

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.150 of 1993

Arising Out of PS.Case No. -32 Year- 1992 Thana –Riga District- SITAMARHI

=====

1. Kasim @ Kasim Ansari, son of Hadis Ansari

2. Taslim Ansari son of Sadik Ansari

Both are residents of village Kapraul Police Station Riga District Sitamarhi

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Uday Kumar

For the Respondent/s : Mr. Ajay Mishra

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date: 20-06-2017

1. Heard Sri Uday Kumar , learned counsel for the two appellants and Sri Ajay Mishra, learned Additional Public Prosecutor.

2. The present Appeal was preferred against the judgment of conviction dated 18.3.1993 passed in Sessions Trial No. 118 of 1992 / 145 of 1992 & 183 of 1992 / 85 of 1992 by the learned 2nd Additional Sessions Judge, Sitamarhi (arising out of Riga P.S. Case No. 32 of 1992) . By the said judgment the appellant/ Kasim @ Kasim Ansari was held guilty for offence under Section 302 of the Indian Penal Code and so far appellant no. 2 is concerned , he was held guilty for offence under Section 302 read with Section 114 of the Indian Penal Code. Both the appellants were sentenced for



rigorous imprisonment for life.

3. Short fact of the case is that on the basis of fardbyan of Shahid Ansari , son of Rafique Ansari an F.I.R. vide Riga P.S. Case No. 32 of 1992 was registered on 7.3.1992 for offence under section 302 /34 of the Indian Penal Code. It was alleged by the informant that while he along with father namely, Rafique Ansari and other co - villagers had visited a Maszid of the village, ten accused persons namely: 1- Kasim, son of Hadis Ansari , 2- Qayum son of Sadique Ansari, 3- Taslim Miyan , son of Sadik Ansari /appellant no. 2, 4- Farjand , son of Munsu Miyan , 5- Hakim Ansari , son of Iman Ansari, 6- Idrish , son of Shaheb Jan , 7- Julfikar , son of Taslim , 8- Hadis , son of Dhanu Miyan, 9- Khalil Ansari , son of Adalat Ansari and 10- Muzaffar Ali, son of Abdul Bari started assaulting his father, in which he fell down. Thereafter, two accused persons Taslim Ansari /appellant no. 2 and Qayum caught both hands of his father and thereafter, Md. Kasim gave knife blow on his chest. The reason for such occurrence was disclosed regarding offering prayer in the Maszid premises. Subsequently, the injured was carried on *thela* to hospital, but on way to hospital he succumbed. Thereafter, dead body was brought near the door of the deceased. Subsequently, on information received Police arrived, recorded fardbayan of Shahid Ansari , who had been examined as PW 11. In the present case the



dead body was forwarded for post -mortem examination, which was held and in post -mortem examination one external injury was found, that was incised injury on the chest of the deceased. The case was investigated and thereafter, charge sheet was submitted on 9.5.1992 against all the ten F.I.R. named accused persons. After completion of supply of police paper the case was committed to the court of Sessions on 1.7.1992. However, charges were framed against eight accused persons including both the appellants. During the trial prosecution produced eleven witnesses to prove the case. Alisher Ansari , brother of the informant, was examined as PW 1; Dr. Virendra Kumar Sharma , who had conducted post -mortem examination on the dead body of the deceased was examined as PW 2 ; Md. Jahoor Ansari, son of the deceased and brother of the informant was examined as PW 3 ; Shamsheer Ansari , son of the deceased and brother of the informant was tendered as PW 4; whereas Sri Arun Kumar, who was the Investigating Officer of the case was examined as PW 5. In the case remaining six witnesses namely Hafiz Ansari PW 6, Farookh Ansari PW 7 , Shaheb Jan Mian /PW 8, Shafi Mohammad/ PW 9 , Abdul Sattar /PW 10 and informant/ Shahid Ansari, who was examined as PW 11 were declared hostile. PW 1 and PW 3 had claimed to be eye witnesses. In the examination –in-chief , PW 1 as well as PW 3 claimed to be eye witnesses and



stated that while they along with their father and other villagers were entering into the premises of Masjid for offering Namaz, the accused persons were coming out and thereafter occurrence had taken place whereas, in the fardbyan of Shahid Ansari (PW 11) , who has also claimed as eye witness, it was stated that dispute arose in between the parties in respect of offering prayer (Namaz). It was disclosed as per fardbyan that the prosecution side were offering prayer and thereafter dispute arose.

4. Learned counsel for the appellants has argued that in the fardbyan the informant /son of the deceased, had made categorical statement that his father and other villagers had visited Masjid for offering prayer (Namaz) and in the F.I.R. the informant has specifically given the name of two persons namely, Shafi Mohammad and Shaheb Jan as witness to the occurrence , however during trial both the witnesses i.e. Shafi Mohammad and Shaheb Jan who was examined as PW 9 and PW 8 had turned hostile. According to him as per the evidence brought on record neither PW 1 nor PW 3 were present at the time of occurrence and subsequently they had come to support the prosecution case. He submits that in the cross- examination of Shahid Ansari /PW 11 , who was the informant of the case, has accepted that whatever he had stated in his fardbyan was not explained to him. In categorical terms in his



examination- in- chief he has stated that he had not seen as to who gave knife blow on his father. In paragraph no. 1 of his examination – in- chief he has made specific statement that he has not seen as to who had given knife blow on his father and while answering to question no. 2 he has also stated that only on being said by the Investigating Officer he had put signature on the F.I.R., which was never read over to him. According to learned counsel for the appellants in the case none of the eye witnesses has turned up to prove the case. Even the deposition of informant /PW 11 categorically indicates regarding false implication of the appellants. He submits that during trial no evidence was brought on record to suggest complicity of either of the appellants, even then the learned trial judge while acquitting other eight accused persons who were put on trial had convicted both the appellants and sentenced them for rigorous imprisonment for life. According to learned counsel for the appellants in a criminal trial it was necessary to prove the case beyond all reasonable doubt, whereas in the present case there is nothing on record to draw an inference regarding involvement of the appellants.

5. Sri Mishra, learned A.P.P. has argued that F.I.R. may not be treated as encyclopedia. According to him PW 1 and PW 3 were witnesses to the occurrence and they have supported the prosecution case and evidence of those witnesses are sufficient to show that the



learned trial judge has rightly passed the judgment of conviction.

6. On going through the materials available on record it is evident that the Investigating Officer, who was examined as PW 5 has not bothered to collect necessary evidences during investigation. In his evidence it has come that during the trial from the prosecution side even the clothes stained with blood were not produced as material evidence nor anything has been indicated regarding recovery of material stained with blood of the deceased from the Masjid premises. In paragraph no.10 of his cross-examination PW 5/ the Investigating Officer has accepted that he had not even prepared the sketch map of the place of occurrence nor he has written anything in the case diary regarding non- seizure of any material with stained blood from the place of occurrence. In paragraph no. 13 of his cross-examination he admits that he had not even sent the clothes to the Forensic Science Laboratory for its examination nor he had produced any list relating to seized clothes. The Investigating Officer had not bothered to send inquest report. In paragraph no. 15 of his cross-examination he admits that in the case diary nothing has been indicated as to in whose presence inquest report was prepared. Now coming to the evidence of the informant, who has been examined as PW 11 it is evident that in his examination- in- chief he had made specific statement that he has not seen as to who had given knife



blow on his father. He has not indicated as to who were participant in the occurrence. The occurrence in the case had taken place in the night at about 8 P.M. Though PW 1 and PW 3 had claimed that they had witnessed the occurrence but nothing has been indicated regarding the mode of light in the Maszid premises in which the accused persons were identified. In the evidence of Investigating Officer it has come that only one lantern was found in the premises. The informant has categorically stated in his deposition that he had put his signature on fardbyan only as per instruction of the Investigating Officer. Considering the facts and circumstances particularly the fact that informant, who was non else than the son of the deceased has not supported the prosecution case nor any of the witnesses who were shown as witnesses in the F.I.R. had come forward to support the prosecution case it is difficult to rely on the evidence of PW 1 and PW 3 who were also son of the deceased and brother of the informant. Moreover as per FIR it is specific case of prosecution that the informant with other co-villager had gone for offering Nawaz. Meaning thereby that P.W. 1 and PW 3 were not present. Accordingly the evidence of PW 1 and PW 3 as eye witness becomes doubtful. In their evidence there were inconsistency in respect of manner of occurrence. In a case relating to offence under section 302 of the I.P.C. absence of inquest report also creates



serious doubt on the prosecution case.

7. After going through the material on record and evidences, the Court is of the opinion that prosecution has not proved the case beyond all reasonable doubt and as such, the appellants deserves to be given the benefit of doubt. Accordingly, the judgment of conviction and sentence dated 18.3.1993 is hereby set aside. The appellant no. 2 / Taslim Ansari was granted bail vide order dated 31.3.1993 while appeal was admitted and thereafter, vide order dated 24.7.1995 the appellant no. 1/ Kasim @ Ksasim Ansari was directed to be released on bail and they are still on bail. Considering the fact that they have been acquitted, they are hereby discharged from their liability of bail bond. The Appeal stands allowed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28-06-2017
Transmission Date	28-06-2017

