

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.305 of 1992

1. Ram Bandhu Thakur , son of late Budhi Thakur
2. Ram Bali Thakur, son of Late Ram Deni Thakur
both resident of village Uchidih, P.S. Pipra, District – East Champaran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 387 of 1992

Din Bandhu Thakur, s/o Late Ram Deni Thakur, resident of village Uchidih,
P.S. Pipra, District East Champaran

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 305 of 1992)

For the Appellant/s : Sri Uma Shankar Verma

For the Respondent/s : Sri Ajay Mishra, A.P.P.

(In Criminal Appeal (DB) No. 387 of 1992)

For the Appellant/s : Sri Uma Shankar Verma

For the Respondent/s : Sri Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 12-10-2017

In both the appeals, appellants were convicted and sentenced by a common judgment in Sessions Trial No. 267/17 of 1990 and as such, both the appeals were heard together and are being disposed of by this common judgment.



Appellant/ Din Bandhu Thakur [the sole appellant in Cr. Appeal (DB) No. 387 of 1992] was convicted by judgment dated 12.8.1992 passed by Sri Damodar Prasad, learned 4th Additional Sessions Judge, Motihari, East Champaran in Sessions Trial No. 267 /17 of 1990 for offence under section 302 of the Indian Penal Code , 1860 (hereinafter referred to as the “I.P.C.”) and sentenced to undergo rigorous imprisonment for life, whereas two appellants in Cr. Appeal (DB) No. 305 of 1992 were convicted by the same judgment under section 109 read with section 302 of the I.P.C. and both were directed to undergo rigorous imprisonment for life.

Short fact of the case is that on 24.11.1989 the officer- in-charge of Pipra police station recorded fardbyan of one Chandeshwar Thakur in the Police Station itself at 1.00 P.M. In the fardbyan, the informant /Chandeshwar Thakur disclosed that on the same date i.e. on 24.11.1989 at 12.00 noon he with Prem Kumar Thakur (deceased) and his father Ram Snehi Thakur /P.W. 1; Raj Kumar Thakur /P.W. 2 and others visited Uchidih Polling Centre No. 32 for casting vote. He noticed that in a temple which was on the Eastern side Din Bandhu Thakur /appellant in Cr. Appeal (DB) No.387 of 1992 , Ram Bandhu Thakur, Ram Bali Thakur [both appellant in Cr. Appeal (DB) No. 305 of 1992] , Nand Kishore Thakur, Cibil Kumar Thakur, Akhilesh Thakur,



Bijai Kumar Thakur, Arun Thakur and Dinesh Thakur were present. While the informant arrived near the the Polling Centre amongst the aforesaid accused persons, Din Bandhu Thakur came and tried to prevent the informant from casting vote on the plea that they were likely to cast vote in favour of Congress "I" candidate. The informant and Prem Kumar Thakur opposed the same. Thereafter, altercation started in between Prem Kumar Thakur and others and subsequently, other named accused persons who were near the temple also arrived there and Ram Bandhu Thakur , Ram Bali Thakur and Nand Kishore Thakur caught hold of Prem Kumar Thakur and Din Bandhu Thakur took out a knife and gave blow on the left side of the chest of Prem Kumar Thakur and other accused persons uprooted 'fathas' (bamboos) and started assaulting others. After noticing the condition of Prem Kumar Thakur deteriorating one Lal Babu Sharma carried the victim Prem Kumar Thakur on his motorcycle to one Dr. Manindra Das where he was declared dead and thereafter, dead body of deceased was carried to the police station where fardbyan of the informant was recorded and on the same date First Information Report was drawn vide Pipra P.S. Case No. 81 of 1989 for offence under section 302/ 323/ 34 of the I.P.C. against nine accused persons which includes the three appellants. The officer -in- charge of



Pipra Police Station who recorded fardbyan took up investigation, prepared inquest report on dead body and thereafter he investigated the case, the dead body was sent for post-mortem examination. After investigating the case, police found accusation against eleven accused persons and submitted charge-sheet showing two accused namely Nand Kishore Thakur and Ram Ekbal Thakur as absconder. Charge sheet was submitted on 22.2.1990. After submission of charge-sheet on 9.10.1990 learned Magistrate took cognizance of the offences. Subsequently, after completion of formalities under section 207 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") on 1.12.1990 the case was committed to the court of Sessions. Thereafter, the case was numbered as Sessions Trial No. 267 /17 of 1990. In the case on 11.4.1991 charge under section 302 of the I.P.C. was framed against appellant /Din Bandhu Thakur (appellant in Cr. App. (DB) No. 387 of 1992) and against other accused including two appellants of Cr. Appeal (DB) No. 305 of 1992. Charge was framed under section 302 read with section 109 of the I.P.C. against two appellants of Cr. Appeal (DB) No. 305 of 1992. However, further against all the ten accused persons including three appellants further charges were framed under section 302 read with section 149 of the I.P.C. Since the accused



persons denied charges and claimed to be tried, the prosecution to establish its case examined altogether nine witnesses. Out of nine witnesses P.W. 1/ Ram Snehi Thakur, P.W. 2/ Raj Kumar Thakur; P.W. 3 / Hanuman Thakur; P.W. 4 /Awadh Bihari Thakur; P.W. 5/ Shavitri Devi; P.W. 6/ Ajay Kumar; P.W. 7/ Chandeshwar Thakur (informant) were examined as eye witness to the occurrence, whereas, Dr. Upendra Prasad Sinha, who conducted autopsy on the dead body of the deceased /Prem Kumar Thakur was examined as P.W. 8 and investigating officer/ Raghunath Dubey was examined as P.W. 9. After closure of prosecution evidence, evidences and circumstances which were collected during trial were explained to the accused persons and their statement under section 313 of the Cr.P.C. was recorded and finally by the impugned judgment the learned trial judge except convicting the aforesaid three appellants passed the judgment of acquittal in respect of other accused persons and thereafter, appellants filed this appeal before this court.

Sri Uma Shankar Verma, learned counsel appearing on behalf of the appellants in both the appeals, after referring entire evidences i.e. oral and documentary evidences, has argued that learned trial judge has incorrectly held all the appellants guilty. He submits that in respect of same set of evidences though



learned trial judge has acquitted seven accused persons who were tried together with the appellants, but appellants were held guilty and convicted and sentenced. It has been argued that during trial no independent witnesses were examined to establish the case which seriously creates doubt on prosecution case. He has also argued that it is consistent case of the prosecution that occurrence had taken place at the polling booth where for Parliamentary election the voters had come for casting their votes and occurrence had taken place in presence of Presiding Officer, Polling Officer and other police personnels who were deputed at the place of occurrence, but the prosecution purposely withheld those persons for their examination as prosecution witnesses. According to Sri Verma, non-examination of either Polling Officer, Agents or Police officials deputed at the place of occurrence create serious doubt on the prosecution case. He has also argued that it is a peculiar case in which dead body was carried to police station and only thereafter F.I.R. was got recorded in the police station and as such, according to Sri Verma the manner of occurrence appears to be doubtful. He has further argued that as per prosecution case at the time of occurrence father of the deceased and other family members were also present, but non had come forward to become informant but one



co -villager namely Chandeshwar Thakur has come forward to become informant of the case. He submits that conduct of family members appears to be not believable and as such, the evidence of family members of the deceased may be considered as doubtful. Learned counsel for the appellants has further tried to persuade the court that ocular evidence is in consistent with the medical evidence. He submits that number of witnesses have said that knife blow was given below the chest but during post -mortem examination injury was found on the chest which had penetrated the heart of the deceased. On aforesaid grounds Sri Verma has argued that if it was not a case of clean acquittal, at least the appellants were entitled to be extended the benefit of doubt.

Sri Ajay Mishra, learned Additional Public Prosecutor opposing the appeal has argued that prosecution case is quite natural. He submits that presence of witnesses at the place of occurrence is also very much established in view of the fact that occurrence had taken place at the time while polling was continuing and this was the reason that all the witnesses who were at polling both and in queue waiting for casting vote had noticed the entire occurrence. He submits that oral evidence has also been corroborated by other documents and medical evidences. According to Sri Mishra, after police visited place of



occurrence, police had noticed blood mark on grass near the first place of occurrence where deceased was firstly given knife blow and police thereafter also found blood stain on the earth where dead body was found. He submits that it is consistent case of prosecution that after receiving knife injury on chest the deceased firstly pressed the injury by his hand and started running and after few yards he fell down beneath a 'bargad' tree and this was the reason that blood stain was found at the first place of occurrence as well as at the place where the injured after getting injury had fell down. He submits that the submission of learned counsel for the appellants that none of the family members had come forward to become informant is immaterial and has got no relevance. According to learned Additional Public Prosecutor in a case of cognisable offence any one can put the law into motion and in the present case it is case of prosecution that after the occurrence the informant was the first person who reached the place where the deceased after getting injury had fallen down and he had gone to doctor for treatment of the victim and after being declared dead he was the person who followed dead body to the police station. So far father of the deceased namely Hanuman Thakur, who has been examined as P.W. 3 in the present case, is concerned, it has been argued that



during evidence this fact has come that after noticing the occurrence and injury of his son, he was not in a position to make any statement and this was the reason that he had not come forward to become informant. Besides this, it has been argued that the investigating officer after recording fardbyan, in his deposition during trial has stated that he reached the place of occurrence at about 6.00 P.M. and he stated that he had noticed that polling officers were there, where the Presiding Officer had given written complaint regarding the occurrence, which has been got marked as Exhibit- 8. The investigating officer has further stated that copy of the said complaint was also received in the police station and same was got marked as Exhibit- 8/1. By way of placing content of Exhibit -8, Sri Mishra has stated that time and manner of the occurrence was also established from the written complaint of the Presiding Officer. In the written complaint also Presiding Officer had stated that at about 12.00 noon during polling one person was stabbed and other were also assaulted. According to Sri Mishra the entire prosecution case is also corroborated on examination of Exhibit -8 i.e. written information which was given by the Presiding Officer . He submits that investigating officer has also categorically stated that how he noticed blood stain at the first place where the deceased was



given blow by knife and he found blood stain on the earth where the injured after receiving injury and running to some extent had fallen. Blood soaked earth from both the places were seized and seizure list was prepared, which was marked as Exhibit -7 and Exhibit -7/1. He has further argued that oral evidence was also corroborated by the medical evidence. According to him post-mortem examination report also indicates that one knife injury was found on the chest which had penetrated up to the heart of the deceased. In sum and substance it has been argued that there is no contradiction either in the oral evidence or documentary evidence and the learned trial judge after examining entire evidence has rightly held them guilty and passed the order of conviction and sentence.

Besides hearing learned counsel for the parties, we have also minutely examined the evidences. At the very outset it would be necessary to notice what the informant has stated during trial. The informant /Chandeshwar Thakur was examined as P.W. 7. The informant has made specific statement that at about 12.00 noon he along-with other persons who have been examined as witness were in queue for casting vote and he had noticed the F.I.R. named accused persons including the appellants near a temple which was about 20-25 steps away from the place of occurrence



and thereafter the accused persons including the three appellants arrived there and one of the appellants namely Din Bandhu Thakur asked the deceased that they will not allow them to cast vote, which was opposed by him and thereafter, altercation took place. In the meanwhile, one of the accused from corner of the temple exhorted to kill. Thereafter, two appellants of Cr. Appeal (DB) No. 305 of 1992 namely Ram Bandhu Thakur and Ram Bali Thakur along-with one Nand Kishore caught the deceased and thereafter, one of the accused persons exhorted to kill him and then, Din Bandhu Thakur [appellant of Cr. Appeal (DB) No. 387 of 1992] gave knife blow on the chest of Prem Kumar Thakur. Immediately after receiving injury he tried to ran towards his house but after some distance near 'bargad' tree he fell down and the informant immediately arrived there. He further disclosed that other accused persons had also assaulted others by 'fatha'. Thereafter, the injured on a motor cycle was carried to a hospital where he was declared dead and then, deceased was carried to police station which was just near to the hospital [about 20-25 yards from the hospital] where fardbyan was got recorded and F.I.R. was drawn and thereafter, inquest report was prepared. He proved his signature on fardbyan, which was marked as Exhibit -2 and he also proved signature of one Awadh Bihari Thakur,



who has been examined as P.W. 4 on the fardbyan and same was marked as Exhibit -3 . This witness has also proved signature of Awadh Bihari Thakur / P.W. 4 and Prithwi Nath Sharma who had put signature on the inquest report and those signatures were marked as Exhibit -3/1 and 3/2. Though this witness was cross-examined at length but after going through the entire evidence it is evident that nothing could be extracted to draw any adverse inference against his evidence. Almost in similar manner, P.W. 1, 2, 3, 4 , 5 and 6 have stated that all were present in queue for casting vote and in their presence entire occurrence had taken place. We have examined their evidences minutely and after going through the same we do not find any inconsistency in their evidence. Since their evidences are consistent, we thought it not proper to incorporate their evidences in detail. So far P.W. 8 / Dr. Upendra Prasad Sinha is concerned he had conducted post-mortem examination on the dead body of the deceased and he proved the post-mortem examination report as Exhibit -4. In the post-mortem examination following injuries were found by the doctor which is quoted hereinbelow:-

“Incised punctured wound 1 ½” x 1/3” x cavity deep on the left interior side of chest one inch below and one inch medial side of left nipple. On dissection the under line skin, muscles and sub tissues were incised and punctured through the sixth inter coastal space of the left chest up to heart puncturing the lower portion of left ventricle upto



its chamber. The left side chest cavity was full of blood. All chambers of the heart were empty. In my opinion death was due to shock and haemorrhage caused by above injury. Time elapsed since death approximately within 36 hours before post mortem. Weapon used- sharp cutting and pointed such as dagger (chhura). This post -mortem report is in my pen and signature (Ext.4)”

This witness in his examination- in- chief has stated that on 24.11.1989 he was posted as Assistant Civil Surgeon in Sadar Hospital, Motihari and on the same day at 3.45 P.M. he conducted post -mortem examination and found following injury :-

“1. On 24.11.1989 at 3.45 P.M. I conducted autopsy on the dead body of Prem Kumar Thakur, s/o Hanuman Thakur of village Uchidih, P.S. Pipra, District East Champaran, male aged about 28 years. I found the following ante -mortem injuries on the dead body :-

(i) incised punctured wound 1 ½” x 1/3” x cavity deep on left interior side of chest one inch below and one inch medial side of left nipple. On dissection the underline skin, muscles and sub tissues were incised and punctured through sixth inter coastal space of the left chest upto heart puncturing lower portion of left ventricle upto its chamber. The left side chest cavity was full of blood. All chambers of the heart were empty. In my opinion death was due to shock and haemorrhage caused by above injury. Time elapsed since death approximately within 36 hours before post moretm. Weapon used- sharp cutting & pointed, such as dagger (chhura). This post- mortem report is in my pen and signature (Ext. 4)”

Though he was cross -examined, nothing could be extracted to draw any adverse inference. The investigating officer i.e. Raghunath Dubey was examined as P.W. 9 and during his examination he categorically stated that after recording fardbyan,



inquest report was prepared and subsequently, he visited the place of occurrence at about 6.00 and he had noticed that at that very time Polling Officers, Presiding Officers and others were doing some election work where a written report was given to the investigating officer by the Presiding Officer in which it was stated that at 12.00 in the noon at the booth an occurrence had taken place in which one person was stabbed and others were assaulted. This witness has proved the written report of the Presiding Officer, which was marked as Exhibit -8 . He further stated that copy of the same report was also received in the police station and same was proved as Exhibit -8/1. This witness has also proved F.I.R. which was marked as Exhibit- 5 , inquest report as Exhibit -6 and proved his signature on the inquest report which was marked as Exhibit -6. He also proved the seizure list in respect of blood stained soil / grass, which was seized near the polling booth and same was marked as Exhibit -7 and thereafter, blood stain was found near the 'bargad' tree, which was seized and soaked soil was seized and seizure list was marked as Exhibit -7/1. This witness has categorically corroborated regarding the place of occurrence .

After going through the aforesaid evidences we are of the considered opinion that the learned trial judge has rightly passed



judgment of conviction and sentence in respect of the aforesaid appellants. So far submission of learned counsel for the appellants regarding non-examination of independent witnesses is concerned, the court is of the opinion that it was a quite natural situation that witnesses had gone to the polling booth and while they were in queue occurrence had taken place and as such, their presence and their evidence may not be ignored or may not be discarded only on the ground that none of the polling agents or polling officers were examined in the case. Regarding the submission of learned counsel for the appellants that F.I.R. was lodged in the police station, this submission has also got no relevance due to the reason that it is prosecution case that after getting injury the injured was firstly carried to hospital where he was declared dead and from hospital to police station there was hardly any distance and as such, naturally the deceased was carried to police station where fardbyan was recorded and investigation commenced.

In view of the facts and circumstances and evidences brought on record we are of the considered opinion that learned trial judge has committed no error in passing the impugned judgment, which requires no interference. Accordingly, both appeals are dismissed.



Since the appellants are on bail their bail bonds are hereby canceled with a direction to surrender before the court below forthwith.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

praful/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	17-10-2017
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