

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.239 of 2013

Arising Out of P.S.Case No. -14 Year- 2008 Thana -BHELDI District- SARAN

Om Prakash Prasad S/O Late Mohit Mahto Permanent Resident Of Village -
Patarahikala, P.S. Bheldi, District - Saran

.... Appellant

Versus

The State Of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 275 of 2013

Arising Out of PS.Case No. -14 Year- 2008 Thana -BHELDI District- SARAN

Prem Kumar S/O Late Mohit Mahto Permanent Resident Of Village- Patarahikala,
P.S.- Bheldi, District- Saran

.... Appellant

Versus

The State Of Bihar

.... Respondent

Appearance :

(In CR. APP (DB) No.239 of 2013)

For the Appellant : Mr. Bindhyachal Singh, Advocate
Mr. Pramod Kumar, Advocate
Mr. Ajay Kumar, Advocate
Mr. Bipin Kumar Singh, Advocate
For the Respondent : Mr. S.N.Prasad, APP
Mr. Ajay Mishra, APP
For the Informant : Mr. K.K.Singh, Advocate
Mr. Amit Kumar Sinha, Advocate.

(In CR. APP (DB) No.275 of 2013)

For the Appellant : Mr. Bindhyachal Singh, Advocate
Mr. Pramod Kumar, Advocate
Mr. Ajay Kumar, Advocate
Mr. Bipin Kumar Singh, Advocate
For the Respondent : Mr. S.N.Prasad, APP
Mr. Ajay Mishra, APP
For the Informant : Mr. K.K.Singh, Advocate
Mr. Amit Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
and
HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SANJAY KUMAR)



Date: 30 -03-2017

Both the appeals filed by one appellant each arose out of Bheldi P.S. case No. 14 of 2008 lodged by Ranjit Kumar son of the deceased and two separate trials emerged out of the aforesaid case. In Sessions Trial No. 774 of 2008 the sole appellant of Cr. Appeal (DB) 239 of 2013 was put on trial whereas in Sessions Trial No. 446 of 2013 the sole appellant of Cr. Appeal (DB) No. 275 of 2013 was put on trial. To put the record straight, it may further be noticed that in Sessions Trial No. 774 of 2008 03 accused were put on trial. The trial of accused Mohit Mahto, father of the appellant, Om Prakash Prasad, stood abated on 27.06.2011, as he died during the pendency of the appeal and an affidavit to this effect was filed. The trial of co-accused Sheorato Devi (mother of two appellants herein) was separated. The learned XIth Additional Sessions Judge, Saran (hereinafter referred to as 'the Trial Court') by a separate judgment of conviction dated 14th February, 2013 passed in both the Sessions Trial held both the appellants guilty under Section 302/34 of the IPC. The appellant of Cr. Appeal (DB) No. 239 of 2013 was, however, acquitted of the charge under Section 307/34 of the IPC and appellant of Cr. Appeal(DB) No. 275 of 2013 was acquitted of the charge under Sections 307/34 and 324/34 of the IPC for want of sufficient evidence and by a separate order of sentence dated 20.02.2013 passed in both the trials sentenced both the appellants to



undergo R.I. for life and imposed a fine of Rs. 5000/- on them and in default of payment thereof they were directed to further undergo imprisonment for one year. Both the appeals are thus cognate and have been heard together.

2. The investigation of the case was set in motion when Ranjit Kumar(PW3) lodged a fardbeyan (Ext.4) before the Station House Officer, Bheldi P.S. on 20.04.2008 at 11:45 hours alleging that on 20.04.2008 at about 9:30 hours, the family members including the deceased were inside the house. Some noise of abuse was heard at the 'Darwaja' whereafter the deceased came out at the 'Darwaja' where the accused persons were seen abusing the deceased. His father said that the land dispute had already been settled, and as such, they should forbear from doing so whereon all the four accused persons caught hold of the deceased and appellant Prem Kumar inflicted a dagger blow on the chest of the deceased who on receiving the injury fell on the ground and started screaming. On 'hulla' his mother (PW1), sister Asha Kumari injured; not examined and Amisha Kumari (PW-2) and other family members also reached the 'Darwaja' and witnessed the assault being made by the accused on the deceased. It is further alleged that in the said occurrence one of the sisters of the informant, namely Asha Kumari also received injuries on her head at the hands of the accused(s). The reason for occurrence was litigation between them since last several years in which a



panchayati was also held. The injured was immediately carried to the nearby Primary Health Centre at Garkha where he was declared brought dead whereafter the dead body was again brought to the house. The accused persons were the father and step mother of the deceased and their two sons (appellants herein) born from the second wife of the father of the deceased.

3. The Officer in charge (PW-6), on receiving information about the murder of one person in the village arrived at the place of occurrence immediately and recorded the fardbeyan of PW-3 on the same day at 11:45 hours. An investigation thereafter ensued wherein the death inquest report (Ext.5) was drawn by the Investigating Officer(I.O.) and the dead body was thereafter dispatched to the District Hospital at Chapra for post mortem. A formal FIR (Ext.6) was drawn. On inspecting the place of occurrence and promptly recording the statement of the witnesses and after obtaining the post mortem report (Ext.2), the investigation was concluded and finding the accusation true against the accused persons including the appellants the charge sheet was laid on 5.6.2008 by PW-7.

4. Be it noted that PW-7 took over the investigation from the SHO of the police station (PW-6) on 5.6.2008 and after effecting arrest of one of the accused(s) and executing the processes under 82-83 of the Cr.P.C. against some of the accused(s),



he laid the charge sheet. Cognizance was, accordingly, taken and the case was later committed to the Court of session. As the investigation in respect of appellant Prem Kumar was kept pending and later charge sheet was filed which gave to two trials .

5. The charges were framed and read over to the appellants to which they pleaded not guilty and claimed to be tried.

6. In Sessions Trial No. 774 of 2008 eight prosecution witnesses were examined on behalf of the prosecution to prove the charge against the appellant beyond shadow of all reasonable doubt. Few documents such as post mortem report (Ext.2), injury report of the sister of the informant (Ext.3), Fardbeyan (Ext.4), death inquest report (Ext.5), formal FIR (Ext.6), written report of the deceased giving rise to Bheldi P.S. case no. 34 of 2007 dated 18.04.2007 (Ext-7), death certificate of Asha Kumari (Ext. 9) were proved. As there were two distinct trials almost all the witnesses of the prosecution examined in sessions trial no. 774 of 2008 were re-examined as prosecution witnesses in Sessions trial no. 446 of 2011. Exhibits were also proved in the said trial.

7. For the sake of convenience, we would refer to the prosecution evidence and the documents as numbered in Sessions trial No. 774 of 2008.

8. We would first examine whether the death of the deceased was homicidal or not. The death of the deceased was



homicidal is not much in dispute. The FIR alleges assault by dagger/knife on him on the relevant date and time of occurrence . (PW-6) carried the death inquest proceeding (Ext.5) of the body and found that the deceased had been killed by inflicting sharp cut/penetrating injury on the right side of his chest. In the post mortem report (Ext.2) held by PW-4 on 20.4.2008, the following injuries were found on the person of the deceased:-

“External injury:

(i)sharp cutting penetrating injury on right intraclavicular region and mid clavicular line just 1” below the mid clavicular area 3”x 1½”x cavity deep

On dissection: Injury to right lung upper lobe and incised injury 1 ½”x1” upper lobe. Heart-complete transaction of the superior venacava

The doctor opined the cause of death due to shock and hemorrhage caused by sharp /penetrating wound/injury such as ‘Chaku’/dagger.

9. The aforesaid evidence/material, placed on record by the prosecution clearly establish that it was a case of homicidal death of the deceased due to the injuries sustained by him on the relevant date and time of occurrence. Now the crucial point is whether the prosecution has been able to prove the complicity of the appellants in the crime beyond shall of reasonable doubt. Related question would be whether the prosecution has been able to establish the place of occurrence and the manner of occurrence as alleged by the prosecution. Although motive for occurrence of such nature would not be of much relevance but in the case in hand a specific reason has



been assigned by the prosecution. The Court would also examine whether the motive to commit the crime, as alleged by the prosecution has been adequately proved or not.

10. PW-1 Raj Kumari Devi is wife of the deceased who on the relevant date and time of occurrence was present in the house and is said to have come out soon after the deceased had come to 'Darwaja' on hearing the noise/abuse made/hurled by the accused persons. PW-2 is the daughter of the deceased who too was present in the house and claims to have witnessed the occurrence. PW-3 is the son of the deceased and the informant of the case. PW-4, Dr. Rameshwar Prasad is the Medical Officer, Sadar Hospital, Chapra who conducted the post mortem on the cadaver and proved the post mortem report (Ex.2). PW-5 Dr. Mukteshwar Lal Das had examined Asha Kumari, one of the injured in the said occurrence. PW-6, as noticed above, is the Station House Officer who not only recorded the 'fardbeyan' but also conducted the investigation which was later handed over to PW-7 who submitted the charge sheet. PW-8 Hareesh Ojha is a formal witness who has proved the formal FIR (Ext.8).

11. We have heard Mr. Bindhyachal Singh who has appeared on behalf of both the appellants, Mr. Krishna Kant Singh for the informant and Mr. S.N.Prasad APP for the State.

12. Mr. Bindhyachal Singh has criticized the



impugned judgment of conviction on several grounds. It has been submitted that if the evidence of PWs- 1 and 2 are read between the lines, it would appear that they have not actually seen the actual assault perpetrated on the deceased. They have also not named the informant (PW-3). Specifically the evidence on record would suggest that informant (PW-3) was actually not present and was later projected as the eye-witness who lodged the case. The evidence adduced by the prosecution is clear on the point that the victim on receiving the injury was taken to the Primary Centre at Garkha where he was declared dead and thereafter the persons accompanying him brought the dead body back to the house and placed on the 'Darwaja'. The FIR was not promptly recorded. Only upon arrival of the PW-6 on getting an information about killing of one person in the village, the 'fardbeyan' was lodged. The death inquest proceeding was carried out before recording of the 'fardbeyan'. This is again intrigue. He has further submitted that if the oral evidence of the relevant witness is to be believed then the Panchayati with respect to the land dispute had already taken place in 2004 wherein a 'Panchnama' was also created. Four years thereafter the present occurrence had taken place. Referring to the suggestion given to the witnesses, it has been submitted that deceased himself was the greedy person as he had removed his full brother in order to grab his share in the property. To top it all, no independent witness had taken



the dock to support the prosecution case except the kith and kin of the deceased.

13. In contra, the learned APP for the State conversely submitted that in this case all the three witnesses are eye witnesses to the occurrence and they have categorically stated that the appellants and their family members who are the agnates of deceased and residing just by the side of his house, came and abused the deceased. They caught hold and assaulted the deceased by a dagger. They have consistently deposed on the manner of assault for the land dispute. The FIR was recorded immediately after the occurrence. The prosecution has been able to prove the motive of committing murder of the deceased also. There is absolutely no contradiction in the evidence of prosecution witnesses. The court below has rightly held both the appellants guilty and convicted for the offence and so the appeals have no merit.

14. Now in view of the submission made on behalf of both the parties, we would like to evaluate the evidence on record to find as to whether the prosecution has been able to prove the guilt of the appellants beyond shadow of all reasonable doubts.

15. In this case, all the three witnesses (PWs.1, 2 and 3) examined as eye witnesses to the occurrence are family members of the deceased related as widow, daughter and son respectively. All the witnesses claim that they were present in their



house at the time of occurrence. The appellants and their family members came at their Darwaja and started making noise and abusing. The deceased hearing the noise came out and saw the accused abusing. The deceased tried to made them understand that as the land dispute has been settled, then why were they creating the trouble. Thereafter, the appellants and their family members caught hold of him and appellant Prem Kumar inflicted dagger on his chest. The widow of deceased (PW-1) her daughter (PW-2) and another daughter Asha Kumar (since dead) came out from the house and saw the occurrence. The witnesses with the help of people who immediately reached at the place of occurrence moved the injured to Garkha hospital where the deceased was declared dead. The counsel for the appellants has seriously challenged the presence of the informant at the time of occurrence. It was submitted that he was a college going student aged about 19 years and at the relevant time he might have gone to college. Had he been in the house, he would have proceeded ahead to rescue his father. The mother and sister have not stated about his presence at the place of occurrence. In this regard, the counsel for the APP while controverting the submissions pointed out that on the date of occurrence, it was Sunday and so the presence of the informant cannot be doubted in any manner. From the evidence of the prosecution witnesses, it appears that the informant and his family members with the help of local people moved the victim to Garkha



hospital where he was declared dead. We have very minutely perused the evidence of all the three witnesses recorded by trial court in two different Sessions cases on two different occasions after a gap of two years. The informant has been cross-examined by defence in detail in both the cases and in his cross-examination, we do not find that any suggestion to this effect that he was not present in the house at the time of occurrence. The dead body was brought back to the place of occurrence from the hospital where the investigating officer (PW-6) prepared inquest report Ext-5 and sent the dead body for postmortem examination. He recorded the fardbeyan of informant at 11.45 A.M. and statement of his mother and two sisters. The informant has stated that he also came out from the house and moved the deceased and injured sister to Garkha hospital. In cross-examination, the investigating officer, PW-6 at para-31 has stated that the informant had stated that he came out from the house at the time of occurrence. In the cross-examination of investigating officer, the defence has not given any suggestion to this effect that the informant was not present at the place of occurrence at the relevant time. The I.O. at para-16 has narrated about the geographical topography of the place of occurrence. From his evidence, it appears that the deceased and appellants have got their houses adjoining to each other facing north having a village road after few paces. The deceased came out from his house and was stabbed by the appellants at the door step itself. The



investigating officer has found profused bleeding also at the place of occurrence. The witnesses have further stated that the appellants assaulted Asha Devi who was treated at Garkha hospital on the same day, i.e., 20.04.2008. She was subsequently treated at Patna for few months but on account of her death during trial, she could not be examined.

16. The counsel for the appellants has seriously challenged the treatment of Asha Devi on 20.04.2008 at Garkha PHC. He cited the injury report of Asha Devi which is marked as Ext-3 and also the evidence of PW-5 (Dr. Mukteshwar Lal Das). This witness in his evidence has stated that on 24.04.2008 he was posted as Medical Officer and on that day at 03 P.M. he had examined Asha Kumari and found sharp cut injuries on occipital part of skull 4"x1/2"x1/4" caused by sharp object such as farsa. The counsel for the appellants referred the date of occurrence mentioned in the fardbeyan which is 20.04.2008. This shows that the injured Asha Kumari was treated after four days of the occurrence which falsify the prosecution case that the sister of the informant had sustained injuries in the said occurrence and she was treated on the same day, i.e., 20.04.2008 at Garkha hospital. In order to find the truth, we perused the injury report Ext-3. We find that the investigation officer referred the injured Asha Kumari for her treatment and injury report on the date of occurrence itself, i.e., 20.04.2008. The doctor (PW-5) examined the



injured and prepared report on the reverse of requisition slip of investigation officer. All the three witnesses have stated that injured Asha Kumari was assaulted by appellant Om Prakash Prasad by Farsa on her head on 20.04.2008 and she was moved to Garkha hospital immediately along with the deceased. She was treated by doctor and after few days, the informant took her to Patna for better treatment. There is neither cross-examination nor any suggestion to any witness that she did not sustain injury or was not treated at Garkha hospital on 20.04.2008. We further find that the doctor in the injury report Ext-3 itself has written that he examined Asha Kumari (injured) on 20.04.2008 at 3 P.M. The investigating officer (PW-6) at para-10 has stated that he also observed the injuries on the person of Asha Kumari and sent her to PHC Garkha for her treatment and injury report on the same day. Thus in view of evidence of all the three eye witnesses, investigation officer and Ext-3, we have no doubt in our mind that the injured Asha Kumari was not treated on 20.04.2008. The statement of doctor PW-5 as regards treating the injured on 24.04.2008 is a mere omission on his part and for this omission of doctor, the evidences of eye witness and Ext-3 (injury report) which bears date 20.04.2008 cannot be brushed aside.

17. It was also contended that the inquest report does not bear signature of informant which also creates doubt over his presence at the place of occurrence at the relevant time. This submission in our



view is of no relevance as the presence of informant stands established from the evidence of witnesses and recording of his fardbeyan by investigating officer. So far examination of other local witnesses is concerned, we find that these days, it is seen that the public are generally reluctant to come forward to depose before the investigating agency or Court against the assailant unless he is closely related with the victim and only family members or closely associated people only move forward to support the case or depose against the actual assailants to get them punished. We have already discussed above that the family members who were present in the house appeared on Darwaja and saw the occurrence. The family of the informant and appellants have got their houses adjoining to each other and in the boundary of place of occurrence, the investigating officer has mentioned vacant land of Rajendra Prasad towards south. Thus, we find that the investigating officer has recorded the evidence of only those persons who actually saw the occurrence.

18. The counsel for the appellant has further submitted that the prosecution has failed to prove the motive of the appellants in committing the murder of the deceased. The appellants are agnates of the deceased and they are separate from each other. They are residing separately. The witnesses have stated that as per Panchayati, the family properties have already been portioned and so there was no occasion for the appellants or their family members to quarrel with the



deceased for land dispute. In this regard, we examined the evidence on record. In fardbeyan, we find that the father of appellants was nursing grudge against the deceased as he was demanding land beyond his share which was given as per decision of Panchayat. From the evidence of prosecution witnesses and statement of appellants recorded under Section 313 Cr.P.C., we find that the father of deceased had two wives. The deceased was the son from the first wife whereas the father of the appellants from second wife. The appellants and their parents were claiming more share in the property. They were objecting the decision of the Panches. In fardbeyan, Ext-1 the informant has stated that on the date of occurrence, the appellants came and started abusing the deceased and his family members whereupon the deceased came and asked them as to why they were raising voice with respect to the landed property which has already partitioned in the year 2004. We have also perused the statement of appellants recorded under Section 313 of the Cr.P.C. wherein both the appellants have stated that deceased Yogendra Yadav was the step brother of their father and there was dispute for partition of residential land. The prosecution has further filed Exts-7 and 8 to show that the appellants and his family members had committed overt-act on earlier occasion also for which the deceased had lodged Bheldi P.S. Case No.34 of 2007 for the offence under Sections 323, 379 and 504/34 of the IPC. In the written report Ext-7, the deceased had stated that the



appellants and their father were intending to grab the land of his share which was given to him by a Panchayat and the appellants and their family members abused and assaulted the deceased on 15.04.2007. These two documents go to show that the appellants and their father were adamant to take more share/land in residential house from the deceased. They had committed overt-act also on earlier occasion for which the deceased had lodged Amraur P.S.Case No.34 of 2007 against the appellants. Thus, we find that the prosecution has been able to prove the motive also.

19. In view of above facts and discussions made above, we find that the prosecution has been able to prove the guilt of both the appellants beyond shadow of all reasonable doubt. The learned trial Court rightly found and held the appellants guilty and convicted.

20. For the reasons stated above, we do not find any merit in the appeals. Accordingly, both the appeals are dismissed.

(Sanjay Kumar, J)

I agree

(Kishore Kumar Mandal, J)

B.Kr./-

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