

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.479 of 2012

[Against the judgment of conviction dated 13th April, 2012, and order of sentence dated 21st April, 2012, passed by the 8th Additional Sessions Judge, Motihari, East Chamapran, in Sessions Trial No.307 of 2009]

1. Taiyab Mian, S/O Late Mohamaddin Mian, resident of village- Dhawahi, P.S- Harsidhi, District- Motihari at East Champaran.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 824 of 2012

[Against the judgment of conviction dated 13th April, 2012, and order of sentence dated 21st April, 2012, passed by the 8th Additional Sessions Judge, Motihari, East Chamapran, in Sessions Trial No.307 of 2009]

1. Shaukat Miya, S/O Taiab Miya, resident of village- Dhawahi, P.S.- Harsidhi, District- East Champaran

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 1091 of 2012

[Against the judgment of conviction dated 13th April, 2012, and order of sentence dated 21st April, 2012, passed by the 8th Additional Sessions Judge, Motihari, East Chamapran, in Sessions Trial No.307 of 2009]

1. Sohram Mian, S/O Shri Taiyab Mian, R/O Dhawaohi, P.S. Harsidhi, District - East Champaran

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 479 of 2012)

For the Appellant/s : Mr. Kanhaiya Pd. Singh, Sr. Advocate with
Dr. Rajesh Kumar Singh, Advocate
Mr. S. K. Lal, Advocate

For the Respondent/s : Mr. A. K. Sinha, APP

(In CR. APP (DB) No. 824 of 2012)

For the Appellant/s : Mr. Kanhaiya Pd. Singh, Sr. Advocate with
Dr. Rajesh Kumar Singh, Advocate
Mr. S. K. Lal, Advocate

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

(In CR. APP (DB) No. 1091 of 2012)

For the Appellant/s : Mr. Kanhaiya Pd. Singh, Sr. Advocate with
Dr. Rajesh Kumar Singh, Advocate
Mr. S. K. Lal, Advocate

For the Respondent/s : Ms. S. B. Verma, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 31-03-2016

1. All the three Appellants have been convicted under Section(s) 302/34 Indian Penal Code and sentenced to undergo rigorous imprisonment for life with fine of ₹10,000/- and in default of payment of fine to further undergo simple imprisonment for three months by the judgment of conviction dated 13th April, 2012, and order of sentence dated 21st April, 2012, passed by the 8th Additional Sessions Judge, Motihari, East Champaran, in Sessions Trial No.307 of 2009.

2. Case of the prosecution according to Md. Naseeb (PW 2) is that on 01.01.2009 a group of persons including the present Appellants and eight others were returning from the market after having sold off their goods when they started altercating in a



drunken state. When they reached near the village, the deceased Khedan Miyan, who happens to be the brother of the Informant, asked them not to make a noise at which Mannan Mian, Manuwar Mian, Makoon Mian @ Noor Alam, Firoz Mian caught hold of him and thereafter Appellant, Shaukat Mian, assaulted him with the big knife used for cutting goat on account of which he fell down dead. When Md. Firoz, son of Khedan Mian tried to intervene, Sohram Mian assaulted him on the stomach and Appellant, Taiyab Mian, and some other accused persons also assaulted him due to which he also died.

The cause of the occurrence was an earlier dispute in the village over solar light having been stolen from the mosque due to which the village was divided into two groups.

3. During trial, the prosecution examined nine witnesses, whereas, the defence examined five witnesses.

4. PW 1 (Hasnain Mian) is the eye witness, who stated that while he was at his door, Appellants, Sohram Mian, Shaukat Mian, Taiyab Mian as also Mannan Mian, Manuwar, Riyaz, Bachha, Firoz, Shakund, Abbas, Gulbas, Sohram Mian and Shaukat Mian abusing each other crossed his door. When they reached near the mosque at a time when people were busy in reciting Quran and the deceased Khedan Mian was in the process of it, he asked them as to why they were abusing. At this, they all surrounded him and then



Appellant, Shaukat Mian, assaulted him on the stomach with *Daab* while Mannan Mian, Manuwar Mian, Makund Mian and Firoz Mian caught hold of him. On hearing cries, when his son Firoz Mian came to save him, he was caught hold by accused Taiyab, Abbas, Gulbas, Reyaz while Appellant, Sohram Mian, assaulted him with *Chura* on the stomach. Both of them died soon thereafter. He also stated about the earlier dispute in the village over solar light having been stolen from the mosque for which a case was instituted and Panchayati held.

His attention was drawn to the earlier statement in the cross-examination that he had not stated that the accused persons had surrounded Khedan Mian, but we find that the Investigating Officer has not been confronted with this statement and hence, it has no value. In his cross-examination, there is nothing which would discredit the worthiness of this witness in any manner.

5. PW 2 (Md. Naseeb Mian), who is the Informant of the case, stated that while he was in the mosque on the fateful day the accused persons were abusing each other which was sought to be pacified by the deceased Khedan, who was in the process of reading Quran but being enraged Appellant, Shaukat Mian, assaulted him on the stomach with *Daab* on account of which his stomach was cut and he fell down there. When his son, Firoz, rushed to save his father, he was also caught hold of by the Appellant, Taiyab Mian,

Abbas Mian, Gulbas Mian, Reyaz Mian, whereas, Appellant, Sohram Mian, assaulted him with *Daab* on the stomach due to which he also fell down injured and later on died. He has also stated that the accused had earlier committed theft of solar light which had led to institution of the case against them.

In cross-examination, even though he gave full eye witness account but at one point in time he stated that he saw both the deceased at quarter past seven and no one was there and he did not find anyone else present. However, this stray statement appears to be of no importance since we are unable to reconcile it with the rest of the evidence. He conceded that one case was instituted by Appellant Shaukat Mian in which the police had come for investigation but he did not know the full details of the same.

6. PW 3 (Jhon @ Jal Mohammad) is merely on the point of occurrence. He stated about the factum of occurrence but without alleging any specific overt act against any of the eight accused persons including the present Appellants. From his examination-in-chief it is not clear as to whether he was an eye witness but in cross-examination the defence elicited from him that he was, in fact, an eye witness.

7. PW 4 (Jumman Mian) is a formal witness on the point of Inquest Report but the same was not put to him.

8. PW 5 (Muharram Mian) is next eye witness, who



stated that while he was at the gate of the mosque, the accused persons were litigating with each other at which deceased Khedan Mian told them not to make a noise since it was 1st January, but Appellant, Shaukat Mian, cut his stomach with *Daab* while rest surrounded him. When the deceased Firoz, son of Khedan Mian, rushed to save him, rest of the accused persons caught him while Appellant, Sohram Mian, assaulted him on the stomach on account of which he also died at the place of occurrence.

He stated in his cross-examination that he had seen the occurrence from the distance of 5-6 steps. However, he also stated that the Informant had reached five minutes after the occurrence when the deceased Firoz had already died, whereas, Khedan Mian was still breathing. He denied the suggestion that the Appellant, Shaukat Mian, had instituted a case against him in regard to the same occurrence and that, in fact, it was they who had assaulted the accused persons.

9. PW 6 (Abdul Mian) is the next eye witness, who stated that on the date of occurrence the accused persons were abusing each other, when the deceased Khedan Mian, who was in the mosque, tried to pacify them but instead while some of the accused persons caught hold of him, Appellant, Shaukat Mian, assaulted him on the stomach with *Daab* and also on the head. When Firoz tried to save him, Abbas caught him while Appellant, Sohram

Mian, cut his stomach by the big knife. Both of them died soon thereafter. He stated that on the date of occurrence it had become dark and also testified to the presence of the witnesses mentioned earlier. He stated that he was about three steps from Firoz when the occurrence had taken place.

There is nothing else which is of note in the cross-examination.

10. PW 7 (Dr. Rajendra Prasad Singh) held Post Mortem Examination of Firoz along with Dr. Alok Kumar. He proved the Post Mortem Examination Report as Ext.2 and found following injuries on his person:

- (i) Incised wound right thigh lateral side 1½" x ½" x skin deep
- (ii) Below Chest right side lateral portion incised wound 2½" x 2" x cavity deep.
- (iii) Some abdominal content producing outside.
- (iv) Chest left side below nipple incised wound 4" x ½" x cavity deep.

Internal Examination:

- (i) Chest- Lung left punctured by Injury No. (iv).
- (ii) Heart- Transversely incised 2" x ½" x cavity deep (Atrial region)

Time elapsed since death within 24 hours.

Weapon used- Sharp cutting weapon

Cause of death- Shock and haemorrhage caused by the above injuries.

11. PW 9 (Dr. Sachidanand Choudhary) is the next doctor who conducted Post Mortem Examination of Khedan Mian. He proved the Post Mortem Examination Report as Ext.2/1 and

found following injuries on his person:

- (i) Incised wound 7" x 1" x bone deep extending from right side fore head to front parietal area of scalp on right side.
- (ii) Incised wound 1½" x ¼" x cartilage deep over pinna of right ear.
- (iii) Incised wound 5" x 1½" x cavity deep on lateral part of chest wall.
- (iv) Incised wound 7" x 3" x cavity deep on left side of upper part of abdomen.

Stomach, Omentum and transverse colon coming out of wound.

Internal Examination:

Head & neck- skull bone in tact, brain and its meninges pale.

Chest- Cavity full of blood on left side. Puncture of left lungs and left vertical chamber of the heart empty.

Abdomen- blood in peritoneal cavity with puncture of omentum and mesentery and intestine. Spleen and diaphragm also punctured. Stomach was containing digested food material.

Cause of injuries- Sharp cutting substance

Opinion to cause of death- Haemorrhage and shock due to above injuries.

From both the Post Mortem Examination Reports, it appears that the injuries fully corroborate the prosecution story.

12. PW 8 (Krishna Murari Gupta) is the Investigating Officer, who stated that on 01.01.2009 while he was on his duty he heard two persons had been killed, at which, he proceeded to the place of occurrence and recorded the *fard-e-bayan* which he proved as Ext.3. He also proved the formal First Information Report as Ext.4. He stated that during investigation he examined number of witnesses as also inspected the place of occurrence which was

outside the mosque. He also examined DW 3 (Kadir Mian) and DW 4 (Gajadhar Sah) on the next day. After due investigation, he submitted charge-sheet.

In his cross-examination, we find that there is no contradiction on any point whatsoever.

13. The defence has examined five witnesses on various points materially differing with each other.

14. DW 1 (Azad Alam) stated that on the date of occurrence both the parties, who were in drunken state, had altercated with each other in course of which one Naseem and Khedan and Firoz (the two deceased) had assaulted the Appellant, Shaukat, with knife at which he was taken to the hospital for treatment. Thereafter Naseem and the two deceased Khedan and Firoz as also Abdullah, Moharram started assaulting each other in course of which Abdullah and Moharram caused death of Firoz and Khalid due to which they immediately died. He had given similar statement to the police.

15. DW 2 (Surendra Patel) stated that while he had organized a feast at his home he heard halla and found Appellant Shaukat Mian, Sohram Mian, Taiyab Mian coming from market Sheetal Bazar. Along with them were, Qadir Mian, Moharram Mian, and the two deceased, Khedan and Firoz. All of them were fighting with each other in course of which Appellant Shaukat Mian had

sustained a knife injury. He was then rushed for treatment. In the meanwhile, two deceased Khedan and Firoz, Abdullah and Moharram were still fighting in course of which both of them died.

However, in cross-examination, he stated that he was not an eye witness to the occurrence.

16. DW 3 (Kadir Mian) stated that on the date of occurrence while he was returning with Moharram, Abdullah, Naseem, Firoz, Shaukat, Taiyab and Sohram, who all were drunk, started fighting with each other in course of which Khedan assaulted Shaukat on account of which he was rushed to the hospital. At that time, Appellant, Shaukat, had about 10-15 thousand with him which was snatched by the two deceased Khedan and Firoz. For distribution of the said amount, a fight took place between Abdullah and Sohram and the two deceased in course of which they were assaulted. Both of them were killed. However, he stated that he could not see as to who assaulted because it was dark.

17. DW 4 (Gajadhar Sah) stated that on the date of occurrence a fight had ensued between Shaukat and deceased Khedan and Firoz in which course Shaukat had been injured for which he was removed to the hospital. Thereafter, two deceased were killed. However, he did not see the occurrence and this was the statement which he had given to the police as well.

His attention was drawn to the earlier statement

recorded under Section 161 Cr. P.C. which completely differs with what he has stated in his examination-in-chief.

18. DW 5 (Rabindra Singh) stated that he reached the place of occurrence on hearing halla and saw that the deceased Khedan Mian had assaulted Appellant Shaukat Mian with *Chura* and Shaukat was removed to the hospital by the father and brother. Thereafter, deceased Khedan Mian, Naseem Mian, deceased Firoz and the rest started fighting with each other for distribution of the money which had been snatched from the Appellant-Shaukat in course of which Khedan and Firoz sustained injuries and died.

In cross-examination, he has given graphic description as to how Shaukat Mian had been assaulted.

19. However, in order to create a reasonable doubt about the manner of occurrence and to some extent substantiate the defence of Appellant Shaukat Mian, we find that neither the Injury Report with regard to the injury allegedly sustained by him was brought on record nor has he stated about this fact in his statement under Section 313 Cr. P.C. which could have been considered by the Court. In such circumstances, we are unable to place any reliance on the evidence of the defence witnesses.

20. On going through the evidence of the witnesses discussed above, we find that there is complete consistency therein that the three Appellants caused death of the two deceased and such

corroborative injuries were found on the person of the deceased by the doctor. We also find that the Investigating Officer had recorded the *fard-e-bayan* soon after the occurrence and the First Information Report had also reached the Court very next day, thus, leaving no scope for speculating that there was an opportunity for improvement.

21. In such circumstances, we do not find any merit in the appeals.

22. In the result, all the appeals are **dismissed**.

(Anjana Prakash, J)

NAFR
J.Alam/-

(Rajendra Kumar Mishra, J)

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