

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.701 of 2013

AGAINST THE JUDGMENT OF CONVICTION AND THE ORDER OF SENTENCE, DATED 01.05.2013, PASSED BY SHRI BIPIN BIHARI MISHRA, 4TH AD HOC ADDITIONAL SESSIONS JUDGE, GOPALGANJ I SESSIONS TRIAL NO. 447 OF 2009/01 OF 2013, ARISING OUT OF GR NO. 2192 OF 2008, UCHHAKAGAON POLICE STATION CASE NO. 117 OF 2008.

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1. Jahangir Ansari Son Of Mahjeed Mian Resident Of Village Brahman Tola Dawnapati Police Station Uchkagaon Distt Gopalganj
 2. Naushad Mian Son Of Jamaluddin Ansari Resident Of Village Brahman Tola Dawnapati Police Station Uchkagaon Distt Gopalganj

.... Appellants

Versus

The State of Bihar

.... Respondent

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With

Criminal Appeal (DB) No. 636 of 2013

- =====
1. Babuddin Ansari S/O Sayed Hussain Resident Of Village- Brahman Tola- Dawnapati, Police Station- Uchkagaon, District- Gopalganj
 2. Guddu @ Arif Billah S/O Akbar Hussain Resident Of Village- Brahman Tola- Dawnapati, Police Station- Uchkagaon, District- Gopalganj Appellants

Versus

The State Of Bihar

.... Respondent

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Appearance : in both appeals

For the Appellants : Mr. Kanhaiya Pd.Singh, Sr. Advocate

For the Respondent : Dr.R.K.Singh, Advocate,
Mr. B.K.Singh, Advocate and
Mr. Satyeshwar Prasad, Advocate

For the Respondent : Mr. A.K.Sinha, APP and
Mr. S.C.Mishra, APP

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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: 26-07-2016

Both Criminal Appeals No. 701 and 636 of 2013, arise out of common judgment of conviction dated 1.5.2013 and order of sentence, dated 2.5.2013, passed in Sessions Trial no. 447 of 2009/01 of 2013. All the four appellants, two in each appeals, have been convicted under sections 302/34 of the Indian Penal Code (herein after referred as 'the IPC') and sentenced to life imprisonment along with fine of Rs. 10,000/- each, and in default whereof, to undergo further rigorous imprisonment for three months, by the court of Adhoc Additional Sessions Judge, Gopalganj.

2. The prosecution case, as stated in the *fard beyan* of the informant Sadaru Nesa, aged about 40 years, wife of Hasamudin Mian, resident of village Barmaina Tola, Dawana Patti, Police Station Uchkagawn, district Gopalganj, recorded by the Sub-inspector Sri A.K.Singh of Gopalganj Police Station on 10.10.2008 at 7.15 AM at Sadar Hospital, Gopalganj in short is as follows:-

(i) The informant in the fard beyan stated that her seven years old daughter was suffering from Diarrhea. At about 1.30AM on 10.10.2001, she got up to help her to answer the call of nature. When she returned to bed, she heard yelling sound of her nephew coming from the direction of nearby *Palani* (a thatched room for short rest). Thereafter, she took



her torch and proceeded towards the Palani. In the torch light, she saw accused Jahangir Ansari S/o Majid Mian, having caught hold of the legs of her nephew; accused Babudin Ansari had caught hold of his arms; accused Kutubdin Mian was pressing his mouth, while accused Naushad Mian hurled a number of knife blows on and around neck and chest of Firoz Ahmad. One Guddu Mian @ Arif Billah S/o Akbar Hussain, was also standing nearby with a pistol in his hand.

(ii) The informant raised *hulla*, whereupon all the accused started fleeing. On hearing *hulla*, her brother-in-law (*dewar*) Habibullah came and tried to chase the fleeing accused persons, who ultimately managed to escape. On *hulla*, a number of people also gathered at the place of occurrence. Firoz Ahmad was grievously injured and was taken to Sadar Hospital, Gopalganj on a Commander Jeep, where the doctors declared him brought dead.

(iii) The cause of occurrence is said to be a previous altercation, between the parties on 18.09.2008. However, on account of intervention, the dispute was settled and a compromise was arrived at between the parties. The informant claims that all the accused persons with common intention killed her nephew.

3. Police after investigation submitted charge sheet against only two of the accused persons, namely, Jahangir

Ansari and Naushad Mian who are appellants in Cr. Appeal No. 701 of 2013. Rest two accused persons, who are appellants of Cr. Appeal No. 636 of 2013, were summoned for trial under section 319 of the Code of Criminal Procedure. All faced charge under sections 302/34 of the I.P.C.

4. The prosecution, in order to establish its case, has examined ten witnesses. Out of these ten witnesses, PW 1 is Habibullah Mian and PW 2 Nazia Khatoon have claimed to have seen the accused coming out of *Palani* of deceased. PW 3 Umesh Prasad and PW 7 Aftab Alam are formal witnesses. PW 3 has proved the post mortem report, marked as exhibit 1. PW 7 is the witness to the seizure list. PW 4 Sudish Rai is a hearsay witness, whereas PW 5 Lakhichandra Ram has turned hostile. PW 6 is Sadaru Nesa, who is the informant of the case. PW 8 (Dr. Sanjay Kumar Singh) was an observer while post mortem was being conducted. PW 9 is Dr. Vipul Prakash Singh who conducted post mortem on the deceased Feroz Ahmad., and PW 10 is Ram Kumar Singh, who is the Investigating officer of the case. Prosecution side has also proved post mortem report marked as exhibit 1, seizure list as exhibit 2, signature of Dr. S.K.Singh on the post mortem report as exhibit 3.

5. PW 1 Habibulla is the brother-in-law of the informant. He states that the occurrence took place in the



night of 09.10.2008 and at the relevant time, he was sleeping in his courtyard. On hearing unnatural utterance of Firoz Ahmad and alarm raised by Sadru Nesa, he went towards the *Palani* of Firoz Ahmad. In the Solar light, he saw Naushad, Kutubdin, Babuddin, Jahangir and Arif Billa @ Guddu coming out of *Palani* of Firoz Ahmad. Naushad was holding a blood stained knife in his hand, whereas Arif Billa was having a pistol in his hand. This witness tried to catch the accused persons but stepped back as they tried to assault him also. The accused persons thus made their escape good. On hearing *hulla*, his sister-in-law (*Bhabhi*), Nazia Khatoon PW 2, Wasir Ahmad and Hidayatulla @ Oversiyar arrived at the place of occurrence. When he entered into the *Palani* of Firoz Ahmad, he saw him in a pool of blood. At that time, Sadaru Nesa PW 6 was continuously crying. Firoz Ahmad had sustained knife injuries on his neck. With the help of villagers, he was taken to the Sadar Hospital, Gopalganj, where he was declared dead.

6. In the cross-examination, he stated that his house is situated at a distance of 15-16 steps west to the *Palani*, whereas house of the informant was just adjacent to it. House of the accused persons were situated at a distance of 200 steps from the place of occurrence. He also stated that at the relevant time his mother, sister and brother-in-law of Firoz Ahmad were also present in the house. He stated that prior to

the occurrence, an altercation took place in between him and the accused persons. However, the dispute was settled and compromise was arrived at between the parties due to persuasion made by the police.

7. It is relevant to state here that PW 1 is not a witness on the point of assault and he only saw accused persons fleeing away from the *Palani* of the deceased.

8. PW 2 Naziya Khatoon is sister-in-law (*Gotini*) of the informant PW 6. She has stated in her evidence that at the time of occurrence she was feeding her child in the house. She heard the cry of Sadaru Nesa as well as groaning sound of Firoz Alam. Thereupon, she along with her brother-in-law (*Dewar*) Habibulah (PW 1), son-in-law Wasir Ahmad and one other person, namely, Oversear rushed towards the *Palani* of the deceased. She saw accused persons, namely, Naushad, Jahangir, Guddu Babuddin and Kutubudin coming out of the Panani. Guddu was holding a pistol in his hand, whereas Naushad was holding a blood stained knife in his hand. Her brother-in-law and others unsuccessfully tried to chase the accused persons. She saw a number of injuries on the neck and chest of Firoz Ahmad and blood oozing from the wounds. Firoz Ahmad was restless and he was unable to speak.

9. In the cross examination, she stated that father of Firoz Ahmad had separated from her since long. The mother

and sister of Firoz Ahmad, were present in the house at the relevant time. In her further cross-examination, she stated that the police took her statement after a year. This witness too is not a witness on the point of occurrence and her statement was taken by the police after a year.

10. PW 6 Sadaru Nesa is the informant as well as an eye witness to the occurrence. She stated in her evidence that occurrence took place about three years back at about 1.30 AM in the night. Her daughter was not well, as she was suffering from Diarrhoea. At about 1.30 AM, she had taken her towards the door to help her answer her call of nature. Thereafter, she cleaned the stool and gave her medicine and then returned to her room. In the meantime, she heard groaning sound of Firoz Ahmad coming from his house. She immediately rushed with her torch. In the torch light, she saw accused Jahangir, Babuddin, Naushad, Kutubdin and Guddu. Accused Jahangir was pressing legs of Firoz Ahmad, Babudin had caught hold of his both hands; accused Kutubdin was pressing his mouth and accused Naushad was repeatedly assaulting by knife on the neck and chest of Firoz Ahmad. Guddu was also present there with a pistol in his hand. At the relevant time, Firoz Ahmad was in his *Palani*. She further stated that she raised *hulla* on which Habibullah PW1, Nazia Khatoon PW 2 and Wasi Ahmad (not examined), also arrived. These persons also chased the



accused persons. However, they succeeded in escaping from the place of occurrence. The informant PW 6 further stated that injured Firoz Ahmad was lying on *Chauki* in the pool of blood in a restless condition. However, he soon fell from the Chauki. Thereafter, he was taken to the Sadar Hospital, Gopalganj where the doctor declared him dead. At about 7.05 am, police came to the Sadar Hospital, Gopalganj and recorded her statement, and on finding the same to be correct she put her thumb impression.

11. She stated in her cross- examination that sister and mother of Firoz Ahmad were present in the house but they did not come to the hospital. On the other hand, Habibullah, Wasir Ahmad, Hidayattullah and Aftab Alam had come to the Sadar hospital. In her further cross-examination, she stated that *Palani* was open from all sides and its height was 7 to 8 feet and Harijan families were residing in and around the *Palani*. She stated that when she rushed to the *Palani* on hearing groaning of Firoz Ahmad, only the female members came out, whereas male members of Harijan family preferred to remain inside, and just after arrival of females of Harijan families the brother-in-law and other family members of the deceased arrived at the place of occurrence. She stated that she did not chase the accused persons, whereas PW 1 her brother in law chased the accused. She admitted that she did not hand over the torch to

the police.

12. PW 8 Dr. Sanjay Kumar Singh, was an observer of the post mortem examination conducted by PW 9 Dr. Bipul Prasad Singh. The former simply proved the signature and post mortem report conducted by the latter on the dead body of Firoz Ahmad on 10.10.2008.

13. PW 9 is the doctor, who conducted post mortem on body of deceased Firoz Ahmad at 11.20 AM on 10.10.2008 and found following injuries on the person of the deceased:-

- 1. a sharp edge penetrating wound 2" x ½" x cavity deep over right upper part of neck.*
- 2. sharp edge penetrating wound 1" x ¼" x cavity deep right upper part of neck.*
- 3. Clean lacerated wound 1" x ½" skin deep at lower part of left side of neck.*
- 4. Sharp edge wound 3" x 2' x cavity deep of left side of neck.*

On dissection, the doctor found Jugular vein of the deceased cut and central artery cut. The doctor further found penetrating wound on upper lop of lung left side and blood seen in left chest cavity. According to him, the cause of death was shock and bleeding, consequent to the injuries caused by sharp and edged substance.

14. PW 10 Ram Kumar Singh is the Investigating officer (IO) of the case. In his evidence, he stated that on 10.10.2008 he was posted as the Officer-in-charge of Uckagaon Police Station. He recorded the First Information Report (FIR) and took charge of the investigation of the case.



The inquest report was prepared at the Sadar Hospital, Gopalganj by the Gopalganj police. In course of investigation, he visited the place of occurrence. He stated that the seizure list of bed sheet and shirt was prepared by Sub-inspector Umesh Singh of his police station. He proved the seizure list and exhibits. In course of cross-examination, the investigating officer stated that the place of occurrence lies behind the house of the informant in village Dawana Patti. There was a open thatched shed in shape of square called *Palani*. The deceased was lying inside mosquito net on a Chauki in the said *Panani*. Deceased is said to be stabbed on the said *Chauki* in sleeping condition by knife. He found blood stain on the *Chauki*, *bed sheet* and shirt, worn by the deceased. The residential house of the deceased was situated 50 yards west of the *Palani* on concrete road. He recorded the statement of informant PW 6 as well as statements of other witnesses, namely, Habibullah PW 1, Lakhichand Ram PW 5, Sudish Rai PW 4 and Aftab Alam PW 7. He also collected the post mortem report and submitted charge sheet. However, he did not sent up Guddu @ Arif Billah and Babuddin Ansari as sufficient materials had not come against them, in course of investigation. He stated that the *fard beyan* of the informant was taken in the Sadar Hospital at Gopalganj, much prior to his arrival at the Hospital. He received the *fard beyan* at 2 am

on 10.10.2008. He further stated that he received the information on telephone regarding the incident at 4 am on 10.10.2008.

15. In the cross-examination, he stated that at about 5 am, he arrived at the place of occurrence, by which time, a lot of people had already gathered but none from the family of the deceased were present at the spot. People present at the place of occurrence expressed ignorance about the cause of murder. Though he remained at the place of occurrence till 5 pm in the evening, no one disclosed the names of the accused persons. He stated that he did not record the statements of mother, sister and father of the deceased.

16. Mr. Kanhaiya Prasad Singh, learned senior advocate appearing for the appellants submits that the instant case suffers from a number of infirmities, which hit at the root of the prosecution case itself. He submits that even assuming the prosecution case to be true, the informant PW 6 is the only eye witness to the occurrence. He submits that the mother and sister of the deceased, who were at their house, did not come forward to support the prosecution case. Furthermore, it has come in the evidence of PW 6 as well as PW 1 that after the occurrence, family of Harijan Tola situated very near to the place of occurrence expressed ignorance as to the names of the accused who were involved in the incident.

17. On the other hand, counsel for the State submits that the occurrence took place in *Palanai* of Firoz Ahmad, whereas his house was situated 50 yards away from *Palani*, where his mother and sister were sleeping at the time of occurrence, so they could not witness the occurrence and consequently did not come out to support the prosecution case.

18. We find no substance in the submission of learned counsel for the State, as PW 1, whose house was adjacent to the house of the deceased could reach the place of concurrence on hearing *hulla* raised by PW 6. Thus, there could be no reason as to why mother and sister of the deceased, did not reach the place of occurrence on *hulla* raised by PW 6. Furthermore, case of the informant that the appellants were involved in the murder of the deceased is also not free from doubt, as after the occurrence, a number of Harijan ladies, whose houses were situated nearby the place of occurrence, reached at the scene but all of them expressed ignorance about the persons involved in the killing. Furthermore, none of the Harijans who reached the spot soon after the occurrence, deposed in the trial. Even, the investigating officer in his evidence stated that none of the persons present at the place of occurrence disclosed the name of accused persons, though he was present till 5 pm of the following day, which also

supports the submission of the learned counsel for the appellants that the accused persons were unknown persons. Furthermore, PWs. 1, 2 and 6 are all relatives and had altercations with the accused persons in the past and as such their implication cannot be ruled out.

19. In the result, these appeals are allowed and the impugned Judgement of conviction and order of sentence passed against all the four appellants of both appeals, above named, are set aside. They are acquitted of the charges.

20. It appears that the appellant no.2 {in Criminal Appeal (DB) No.701 of 2013} is in jail custody, therefore, he (Naushad Mian) is directed to be released forthwith, if not wanted in any other cases. The rest three appellants of both the appeals are on bail, as such, they are discharged from the liabilities of their bail bonds.

(Samarendra Pratap Singh, J)

(Rajendra Kumar Mishra, J)

Shashi.

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