

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction, dated 28.09.2013, and order of sentence, dated, 30.09.2013, passed by Shri Vijay Kumar Trivedi, learned Ad-hoc Additional Sessions Judge-IV, Patna in Sessions Trial No. 1637 of 2008, arising out of Digha P.S. case No. 105 of 2008)

Criminal Appeal (DB) No.1066 of 2013

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Dinanath Singh S/O Late Ramashray Singh, Resident of Village- Kurji Kothia,
P.S.- Digha, District- Patna

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Akhauri Kamal Kishore Sahay, Advocate

For the Respondent/s : Mr. A. K. Sinha, A.P.P.

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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

The instant appeal is directed against the judgment of conviction, dated 28.09.2013, and order of sentence, dated, 30.09.2013, passed by Shri Vijay Kumar Trivedi, learned Ad-hoc Additional Sessions Judge-IV, Patna in Sessions Trial No. 1637 of 2008, arising out of Digha P.S. case No. 105 of 2008, whereby the sole appellant Dinanath Singh has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo R.I. for life and a fine of Rs.10,000/- and in default of the same to undergo R.I. for one year.

2. The prosecution case, as set out in the written



report, dated 09.06.2008 (Ext-2) of Manju Devi (P.W.7), is that on 08.06.2008, she was at her house. At about 8.30 P.M., her father-in-law Dinanath Singh made demand of money from her husband Ramadhar Kumar Singh. The aforesaid Dinanath Singh always used to demand money from her husband and often used to quarrel with him on the issue of money. In the meantime, her father-in-law took out a knife from his pocket and struck on his neck, stomach and hand of her husband, who fell down. She tried to save her husband, who was taken to P.M.C.H. In course of treatment, her father-in-law told her to go back home, as her husband is well. Thereafter, she returned to her house. On 09.06.2008, at 2.00-3.00 P.M., her father-in-law informed that her husband is in coma and subsequently died. Her father-in-law informed her father that her husband had met with an accident. On hearing the news, her father came on 09.06.2008 at about 3.00 P.M., whereafter she narrated the entire incident to him and has lodged this written report after coming to police station.

3. On the basis of the written report of the informant, Digha P.S. case no. 105 of 2008, dated 09.06.2008, was registered under Section 302 of the Indian Penal Code.

4. After investigation, the police submitted charge-sheet, whereafter learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions, which was

numbered as Sessions Trial No. 1637 of 2008. Charges were framed under Section 302 of the Indian Penal Code against the appellant.

5. In his statement under Section 313 of the Cr.P.C. he claimed to be innocent and denied the allegations levelled against him.

6. The prosecution in order to establish his case examined 10 witnesses. Out of these 10 witnesses, P.W. 1 Shyamadhar Kumar, P.W.2 Kaushlaya Devi and P.W. 3 Rajeshwar Roy, are brother, mother and neighbour of the deceased, have all turned hostile. P.W. 8 Baijnath Prasad and P.W. 9 Pappu Kumar are hearsay witnesses, who came to know about the occurrence from Manju Devi (P.W. 7) informant of this case. P.W. 4 Ram Nandan Prasad Singh is investigating officer of the case. P.W. 5 Hari Kishore Prasad is the father of the informant. P.W. 6 Bipin Kumar is the brother of the informant, whereas P.W. 7 Manju Devi is the informant of the case. P.W. 10 Pappu Kumar is the doctor, who conducted post-mortem examination on the dead body of the deceased Ramadhar Singh.

7. P.W. 5 Hari Kishore Prasad is the father of the informant and father-in-law of the deceased. He stated that the informant Manju Devi (P.W.7) is her daughter. She was married to Ramadhar Kumar Singh, son of Dinanath Singh (appellant). His son-



in-law is now not alive. The occurrence is of 08.06.2008 at about 8.30 P.M. Appellant Dinanath Singh struck his own son Ramadhar Kumar Singh with knife, on account of which he sustained grievous injury and subsequently died. Dinanath Singh (appellant) rang up and informed that his son-in-law has met with an accident and is undergoing treatment in P.M.C.H. On receipt of information, he came to P.M.C.H. on 09.06.2008, thereafter he met his daughter (P.W.7), who narrated the entire incident to him. His daughter told him that her father-in-law always used to demand money from his son. On the date of occurrence, again on account of money matter, her father-in-law struck her husband with knife on stomach, hand and neck causing grievous injury. His intestine too came out because of injury. In course of treatment, her husband Ramadhar Kumar Singh died. Thereafter information was given to Digha police, where he had gone along with his daughter. He recognized the fardbeyan, which is in his hand writing, on which his daughter (P.W.7) has put her signature. The signature of his daughter is Ext.1 and his signature is Ext. 1/1. He recognized the appellant-accused, who was present in the dock.

8. In cross-examination, the defence has not been able to elicit any material contradiction to discard the testimony of Hari Kishore Prasad (P.W.5). According to this witness, he came to

know about the occurrence from his daughter Manju Devi, who is informant of the case (P.W.7).

9. P.W. 6 Bipin Kumar is the brother of the informant. He stated that the occurrence took place on 08.06.2008, at about 8.30 P.M. The deceased Ramadhar Kumar Singh was his brother-in-law. He learnt about the occurrence through telephonic message. On phone, he was informed that his brother-in-law met with an accident and he was being treated at PMCH. On the following day, he came to PMCH, where his brother-in-law, Ramadhar Kumar Singh, was lying dead. Thereafter he went to Kurji Vikash Nagar to meet his sister, who narrated the true story that her father-in-law struck her husband with knife on different parts of the body, due to which her husband died. He further stated that he along with his sister (P.W. 7) and his father (P.W.5) went to police station, where his father gave his statement. The police seized the knife as well as blood stained soil and prepared seizure list on which he put his signature. He proved his signature on seizure list as Ext-1/2.

10. On going through the evidence of this witness, we are of the view that the defence has not been able to elicit any material contradictions and this witness has come to learn about the occurrence from his sister Manju Devi (P.W.7).

11. P.W. 7 Manju Devi is the informant of the case



and the wife of the deceased. She stated that she was married to Ramadhar Singh in the year 2006. Her father-in-law Dinanath Singh always used to demand money from her husband. On 08.06.2008 at about 8.30 P.M., her father-in-law again made demand of money from her husband, whereupon altercation took place. In the meantime, her husband came out followed by her father-in-law, who hurled knife blows on neck, stomach and hand of her husband. While she rushed to save her husband, her father-in-law pushed her, on account of which she also fell down. She again tried to rescue her husband, but her father-in-law continued to assault her husband with knife. She stated that she also sustained scratch injuries in the process of saving her husband. She took her husband for treatment to P.M.C.H. alongwith Suresh Mistri and her father-in-law. Her father-in-law asked her to return to her house, as her husband was being given due treatment. Her husband subsequently slipped into coma and died. Her father-in-law had informed her father that his son-in-law met with an accident. Receiving the information, her father came on 09.06.2008 from Kanpur at about 2.00 – 3.00 PM., and she narrated the entire incident to him. After death of her husband, he was taken for cremation at cremation ghat. From cremation Ghat, she came to Digha police station, where she gave written report, which was in the hand writing of her father, who also put his signature on the same. She recognized

the written report, which is marked as Ext.1/1.

12. In her cross-examination, she stated that after death of her husband, she came to Kanpur from Patna where she lived with her parents. She stated that she also learnt that her father-in-law has also made a report at PMCH with respect to her husband. At the time when her father-in-law made report, she was not present, but his younger son Shyamadhar (P.W.1) was there. Her father-in-law had got her husband admitted in PMCH, where he asked her to go home, as the treatment of her husband is going on. As there was none with her, she did not report the matter earlier and when her father came, she made a report with the police station on 09.06.2008 at 3.00 P.M. This witness has further stated that her father-in-law (appellant) has house at Gopalganj and due to illness he had come to Patna for treatment and he was under treatment since six months.

13. It is evident from her deposition that she is the wife of the deceased and an eye witness of the occurrence.

14. P.W. 10 Dr. Anil Kumar was posted at PMCH on 09.06.2008 as tutor in the department of Forensic Medicine and Toxicology. On the same day, he conducted post-mortem examination on the dead body of Ramadhar Kumar, aged 23 years, Hindu Male and found the following injuries:

(i) Incised wound on left cheek of size 1¼"x ½"x

bone deep.

(ii) Two incised wounds on neck on left side, each of size $\frac{1}{4}$ " x $1\frac{1}{6}$ " x muscle deep.

(iii) Incised wound on chest on left side situated two inches above and medial to left nipple of size $\frac{1}{2}$ " x $\frac{1}{4}$ " x muscle deep.

(iv) Incised wound of $1\frac{1}{2}$ " x 1" x cavity deep on abdomen on left side lower region from which large gut was protruding with rupture of gut situated at $1\frac{1}{2}$ " above iliac crest.

(v) Incised wound size 1" x $\frac{3}{4}$ " x muscle deep on left arm in mid region on medial aspect (surface).

(vi) Incised wound of size $\frac{1}{2}$ " x $\frac{1}{4}$ " x muscle deep on left arm about $2\frac{1}{2}$ " below injury no.v.

(vii) Incised wound of size 1" x $\frac{1}{2}$ " x bone deep on left scapular region.

(viii) Incised wound of size $\frac{1}{2}$ " x $\frac{1}{4}$ " x muscle deep on left side of neck at its root.

(ix) Incised wound of size $\frac{3}{4}$ " x $\frac{1}{4}$ " x muscle deep on chest on right side situated at $5\frac{1}{2}$ " below and lateral to right nipple.

On dissection:

Skull-NAD. Thorax- chest cavity on both sides full of blood with rupture of left lung. Heart: Both side chambers empty. Abdomen: Blood found in abdominal cavity due to rupture of liver, all

other viscera found pale due to excessive bleeding. Stomach: chocolate colour paste like food substance found. Its mucosa normal. Urinary Bladder was empty.

According to him, the death was caused by injuries on chest, lung and abdomen leading to excessive haemorrhage. The time elapsed since death is 6 to 24 hours. He proved the post-mortem report as Ext.5.

15. P.W. 4 Ram Nandan Prasad Singh is the investigating officer of the case. He stated that the written report was given by Manju Devi (informant/P.W.7) upon which she made her signature and her father also put his signature as a witness. This witness has proved the signature of informant Manju Devi (P.W.7) as Ext.1 and signature of her father is Ext.1/1. He also proved the endorsement on the written report as Ext. 3 saying that this was recorded by officer-in-charge (S.I. Basawan Ram) of Digha police station. After registration of F.I.R., the case was handed over to him and in course of investigation, he visited the place of occurrence situated in village Kurji Vikash Nagar. He stated that the place, where the deceased was assaulted was a room situated on the north of the house of the informant, which was situated on the soling road. He found large quantity of blood at the place of occurrence, where as per the informant, the deceased was struck with knife. He also picked-up



blood stained soil form the place of occurrence as well as knife and prepared seizure list as well. He had given the description of the place of occurrence. He further stated that he recorded re-statement of the informant (P.W.7) and arrested the accused and took his confessional statement. He has proved the seizure list, which was prepared in his writing as Ext.4. He stated that after investigation, he entered the post-mortem report in para 55 of the case diary and submitted charge-sheet.

16. In his cross-examination, he denied the suggestion that the written report was submitted by Manju Devi on 09.06.2008, rather the same was prepared later on. In his cross-examination, he stated that the blood stained soil and the knife was not sealed and sent to Forensic Science Laboratory for examination.

17. Counsel for the appellant submits that the informant Manju Devi (P.W.7) is the sole eye witness of the occurrence. He submits that P.W.1 and P.W.2, who are the brother and mother of the deceased, have not supported the prosecution case. Furthermore, Rajeshwar Rai, neighbour of the deceased has also not supported the prosecution case, as such the case is based on solitary evidence of P.W. 7, which is not enough to warrant conviction of the accused, as she reported the matter one day after the death of her husband. Furthermore, it would be very unnatural that a father would kill own son. He next submits that the appellant was old and sick

person and he had come to Patna for treatment and it is not possible that he would be able to over power a young person and kill him.

18. On the other hand, learned Additional Public Prosecutor appearing on behalf of the State submits that the informant is the own daughter-in-law of the appellant and the wife of the deceased. As her husband was seriously injured, she along with others came to the hospital first. Furthermore, she was alone, she could not make any written statement on the same day, however, as soon as her father came on the next day, she lodged the case after cremation of her husband.

19. On going through the evidence as discussed above, it is evident that P.W.7 Manju Devi (informant), the wife of the deceased, is an eye witness to the occurrence. She has given the detailed description of the occurrence that her father-in-law, on the issue of money struck her husband with knife on his neck, stomach and hand, on account of which he subsequently succumbed to the injuries. The Doctor (P.W.10) too found as many as seven injuries caused by sharp cutting weapon on the person of the deceased. Besides this, P.W. 5 and P.W. 6, the father and brother of the informant respectively, have also stated in their evidence that they learnt about the occurrence from Manju Devi (P.W.7) when they came to PMCH, on getting information from the appellant on 08.06.2008

that Ramadhar Kumar Singh (deceased) met with an accident. We find that P.W.7 has not been shaken in her evidence and she has been consistent in her statement and fully supported the prosecution case in the trial.

20. In the facts and circumstances, we do not find any merit in the appeal and the same is dismissed.

(Samarendra Pratap Singh, J.)

(Rajendra Kumar Mishra, J.)

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