

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 328 of 2011

(Against the Judgment of conviction dated 10.02.2011 and Order of sentence dated 14.02.2011 passed by the 5th Additional Sessions Judge, Muzaffarpur, in Sessions Trial No.429 of 2004).

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Shri Kishun Sahani, son of Feku Sahani, resident of village-Rajwara Dih, Police Station-Musahari in the district of Muzaffarpur.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant: M/s. Tarkeshwar Prasad Verma & Ashish Kumar, Advocates.

For the State : 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: 18-05-2016

The sole Appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life vide Judgment of conviction dated 10.02.2011 and Order of sentence dated 14.02.2011 passed by the 5th Additional Sessions Judge, Muzaffarpur, in Sessions Trial No.429 of 2004.

2. The case of the Informant Ranjeet Sahani (P.W.10) is that the deceased Rajesh Sahani, his brother-in-law ('Sala') had come to his house on 06.03.2004. On 07.03.2004 at about 12 noon both of them went to his grand father Sadhu Sahani's house at village Rajwa Dih. A little while later, his brother-in-law, the deceased Rajesh

Sahani left alongwith Dilip Sahani (not examined) and when they reached near the house of the Appellant Shri Kishun Sahani, he stopped him and then assaulted the deceased with the 'Chhura' on account of which he fell down dead. The reason for the occurrence was that the deceased had tried to put colour on the daughter of the Appellant and, therefore, the Appellant committed his murder.

3. During trial, the prosecution examined 12 witnesses. However on going through the evidence of the witnesses, we find that there is no eye witness account of any of the witnesses and, therefore, the case is almost based on no evidence. The only circumstance is that the Appellant was seen near the place of occurrence with the 'Chhura'.

4. P.W.1 Sukan Sahani, P.W.2 Akalu Sahani, P.W.3 Parikshan Sahani, P.W.4 Ram Sewak Sahani, P.W.5 Ram Swarup Sahani, P.W.6 Kishori Sahani, P.W.7 Nand Kishore Sahani, P.W.8 Mahendra Sahani and P.W.9 Kailash Sahani have been declared hostile.

5. P.W.12 is Dr. Mumtaz Ahmad, who conducted the Post-mortem Examination of the dead body of the deceased and found the following injuries on his person:

- I. Abrasion in between left eye and ear 5cm. X 2cm.
- II. One stab wound spindle shaped with clean cut margin

was found on part of chest 1½ below right sterno.

Clavicular joint 2cm. X 1cm. X internal cavity deep.

III. One stab wound spindle shaped with clean cut margin was found in front of left side of chest. 2.5 cm. lateral and 1.5 cm. below.

Wound no.II 2 cm. X 1 cm. X chest cavity deep.

On dissection, 2nd right rib in the line of wound no.II and 3rd left rib in the live of wound no.III was cleanly cut and as ending ascoria in the line of wound no.II and left ventide of heart and pericardican in the line of wound no.III was found puncture, Fluid blood was fond in the chest cavity.

IV. Deceased died due to shock and haemorrhage as a result of injuries no.II and III.

Injury No.I may be caused due to fall on rough surface and injury no.II and III by sharp pointed weapon.

Time elapsed since death within 18 to 24 hours.

He proved the Post-Mortem Examination Report as Ext.2.

6. Now, the only two material witnesses, who are left to be discussed, are P.W.10 Ranjeet Sahani, the Informant and his mother P.W.11 Rekha Devi. Notably, the Investigating Officer has not been examined.

7. P.W.10 the Informant Ranjeet Sahani stated that about



4-5 years back, his brother-in-law (Sala) had come to his house on the occasion of 'Holi'. He alongwith the deceased and Dilip had gone to his grand father's house and was returning after having their lunch and he had stopped to urinate on the way while the deceased and Dilip (not examined) proceeded ahead. When they reached the house of the Appellant, the Appellant started to abuse them and assaulted the deceased with a dagger on his chest on account of which he fell down dead. He then ran towards the place of occurrence and asked the Appellant as to why he had done so but he was sought to be assaulted so he ran to the Police Station. He stated the reason for the occurrence was that his brother-in-law Rajesh Sahani had tried to put colour on the daughter of the Appellant. When the police came, the Appellant was arrested right then. The Appellant was allegedly not allowing to anyone to come to the place of occurrence. He proved the Fardbeyan as Est.1.

In cross examination, he denied that he had taken Alcohol. He described as to how the daughter of the Appellant had been sought to be coloured by the deceased. It was suggested to him that the occurrence had taken place in another manner but he denied the same.

From the evidence of the Informant (P.W.10) in court, we find that he has tried to develop the case by saying that the occurrence took place where he was also present in the vicinity which was not his

case at the earlier instance.

The next circumstance he has disclosed against the Appellant is that he was found standing at the place of occurrence with a dagger and the police arrested him right after the occurrence. However, the Investigating Office has not been examined in the case nor the sole eye witness Dilip Sahani, who was also accompanying the deceased, has been examined. This fact has also not been stated in the Fardbeyan.

8. P.W.11 Rekha Devi, the mother of the Informant, stated that on the day of 'Holi' Dilip(not examined) came running and informed that the Appellant had assaulted the deceased with 'Chhura' so she went there and saw him injured. The Appellant was forbidding everyone not to come near him. Her son reportedly went to the police and brought the police whereafter, the Fardbeyan was recorded and Appellant was arrested with the 'Chhura' from the place of occurrence itself.

In cross examination, she confirmed that she was not an eye witness and whatever she had narrated on the basis of the version of Dilip Sahani, who has not been examined. As such, her hearsay account is not admissible in law.

9. Thus, the circumstance which we find against the Appellant that he was found standing with the dagger and arrested

when the police came is an obvious development in court by both the witnesses. Had it been so why the same has not been mentioned in the Fardbeyan, which was recorded at the place of occurrence is not explained. Coupled with this the sole eye witness Dilip has not been examined.

10. Hence, in the facts and circumstances of the case discussed above, 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 charge. The Appellant is in jail custody, therefore, he is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

A.B. Bhardwaj/Pradeep Srivastava.

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