

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.10 of 2013

Arising Out of PS.Case No. -27 Year- 2010 Thana -ISUAPUR District-Saran at Chapra

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Bhusan Singh S/O Vira Singh Resident Of Village- Parsa, Police Station-
Ishuwapur, District- Saran At Chapra

.... Appellant

Versus

The State Of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Manoj Kumar

For the State Mr. S.N.Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR. JUSTICE SANJAY KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 23-03-2017

The appeal filed by the sole appellant is directed against the judgment of conviction and order of sentence dated 30.11.2012 passed by the learned 1st Additional Sessions Judge, Saran at Chapra in S. T. No. 768 of 2010, whereby the appellant was held guilty under section 302 IPC for having voluntarily caused the death of the husband of the informant and sentenced him to undergo R.I. for life and to pay a fine of Rs. 20,000/- with default clause.

2. The fardbeyan of P.W.9, the wife of the deceased, was immediately recorded by the Station House Officer (SHO) Ishuapur (P.W.10) at the midnight of the said date wherein it was alleged that on 28.05.2010, at about 8.00 P.M., the informant along with the deceased was sitting on the Sahan(elevated platform) between the grilled gate of the house and road when from the house of the son-in-law of her Pattidar namely Ramraj Singh who was living in Sasural as Gharjamai, a cry of his wife and children was heard. Soon thereafter the wife of the accused appellant with children



came out of her house and started cajoling the deceased to save her from assault by the appellant. Following the wife, the appellant armed with a knife also reached the Sahan(raised platform). The deceased wanted to interfere and save the wife of the appellant whereafter it is alleged the appellant gave one knife blow on the right side of his chest causing grievous injury whereafter he fell down. It is further alleged that the appellant thereafter again inflicted 2-3 knife blows on him which caused the injury on his Panjra, left shoulder and near his lips. The deceased having received those injuries remained alive for sometime and thereafter died. Her son Jai Ram Singh came running there and tried to catch hold of him but the appellant managed to escape.

3. The SHO (P.W.10) upon recording the Fardbeyan (Ext.2/C) duly signed by her son Jai Ram Singh (Ext.2/1) took up the investigation. The Panchnama of the body was drawn by him on 28.05.2010 at 11.45 P.M. in presence of Jai Ram Singh (P.W.6) whose signature thereon has been proved as Ext. 3 and one Jaykeshwar Singh whose signature has been proved as Ext. 3/1. The dead body was dispatched for the post mortem. P.W. 3 was then posted as the Deputy Superintendent, Sadar Hospital, Chapra who held the post mortem on the dead body duly identified by the Chaukidar and submitted the post mortem report (Ext.1). The I.O. inspected the place of occurrence and recorded the statement of the witnesses. Upon finding the accusations made against the appellant true the charge-sheet was filed wherein cognizance of the offence was taken on 20.09.2010 and the case was later committed to the court of sessions for trial. Charges were framed and read over/explained to the appellant to which he pleaded not guilty and hence the trial. The defence version is complete denial of the occurrence. From the trend of the cross-examination, it appears that the defence proceeded on the



plea that the occurrence was not committed in the manner alleged by the prosecution. The deceased had received injury due to fall on the ploughing equipment of the tractor belonging to the deceased.

4. At the trial, the prosecution examined all the 10 charge-sheet witnesses named, proved the Panchnama (Ext.3/A), the formal FIR (Ext.4) and the post mortem report (Ext.1). We would classify here P.W. 1 as a hearsay witness. P.Ws 2, 4, 5,6,7,8 & 9 (informant) have projected themselves as the eye-witnesses to the occurrence. P.W. 3 Dr. Shambu Nath Singh has conducted the post mortem over the cadaver and submitted the report. P.W. 10 is the SHO-cum-I.O. of the case who carried out investigation and filed the charge-sheet. Upon recording of the evidence of the prosecution, the statement of the appellant was recorded under section 313 Cr. P.C.. The defence, however, did not adduce any evidence either oral or documentary. Learned trial court, on appraisal of the evidence adduced by the prosecution, relied on the testimony of the eye-witnesses who were found natural witnesses and having withstood the test of their cross-examination(s) and convicted the appellant in the manner stated above.

5. We have heard the counsel for the appellant and the APP for the State.

6. It has been submitted that the prosecution has not been able to prove the case beyond shadow of all reasonable doubts. The objective findings of the doctor in the post mortem report (Ext.1) do not fully support the prosecution case. Similarly, the objective findings of the I.O. (P.W.10) create a serious doubt over the place of occurrence and thus the manner of occurrence as he did not find blood-stained marks on the Chabutra (elevated platform) outside the main door of the house of the informant which is said to be the place of occurrence. It is submitted that prosecution ought to have



proved the motives of the occurrence. The said onus has not been discharged by the prosecution. In this regard, he has referred to the evidence of the informant (P.W.9) at paragraph 5 where she has stated that they had no animosity with the appellant and he used to behave properly with them.

7. Mr. S. N. Prasad, counsel for the State, conversely submitted that this is a case where the occurrence was witnessed by several eye-witnesses which include non family members of the deceased. They have consistently deposed in court showing the complicity of the appellant in the crime as propounded by the prosecution. It is a case where the evidence of these witnesses should not be doubted as not only the FIR was promptly recorded but their statements were also recorded immediately thereafter by the I.O. There is nothing on record to even remotely indicate that these witnesses bore hostility against the appellant. He has further submitted that the objective findings of the Doctor (P.W.3) in his post mortem report (Ext.1), give full credence to the prosecution case. The I.O. of this case has however not discharged his responsibility properly and for this the prosecution should not suffer. In this connection, he has drawn our attention to the ocular statement of the informant (P.W.9) and P.W.5 wherein they have stated that on receiving injuries the blood had oozed out from the wound. Their deposition in the court particularly when no material contradiction has been elicited in their cross examination by the defence is worth reliance.

8. We shall first examine whether the death of the deceased was homicidal or not, even though serious challenge has not been made by the defence. The inquest report (Ext.3/A) which was drawn by the I.O. in presence of P.W.6 hardly within 03 hours of the occurrence indicates that the deceased was seen having received sharp-cut/penetrating injuries on his chest, near the lip and on the left scapular region. The I.O. noted those



injuries seemingly caused by a knife. We shall now scan the evidence of the Doctor (P.W.3) who held the post mortem on 29.05.2010 at 9.00 A.M. and found the following ante mortem injury on the cadaver:-

“External :- (1) Incised and penetrating wound on right side of chest about 4” below right clavicle and 3” away from midline measuring 1½”x½”x cavity deep 2. Incised wound on left side of upper lip ½”x ½”x ¼” 3. Linear abrasion on right side of flanks. 4. Incised wound on left scapula 6”x ¼”x ¼”. On dissection thoracic cavity was full with blood. Laceration of right lung size 3”x3” through and through. Rest all viscera were intact and pale.” Cause of death was haemorrhage & shock due to injury no.1 which was due to sharp penetrating weapon.”

9. Considering the above, there is no doubt in our minds that the death of the deceased was homicidal in nature.

10. Having held so, we would now examine the relevant evidence on record in the light of the submissions advanced on behalf of the appellant and the State to find out whether the prosecution has been able to prove the charge beyond shadow of reasonable doubts. Before we do so, it may be highlighted that the occurrence was committed at about 8.00 P.M. in the evening. We find from the record that the police arrived within few hours of the commission of the crime/occurrence and the Fardbeyan was made by the wife of the victim in the midnight of 28.05.2010 (24.00 hours).

11. P.W.2 Chinta Kumari, P.W.6 Jay Ram Singh, P.W.7 Puja Kumari, P.W.8 Nitu Devi and P.W.9 Bijli Devi (informant) are the family members of the deceased whereas P.W. 1 Ashok Tiwari and P.W. 5 Krishnadeo Tiwari are the co-villagers. P.W. 5 has supported the prosecution case as eye-witness.



12. P.W. 9 (informant) in her deposition has supported the prosecution case in toto. According to her deposition she was sitting at the outside Osara (raised platform) with her husband when she could see the wrangling between the appellant and his family members. The appellant was assaulting them. When the appellant took a knife his wife and other children came out of the house and ran to the other side of the road with a request to save her from assault. The appellant also followed her with a knife in his hands. When her husband (deceased) tried to intervene, the appellant inflicted a knife blow on his right chest and thereafter on his Pakhura (scapular region) and near his lip. The SHO arrived at the place of occurrence and recorded her statement. She has proved her *Fardbayan* (Ext.2). From her cross examination, it appears that the appellant was living at his *Sasural* for the last 10-15 years as he got property through his wife. There was a time gap around 10 months between the wrangling and the actual assault. She has denied the suggestion that the deceased received injury due to fall on the firm equipment. The evidence of the two daughters namely P.Ws. 2 and 7 is to the effect that they were at the rooftop gossiping with each other when on hearing the cry of the wife of the appellant they came out and saw the appellant had reached the raised platform following his wife. Both of them have stated that the appellant being enraged/incensed by intervention of the deceased inflicted a knife blow on his chest, Pakhura (Scapular region) and other parts of the body.

13. It has been submitted by the counsel for the appellant that at least P.W. 2 has stated in her cross examination that it was a moonlit night and she could see the blood oozing out of the injury sustained by her father. Referring to paragraph 6 of the cross examination of the I.O. (P.W.10) it is submitted that the I.O. did not find blood stains at the place of occurrence.



This is a serious jolt to the prosecution case. We find from the post mortem report that owing to the injury sustained by the deceased on his left scapular region, the thoracic cavity was found full of blood. There was laceration of right lung. In such circumstances, profuse bleeding from the wound would not have happened. Beside that we find that P.W.2 at para 6 and 7 has stated that she had shown the blood and blood-stained clothes of the deceased to the police on their arrival at the place of occurrence. The I.O. (P.W.10) at para 7 has stated that the clothes (of the deceased) was found cut but he did not seize the same. P.W. 5 at para 2 and 3 has stated that blood was oozing from the chest of the deceased and was seen also at the place of occurrence. P.W 6 at para 9 has stated that on arrival of police, the dead body was placed on the cot at the place of occurrence itself. The I.O., however, at the time of preparing the inquest report did not mention the fact as to whether the dead body was on the ground or on cot. Thus we find that non-mentioning of all these facts are lapses and omission on the part of the I.O. Even if the I.O. did not find blood stains at the place of occurrence or inadvertently overlooked any material fact at place of occurrence, it would not throttle the prosecution case so much so to reject the unimpeachable evidence of eye-witness on the manner of assault, place of occurrence and complicity of the appellant in the above crime.

14. P.W. 1 is the co-villager. On hulla, he went to the place of occurrence and found the victim lying in an injured condition. P.W.5 is another co-villager who has specifically stated that it was a moonlit night and on hearing the 'Hulla' he too reached the place of occurrence and saw the appellant inflicting Chura blow on the deceased. He also noticed the blood oozing out from the injury sustained by the victim. The statements of these witnesses were recorded by the I.O. on the same day or the following day.



From the evidence of the Investigating Officer (P.W.10) recorded at para 6, it appears that he recorded the statements of all the available witnesses of the vicinity of the place of occurrence. He has stated that near the place of occurrence only the appellant and the deceased had their houses which are admittedly intervened by a village road. Thus, we do not find any force in the submission of the appellant that no independent witness has been examined by the prosecution. The defence has not been able to discredit their testimony as no material contradiction was drawn from their cross-examination, save and except a suggestion that his implication in the case was false which was denied by them.

15. It has been urged on behalf of the appellant that P.W. 4 Chandan Kumar cannot be accepted as eye-witness. According to his deposition, he was inside the house taking food with P.W.6. P.W.5, in his examination-in-chief, has stated that P.W. 4 was with him at his house when they heard the cry and rushed to the place of occurrence. Although P.W. 5 has claimed himself as eye-witness, but considering the above, particularly the examination-in-chief of P.W.4, read along with examination-in-chief of P.W.5, his claim of being eye-witness to the occurrence has become doubtful. Even if the evidence of P.W.4 is excluded from our consideration we find that P.Ws 2, 5,6,7 and 8 have consistently supported the prosecution case. They have no axe to grind against the appellant. Although, the appellant is the son-in-law of their agnates, but nothing has come on the record that there was any ill-will or bad blood from before between the two agnates. There is absolutely no reason forthcoming for false implication of the appellant by the prosecution.

16. Much emphasis has been laid by the counsel for the appellant that the motive to assault on the deceased has not been proved. The motive has a



role to play where the case hinges on the circumstantial evidence. That is considered as one of the links in chain. In a case, like present one, the motive shall pale into insignificance. We may however add that the motive constitutes the mental status which may spring up in the nick of time. The prosecution evidence is that the wife came out of the house and run to the deceased to save her from assault by her husband who soon followed her with a knife in his hand. The deceased had intervened which provided a motive to the appellant to inflict assault on him. All the prosecution witnesses have stated the above episode by stating as to how the appellant followed his wife and on intervention of the deceased in their quarrel, the appellant stabbed the deceased to death. This part of the evidence is unchallenged from the defence side. The appellant has not denied this fact in his statement given U/s 313 Cr. P.C. Neither the wife of the appellant nor any witness from defence side came to rebut the above evidence of the prosecution witnesses. The appellant in his statement U/s 313 Cr. P.C. has simply sated that this was not the fact. He did not put his defence of his false implication by the prosecution. He has failed to explain the reasons or any circumstances of his false implication in this case. In the evidence of witnesses, we do not find that the prosecution had any enmity or grudge to lodge this case against the appellant. It has been held by the Hon'ble Apex Court in ruling reported in **AIR 1997 S.C. Page 769** that the examination of the accused person under section 313 Cr. P.C. is not a mere formality. Answers given by the accused to the questions put to them during such examination have a practical utility for the criminal courts. Apart from offering an opportunity to the delinquent to explain incriminating circumstances against them, they would help the court in appreciating the entire evidence adduced in the court during trial. So the argument of the appellant of his false implication has got no force.



17. In view of discussions made above, we find that the prosecution has been able to prove the charge beyond shadow of reasonable doubts. The learned trial court rightly found and held the appellant guilty and convicted.

18. For the reasons stated above, we do not find any merit in the appeal. Accordingly, the appeal is dismissed.

(Kishore Kumar Mandal, J)

I agree (Sanjay Kumar, J)

HR/-

AFR/NAFR	NAFR
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