

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction, dated 28.02.2011, and order of sentence, dated, 04.03.2011, passed by Shri Paras Nath Rai, learned Additional Sessions Judge, F.T.C.-V, Jamui in Sessions Trial No. 292 of 2004 / 112 of 2005, arising out of Khaira P.S. case No. 56 of 2003)

Criminal Appeal (DB) No.295 of 2011

Sanjiv Modi @ Sanjeev Kumar Modi, son of Bhola Modi @ Shankar Lal Burnwal,
resident of village- Chaudiha, P.S.- Jamui, District- Jamui.

.... Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 211 of 2011

Radhey Shyam Modi, son of Kaleshwar Modi, Resident of Village- Jhundo, P.S.
and District- Jamui, at present residing at village- Chaudiha, P.S.- Jamui, District-
Jamui.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

(In CR. APP (DB) No. 295 of 2011)

For the Appellant/s : Mr. Surendra Kumar Singh, Sr. Advocate
Mr. Abdul Wadood, Advocate

For the Respondent/s : Mr. Ashwini Kumar Sinha, APP.

(In CR. APP (DB) No. 211 of 2011)

For the Appellant/s : Mr. Surendra Kumar Singh, Sr. Advocate
Mr. Abdul Wadood, Advocate

For the Respondent/s : Mr. S. C. Mishra, APP.

**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
and**

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 01-08-2016

Both the appeals are preferred against the judgment
of conviction, dated 28.02.2011, and order of sentence dated,
04.03.2011, passed by the Additional Sessions Judge, F.T.C.-V, Jamui

in Sessions Trial No. 292 of 2004 and Sessions Trial No. 112 of 2005, arising out of Khaira P.S. Case No. 56 of 2003, registered under Sections 302, 380, 324/34 of the Indian Penal Code, to which Section 307 of the Indian Penal Code was added vide order, dated 08.10.2003 of Chief Judicial Magistrate, Jamui.

2. The appellant Sanjiv Modi of Cr. Appeal (DB) No. 295 of 2011 has been convicted under Sections 302/34, 307/34, 380 of the Indian Penal Code and Section 27 of the Arms Act. Appellant Radheshyam Modi of Cr. Appeal (DB) No. 211 of 2011 has been convicted under Sections 302/34, 307/34 and 449 of the Indian Penal Code. Both the appellants have been sentenced to undergo R.I. for life and a fine of Rs.5,000/- each under Section 302/34 of the Indian Penal Code and in default of the same to undergo R.I. for six months. Both the appellants have been further sentenced to undergo R.I. for ten years and fine of Rs.2500/- each under Section 307/34 of the Indian Penal Code and in default of the same to undergo further imprisonment for three months. For the offence under Section 380 of the Indian Penal Code and Section 27 of the Arms Act, the appellant Sanjiv Modi has been sentenced to undergo R.I. for three years under each count, along with a fine of Rs.1,000/- under each count, and in default to undergo R.I. for two months under each count. The appellant Radhey Shyam Modi has been further sentenced to undergo R.I. for ten years and a fine of Rs. 2500/- under Section 449 of the

Indian Penal Code and in default to undergo R.I. for three months. However, all the sentences have been directed to run concurrently.

3. The prosecution case as set out in the Fardbeyan of informant Dayanand Modi (P.W.6) son of Bhubneshwar Modi of village Badaldihi, P.S.- Khaira, District- Jamui recorded on 09.07.2003 at 6.00 A.M. by Sub-Inspector of Police, namely, A. K. Lal Pandey in an injured condition in the Varanda at his village Badaldihi is as follows:

(i) The informant stated that in the previous night after taking food, he was sleeping in his varanda along with his family members, whereas he was sleeping on a Chowki, his wife Urmila Devi was sleeping north to him on a cot. The informant's daughter Sarita Devi was sleeping inside a room on a "Palang". His daughter, Sarita Devi, was married 3-4 years back to Sanjiv Modi, son of Bhola Modi of Village Chaudiha, P.S.- Sikandara, as per Hindu rites. After marriage, her in-laws began to torture her, which forced her to file dowry case against them. The case was subsequently settled. He stated that the previous night i.e. 08.07.2003, at about 10.30 A.M., 5-6 persons variously armed came to his house. Amongst the accused, he recognized Sanjiv Modi, son of Bhola Modi and Radhey Shyam Modi, son of Kaleshwar Modi, resident of Village Jhundi, P.S.- Jamui (both the appellants). However, the informant was not able to recognize the other four accused persons. All the six accused persons



while hurling abuses started striking them with Talwar (Fasuli). In the process, Radhey Shyam Modi with an intention to kill him struck with Talwar blow at his neck, which slashed his chin and blood started pouring. Sanjiv Modi dragged his daughter from her “Palang” and brought her out, whereafter he shot her at her belly, as a result, she fell down. While falling, she uttered that her husband had shot her. After some time, she succumbed to her injuries. The accused persons also took away Rs.4,000/- cash as well as jewelries from the person of her daughter. The accused persons were looking for his son, namely, Pramod Kumar Modi also. The informant claims that Sanjiv Modi and Radhey Shyam Modi with a common intention and planning has killed his daughter.

(ii) On the basis of Fardbeyan of informant, Dayanand Modi, Khaira P.S. case no. 56 of 2003, dated 09.07.2003, was registered under Sections 302, 380, 324/34 of the Indian Penal Code and Section 27 of the Arms Act. Later on, Section 307 of the Indian Penal Code was added vide order, dated 08.10.2003.

4. Initially, the police after investigation submitted charge-sheet on 08.10.2003 under Sections 302, 380, 307, 324/34 of the Indian Penal Code and Section 27 of the Arms Act against Radhey Shyam Modi and 4-5 unknown criminals. The learned Chief Judicial Magistrate vide order, dated 08.10.2003 splitted the record, as investigation was pending against Sanjiv Modi and others.

5. The learned Magistrate after taking cognizance committed the case to the Court of Sessions, which was numbered as Sessions Trial No. 292 of 2004. Charges were framed under Sections 324, 326, 449, 307 and 302/34 of the Indian Penal Code against Radhey Shyam Modi.

6. Later on, supplementary charge-sheet was submitted on 30.01.2005 under Sections 302, 380, 324/34 of the Indian Penal Code and Section 27 of the Arms Act against Sanjiv Modi. Upon cognizance, the case of Sanjiv Modi too was committed to the Court of Sessions, which was numbered as S.T. No. 112 of 2005. Both the cases were amalgamated for trial.

7. The accused in their statement recorded under Section 313 of the Cr.P.C. claimed to be innocent and denied the allegations levelled against them.

8. The prosecution in order to establish his case examined 08 witnesses, out of whom P.W. 3 Urmila Devi (mother of the deceased) and P.W. 6 Dayanand Modi (informant) are the eye witnesses. P.W. 1 Sita Ram Rajak, P.W. 2 Vinod Kumar Pandey, P.W.4 Rajo Rajak @ Raju Rajak and P.W.5 Bideshi Yadav have supported the prosecution case. P.W.7 is Dr. Suchi Prasad Singh, who conducted the post-mortem examination on the dead body of the deceased, whereas P.W. 8 Ajeet Kumar Sao is a formal witness, who proved the formal F.I.R. (Ext-6).



9. P.W. 1 Sitaram Rajak stated that at 10.00 P.M. he heard halla near Guava tree, which is situated very close to the house of the informant Dayanand Modi (P.W.6). He went there. The person, who was present at the door warned him not to come near, otherwise he would be shot at. In the meantime, he heard sound of firing, but he did not enter in the house of the informant Dayanand Modi. The persons living in the house had sustained cut injury. Sarita Devi had received gun shot injury, whereas Urmila Devi, wife of Dayanand Modi, had a number of cut injuries. Dayanand Modi had sustained injuries on his chin. Sarita Devi told them that her husband shot her. She stated that her husband fled after taking cash worth Rs. 3000-4000/-. This witness, however, stated that he did not recognize the accused persons. In his cross-examination, he maintained that Sarita Devi had sustained gun shot injury on her belly and she was in a serious condition. He stated that at the relevant time when he saw her, she was alive.

10. It would appear from the evidence of this witness that he has supported the prosecution case that some accused persons had entered the house of the informant and had not only killed her daughter by firing at her, but had also assaulted the informant (P.W.6) and his wife (P.W.3) with sharp cutting weapon.

11. P.W. 2 Vinod Kumar Pandey stated that on 08.07.2003, he was sleeping in his house. At about 10.30 P.M., he



heard some sound coming from the house of Dayanand Modi. He proceeded towards the same, but stopped five feet short of from the house of Dayanand Modi, as he was warned by the accused persons not to come near, otherwise he would be shot dead. He also heard a firing shot in the house of Dayanand Modi. After fleeing of the accused persons, he found the inmates of the house of Dayanand having been assaulted variously. Sarita Devi was shot at whereas Urmila Devi had sustained injuries on her person. The chin of Dayanand, too was cut. On enquiry, Dayanand Modi informed him that his son-in-law Sanjiv assaulted him as well as his daughter Sarita Devi and Radhey Shyam Modi assaulted him as well as his wife Urmila and snatched Mangalsutra as well as cash worth Rs.4,000/- from his wife. He stated that his house is situated at 10 steps from the house of Dayanand Modi. This witness stated that he did not recognize any of the accused persons, as they were not of his village. This witness though had not recognized the accused persons, nonetheless, corroborated the prosecution case that some miscreants had entered into the house of informant and had shot Sarita Devi and had also injured the informant as well as his wife Urmila Devi.

12. P.W. 3 Urmila Devi is the wife of the informant Dayanand Modi and mother of the deceased Sarita Devi. She stated that Sanjiv Modi is her son-in-law and Radhey Shyam Modi is brother-in-law of Sanjiv Modi. She recognized both the persons, who



were standing in the dock. She stated that the occurrence took place about three years back. It was at about 10.30 P.M. She was sleeping in the Varanda of her house and the husband was also sleeping close by her. Her daughter Sarita Devi was sleeping in the room. All of a sudden, six persons variously armed came. She identified two of them, as Sanjiv and Radhey Shyam Modi. She could not recognize the other four. Radhey Shyam had sword and pistol in his hand, whereas Sanjiv was armed with pistol. Both of them enquired about her son Pramod. She stated that her son is at Jamui, whereupon Sanjiv and Radhey Shyam began to hurl abuses. She tried to restrain them from hurling abuse, but they did not desist. In the meantime, Radhey Shyam struck her husband with sword, which cut his chin. When she began to raise halla, Radhey Shyam struck her too with his sword, which hit her neck and back, thereafter both the accused asked her to open the door of the room of her daughter. Out of fear, she responded and opened her daughter's room. Thereafter, she asked her daughter to open the door, whereupon she opened the door. Both the accused entered in the room and dragged Sarita Devi outside the room. Radhey Shyam robbed the jewelry from the person of her daughter, as well as her own. Radhey Shyam caught one hand of Sarita Devi and one of the four unknown accused caught hold other hand also, whereas accused Sanjiv Modi shot her at bailey. She started raising halla in pain, and thereafter the accused persons fled away from the



house. On hearing halla, 2-4 people from the neighbouring areas, came to her house. On query, Sarita informed them that her husband had shot at her. Sarita remained alive for 20-25 minutes, thereafter she died. She stated that marriage of Sarita was performed with Sanjiv about 1 ½ years back. Soon after the marriage, Sanjiv began to torture her for motorcycle and dowry, leading to institution of dowry case, in which Sanjiv and others were made accused and all of them were sent to jail. Subsequently, the case was compromised and her daughter Sarita went to her Sasural. However, after one month, the accused persons again began to torture her and the husband of Sarita dropped her at her house on the pretext to take her latter. She recognized the accused persons in the light of lantern.

In her cross-examination, P.W. 3 remained unshaken and supported the prosecution case. The defence has not been able to illicit anything contradictory, to make her testimony unworthy of reliance. In cross-examination, the defence made a suggestion to the effect that a dacoity was committed in her house by unknown persons and in course of which she sustained gun shot injury and due to animosity, they have been implicated in the instant case, which was denied by this witness.

13. P.W. 4 Raju Rajak is also a co-villager. He is witness to the inquest report and he has also proved his signature on the inquest report as Ext-1.

14. P.W. 5 Bideshi Yadav is also a co-villager. He corroborated the prosecution case that Sarita Devi was murdered three years ago. However, he did not see, as to who had murdered her.

15. P.W. 6 Dayanand Modi is the informant and also an eye witness of the occurrence. He is father of deceased Sarita Devi. He stated that the occurrence took place at about 10.30 P.M. in the night of 08.07.2003. He was sleeping on a Chowki in Varanda, whereas his wife was sleeping nearby a cot. A Lantern was burning nearby. Round about the said time, Radhey Shyam Modi along with 4-5 persons came to his house. Radhey Shyam was holding a sword, whereas Sanjiv Modi was armed with pistol. The rest accused were also armed with pistol etc. As soon as they reached his house, Radhey Shyam Modi struck with sword on the neck of his wife, upon which she cried. He got up on the sound of her cry. The accused persons had hurled four sword blows on her neck and hands and other parts of the body. The accused also caused injury on his chin. Both Radhey Shyam Modi and Sanjiv Modi enquired about his son, to which he replied that the latter is at Jamui. Thereafter, they asked him to get the door of her daughter's room opened. On account of fear, this witness got the door of his daughter opened. Her daughter was sleeping on the bed. Sanjiv and three unknown persons dragged her daughter from the room to Varnada. Thereupon Sanjiv Modi shot at her. While receiving the injury, her daughter cried that her husband had shot her. The



accused persons snatched jeweleries from his wife and also took away cash worth Rs.4,000/-. The informant had got married his daughter with Sanjiv, who was asking motorcycle as dowry. The in-laws of Sarita Devi also tortured her daughter for non-fulfillment of dowry demand, leading to institution of a dowry case, in which Sanjiv was sent to jail. Though, the case was compromised, on account of the said animosity, the present occurrence has been given its effect. He stated that on hearing halla, Sita Ram Rajak (P.W.1), Binod Pandey (P.W.2), Rajo Rajak (P.W.5) and Bideshi Yadav (P.W.5) and other villagers arrived at the place of occurrence. When Sita Ram Rajak came to his house, his daughter Sarita Devi was alive. Her daughter informed him that her husband had shot her. This witness stated that he gave his fardbeyan to Daroga Jee and proved his signature (Ext.-2). This witness has also identified both Sanjiv and Radhey Shyam Modi, who were present in dock. Again the defence has not been able to illicit anything material to render his testimony unworthy of reliance.

16. P.W. 7 Dr. Suchi Prasad Singh on 09.07.2003 was posted as Civil Assistant Surgeon, S.D. Hospital, Jamui. (I) On the same day, he examined Urmila Devi (P.W.3) and found the following injuries on the person of Urmila Devi:

- (i) Incised wound 3"x 1/4" x 1/4" at wrist joint of left hand.
- (ii) Incised wound 1/2"x 1/2" x 1/4" on the lower area of the neck.

(iii) Incised wound 1"x ¼" x ¼" on the upper arm of the right hand.

(iv) Incised wound ½"x ¼" x ¼" on the upper part of the back behind right shoulder.

Nature of injury: Simple. Age- within 16 hours. Caused by sharp cutting substance like sword.

(II) On the same day, he also examined Dayanand Modi (P.W.6) and found the following injuries on the person of Dayanand Modi:

(i) Incised wound 3"x ½" x ½" on the chin of the mouth.

(ii) X-ray done on 13.07.2003 at Dazy X-ray of mouth and chin. X-ray shows fracture on the lower base of the mandula.

Nature of injury: Grievous. Age- within 12 hours. Caused by sharp cutting substance like sword.

(III) On the same day, he also conducted post-mortem examination on the dead body of Sarita Devi at about 2.20 P.M. and found following external injuries on her body:

(i) One lacerated wound oval in shape ½" in diameter, having inverted and black margin on middle of abdomen above umbilicus (would of entry).

(ii) One lacerated wound oval in shape having everted margin on the back lumber 1 and 2 Vertebra (would of exit).

On dissection: Superficial and deep tissue piercing the

abdominal viscera. Large intestine containing blood and blood clots.

Injury nos. (i) and (ii) are connected to each other within the intestinal wall, blood vessels and viscera parts. The above injuries are ante-mortem in nature.

17. According to the doctor, the cause of death is shock and haemorrhage caused by fire-arm, such as revolver. He stated that time elapsed since death is 16 to 20 hours, which was in tune with the prosecution case. Post-mortem report is Ext.-5.

He (P.W. -7) in his cross-examination also stated that the injury may have been caused from the distance of 4 feet.

18. The evidence of the doctor fully corroborates the prosecution case that Sanjiv had shot at the deceased from a close distance, and that both Urmila Devi (P.W. 3) and Dayanand Modi (P.W.6) were also assaulted by sharp cutting weapon.

19. P.W. 8 Ajeet Kumar Sah is a formal witness.

20. Learned counsel appearing for the appellants have raised mainly two issues. He submits that defence has been prejudiced on account of non-examination of the investigating officer. He next submits that both the appellants and accused were closely related and were known to each other and as such it is very unnatural that they would participate in the occurrence without concealing their identity.

21. On the other hand, learned Additional Public Prosecutor has supported the prosecution case. He submits that the

defence has not drawn any attention to the witnesses examined during trial, regarding any of the statements made earlier by them before the police, as such, there is no question of any prejudice in the case due to non-examination of the investigating officer. He next submits that there is no well founded assumption that in all the cases, known persons would conceal their identity at the time of committing the crime.

22. On examination of the materials on record, we find that the prosecution witnesses, especially P.Ws. 3 and 6 have consistently proved the prosecution case. The other witnesses, namely, P.W. 1 and P.W.2 have supported the factum of occurrence, though they have not claimed to have identified the accused persons. The place of occurrence and time of occurrence have not been disputed. We do not find any discrepancies in the prosecution version to doubt their testimonies.

23. We are in agreement with the submission of the learned counsel for the State that non-examination of the investigating officer did not cause any prejudice to the defence, as no attention was drawn to any previous statement of the witnesses. We do not find merit in any of the two appeals and are, accordingly, dismissed. The judgment of conviction and order of sentence passed by the learned trial court are upheld.

24. Since, Radhey Shyam Modi, appellant of Cr. Appeal

(DB) No. 211 of 2011 is on bail, his bail bonds is cancelled and he is directed to surrender before the court below for serving out the remaining part of the sentences.

25. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Courts Record.

(Samarendra Pratap Singh, J.)

(Rajendra Kumar Mishra, J.)

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