

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.177 of 2015**

Arising Out of PS.Case No. -25 Year- 2011 Thana -KAJRA District- LAKHISARAI

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Doman Mandal, son of Late Kishori Mahto, resident of village- Khaira Police Station- Piri Bazar, District- Lakhisarai

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Pankaj Kumar Sinha-Advocate
Mr. Ravi Bhushan-Advocate.
Mr. Rakhi Kumari-Advocate

For the Respondent/s : Smt. Abha Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 12-09-2017

Appellant, Doman Mandal, has been convicted for an offence punishable under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for seven years with a further direction to set off regarding the period already undergone during course of trial under Section 428 of the Cr.P.C. vide judgment of conviction dated 27.02.2015 and order of sentence dated 28.02.2015 passed by the Adhoc Additional Sessions Judge-5th, Lakhisarai in Sessions Trial No.472 of 2013.

2. PW-5, Rajendra Tanti gave his fard-bayan on 03.07.2011 at about 10.00 p.m. near Kajra Railway crossing disclosing therein that while he was at his house, at about 8.45 p.m., he received information that his sister Lalpari Devi is groaning on



account of injuries inflicted upon her by her husband Doman Mandal with Chhura. On this information, he along with others came at the place of occurrence and found his sister dead. On query, people have disclosed him that at about 8.30 p.m., his sister as well as brother-in-law quarreled over an issue and during course thereof, Doman Mandal began to give indiscriminate Chhura blow as a result of which, she became injured and died. Her husband Doman Mandal fled there from with Chhura. It has also been incorporated that his sister Lalpari was married at different place, but on account of separation from her former husband, she was maintaining herself doing vegetable vending and during course thereof, she on her own, court-married with Doman Mandal, who also happens to be married since before. Then thereafter, they hired a room and were residing. Now-a-days, they have developed some sort of strained relationship on account of monetary differences and in the aforesaid background, Doman Mandal has murdered his sister.

3. After registration of the case as Kajra P. S. Case No.25 of 2011, investigation commenced and after concluding the same, chargesheet was submitted whereupon trial commenced and concluded in a manner, the subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, neither any DW nor any



chit of paper has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether nine PWs, who are PW-1 Awadh Ram, PW-2 Bindeshwari Sao, PW-3 Dilip Kumar, PW-4 Pintu Kumar, PW-5 Rajendra Tanti, PW-6 Lakhan Tanti, PW-7 Shyam Nandan Mahto, PW-8 Dr. Kumar Ranjan and PW-9 Devendra Narayan Singh. Side by side, had also exhibited the document viz. Exhibit-1 signature of informant over fard-bayan, Exhibit-1/1 fard-bayan, Exhibit-1/2 endorsement over fard-bayan, Exhibit-2 post mortem report, Exhibit-3 inquest report, Exhibit-4 formal F.I.R.

6. Now, coming to evidence of the PWs, it is evident that though the witnesses have stated with regard to commission of murder of Lalpari, but some of them disowned to be an eye witness to an occurrence and on that very score, PW-2 Bindeshwari Sao was declared hostile. While the status of PW-3, PW-4 and PW-5 are completely hearsay as subsequently, they came to know with regard to murder of Lalpari Devi by Doman Mandal. They have also stated that they both were identified as spouse and were living conjointly.

7. Now, remains PW-1 as well as PW-6. These two witnesses claimed to be an eye witness to occurrence. PW-6 is the father of the deceased. During his examination-in-chief, he had stated that at the time of occurrence, he was present at the vegetable shop of his daughter Lalpari where Doman came. At that very time, his



daughter was weighing vegetable. No sooner than arrival at the spot, he (Doman) began to inflict repeated Chhura blow, as a result of which, she died out of her shop. During cross-examination at Para-5, he had stated that he tried to apprehend the accused over which, he was pushed away as a result of which, he fallen down and sustained fracture of his hand. He got it treated at Munger. Then, there happens to be cross-examination with regard to previous marriage of the deceased. In Para-8, his attention has been drawn up with regard to his previous statement wherein he had not claimed to be an eye witness to occurrence, but the reason best known to the defence while cross-examining PW-9, I.O. his attention was not drawn up and so, that part became worthless. At Para-9, he had stated that he is not deposing falsely. He was at the place of occurrence at the time of occurrence. Blood had spread over whole area. Police had come in his presence. They have seen. Then, there happens to be suggestion at the end of the defence whereunder it has been suggested "it is not a fact that no blood had fallen over the place of occurrence." He had further stated that he is not aware whether I.O. had found blood at the place of occurrence or not. In Para-11, he had stated that his daughter was living on rent at the place of Guddu Singh. She was not residing at his place. Then had stated that it was dark night. Then had denied the suggestion that he had made statement before the police that he came to know that there was quarrel amongst the spouse. Again this part has



not been tested from PW-9, I.O. Then at Para-12, there happens to be suggestion that on account of considering the conduct of the deceased, he along with Rajendra Tanti, Nageshwar Tanti committed murder of Lalpari Devi at different place and then, brought her dead body south to her shop and then, to save their skin, got this false case filed. In Para-13, he had further stated that shop was over railway land. She had taken settlement. The dead body was recovered from the place which also happens to be railway land. Further, rail police had not come.

8. PW-1 had deposed that Lalpari is dead, she died about three years ago. She was murdered by Doman Mandal by means of Chhura. Doman and Lalpari were spouses. They both used to quarrel frequently. At about 8.00-8.30p.m., she was murdered by means of Chhura. At that very time, he was about to close his shop. It was raining. He had further stated that at the time of assault, Doman Mandal was drunk. He had worn vest and Lungi. He used to assault frequently on being instigated. On account of Chhura blow, she died. Identified the accused. During cross-examination at Para-4, he had stated that house of Lalpari lies at village-Mananpur. She was doing business in vegetable 10-20 yards away from Kajra crossing. He has also got tea stall nearby. At the time of occurrence, he was about to close his shop. At that very time, there was uproar, whereupon had seen the occurrence. At Para-5, he had deposed that while Chhura



blow was being given, he was in a mood to close his shop. During midst thereof, the occurrence was completed. All the shops got closed within half an hour of occurrence. After the occurrence, all the shopkeepers left for their house after closing their respective shops. He also closed his shop and gone to his house. At Para-6, he had stated that his kiosk lies south to Kajra Railway Station Road. Police had not come at that very time. Police came after 2-4 days and took his statement. House of Doman Mandal lises at Khaira. At Para-7, he had deposed that he heard alarm relating to infliction of Chhura blow and had also seen the same. Again said that he had not seen inflicting Chhura blow. Again, said that he had seen Doman Mandal fleeing there from with Chhura. Again said that the occurrence took place in his presence. Again said that he had not seen the assault. Then said that he had not seen the wearing of Lalpari, but again corrected as Sari and blouse. In Para-8, he had stated that Chhura blow was given over stomach. Blow was given at both side of stomach, which he had seen. He is not remembering how many places, Chhura blow was given. Lalpari was there for the last 2-4 years. She was residing in market on rent. Then there happens to be cross-examination over inter se relationship. In Para-13, he had stated that he is not aware with regard to character of Lalpari. He had simply deposed over the occurrence which took place near him.

9. PW-7 is the part I.O., who had arrested the appellat



and then, submitted chargesheet. PW-9 is the main I.O., who had deposed that he was entrusted with the investigation of Kajra P.S. Case No.25 of 2011, whereupon proceeded therewith. He had exhibited the inquest report. Searched out the accused, who was found absconding. On the following day, he took statement of Lakhani Tanti and then, reached at the place of occurrence and inspected the same. P.O. happens to be a hut belonging to the deceased by the side of Railway Track over Kajra Railway Station Road having southern front. It has got bamboo peg, roofed by joot bag. He had not found anything objectionable. He had recorded statement of other witnesses at the place of occurrence and then returned back. Also took further statement of Rajendra Tanti, procured post mortem report. As he was transferred on account thereof, he handed over investigation. He had also exhibited fard-bayan happens to be in his pen, endorsement having made by the O/c. In Para-8 of his cross-examination, he had admitted that he had not mentioned in the case diary with regard to presence of blood at the P.O. He had not mentioned the same. Whatever he found at the P.O., he had incorporated those things. He had not found any vegetable. In Para-9, he had further admitted that he had not mentioned the fact that, who had shown the P.O. In Para-10, he had further stated that on 04.07.2011 itself he had recorded statement of all the witnesses. He had further stated that he had found anything from which, it could be said that by way of Chhura blow,



murder was committed at that very place. Then had denied the suggestion that he had conducted faulty investigation.

10. PW-8 is the doctor, who had conducted post mortem over the dead body of Lalpari on 04.07.2011 and found the following injuries:-

I) Penetrating wound of size 1" x ½" and skull deep over left temporal region of skull.

II) Penetrating wound of size 1 ½" x ½" x Muscle deep on left side of upper neck just between the mandible.

III) Penetrating wound of size 1" x ½" x chest cavity deep on left side of back of chest just below the anterior angle of scapula.

IV) Penetrating wound of size 1" x ½" x chest cavity deep on left side of chest in posterior auxiliary line.

V) Penetrating wound of size 1" x ½" x abdominal cavity deep on left loin.

VI) Penetrating wound of size 1" x ½" x chest cavity deep on the back of chest lower part of the right side of chest back infra scapular.

VII) Penetrating wound of size 1" x ½" x muscle deep left forearm upper part interiorly.

VIII) Penetrating wound of size 1 ½" x ½" x muscle deep on right forearm upper part interiorly.

IX) Penetrating wound of size 1" x ½" x



muscle deep right forearm posto-laterally upper part.

2. On dissection:- I) on opening of skull, skull cavity was filled with blood and blood clot, left temporal bone was found fractured, brain matter was found lacerated.

II) On opening the thoraco abdominal cavity right side of chest was found filled with blood and blood clots, left kidney was found lacerated, right wing was found lacerated through and through.

3. Death in his opinion was due to shock and haemorrhage as a result of above mentioned injuries caused by penetrating weapon.

4. Time elapsed since death within 24 hours.

11. From the evidence available on the record, it is apparent that Lalpari was done to death by means of indiscriminate Chhura blow, which has been found by the doctor (PW-8). Now, the only question hinges, who is the author of the aforesaid ante-mortem injuries. As indicated above, PW-2, PW-3, PW-4 and PW-5 either became hostile or happens to be hearsay, but inter se relationship happens to be admitted at their end. So far PW-6 his father is concerned, though he had himself claimed to be an eye witness of occurrence, but his son PW-5 had not shown his presence either at the initial version or during course of trial. Furthermore, as is evident from evidence of PW-6, he had shown presence of PW-5, informant,



his son at the P.O. while he was also present. Police had also arrived, then in that event, it was expected at his end to have projected himself as an informant or his presence would have been in the fard-bayan of PW-5 as one of the eye witness. Apart from this, though during course of cross-examination, he had stated that he tried to rescue his daughter and during course thereof, was pushed by the appellant Doman Mandal as a result of which, he sustained fracture of hand and the same was treated at Munger, then in that event, his presence at the P.O. became doubtful and in likewise manner, there happens to be no supportive evidence to infer that he sustained fracture injury on the alleged date and time of occurrence and in likewise manner, was treated for the same. Then coming to the evidence of PW-1, certainly fard-bayan did not speak with regard to presence of any of the witnesses. Fard-bayan did not speak with regard to presence of any shop near about the place of occurrence nor I.O., PW-9 during course of inspection of the P.O., had shown presence of any shop in the surrounding. However, during course of cross-examination, the defence had not cross-examined or challenged status of the PW-1 that of tea vendor having his tea stall near the P.O. Moreover, from his evidence, it is apparent that no source of identification has been disclosed. In likewise manner, there happens to be complete absence with regard to presence of lampar bulb at the P.O., which could have been the source of identification nor, the I.O. had pointed the same. In



the aforesaid background, coupled with the fact that he himself admitted that he was going to close his shop, then certainly all the lights, if any, would have been switched off. Though none had spoken that their shops were electrified. In the aforesaid background along with fact that he happens to be inconsistent over his status either to be an eye witness or hearsay witness or chance witness did not inspire confidence and the cumulative effect in spite of presence of several ante-mortem injuries over the dead body of Lalpari could not give any supporting link to infer appellant to be author of the crime. As such, it is found and hold that prosecution failed to substantiate its case by way of proper identifying the appellant to be responsible for causing murder of the deceased.

12. That being so, the judgment of conviction and sentence recorded by the learned lower Court is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liabilities.

(Aditya Kumar Trivedi, J)

Vikash/-

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