

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.546 of 2014

Arising Out of PS.Case No. -154 Year- 2007 Thana -WAJIRGANJ District- GAYA

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Jyoti Prakash @ Jyoti Prakash "Akela" S/o Late Bhagwan Das, R/o Jhumri Tilaiya,
P.S. Jhumri Tilaiya, District – Koderma

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Adv.
Mrs. Meena Singh

For the Respondent/s : Mr. Ashwini Kumar 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: 22-02-2016

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

2. The Appellant has been convicted under section
302 of the I.P.C. and sentenced to undergo Rigorous Imprisonment
for life and fine of Rs. 10,000/-, in default of which, further
imprisonment of six months by the Additional District and
Sessions Judge, F.T.C. II, Gaya in connection with Sessions Trial
No. 63 of 2009/36 of 2009 arising out of Wazirganj P.S. Case No.
154 of 2007.

3. The case of the informant, according to P.W. 7,
Chhotu Kumar, is that on the date of occurrence, while they were

in the midst of marriage of his sister where the wife of the Appellant was also present, suddenly, the Appellant came and locked his wife Anita Devi in a room and started to abuse her. When his father Ramdeo Ram protested, the Appellant assaulted him with *Chhura* on the neck, on account of which, he fell down and died on the way to the Hospital. The occurrence was witnessed by rest of the family members of the informant.

4. During trial, the prosecution examined 10 witnesses. P.W. 9, Dr. Parmanand Sinha, performed the Postmortem Examination upon the deceased and found the following injuries on his person :-

- i) *Incised penetration wound size 2" x ¼" x ½" on lower part of the right side of the neck. One inch above right mid clavicle communicating with the right chest cavity. The wound was oblique and margins were clear cut. The depth of the wound and chest cavity contained blood and blood clots. The upper part of the right lungs was lacerated. Right carotid vein was ruptured.*
- ii) *Incised wound on lateral aspect of right*

forearm ½” x ½” x bone deep. Cause of death is due to hemorrhage caused by sharp cutting weapon.

5. P.W. 10, Jeetan Ram, is the Investigating Officer, who stated that on the date of occurrence on getting information about the same, he recorded the *fardbeyan* of the informant, which is marked as Exhibit-3, upon which the First Information Report bearing signature of Officer-in-Charge has been marked as Exhibit-4 and the seizure list of the case in the handwriting of officer-in-charge has been marked as Exhibit-5. The Inquest Report was prepared, which is marked as Exhibit-6 and the confessional statement of the Appellant was marked as Exhibit-7. He examined the place of occurrence, which was the house of the informant, on the second floor, which was surrounded by several houses. He found the dead body there. He further stated that he found a lot of blood fallen on the ground and he also stated that the blood stained cloth was recovered at the place of occurrence.

6. After having read the entire evidence, we are of the opinion that it is not a case under section 302 of the I.P.C. rather a case under section 304 Part-I of the I.P.C., which we are discussing the evidence of the witnesses showed.

7. The consistent story of all the witnesses including

P.W.1, Rajesh Mathur @ Rajesh Kumar, P.W.2 Preeti Devi @ Asha Devi, P.W.3 Tunni Kumari, P.W.4 Gudia Devi, P.W.5 Rubi Kumari, P.W.6, Guddu Kumar, P.W.7, Chhotu Kumar, P.W.8, OAnita Devi @ Usha Devi is that on the date of occurrence, the Appellant came in the house of the informant, looked for his wife and thereafter, started quarrelling with her. When a protest was made, especially by the deceased, there was assault by *Chhura* on the neck which he waived out from the back.

8. P.W.1, Rajesh Mathur @ Rajesh Kumar, who happens to be brother-in-law, stated that he saw the Appellant having caught hold of his sister by the hair and abused her, which was witnessed by the other family members. He also stated that after assault, the deceased was rushed to the Hospital but he was declared dead whereafter the Police came and then P.W.7 got recorded his *fardbeyan*. He also explained that his sister has been married to the Appellant, but she was not treated well. It is in this course that the appellant had also come to the house and assaulted her.

9. P.W.2, Preeti Devi @ Asha Devi, one of the sisters-in-law (wife of the brother of the informant) stated in her Examination-in-Chief merely to the extent that when the Appellant was heard quarrelling with the wife, the deceased had

raised objections and questioned him and then the Appellant was pushed inside the room. The injured was moved to the Hospital. In her examination-in-chief, she does not say anything about having seen the Appellant assaulting the deceased but, strangely enough, she has been cross-examined on this point.

10. P.W.3, Tunni Kumari, the daughter of the deceased, had also stated that on the date of occurrence, when the Appellant started to assault her sister, a protest was made by her father on account of which Appellant assaulted her father on the neck. They then caught hold of the appellant and locked him up in the room. She stated about the bad relations between the Appellant and his wife on account of which she often came to her maternal home.

11. P.W.4, Guria Devi, daughter of the deceased, stated that on the date of occurrence, the Appellant asked for his wife and went up and started to quarrel with her and when the deceased intervened, he was assaulted with a knife. She also stated about the bad relations between husband and wife.

12. P.W.5, Rubi Kumari, yet another daughter of the deceased, had also stated as the earlier family members had done.

13. P.W.6, Guddu Kumar, son of the Appellant,

stated that his mother and he were visiting the grand parents' house when the father came and started to quarrel with his mother which was resisted by the deceased and the family members on account of which he assaulted the deceased with a knife. He also stated that he and his mother were not treated well by the father and often assaulted because of his bad habits.

14. P.W.7, Chhotu Kumar, who is informant, has fully supported the case of the prosecution and the manner of the same.

15. P.W.8, Anita Devi @ Usha Devi, Wife of the Appellant, stated that on the date of occurrence, while she was visiting her maternal house, the Appellant came and started to quarrel with her and when her father intervened, he assaulted him with *Chhura*. She also stated in her cross-examination that she was financially looked after well, but she was tortured by the Appellant.

16. On going through the evidence of the witnesses, the consistent story which has come across is that while the wife of the Appellant was in the maternal house, the Appellant came there and started quarrelling with her. When the father-in-law protested, he was assaulted with a knife on the neck. Thus, the inference is that the intention of the appellant was not to kill the

deceased but to thwart the overtures of the deceased to extract his wife from his clutches. There is no allegation that the Appellant had repeated the blow. We find that the Doctor had found two injuries on the person of the deceased which may have been caused by single blow.

17. In such circumstances, we convert the conviction of the Appellant under section 304 Part-1 and reduce the sentence to the period already undergone by him.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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