

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.390 of 2013

Arising Out of PS.Case No. -66 Year- 2009 Thana -CHANDAULI District- GAYA

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Sanjay Yadav, S/o Dwarika Yadav, R/o Village- Molvichak, P.S.- Chandauti,
District- Gaya.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Rakesh Kumar Sharma
For the State	:	Mr. Shiwesh Chandra Mishra, A.P.P.
For the Informant	:	Mr. Ajay Kumar Thakur Mr. Madhuri Kumari Mr. Babita Kumari

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: **HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH**)

Date: 05-08-2016

Heard learned counsel for the Appellant and learned
counsel for the Additional Public Prosecutor as well as learned
counsel for the Informant.

2. The sole appellant Sanjay Yadav has been
convicted under Section 302 of the I.P.C. and sentenced to undergo
Imprisonment for life along with fine of Rs. 10,000/-, in default of
which, further sentenced to undergo one year imprisonment.

3. The prosecution case, as set out in the *fardbeyan*
(Exhibit-3) of informant Ahmad Khan (P.W. 2) recorded by
Gajendra Prasad Singh (P.W. 5), S.H.O., Chakand O.P. on



19.04.2009 at 13:30 pm. in Budhuwa Maweshi *Hat*, is that the *Hat* belongs to Dr. Shamim Ahmad Khan of village Agthu, who lives with his family in Gaya. The deceased Md. Amanullah Khan had taken the Hat land on lease for the purpose of organizing sale and purchase of cattle. On 19.04.2009 at about 12:00 O'clock, he was checking his accounts under a Mango Tree in North-West corner of the *Hat*. The informant along with Kishori Manjhi and Sher Khan were sitting next to him listening songs on his mobile. In the meantime, Krishna Yadav and Dwarika Yadav, both of village Molvi Chak, P.S. Chandauti came and sat near Md. Amanullah Khan and indulged in discussions with him, over the ownership of Dr. Shamim Ahmad Khan of the *Hat* land. In the meantime, appellant Sanjay Yadav, son of Dwarika Yadav also arrived having covered his face with white *Gamcha*. He sat behind Md. Amanullah Khan and cut his neck with sharp *Fasuli*. On account of injury, Md. Amanullah Khan fell on the ground. Soon thereafter, Krishna Yadav fled towards South, whereas Dwarika Yadav and his son Sanjay Yadav ran East, towards his village Maulvi Chak. On their *hulla*, several persons arrived but by that time, all three accused persons had already fled. The deceased Md. Amanullah Khan died at the place of occurrence.

4. The cause of occurrence is an old dispute



concerning the *Hat* land between Dr. Shamim Ahmad Khan, owner of *Hat* land and accused persons Dwarika Yadav and Sanjay Yadav. The deceased Amanullah Khan had taken the land on lease from Dr. Shamim Ahmad Khan and was organizing *Mela* with the help of two other associates. The accused persons wanted to establish their claim over the land and pursuant thereof killed the deceased by a sharp cutting weapon.

5. During trial, the prosecution examined altogether 5 witnesses. Out of which, P.W. 1 Mosrat Khatoon, wife of the deceased, whereas P.W. 2 Ahmad Khan is the informant himself. P.W. 3 Sher Khan is an eye witness of the occurrence. P.W. 4, Dr. Arbind Prasad conducted the Postmortem on the dead body of the deceased Amanullah Khan, and P.W. 5, Gajendra Prasad Singh is the Investigating Officer of the case.

6. P.W. 1 Mosrat Khatoon is the wife of the deceased. She stated that the occurrence took place two years ago on Saturday at about 8:00 am. At the relevant time, she was at her house. The appellant Sanjay Yadav had come to her house to threaten her husband, who was not present in the house. He warned that if her husband, Amanullah Khan would come to the *Hat*, he would be killed. The following day on Sunday at about 9:30 am., Krishna Yadav, Dwarika Yadav and Sanjay Yadav came to her



house. Krishna Yadav asked her as to why her husband had not come to the *Hat*. She replied that the appellant Sanjay Yadav threatened him Yesterday from going to the *Hat*, as such, he had stayed back in the house. Thereupon, Krishna Yadav explained that Sanjay Yadav may have threatened him under the influence of Ganja. He asked her to send her husband to *Hat*. Her husband, accordingly, accompanied the above three persons to the *Hat*. At about 12:30 pm., she learnt that all the three accused persons have killed her husband by cutting his neck by sharp cutting weapon. On hearing the news, she went to the *Hat*, where she saw her husband drenched in blood, having sustained cut injury on his neck.

7. In her cross-examination, she stated that she did not make any complaint with respect to threatening given by appellant Sanjay Yadav on Saturday. She stated that on Sunday, only Krishna Yadav came inside her house, whereas the other two accused persons remained outside the house. She further stated that the *Mela* was being held 25-30 steps South to the village.

8. P.W. 2 Ahmad Khan is the informant of the case. He has claimed to be an eye-witness of the occurrence. He stated that the occurrence took place about 2 years back at about 12:00 Noon. At the relevant time, he was present in cattle *Hat*. He used



to look after the affairs of *Mela*. The deceased Amanullah Khan was sitting in the West-North corner of the *Hat* and was issuing receipts. In the meantime, Krishna Yadav and Dwarika Yadav came and entered into altercation with the deceased Amanullah Khan. They soon started hurling abuse. In the meantime, appellant Sanjay Yadav came and also sat there. Soon thereafter, he took out a *Fasuli* and cut the neck of Amanullah, who fell and died. The incident was witnessed by Sher Khan and 2 to 4 persons more. There was some dispute with respect to purchase of eastern portion of the land in between Dwarika Yadav and Shamim Babu which, in fact, belonged to Shamim Babu. Dwarika Yadav was under the impression that Shamim Saheb is not executing the land in his favour, because of deceased Amanullah Khan, which was the motive behind his killing. He made his *fardbeyan* before *Darogajee* in the *Hat* and on finding the same to be true, put his signature, which he identified as Exhibit-1. He stated that the house of Amanullah Khan is situated about 400 feet from his house towards East. He stated that Amanullah Khan happens to be his brother-in-law. He also stated that the *Hat* is being organized since number of years and he is looking after the *Hat* since last 4-5 years. He stated that he did not issue receipt and he did not have any paper authorizing him to look after the *Hat*. He stated that the



area of the *Hat* is about 2 acres. He further stated that he is not sure whether the *Hat* land was given to Amanullah Khan by a written lease or on verbal note. On the date of occurrence, there were about 200-250 people in the *Hat*, besides 70 to 75 cattle. He stated that he reached the *Hat* at about 10:00 am., whereas Amanullah Khan had arrived 10 minutes earlier, all alone.

9. In his cross-examination, he stated that Amanullah Khan was sitting facing South, whereas appellant Sanjay Yadav came from the Northern side and sat there. After 4 to 5 minutes, he cut the neck of Amanullah Khan with *fasuli*. He stated that he did not make *hulla* and did not inform the Police about the incident, as he did not have any mobile. When *Darogaji* came to the place of occurrence, he recorded his statement. Thereafter, the dead body was taken to the Hospital. He learned on the date of occurrence that there was a dispute with respect to *Hat* land between Shamim Babu and Dwarika Yadav. He denied the suggestion that the occurrence did not take place in the *Hat*. He also denied the suggestion that he was not present at the time of occurrence.

10. P.W. 3 Sher Khan has claimed to be an eye-witness of the occurrence. He stated that the occurrence took place about 2 years back on Sunday. On the relevant date at about 11:30 am., he had come to the *Hat* to purchase hens. The deceased



Amanullah Khan was issuing receipts regarding sale of cattle etc. He sat near him and started listening songs on his mobile. In the meantime, Dwarika Yadav and Krishna Yadav also came and restrained the deceased Amanullah Khan from issuing receipts with respect to sale and purchase of cattle. Soon altercation followed between them and after five minutes, appellant Sanjay Yadav also came and sat behind Amanullah Khan. Within no times, he took out *fasuli* and struck on the neck of Amanullah Khan, who fell and died. Sanjay Yadav, thereafter, started fleeing. Ahmad Khan, informant (P.W. 2), who was present there, tried to save the deceased Amanullah Khan, but failed to protect him.

11. In cross-examination, he stated that since last 7 years, he has been residing in Orissa, where villagers also run poultry farm. He stated that there were about 150 people in the cattle fair, at the relevant time, but he had not disclosed the name of anyone of them present there. He stated that there were also 70-75 cattle in the fair. He also stated that he had two SIMs in his mobile, but on the date of occurrence, another SIM was used, which belonged to his friend. In cross-examination, he stated that he saw Sanjay Yadav who took out *fasuli* from his waist, whereupon he raised alarm and soon 30-40 people arrived at the place of occurrence. On account of nervousness, he returned to his

village. He admitted that he did not inform the Police about the occurrence. He denied that he has any relation with the deceased Amanullah Khan. He also denied the suggestion that he was not an eye-witness to the occurrence and at the relevant time, was in Orissa and on account of his relationship with the deceased, has deposed in this case as a witness.

12. P.W. 4 Dr. Arbind Prasad was working as Professor-cum-Head of Department in Forensic Medicine, ANMCH, Gaya. On the same day, at 5:00 pm., he conducted the Postmortem on the body of deceased Md. Amanullah Khan aged about 35 years. He found the following injuries on the person of the deceased :-

Incised wound 5 ½" x ½" x 1 ½" on the right side of neck extended from area above thyroid to the right side of neck slightly curved upwards intervening vessels, nerves, muscles and trachea were sharply cut. Blood clots in and around wound, tailing of wound present in right side. The depth of wound was more on left side.

13. According to him, time elapsed since death at the time of Postmortem Examination was six hours and cause of death was due to shock and hemorrhage by injury on neck by sharp cutting weapon, may be by *fasuli*. He proved the Postmortem Examination Report as Exhibit-2.

14. In cross-examination, he stated that *Rigour Mortis* was present on the entire dead body. He stated that *Rigour Mortis* spreads within 12 hours all over the body.

15. P.W. 5 Gajendra Prasad Singh is the Investigating Officer of the case and at the relevant time, was posted as Professor, In-charge of Chakand O.P. He stated that he recorded the statement of Ahmad Khan (P.W.2) in his own handwriting, which he identified as Exhibit-3. A formal F.I.R. was drawn, which has been marked as Exhibit-4. He prepared the Inquest Report. After taking over the investigation, he forwarded the body of the deceased Amanullah Khan for Postmortem Examination. Thereafter, he reached the place of occurrence and prepared the seizure list, which is marked as Exhibit-5. He took re-statement of the informant. He stated that occurrence took place in the North-South corner of the cattle *Hat* near a Mango Tree. Thereafter, he recorded the statement of Kishore Manjhi (not examined) and Sher Khan (P.W. 3). He also recorded the statement of Mosrat Khatoon (P.W. 1), wife of the deceased and Md. Mussa Khan, who was not examined.

16. In cross-examination, he stated that in paragraph no.2 of the case diary, he has mentioned the time of Inquest Report as 1:15 pm. He stated that he has mentioned the time of



recording of *fardbeyan* as 1:30 pm. on 19.04.2009. Nonetheless he stated that on going through the case diary, it is true that the *fardbeyan* was recorded after preparation of Inquest Report and Seizure. He denied the suggestion that he had removed the first *fardbeyan* which he had recorded earlier. He stated in his cross-examination that he has not mentioned about finding of blood in the case diary nor about seizure of blood stained materials. He stated that in the case diary while entering the Inquest Report, he has not written whether there was any blood on the cloth or on the person of the deceased. He got information of the occurrence on telephone, whereafter he entered a *Sanha* in Station Diary. He has also not mentioned about the *Sanha* in the Case Diary. He did not disclose the name of the person, who gave him information on telephone. He denied the suggestion that he did not record the name of assailants, as the accused were unknown persons.

17. Learned counsel for the appellant submits that the original *fardbeyan* has been changed. This is the reason that though the name of the appellant figures in *fardbeyan* (Exhibit-3) as accused no.3, his name does not find place in the formal F.I.R. in column-7, meant for names of accused, whereas name of two accused persons namely Krishna Yadav and Dwarika Yadav were mentioned. On this basis, learned counsel submits that First

Information Report received by the Police has been suppressed, which makes the prosecution case doubtful.

18. He further submits that P.W. 5, Gajanand Prasad Singh, stated that he received telephonic information about the occurrence and made *Sanha Entry* in the Station Diary, but the same has not been brought on the record. The non-production of *Sanha Entry* supports his connection that the prosecution has not come out with clean hands and had tried to suppress the earliest version of the case, which makes the entire case doubtful. He next submits that though the occurrence took place in the cattle fair, where about 150 to 200 persons had gathered, but still no independent person came forward to support the prosecution case. He also submits that three eye-witnesses, who have been examined, are all interested witnesses, closely related to the deceased, for instance; P.W. 1 Mosrat Khatoon is the wife of the deceased; P.W. 2, Ahmad Khan is brother-in-law of the deceased and P.W. 3 Sher Khan is a close associate projecting himself to be a chance witness, as he used to reside at Orissa. He also argued that it would appear from the evidence of P.W. 2 as well as P.W. 3 that the occurrence took place on the spur of moment preceded by hot exchange of words. There is no repetition of blow by this appellant with *Fasuli*. As such, the case, at the maximum would

come under section 304 Part-I of the I.P.C., and not under Section 302 I.P.C. Furthermore, by this time, he is in custody continuously since 23.04.2009 i.e. more than 7 years.

19. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the informant, submits that none mentioning of the name of this appellant in the formal F.I.R. may be a slip of pen and the defence cannot possibly take any benefit of such error. Furthermore, there are no discrepancies in respect of time of preparation of Inquest Report vis-à-vis recording of *fardbeyan*. According to him, it would appear from the Inquest Report (Exhibit-6) that the time of recording the *fardbeyan* is 1:15 pm. and the time of preparation of Inquest Report is 01.30 pm. As such, there exists no discrepancy between them and again defence cannot take any advantage of statement of Investigating Officer that the *fardbeyan* was recorded after preparation of Inquest. He submits that P.W. 2, informant has fully supported the prosecution case.

20. The State too argued that there are sufficient materials to establish charge under Section 302 I.P.C. and the trial Court has rightly convicted the appellant under Section 302 I.P.C. and sentenced him to life imprisonment.

21. Having considered the materials on record and



evidence adduced, we find that it is a consistent case of prosecution that the occurrence took place on 19.04.2009, around 12 noon, under mango tree in north-west corner of cattle *Hat*, just a little distance away from Molvichak. At the relevant time, the deceased Amanullah, who had taken the land on lease from one Dr. Shamim Ahmad Khan for organizing cattle fair, was checking his accounts under the said mango tree. In the meantime, Krishna Yadav and Dwarika Yadav came there and sat near him and entered into the hot discussions over the issue of ownership of the land. Thereafter, the appellant, son of Dwarika Yadav also arrived and sat behind the deceased Amanullah and struck him with *Fasuli* on his neck. The deceased, soon thereafter succumbed to the injuries. The Post-Mortem Report supports the prosecution case that the death was due to the injuries on neck caused by sharp cutting weapon. The time elapsed since death in the Postmortem Report tallies with the time of assault mentioned in the prosecution case. The death by sharp cutting weapon is not denied.

22. Admittedly, there is no repetition of the blow. In such circumstances, we are of the considered view that the case would fall under the section 304 Part-I and not under Section 302 of the I.P.C. Accordingly, the sentence of life imprisonment imposed upon the appellant by the Court below is reduced to 9

(nine) years. The appellant would remain in jail to serve the balance of the sentence.

23. In the result, the Appeal is dismissed with the above modification in the conviction and sentence.

(Samarendra Pratap Singh, J)

(Rajendra Kumar Mishra, J)

Shailendra/-

AFR/NAFR	NAFR
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