

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.294 of 2015

Arising Out of PS.Case No. -29 Year- 2007 Thana -AMOUR District- PURNIA

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Md. Shafeeque S/o Md. Faruque resident of Village - Haripr Banga Toli, P.S.
Amour, District - Purnea.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Satyendra Pandey, Adv.

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

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 04-04-2016

Heard learned counsel for the Appellant and learned
appearing on behalf of the Additional Public Prosecutor.

2. The above Appellant has been convicted under section 302 of the I.P.C. by a Judgment dated 04.02.2015 passed by the 3rd Additional Sessions Judge, Purnea in connection with Sessions Case No. 797 of 2007 and sentenced to undergo Rigorous Imprisonment for life and also to pay a fine of Rs. 50000/-, in default of which, further six months Simple Imprisonment.

3. The case of the prosecution, according to Noorsaba Begam (P.W.4), mother of the deceased child is that on 29.03.2007 when her son Sohail Raza was playing with rest of the children outside, suddenly the Appellant Md. Shafeeque came with the big

dagger and cut his neck. Thereafter, she learnt that another child Jilani had also been assaulted by the same Appellant. He was caught by the villagers while fleeing away with dagger.

This information was given on the same day immediately within three hours at the Police Station.

4. During trial, the prosecution examined 7 witnesses, whereas Defence examined three witnesses.

5. On consideration of the records, we find no merit in the appeal the reason for which will be apparent on perusal of the discussion below.

6. P.W. 1 Sher Mohammed as also P.W. 2 Md. Javed and P.W. 3 Md. Motibul, who is father of P.W. 5 Jilani also injured in the present case are hearsay witnesses, who corroborated the fact of the Appellant suddenly assaulting the deceased Sohail Raza aged about 4 years causing his death and also causing injury to Jilani (P.W.5).

There is nothing in their cross-examination to discredit their evidence in any manner.

7. P.W. 4 Noorsaba is the mother of the deceased, who repeated the facts given in the First Information Report to the Police Station to the extent that on the date of occurrence, while her son aged about 4 years was playing outside, suddenly the Appellant came

with a dragger and assaulted him on the neck and fled away. Thereafter, she went to the Police Station along with her husband and got recorded the *fardbayan*.

In cross-examination, she stated that it was night time when she reached the Police Station and the Investigating Officer had come next day to her villager.

8. P.W. 5 Jilani, injured witness, who was aged about 12 years on the date of deposition and capable of understanding, stated that on the date of occurrence while he was playing suddenly he saw the Appellant coming with a blood stained knife. Thereafter he assaulted him on the neck and his hand and ran away. He was treated at Sadar Hospital, Purnia. He confirmed that his son and his father Md. Motibul (P.W. 3) have been examined as witness in the present case. There is nothing in the cross-examination which is of note.

9. P.W. 6 Dr. Satyendra Kumar Singh found the following injuries on the person of the deceased :

On external examination –

- (i) *Rigor mortis was present in all limbs.*
- (ii) *Sharp cut wound on interior part of neck cutting trachea esophagus and carotid arteries*

(iii) 2" x ½" sharp cut wound on the right shoulder

(iv) ½" x ¼" sharp cut wound over left shoulder joint.

On Dissection –

Head - NAD, Neck as mentioned above, chest – heart – all chambers are empty, lungs pale, abdomen – liver/spleen/kidney – pale, stomach contains semidigested food. Small and large intestine – gas and fascies. Urinary bladder – empty.

Time elapsed since death - Within 24 hours.

Cause of death was due to hemorrhage and shock due to above mentioned injuries caused by sharp cutting weapon.

10. P.W. 7 Barik and P.W.8 Md. Munshi have not supported the case of the prosecution and have been declared hostile.

11. D.W. 1 M. Kumar Harijan and D.W. 2 Md. Ameer had stated that the Appellant had not caused the death of the deceased and DW. 3 Himat had stated that the Appellant was mentally unbalanced.

12. On going through the evidence, which we have

mentioned above, it appears that occurrence had taken place at 7.00 pm. in the evening at the door of the Informant, who was competent to see the occurrence. The matter was reported soon thereafter at 9.00 pm. at the Police Station, which was 5 kilometers away. The manner of occurrence, described by the Informant, is fully corroborated by the hearsay evidence of P.W.1 Sher Mohammed, P.W. 2 Md. Javed, P.W. 3 Md. Motibul and also the independent witness, Dr. Satyendra Kumar Singh (P.W.6), who found such injuries. No doubt, injury report of Noorsaba (P.W. 4) has not been brought on record but that does not appear of any importance, where the charge of 302 I.P.C. for causing the death of the deceased is concerned. We also take note of the fact that the Investigating Officer has not been examined, but there appears no contradiction of any of the witnesses on any point whatsoever which would have made prosecution case untrustworthy to any extent or of having caused prejudice to the Appellant.

13. In the result, finding no merit in the Appeal, the same is dismissed.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

Shailendra/-

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