

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1015 of 2015

Arising Out of PS.Case No. -70 Year- 2006 Thana -HATHAURI District- MUZAFFARPUR

=====

Raghunath Sahani, S/o Jagdev Sahani Resident of Village- Narkatia, P.S.- Hathaur,
District- Muzaffarpur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Rudal Singh, Advocate ,
Mr. Pramod Kumar, Advocate

Amicus curie : Mr. Ranbir Singh, Advocate
For the Respondent : Mr. A.K.Sinha, Additional Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 13-12-2016

Heard learned counsel for the appellant, the learned amicus curiae and learned counsel appearing for the State.

2. The instant appeal is directed against judgment of conviction and order of sentence, both dated 24.9.2009, passed by the Additional Sessions Judge-III, Muzaffarpur in Sessions Trial No. 591 of 2009, arising out of Hathauri Police station Case No. 70 of 2006, whereby the sole appellant has been convicted under section 302 of the IPC and sentenced to life imprisonment along with a fine of Rs.10,000/- (ten thousand) and in default thereof to undergo additional imprisonment for six months.

3. The prosecution case, as set out in the *fard beyan* of



Indradeo Ram, resident of village Narkatia, Police Station Hathaui District Muzaffarpur recorded on 20.6.2006 at 7.30 PM by Officer-in-charge of Hthaudi PS, in short, is as follows:-

(a) The informant stated that on 24.6.2006 at about 4 PM his son Devendra Ram, aged 10 years had gone to the *Chawar* (field) situated west of the village to graze his she goat. However, the she goat of the informant entered into the Mung field of one Md.Hafiz Raja and began to graze Mung crops. One Raghunath Sahani (appellant herein) was guarding the said field. At about 5.30 PM, appellant Raghunath Sahani, Charitar Sahani, Hit Lal Ram, Shafiq Ansari, all residents of Narkatia, Police Station Hathori, district Muzaffarpur, assembled in the Mung field and started assaulting his 10 years old son with legs and fists.

(b) On hearing sound of cry of his son, the informant along with his wife, bhabi and nephew Ranjit Ram rushed to the field. He saw the accused Raghunath piercing a pointed iron rod into the body of his son. When the informant refrained him from doing so, the appellant also rushed towards him to assault. He alleged that the appellant after piercing the ears and right arm, pushed his son into a nearby low land full of water.

(d) On hearing *hulla*, the villagers arrived at the place of occurrence, whereafter accused persons fled away and the informant



along with villagers carried his son to the police station.

4. On the basis of the FIR of the informant, Hathaudi Police Station case no. 70 of 2006 under sections 302/34 of the IPC dated 24.6.2006 was registered against the appellant and three other named accused.

5. After investigation, police submitted charge sheet for offence under sections 302/201 of the IPC against the appellant, whereafter cognizance was taken and the case was committed to the court of sessions for trial. However charge was framed under section 302 of the IPC against the sole appellant vide order, dated 22.1.2010 to which the appellant pleaded not guilty and claimed to be tried.

6. In order to substantiate its case, the prosecution has examined as many as 14 witnesses.

Out of these 14 witnesses, PW 1 Chaniya Devi is the Bhabhi of informant. PW 4 Anita Devi is wife of the informant and mother of the deceased. PW 5 Basudeo Ram is uncle of the deceased and PW 6 Indradeo Ram is the informant of the case. They have claimed to be the eye witness of the occurrence. The I.O., Ramashish Kamti has been examined as PW 13. PW 2 Rajan Sahni and PW 3 Noor Hasan have not supported the prosecution case and have been declared hostile. PW 12 Sumita Devi, is a local villager and has given a different version of the death of the deceased boy



Devendra Ram. Besides this, the prosecution has also adduced documentary evidence including the formal FIR, inquest report and post mortem report which have been marked as exhibits no.2, 3 and 4 respectively. Similarly, signatures of the informant (PW 6) and Basudeo Ram (PW 5) on *fard beyan* are marked as exhibit 1 & 1/1 respectively, whereas signature of the I.O. on the FIR is marked as exhibit ½.

7. The defence examined only one witness Bhuneshwar Paswan in support of its case that the appellant was not present at the relevant time in the village. The case of defence, as disclosed from the statement of the appellant recorded under section 313 of the Cr.P.C., is one of complete denial of his involvement.

8. Mr. Ranbir Singh, learned amicus curiae, as well as learned counsel for the appellant submits that the prosecution case suffers from material contradictions and discrepancies in the statements of witnesses. They further submit that the appellant has falsely been implicated in this case on account of village politics as he opposed the candidature of Chaniya Devi, the own bhabhi of the informant. They next submit that PW 12 Sumitra Devi has not supported the prosecution case and cause of death has not been substantiated as the doctor, who conducted the post mortem examination, has not been examined. Learned counsel submits that



the son of the informant may have had some fight with other boys who were also grazing their she goat, and in course of altercation, may have fallen in the ditch full of deep water.

9. On the other hand, Mr. Ashwani Kumar Sinha, learned Additional Public Prosecutor submits that as many as four eye witnesses have supported the prosecution case. The defence has not disputed the place of occurrence. He submits that the penetrating and lacerated injuries were found on the person of the deceased which was caused by sharp pointed weapon. On these premises, learned counsel submits that the prosecution has proved its case beyond all reasonable doubts.

10. We have heard Mr. Rudal Singh, learned counsel appearing for the appellant, Mr. Ranbir Singh, learned amicus curiae and Mr. Ashwani Kumar Sinha, learned Public Prosecutor representing the State and perused the materials on record.

11. We find that the informant Indradeo Ram (PW 6) has fully supported the prosecution case in his evidence. PW 6 in his evidence has stated that the occurrence took place four years ago. His 10 years old son Devendra Ram had taken his she goat for grazing at about 4 PM. One Raghunath Sahani (the appellant) was looking after the nearby Mung field of Hafiz Raja. In the meantime, he heard yelling of his son, whereupon he along with his wife (PW



4), Bhabhi Chaniya Devi (PW 1) and cousin Ranjit (PW 6) rushed towards the field. He saw Raghunath Sahani, Charitar Sahani, Hitlal Ram and Safiq Ansari were indulging in *marpit* (assault) with his son. Raghunath Sahani had a pointed rod in his hand. He penetrated it below both ears and right arm of his son. Thereafter, he pushed the dead body of his son in the nearby low land full of deep water. Thereafter, the informant along with others brought the dead body to his house and recorded his *fard beyan*.

12. PW 2 Rajan Sahani in his cross examination stated that the place of occurrence is about 50 laggies from the house. He stated that one laggy is around 9 feet. We find that the prosecution, except for the fact that there was some political differences between prosecution side and the accused side, the defence has not been able to elicit any material contradictions to discredit the evidence of PW 4 Anita Devi, the mother of the deceased, PW 5 Basudeo Ram, uncle of the deceased and PW 6 the informant (father of the deceased), have fully supported the prosecution case in their evidence. All of them stated that deceased Devendra Ram had gone to graze his she goat. At about 5.30 PM, on hearing *Hulla* they rushed towards the Mung field and saw the accused persons assaulting the deceased. They stated that the appellant Raghunath Sahani assaulted and pierced below the ears of Devendra Ram with



a thin pointed rod which caused his death. Thereafter, the accused persons pushed the dead body into a nearby low land full of 5 to 6 feet deep water.

13. The I.O. Ramashish Kamti (PW 13) in his evidence stated that the witnesses consistently pointed to the place nearby the ditch, as the place of occurrence. However, Sumitra Devi who has been examined as PW 12, has given a different version. She has stated that at about 5 PM, one Samsul Haque stated that there was a dead body in the ditch nearby Mung field of Hafiz Raja. On hearing *Hulla*, villagers arrived and retrieved the dead body of a small boy, to be one of Devendra Ram, son of the informant. The evidence of PW 12, who has been examined on behalf of the prosecution side, runs contrary to the evidence given by other four witnesses, namely, PWs. 1, 4, 5 & 6. In case, evidence of PW 12 is relied, then the evidence of other witnesses have to be discarded.

14. In the aforesaid light, we have to examine; whether to rely upon the evidence of PW 12 or to rely upon the evidence of PW 6 and other three witnesses, namely, PWs. 1, 4 and 5. On careful scrutiny, the evidence of PW 12 cannot be held to be reliable as she stated that she was working in the nearby field since 8 AM on the date of occurrence. In case, PW 12 is to be believed, then the occurrence ought to have taken place much prior to 8 AM



in the morning of 24.6.2006. However, we find that as per the post mortem report conducted on 25.6.2006 at 11 AM, the time elapsed since death was 15 to 20 hours, which tallies with the time mentioned by the prosecution. As such, we hold PW 12 not to be trustworthy witness and as such we exclude her evidence from consideration.

15. On the other hand, we find that the witnesses have fully supported the prosecution case with respect to time, place and manner of occurrence. On the other hand, we find that the evidence of PWs. 1, 4, 5 and 6 have fully established the prosecution case beyond all reasonable doubts. There is one major flaw in prosecution's case that the doctor who conducted the post mortem examination has not been examined, as such cause of death is not ascertained and conviction under section 302 IPC would not be sustained. However, it appears from the oral evidence of the witnesses and post mortem report that the deceased sustained injuries on his person as he was attacked by sharp pointed iron rod below his ears. In the circumstances, we alter the conviction from section 302 of the IPC to one under section 307 of the IPC.

16. So far quantum of sentence is concerned, as the appellant has already remained in custody for 7 years and 11 months as submitted by him, we find that the ends of justice would



meet if the sentence is reduced to the period already undergone by the appellant and accordingly be released, if not wanted in any other case.

17. The appeal is dismissed with aforesaid modification in the conviction and sentence.

18. Let the first page and the last page of the judgment be handed over to the learned Amicus curiae for payment of his remuneration.

(Samarendra Pratap Singh, J)

(Sanjay Kumar, J)

Shashi.

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