

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.345 of 2011

(Against the Judgment of conviction dated 24.03.2011 and Order of sentence dated 25.03.2011 passed by the Sessions Judge, Khagaria, in Sessions Case No.548 of 2008).

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Tuntun Sahni, son of Late Jhari Sahni, resident of village-Sanhauli, Ward No.12, P.S. Chitragupta Nagar, District-Khagaria.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant : M/s. Ranjeet Kumar Singh & Pawan Kumar Singh, Advocates.

For the State : Mr. Abhimanyu Sharma, 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: 30-03-2016

The Appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and fine of Rs.20,000/-, in default of which, to undergo further simple imprisonment for one year vide Judgment of conviction dated 24.03.2011 and Order of sentence dated 25.03.2011 passed by the Sessions Judge, Khagaria, in Sessions Case No.548 of 2008.

2. The case of the prosecution, according to the Informant Sumiya Devi (P.W.4) is that on 06.06.2008 in the night, the Appellant assaulted his brother, the deceased Prakash Sahni alias Pappu over a domestic matter and ran away. He was given first aid at home and,

later on, he died and, hence, the First Information Report was instituted on the next day, i.e., 07.06.2008 at 05.15 P.M.

3. During trial, the prosecution examined altogether 9 witnesses.

4. P.W.1 Deepak Kumar is a formal witness, who proves his signature on the Inquest Report as Ext.1 and that of Sanni Tanti on the same as Ext.1/1.

5. P.W.2 Bindu Devi is merely on the factum of occurrence but it could not be adduced as to whether she was an eye witness to the occurrence or not.

6. P.W.3 Gita Devi has not supported the case of the prosecution and has been declared hostile.

7. P.W.4 Sumiya Devi, the Informant, stated that in the night of occurrence, the Appellant had assaulted his brother on account of which he died and then she gave the Fardbeyan. However, in cross examination, she sated that she could not see properly and she had been brought to Court by her daughter-in-law and she had given the Fardbeyan on the basis whatever was told to her.

Hence evidently she discredits her own statement given in the Fardbeyan.

8. P.W.5 Manju Devi is the wife of the deceased, who stated that in the night of occurrence, both brothers started a fight on a

petty issue and then the Appellant took out an iron rod and assaulted the deceased repeatedly on his head on account of which he fell down injured and died at home. In cross examination, some questions were directed to her that, in fact, she was at her maternal home on the fateful night and was not an eye witness to the occurrence but she has denied the same.

9. P.W.6 Sanni Tanti is also a witness to the Inquest Report and his signature was marked as Ext.1/1 previously.

10. P.W.7 is Dr. Purushottam Kumar Sinha, who held Post-Mortem Examination on the dead body of the deceased and found the following injuries on his person:

External:

- (i). Lacerated wound 2½” X 1½” X Bone Deep over frontal and right parietal region of skull.
- (ii). Abrasion 1” X 1½” with swelling over left elbow.
- (iii) Bruise 2” X 1” reddish with abrasion 1½” X 1½” over back middle part.

Internal on dissection:

Blood and blood clots were present in cranial cavity. Frontal and right parietal lobe of brain was lacerated. Meninges were lacerated in frontal region. There was extra-vecessation of blood and blood clots in surrounding tissues in associated with all

abovementioned injuries.

All abovementioned injuries were ante-mortem in nature and caused by hard blunt object. All other viscera were pale.

Cause of death: Haemorrhage and shock due to abovementioned injuries.

Time elapsed since death: within 24 hours of Post-Mortem Examination.

He proves the carbon copy of the Post-Mortem Examination Report as Ext.2.

In cross examination, he stated that the injury could be caused due to fall from roof over a hard surface.

11. P.W.8 Pankaj Sahni is an adult son of the deceased, who stated that the deceased had died on account of fall from the roof.

12. P.W.9 Indradeo Paswan is the Investigating Officer, who stated that on 07.06.2008 while he was posted as Officer Incharge at Chitragupta Nagar Police Station, he recorded the Fardbeyan of Sumiya Devi (P.W.4), which he proves as Ext.3 and his endorsement on the same as Ext.4 and the Formal First Information Report as Ext.5. He stated that, thereafter, he inspected the place of occurrence and examined the witnesses.

It appears that the Appellant was caught on 08.06.2008 itself.

In cross examination, he stated that when he reached the place of occurrence on 07.06.2008, neither the wife of the deceased, Manju Devi (P.W.5), nor his son Pankaj Sahni (P.W.8) were present there for giving the statement.

His attention was drawn to the statement of P.W.5 Manju Devi from which it appears that she had arrived at the matrimonial home having learnt about the occurrence and, hence, it appears that she is also not an eye witness to the occurrence.

13. On going through the evidence of the aforesaid witnesses, as discussed above, we find that the Informant Sumiya Devi (P.W.4) has discredited the Fardbeyan in her evidence saying that she was not an eye witness to the occurrence and she has given the Fardbeyan on being prompted by others. P.W.2 Bindu Devi was only on the factum of the occurrence. She has specifically stated that she was not an eye witness to the occurrence. The evidence of P.W.5 Manju Devi, the wife of the deceased, who is the solitary eye-witness, is fit to be rejected in view of the evidence of the Investigating Officer, who stated that she was not present when he reached the place of occurrence and she herself had earlier stated that she had reached the matrimonial home only after hearing about the occurrence. Moreover, her statement that the Appellant had repeatedly assaulted the deceased is also contrary to the Post-Mortem

Examination Report conducted by P.W.7 Dr. Purushottam Kumar Sinha, who found only one injury on the head of the deceased and one abrasion and one bruise over his body and he corroborates the evidence of P.W.8 Pankaj Sahni, son of the deceased who stated that the deceased had died on account of fall from a terrace by saying that such injury could have been caused by falling from a roof over a hard surface. Under such circumstances, we are inclined to acquit the Appellant of the charges giving him benefit of doubt.

14. In the result, this appeal is allowed. The Judgment of conviction and order of sentence passed against the Appellant, above named, is set aside. He is acquitted of the charges. He is in jail custody, so he is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/A.F.R.

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