

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1000 of 2012

Arising Out of PS.Case No. -103 Year- 2010 Thana -null District- GOPALGANJ

Against the Judgment of conviction dated 31.08.2012 and Order of sentence dated 03.09.2012 passed by Adhoc Additional District and Sessions Judge –IV, Gopalganj, in Session Trial No.43 of 2011/04 of 2011.

Raj Kumar Singh, S/O Late Jagarnath Singh, Resident of Village- Gangwa, P.S- Sidhwalia, District- Gopalganj.

..... Appellant/s
Versus

The State of Bihar

..... Respondent/s

Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 13-10-2015

Heard learned counsel for the Appellant and
learned counsel for the State.

2. The sole Appellant, Raj Kumar Singh, has been convicted under Section 302/34 of the Indian Penal Code and sentenced to Rigorous Imprisonment for life vide Judgment of conviction dated 31.08.2012 and Order of sentence dated 03.09.2012 passed by the Adhoc Additional District and Sessions Judge-IV, Gopalganj in Sessions Trial No. 43 of 2011/ 04 of 2011.

3. The case of the Informant, Sanjay Kumar



Singh (P.W.6), son of the deceased, is that on 03.10.2010 at about 9 A.M. when his mother was at home and P.W.4, Nidhi Kumari, daughter of Brij Kishore Singh, was cooking food because his wife was not there, the Appellant and his mother, both being agnates, came there with whom there was land dispute and started an altercation with the deceased on the ground of withdrawing the criminal case. The mother protested at which the Appellant and his mother assaulted the deceased with the Garashi on the neck due to which she fell down and immediately died. The accused then fled away, who were seen by the witnesses gathered there. The signatories of the Fardbeyan are Yogendra Singh (P.W.3) and Ramesh Singh (P.W.2).

4. During trial, the prosecution examined 7 witnesses. P.W. 1, Bikrma Singh, P.W. 2, Ramesh Singh, P.W.3, Yogendra Singh, P.W.4, Nidhi Kumari, who is daughter of Brij Kishore Singh, P.W.5, Dr. Sanjiv Kumar, who conducted the postmortem examination, P.W.6, Sanjay Kumar Singh, informant and son of the deceased and P.W.7, Ugra Nath Jha the Investigating Officer.

5. Defence examined three witnesses. D.W.1, Ram Janam Singh, D.W.2, Nageshwar Singh and D.W.3, Sita Ram Singh.

6. P.W.1, Bikarma Singh, stated that on the date of occurrence the accused came to the Varandah of the deceased and started compelling her to withdraw the case but she protested on some ground at which Sunaina Devi pulled her on the ground and the Appellant assaulted her with 'Garashi' due to which she died. In cross-examination, his attention was drawn to the earlier statement that he had stated that it was Nidhi Kumari (P.W.4), who had told her about the occurrence but he denied such suggestion. He continued that he knew Yogendra Singh (P.W.3), whose land was adjacent to the land of the Appellant. It was suggested to him that in fact the appellant used to ask for a right of a way from P.W.3 but it was denied by him. He further stated that he did not know as to whether after the death of the informant's father, a 'Panchnama' has been prepared with regard to managing the lands of the deceased. He further stated that a criminal case had been instituted by the deceased against the Appellant for committing fraud upon her. He also stated that the informant was mentally weak. He explained the relationship between himself and P.W.4 stating that she was his niece and she was cooking on the date of occurrence. He denied the suggestion that after the death of the deceased her property had been transferred in the name of P.W.3, Yogendra Singh and Brij Kishore Singh, father of P.W.4.

7. P.W.2, Ramesh Singh, stated that on the date of occurrence he heard from P.W.4, Nidhi Kumari and P.W.6, Sanjay Kumar Singh that the deceased had been killed by the Appellant and his mother. He then went to the place of occurrence and signed on the Fardebyan which is marked as Ext.1. He also stated that before death, Meena Devi had given six Kathas of land through a sale deed to the Appellant. He explained that P.W.3, Yogendra Singh and P.W.1, Bikarma Singh are not the agnates of the deceased and that a Panchayati had been held for six Kathas of land and the informant was a person of weak mental health. The Panchayat had decided that the lands of the deceased would be managed by five persons, in which, he, Brij Singh, father of P.W.4, were two of them. He stated that the entire land of the deceased had been registered in the name of Brij Singh and Yogendra Singh, P.W.3, after which the informant and his wife had migrated to some other place. He further clarified that in the Panchayati, it was decided that out of six Kathas of land, four Kathas would be returned to the deceased whereas two Kathas would be kept by the Appellant for maintaining her. As per this arrangement, the Appellant had returned four kathas of land. It was also decided in the Panchayati that Brij Kishore Singh, father of P.W.4, who had taken possession of the land of the deceased would vacate the same

but till date he had not done so. From his statement even though we find that he has stated that he had heard about the occurrence from P.W.4 and P.W.6 but when the same is not corroborated by them his hearsay evidence on this ground has to be rejected being inadmissible in law.

8. P.W.3, Yogendra Singh, stated that on the date of occurrence, on 'hulla', he went to the Varandah of the deceased where he heard the Appellant and his mother telling the deceased to withdraw the case but she stated that unless she was returned the land she would not withdraw the same. At this, an altercation took place and the Appellant is said to have assaulted the deceased with Garashi on her head, on account of which, she fell down and died. He informed the Officer-in-Charge in respect to the occurrence. He himself was a signatory to the Fardebyan which is marked as Ext1/a. He also proved the signature of the informant in the Fardebyan Ext.1/b, Inquest Report Ext. 3 and Seizure list Ext.3/a. He stated that Nidhi Kumari was his niece by village relationship and the deceased was her own grandmother and the name of the father of Nidhi Kumari was Brij Kishore Singh. His attention was drawn to his earlier statement whereunder he had stated that he heard about the occurrence from P.W.3 and P.W.6. He further stated that the deceased had instituted a criminal case



against four persons including the Appellant within a month after the land was transferred to which he was also a witness. After the Panchayati four Kathas of land had been returned to Meena Kunwar, deceased. He also stated that the informant was a person of mentally weak. Further, a Panchayati had been held in which a Committee was formed to look after the lands of Sanjay Kumar Singh, Informant, in which he was also a member along with Appellant, Raj Kumar Singh. After the death of Meena Kunwar, Brij Kishore Singh, father of P.W.4 had got the lands of informant registered in his own name. In his further cross-examination, he stated that police had searched the house of the appellant but nothing was found there.

9. P.W. 4, Nidhi Kumari, who was aged about 12 years on the date of evidence and about 11 years on the date of occurrence, has stated that on the date of occurrence while she was cooking food for the deceased, she saw the appellant and his mother coming to the Varandah and asking her to withdraw the case at which the deceased stated that only when her lands would be returned would she do so. On 'hulla', P.W. 3, her uncle, Yogendra Singh, P.W.1 and her father (not examined) came there and they saw the appellant and his mother assaulting the deceased with Garashi on account of which she fell down and died. After the occurrence, P.W.3, her uncle, informed the police on which they

came there and examined them. She stated in cross-examination that after the occurrence she cried, then people gathered. When she was giving her statement, at that time, her uncle and father both were present.

10. P.W.5, Dr. Sanjiv Kumar, has stated that he conducted the postmortem examination of the deceased on 03.10.2010 and found following injuries on her person.

On External Examination :-

- I. Regor mortis present in all four limbs.
- II. Right eye partially opined left eye closed, mouth opened. Nose – N.A.D.
Left ear normal, external genital area- N.A.D.

Anemortem Injuries

- I. One incised wound 8” X 2” cavity deep over right side of extending from front of right tragus anteriorly to mid line posteriorly and brain matter exposed through the bony defect.
- II. Another incised wound ½” X proximal to injury no. 1 of size of 3”X1/4”Xscale deep.

On dissection – Head and Neck

Fracture of frontal right panctal and occipital bone present Brain lacerated, intra cranial bleeding present.

Thorax – Thoracic cage intact. Lungs Pale and intact.

Heart – Left chamber contained blood- Right chamber empty.

Abdomen – No free fluid or blood present all organs pale and intact. Stomach – Empty. Intestine contained fluid and gases. Urinary bladder-Empty.

Time elapsed since death- Within 24 hours of the examination.

Cause of death – shock both hemorrhagic and neurogenic as a result of head injury caused by sharp cutting heavy weapon, it may be Garasi.

The P.M. report is in his pen and signature marked “Ext.4”.

11. From the evidence of Doctor, we find that he has found one injury on the person of the deceased which was incised in nature, which fully corroborates the prosecution case.

12. P.W.6, the informant, Sanjay Kumar Singh, stated that on the date of occurrence, the appellant and his mother had assaulted his mother, on account of which she died. At that time, P.W.1, Bikarma Singh, he himself and Ramashish Singh were present there. P.W.4, Nidhi Kumari was cooking. He proved the fardebyan as Ext.5. In cross-examination, he stated that on the date of occurrence he was outside and when he returned Brij Kishore Singh, father of P.W.4 Nidhi Kumari, asked him to put his signature on the Fardebyan at which he did so. He further stated that deceased and the appellant had good relations. The court observed that he was

not mentally fit. He further stated that his mother had voluntarily executed the documents in regard to the land and after her death, Brij Kishore Singh and P.W.3 had got the lands executed in their favour. He stated that his mother was not assaulted in front of him and he was brought by Brij Kishore Singh and P.W.3. In the last sentence he added that the Appellant was innocent.

13. P.W. 7, Ugra Nath Jha, who is the Investigating Officer, stated that he got information about the occurrence on which he proceeded to the place of occurrence and recorded the Fardebyan, prepared the inquest report and the seizure list in presence of the witnesses and sent the dead body for postmortem. He examined the place of occurrence, which was the Varandah of the deceased. Even though he stated that Gokhula Singh, Raghunath Singh and Bhikhari Singh are next door neighbors of the deceased but none of them were examined by him. He proves paragraphs 1 to 51 of the case diary and Ext.7 for some inexplicable reason. His attention was drawn to the description of the place of occurrence and he stated that he did not find any vessel or sign of cooking or preparing food there. He also stated that he searched the house of the appellant which was nearby but does not mention anything about finding any incriminating article.

14. The defence examined three witnesses. D.W.1,



Ram Janam Singh, stated that the relationship between the Appellant and the deceased was fine and that on instigation by some interested persons the case was got instituted by P.W.6, Sanjay Kumar Singh, who happens to be a person of weak mental health. D.W.2, Nageshwaar Singh, stated that a compromise petition had been filed duly signed by the deceased and he proved the same as Ext.A. D.W.3, Sita Ram Singh, has proved the sale deeds which were executed by P.W.6, son of the deceased, in favour of P.W.3, Yogendra Singh and Brij Kishore Singh, father of P.W.4 on 13.10.2010, i.e., about 10 days after the occurrence.

15. On going through the evidence, we find that no doubt there is direct evidence against the Appellant of assaulting the deceased with 'Garashi'. However, when we scrutinize the evidence clearly, we find a number of notable points which makes the story untrustworthy.

16. Firstly, when Sanjay Kumar Singh, the Informant, was not in a position to answer any question in court confidently, his detailed statement about the answer of occurrence by way of a Fardebyan becomes highly suspicious. As a result when the edifice on which the entire prosecution case is built and foisted becomes shaky the rest of the evidence also has to be reviewed with a greater caution. On examination of the evidence of rest of the witnesses we



find that fact 10 days after the occurrence, P.W.3 Yogendra Singh, a signatory to the fardbeyan and Brij Kishore Singh, father of P.W.4, an eye-witness had got the lands of the informant executed in their favour. This adds to our nagging suspicion that the informant had been set up by these persons to institute a case in their interest. P.W.2 infact has stated that it was Braj Kishore Singh who did not vacate the land of the deceased despite the Panchayati thus showing his active interest in the lands of the deceased which was to be jointly managed with the appellant.

17. Further even though, P.W.2 and P.W.3 have deposed as eye witnesses but when we look to the earlier statements, we find that they were hearsay witnesses on the point of occurrence. Their hearsay evidence also deserves to be rejected since neither P.W.4 nor P.W.6 have supported the fact that they had disclosed to them that the Appellant had assaulted the deceased.

18. We are then left with the evidence of P.W.1, Bikarma Singh and P.W.4, Nidhi Kumari. Bikarma Singh is the uncle of P.W.4, i.e., brother of Brij Kishore Singh who had got the lands of the deceased transferred in his name. His interest in the prosecution case is more than casual in nature and for this reason, highly suspicious. As far as Nidhi Kumari is concerned, she was aged about 11 years on the date of occurrence. She is said to have

been cooking on the date of occurrence but the Investigating Officer did not find any sign of cooking or cooked food which makes her presence at the place of occurrence highly doubtful. Moreso, because she happens to be the daughter of Brij Kishore Singh, who had a vested interest in the land of the deceased.

19. The other notable point is that witnesses themselves stated that after the criminal case was instituted by the deceased a Panchayati was held and a compromise arrived at by which the appellant was to return 4 Kathas of land to the deceased. The prosecution witnesses have supported the fact that the appellant had fulfilled his obligation, pursuant to Ext.A proved by D.W.1 which was an agreement between the deceased and the appellant to the aforesaid effect.

20. The fact that the appellant's house was searched right after the occurrence and no incriminating articles were recovered further rules out its complicity of the appellant.

21. In such circumstances, we find that not only has the motive not been proved by the prosecution, it has been disproved by reliable documents vide Ext.A and oral evidence of the prosecution witnesses themselves.

22. In the result for the reasons stated above, we are inclined to give benefit of doubt to the Appellant. Hence, this

appeal is allowed. The impugned Judgment of conviction and Order of sentence passed against the Appellant is set aside. Appellant, who is in jail custody, is directed to be released forthwith, if not wanted in any other case

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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