him by the judgment and order, under appeal, are hereby set aside. The accused-appellant is held not guilty of the offence, which he stands convicted, of and he is hereby acquitted of the same under benefit of doubt.

25. The impugned judgment of conviction, dated 20.11.2007, and the order of sentence, dated 22.11.2007, passed by Additional Sessions Judge, Fast Track Court, III, Begusarai, in Sessions Trial No. 268 of 2004, arising out of Bachhwara P.S. Case No. 77 of 2004, are hereby set aside. The appeal is accordingly allowed. The appellant, if not wanted in any other case, be released forthwith.

26. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court, along with the Lower Court Records.

(I. A. Ansari, J)

(Gopal Prasad, J)

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