

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.182 of 1994

(Against the judgment of conviction dated 23.02.1994 and order of sentence dated 24.02.1994 passed by Shri Philip Topno, learned 5th Additional Sessions Judge, Begusarai in Sessions Case No. 218 of 1989, arising out of Phulwaria P.S. Case No. 51 of 1989)

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1. Naresh Chaudhary, son of Sukho Chaudhary		
2. Balram Chaudhary, son of Sukho Chaudhary		
Both residents of Village- Sokhara, Police Station- Phulwaria, District- Begusarai.		
		Appellant/s
	Versus	
The State of Bihar		
		Respondent/s
	with	

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Criminal Appeal (DB) No. 188 of 1994

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Gopal Choudhary @ Gopal Singh, son of Rajendra Singh, resident of Village- Rampur, Police Station- Suryagarha, District- Munger.		
		Appellant/s
	Versus	
The State of Bihar		
		Respondent/s

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Appearance :
(In CR. APP (DB) No.182 of 1994)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Nilesh Kumar, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP
(In CR. APP (DB) No.188 of 1994)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Nilesh Kumar, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)
Date: 14-10-2017

Both the appeals have been filed against the judgment



of conviction dated 23.02.1994 and order of sentence dated 24.02.1994 passed in Sessions Case No. 218 of 1989, arising out of Phulwaria P.S. Case No. 51 of 1989, whereby the learned 5th Additional Sessions Judge, Begusarai convicted Balram Chaudhary and Naresh Chaudhary for the offence under Section 302 of the Indian Penal Code. All the appellants have been further convicted under Sections 302/149 of the Indian Penal Code. The appellants Balram Chaudhary and Naresh Chaudhary have been sentenced to undergo imprisonment for life under Section 302 of the Indian Penal Code. The appellants Sukhdeo Chaudhary and Gopal Chaudhary have been sentenced to undergo imprisonment for life under Section 302/149 of the Indian Penal Code. However, no separate sentence has been passed against the appellants Balram Chaudhary and Naresh Chaudhary under Section 302/149 of the Indian Penal Code. The period of detention was directed to be said set off for the period of sentence incurred during trial.

2. Against the judgment of conviction dated 23.02.1994 and order of sentence dated 24.02.1994 passed in Sessions Case No. 218 of 1989, three appeals were filed, namely, Cr. Appeal (DB) Nos. 93 of 1994, 182 of 1994 and 188 of 1994. The appellant Sukhdeo Chaudhary (Cr. Appeal (DB) Nos. 93 of 1994) has died during the pendency of appeal and as such Cr. Appeal (DB) Nos. 93



of 1994 has been abated. Remaining two appeals i.e. Cr. Appeal (DB) Nos. 182 of 1994 and Cr. Appeal (DB) Nos. 188 of 1994 arises out of the same common judgment and as such both the appeals are heard together and disposed of by this common judgment.

3. The prosecution case in brief is as follows:

The informant Bimla Devi in her Fardbeyan recorded on 31.08.189 at 1.45 P.M. stated that on 31.08.1989 at about 12.00 noon she was sitting near her Door situated in village Sokhara, P.S. Phulwaria, District Begusarai. In the meantime, her daughter Sita Devi was coming to her house from Begusarai. The informant further stated that when Sita Devi reached near the house of Madho Singh, accused Sukho Choudhary and Bishundeo Choudhary (since dead) shouted from their house that Sita Devi should be killed. Thereupon accused Naresh Choudhary, Balram Choudhary and Gopal Choudhary came near Sita Devi and accused Naresh Choudhary and Balram Choudhary gave Farsa blows on her head and neck due to which she fell down at the place. Accused Gopal Choudhary also gave lathi blows on her person. She became unconscious. She was taken to Sokhara State Dispensary where she succumbed to the injuries. The motive of the occurrence was that the informant written her own land in favour of Sita Devi, this was protested by the accused persons, who



were her own relatives.

4. On the basis of the fardbeyan of the informant Phulwaria P.S. case no. 151 of 1989 was registered for the offence under Sections 326, 307/34, 120B and 302 of the Indian Penal Code.

5. The police after investigation submitted charge-sheet. Thereafter the learned Magistrate took cognizance for the offence under Sections 302/120B/34 of the Indian Penal Code and the case was committed to the Court of Sessions for trial. Thereafter charges were framed and the accused persons pleaded not guilty and claimed to be tried.

6. The prosecution has examined 8 witnesses during course of trial. P.W.1 is Ram Bilash Pandit, P.W.2 is Chandra Kumar Rai, P.W.3 is Dinesh Kumar Singh, P.W. 4 is Bimla Devi, P.W.5 is Dr. S. R. Ray, P.W. 6 is Satya Narain Singh, P.W. 7 is Dr. B.C. Choubey and P.W. 8 is Lalan Kumar Mishra. Out of 08 witnesses, P.W.3 is the full brother of the informant, P.W.4 is the informant and the mother of the deceased, who claimed to be the eye witness of the occurrence. P.W.1 and P.W.2 are the witnesses, who have signed the seizure list. P.W. 5 is the doctor, who has examined the injured, P.W.7 is the other doctor, who conducted the post-mortem of the deceased on 01.09.1989. P.W.6 is the investigating officer of the case. P.W.8 is



the formal witness.

7. Mr. Ajay Kumar Thakur appearing on behalf of the appellants has made his submission that the appellants have been convicted in the instant case on the basis of concoction and falsehood. The entire story of the prosecution is unfounded and baseless, yet the trial court has convicted the appellants in the instant case.

8. Mr. Ajay Kumar Thakur, counsel appearing on behalf of the appellants submits that the fardbeyan was lodged by the informant (P.W.4) on 31.08.1989 at 1.45 P.M. in the Sokhara State Dispensary, where she narrated that she was sitting at her door. She saw her daughter returning from Begusarai and when she reached near the house of Madhav Singh then Sukho Chaudhary, Bishundeo Chaudhary challenged from there to kill Sita Devi (deceased) and thereupon Naresh, Balram, son of Sukho Chaudhary, Gopal Chaudhary, son of Rajendra Chaudhary, reached near Sita Devi and Naresh and Balram Chaudhary have assaulted on the head and neck of Sita Devi, which caused injury to her daughter and she fell down and thereafter Gopal Chaudhary has assaulted from Lathi on other parts of the body of Sita Devi. She has stated in her fardbeyan that the reason of killing of Sita Devi was that the informant has transferred her land



in favour of Sita Devi and these people were opposing such transfer of land and that is the reason they have assaulted and injured her daughter Sita Devi.

9. Mr. Thakur thereafter referred to the deposition of the informant (P.W.4), who reiterated the reason of killing of her daughter on the ground that she has gifted three Bighas of land to her daughter, which is the cause of occurrence. In para 3 of his deposition she admitted that her father-in-law, who was also made accused in this case and died before trial, has donated three Bighas of land to her daughter, because her husband had died. In para 7 she has stated that Bishundeo Chaudhary is her father-in-law, who voluntarily transferred the land in favour of her daughter. She also admitted that her daughter was married 10-12 years back and the entire expenditure of the marriage was incurred by her father-in-law. She has stated that the relationship of her daughter and son-in-law was not cordial and her son-in-law was pressurizing her daughter to sell the said land, so that he may carry business out of the sale proceeds of such land. She has stated in para 9 that my brother was with me at the time of occurrence, who came out first and I followed her and when I reached the ditch, the accused persons were fleeing away. I saw my daughter unconscious and blood was there near the ditch. Since her brother was standing there, therefore, she has not called anyone for help and she



lifted her daughter. Then she said that the accused made attempt to assault her brother, who flee away. Mr. Thakur referring to the deposition of P.W.4 has stated that there is contradiction in the version of the informant in her fardbeyan and in the deposition before the Court. He submitted that the motive attributed for commission of offence in the fardbeyan stands belied in her cross-examination where she has admitted that her father-in-law has voluntarily transferred land in favour of her daughter. She also admitted that her father-in-law made entire expenditure of the marriage of her daughter and as such the motive behind killing of the daughter of the informant stands belied. In this case, the informant in para 8 of her deposition stated that her daughter was returning alone from Begusarai and Gopal (son-in-law) has not accompanied her. Adverting to the deposition of P.W.3 Mr. Thakur submitted that from the deposition of P.W.3 contradictions in the version of the prosecution can be gathered, the statement of P.W.3 stands different from the story narrated by P.W. 4 as to the manner of occurrence. P.W.3 has stated that Sita Devi is my Bhagini. When he reached near the house of Madho Singh then Balram and Naresh Chaudhary equipped with Farsa and Naresh Chaudhary armed with pistol also assaulted the deceased Sita Devi. This witness has stated that Sita Devi was accompanied by her husband Gopal Singh, which was not the case of the informant. He



has also introduced story of Naresh equipped with pistol contrary to the version of the informant. According to this witness, Balram Chaudhary assaulted from Farsa, which cause injury on the head of the deceased, who fell down in the ditch and no other accused persons have assaulted. He said that Naresh Chaudhary chased him/P.W.3 with pistol. Referring to his deposition Mr. Thakur submitted that this witness has stated that after death of his brother-in-law, his sister used to stay at Sokahra. He stated that on the date of occurrence he reached village Sokahra and he has discussion with Bishundeo and Sukhdeo Chaudhary in connection with his sister and Naresh and Balram were not there. This discussion continued for 3 hours and concluded in peaceful atmosphere and thereafter P.W.3 claimed that after completion of the discussion he left the place when Naresh was inside the house, Balram Chaudhary was also moving towards inside the house and he stated in para 8 of his deposition that he was moving towards bus stand where his cycle was lying so this statement of P.W.3 falsifies the statement of P.W.4 (informant) that at the time of occurrence her brother was inside the house and at the time of alleged assault her brother rushed first and she followed him. This witness in para 9 has stated that he stayed for hardly five minutes where his Bhagini (deceased) fell down in the ditch and thereafter he moved towards the Bus stand. While moving towards Bus stand he saw his



sister lifting Sita Devi.

10. Mr. Thakur submitted that it is most unnatural conduct of a Mama rushing towards the bus stand when he saw his Bhagini being assaulted and falling in a ditch. He referred to further statement in para. 9 of the said witness where he has stated that after the incident he remained standing in front of a betel shop in Barauni Chowk Bazar for two hours. This is another circumstance, which leads to only one conclusion that either he was not present at the place of occurrence or he has made false statement in this case.

11. Mr. Thakur submitted that in this case, the informant has also made her father-in-law accused, who according to her and the other witnesses has admittedly gifted three Bighas of land in favour of her daughter/deceased and made the entire expense of the marriage of her daughter Sita Devi. Referring to the conduct of P.W.3 and P.W.4 he submitted that these appellants have been falsely implicated in this case, as they (P.W.3 and P.W.4) wanted to grab the land transferred in favour of the deceased, which is evident from the deposition of P.W.4. In para 20 she stated that over the land standing in the name of Sita Devi either her children or she should have the right. She has stated in the said para 20 that she has not been allowed possession over the land. On suggestion, she said that now she is not



ready to compromise, although she was earlier ready to compromise and she has not filed this case only against the father-in-law and relatives only for grabbing of land. Mr. Thakur submitted that from the deposition of the witnesses, it appears that informant was only interested in the land in question and that is the reason false case has been registered and in fact she used to stay away from the in-laws house and stay at Begusarai. In this case, it is alleged that the crime took place in the broad day light in the village, but not a single witness from the village came forward to support the case of the prosecution.

12. Mr. Thakur submitted that so far as Gopal Chaudhary is concerned he has only one hand, as his right hand has been imputed due to thrasher accident several years before the occurrence as such it was not possible for appellant Gopal to give lathi blow on the deceased. Mr. Thakur submitted that the prosecution case in its entirety leads to only one conclusion that in order to grab the land this informant has made false case against the appellants including Bishundeo Chaudhary, who was the father-in-law of the informant, who admittedly transferred the land in favour of the deceased and made the entire expenditure of the marriage of the deceased Sita Devi. He submitted that in a case where the prosecution has pleaded specific motive for killing the daughter of the informant,



and the alleged case was found to be false during the cross-examination, then the prosecution case is liable to be disbelieved. Mr. Thakur submitted that there are serious contradiction in the version of P.W.3 and P.W.4, which renders the prosecution case unreliable and improbable. The conduct of P.W.3 if taken in its entirety, is most unnatural and artificial. He submitted that the apparent contradictions in the version of P.W.3 and P.W.4 in the manner of the commission of the offence renders the prosecution case doubtful. The inference drawn by the trial court about the involvement of the appellant Gopal Chaudhary is most unrealistic.

13. Counsel appearing on behalf of the State submits that the trial court has committed no error in holding these appellants guilty, as they have the motive as per the fardbeyan to commit offence. However, learned A.P.P. has no explanation to the apparent contradictions in the version of P.W.3 and P.W.4 in the manner of commission of crime and non-examination of any witness of the village has rendered the prosecution case doubtful.

14. Adverting to the deposition of P.W.6 (investigating officer of this case) Mr. Thakur submitted that the investigating officer has allegedly collected the blood stained soil from the place of occurrence, but there is no F.S.L. report to support



the prosecution case. The investigating officer has admitted in his deposition that he has not recorded the statement of any witness of the instant case, as no one came forward to make statement in this case. In para 5 he has admitted that P.W.3 has not stated before him that Bishundeo Chaudhary and Sukhdeo Chaudhary have said to kill the deceased. He also admitted that he has not stated that Naresh Chaudhary has given the first Farsa blow on the neck of the deceased and Balram Chaudhary's blow hit the head of the deceased. He also admitted in his deposition that P.W. 3 has not stated before him that Naresh was equipped with pistol and he chased him with pistol. He also admitted that P.W.4 has not stated before him that Naresh was equipped with pistol. The informant has also not stated that after assault the victim fell down from the road to the ditch. He has also admitted in para 6 that in the case diary on the supervision of the Dy.S.P. he has mentioned that the informant as well as the daughter of the informant (deceased) was involved in bad activity and without any reason she used to loiter at Samastipur and other places.

15. Thus, in the totality of the facts situation, Mr. Thakur submitted that no prudent man can accept the version of the prosecution that the deceased was killed by the grand-father (father-in-law of the informant) and other family members, particularly, when materials are available on record; Firstly; reason for false implication



i.e. for the purpose of grabbing the land of the deceased Sita Devi. Secondly; there are materials to suggest that the informant was interested in selling the property of Sita Devi, as she used to stay away from the village of in-laws, the case as framed by the prosecution cannot be taken as established beyond all reasonable doubts, as no independent witness has come forward to support the case of the prosecution. Not a single witness from the village has supported the prosecution version. Under the circumstances, when the motive of commission of crime is found baseless. The P.W.3 and P.W.4 are at variance in their version, as to the commission of occurrence. The unnatural conduct of P.W.3 of leaving the injured Bhagini unattended and moving towards the Bus stand and thereafter standing for two hours before the betel shop renders the prosecution case more suspicious.

16. We have heard the parties and on considering the entire facts and circumstances, we are in agreement with the submission of the Mr. Thakur that the motive suggested for the commission of crime in the fardbeyan has been found false in this case, as she herself admitted the fact that three Bighas of land was transferred in favour of her deceased daughter by the father-in-law, who was made accused in this case. It is also admitted by the informant that the entire expense of marriage of Sita Devi (deceased)



was incurred by the father-in-law of the informant. It is also on record that the informant was not interested in staying in village and investigating officer has admitted that the informant and the deceased used to live licensous life and loiter around Samastipur and other places uncalled for. We have also noticed from the deposition of the informant that she (informant) was interested in taking over possession of the land of the deceased and she herself has admitted that she is entitled for possession over the land standing in the name of deceased Sita Devi. So the aforesaid facts and circumstances are suggestive of the fact that Sita Devi has motive to falsely implicate the father-in-law and other relatives and the non-examination of any of the witness of the villages also creates doubt about the manner of occurrence. We also find substance in the submission of Mr. Thakur that the allegation against the appellant Gopal Chaudhary that he has assaulted the deceased with lathi does not appear to be probable. Thus, we are of the considered view that it is not safe to approve the conviction of the appellants in a case like instant where major contradictions are noticed in the version of the ocular evidence and falsity in the motive alleged by the informant and also the fact that P.W.3 and P.W.4, who are brother and sister, are interested witnesses and there is no independent witness to support the case, we also find that the conduct of the informant to implicate the father-in-law for



commission of the offence of murder of her grand-daughter in this case is most probable as she herself admitted that the father-in-law has voluntarily transferred three Bighas of land in favour of the deceased and made the entire expenditure of her marriage.

17. We are also in agreement with the proposition of the appellants that in a case where the motive stands falsified and there is no independent witness and the interested witnesses are even at variance and particularly conduct of P.W.3 is not natural, rather artificial, we find substance in the submission of the appellants that conviction in such case is not warranted and the appellants deserve benefit of reasonable doubt.

18. We accordingly allow both the appeals, set aside the judgment of conviction of the trial court and acquit the appellants from the charges levelled against them. All the appellants are on bail, they are discharged from the liabilities of their bail bonds.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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