

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.63 of 2013

Arising Out of PS.Case No. -212 Year- 2011 Thana -UDWANTNAGAR District- BHOJPUR

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1. Chinta Devi W/O Vishundeo Giri Resident Of Village + P.O. Masarh, P.S. Udwantnagar, District Bhojpur.
 2. Vishundeo Giri S/O Late Shiv Pujan Giri Resident Of Village + P.O. Masarh, P.S. Udwantnagar, District Bhojpur.
 3. Munna Giri S/O Vishundeo Giri Resident Of Village + P.O. Masarh, P.S. Udwantnagar, District Bhojpur.

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikramdeo Singh,
Mr. Manoj Kumar
Mr. Manish Chandra.

For the Respondent/s : Mr. S.N. Prasad, APP

For the informant : Mr. Rajesh Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 10 -04-2017

Appellants Chinta Devi and Vishundeo Giri are the parents of appellant Munna Giri. All the three appellants were tried and convicted under Section 302/34 IPC read with Section 120B IPC for having caused death of minor son of the informant vide judgment of conviction dated 10.10.2012 passed in S.T. No. 50 of 2012 and by order of sentence dated 12.10.2012, they have been sentenced to undergo R.I. for life with fine having default clause.

2. It is a case where two fardbeyans were recorded. The occurrence had taken place in the evening of 13.08.2011 when the three appellants are said to have assaulted four and a half years old



son of the informant with bricks/stones and knife when he had gone to ease near the pond close to the Jain temple. The victim, having received injury at the hands of the accuseds-appellants, was immediately taken to the Ara Sadar Hospital and from there to Patna where he was hospitalized in a local hospital and, in course of treatment, on the following day at 9 a.m., he was declared dead. The Officer-in-charge of the local police station reached the hospital and recorded the fardbeyan of the informant (Ext.-4) within half an hour of the death of his son. The death inquest proceeding was carried out by him and the dead body was sent to the Patna Medical College Hospital for post mortem examination. Upon conclusion of the autopsy, the body was handed over to the informant and he came back to the village and cremated the dead body on the same day. The following morning i.e. on 15.08.2011, the S.H.O., Gajrajganj Police Out Post reached the village and recorded the fardbeyan of the informant (Ext.-6) at 11.30 a.m.. The fardbeyan recorded on 15.08.2011 gave rise to drawing up of a formal F.I.R. (Ext.-7) whereafter the investigation was taken up. It would be pertinent to note here that only one investigation was carried out pursuant to the lodging of the fardbeyan (Ext.-6).

3. The prosecution case, as unfolded in Ext.-6, in brief, is that on the relevant date and time of occurrence, the informant was at his roof top and watching his four and a half year old son who had



gone to attend call of nature near the pond which is few yards away from the house of the informant. In the meantime, the appellants arrived at the place of occurrence and started assaulting his son with bricks/stones. The informant immediately came down the roof top and rushed to the place of occurrence along with other witnesses and could see that his son was dragged close to the temple structure where also he was assaulted. Seeing the informant and the other witnesses, they left the place of occurrence leaving his son lying injured on wet grass close to the pond. Upon registration of the case, P.W.-7 took up the investigation. In the meantime, the copy of the fardbeyan recorded by the Jakkanpur Police Station in Patna (Ext.-4), the inquest report (Ext.-5) and the post mortem report (Ext.-8) were forwarded to the I.O. who made those documents part of the investigation record. The place of occurrence was inspected by the I.O. The statements of witnesses were recorded. In the meantime, the arrest of appellants Chinta Devi and Vishundeo Giri were secured on 05.08.2011. Finding the accusations true against the appellants, charge-sheet was laid whereon cognizance was taken and the case was committed to the Court of Sessions for trial whereafter learned trial Court framed charges under Sections 302/34 and 120B IPC which were read over and explained to the appellants to which they pleaded not guilty. Hence the trial.

4. With a view to prove the charges, the prosecution



examined eight witnesses at the trial. P.W.-1 Arjun Giri (brother of the deceased), P.W. 2 Rajesh Giri, (brother of the informant), P.W.-3 Neelam Devi (mother of the deceased), P.W.-4 Awadhesh Kumar (co-villager) apart from P.W.-5 narrated the ocular version of the prosecution case. P.W.-6 is a formal witness who proved Ext.-4 and the inquest report (Ext.-5). P.W.-7 is the Investigating Officer of the case. P.W.-8 Dr. Pankaj Kumar conducted autopsy on the cadaver of the deceased, submitted the post mortem report and proved the same at the trial. Upon conclusion of the prosecution evidence, the statements of the appellants under Section 313 Cr.P.C. were recorded wherein they claimed to be innocent. The defence also adduced evidence to prove the alibi of the appellant Chinta Devi. On a critical analysis of the evidence produced by the prosecution, both oral and documentary, the learned Trial Court, under the impugned judgment, held the appellants guilty of the charge and sentenced in the manner noted above.

5. We have heard Mr. Vikram Deo Singh in support of the appeal and Mr. Satya Narayan Prasad, APP for the State.

6. It has been urged on behalf of the appellants that the prosecution has not been able to prove the case beyond shadow of reasonable doubts. Although the informant claims to have witnessed part of the occurrence from his roof top but his wife P.W.-3, who too was present on the roof top on the relevant date and time of



occurrence, has not claimed so. If the evidence of P.Ws.-1, 2 and 3 are read together with the evidence of P.W.-5 (informant), it would appear that they too have not witnessed the actual assault perpetrated on the victim. It has also been submitted that the place of occurrence was not visible from the roof top of the house of the informant. Referring to Ext.-4 which is the fardbeyan made by P.W.-5 at the Sparsh Hospital in Patna on 14.08.2011 at 9.30 a.m., it is submitted that the name of appellant no. 1, in any manner, was not stated by the informant as one of the co-accuseds who participated in the crime. She was the only female accused. Her presence would have been conspicuous, yet the informant in Ext.-4 has not stated the presence of the appellant Chinta Devi at the scene of occurrence. He also collated the two versions of the prosecution case (Exts.-4 and 6) made by the informant in order to emphasize that there is marked difference in the manner of occurrence stated in Ext.-4 and Ext.-6. Ext.-6 was recorded when the findings of the doctor (P.W.-8) were known to the prosecution. A discernable improvement has, therefore, been made by the informant in his subsequent fardbeyan which ignited the investigation and gave rise to the present trial. It has also been urged that considering the attending facts of the case and the nature of the assault, conviction of the appellants under Section 302/34 of the Indian Penal Code would not be sustainable in law. The facts glared at the trial would demonstrably indicate that the accused did not intend



to cause death of the deceased. In this connection, he has drawn, in particular, our attention to the findings of the doctor in the post-mortem report where it was not opined that the injuries sustained by the deceased were in ordinary course of nature sufficient to cause death.

7. Mr. Prasad, in contra, supported the impugned judgment and order of conviction. He would urge that there is overwhelming ocular account of the case on record in the shape of evidence of P.Ws.-1, 2, 3 and 5(informant) who are the most natural witnesses which conclusively prove the guilt of the appellants. In this connection, he has drawn our attention to the cross-examination of the I.O. (P.W.-7) and the testimonies of these P.Ws. from which it appears that no material contradiction was elicited to discredit the ocular account of the prosecution case stated by these P.Ws. Insofar as non-naming of the appellant Chinta Devi in Ext.-4 by the informant is concerned, it has been submitted that this may be a mere omission which would not cut much ice considering the fact that only half an hour before recording the said fardbeyan, the four and a half year old son of the informant was declared dead by the doctor. Countering the submissions of the counsel for the appellants, it is submitted that the facts crystallized at the trial establish the charge that it was a case where the appellants intended and caused injury on the deceased which ultimately proved fatal.



8. In the light of the submissions of the parties, we would now examine the relevant evidence to find whether the prosecution has been able to prove the charge against the appellants beyond shadow of reasonable doubt. Firstly, we advert to the evidence of the informant (P.W.-5). From his deposition as well as from the deposition of the Investigating Officer (P.W.-7), it is found that his house is situated on the east side of the pond which again is part of the precincts of Jain temple. This witness claims to have seen part of the occurrence from the roof top through window. His 4 year son (deceased) had gone to ease near the pond. As it was a rainy day and evening time, the father was at the roof top constantly watching his son. The I.O. found his house a single storey one having no walls on the roof. However, on the southern-western part of the roof top, there was a shed (*jhopri*). On going through the evidence of the informant, it is found that he was present at the roof top on that part of the roof from where the flank of pond was visible. It has been argued with much vehemence that the house of the informant is surrounded by other houses and, as such, the place of occurrence was not visible. The cloud created by the appellant on this points stands cleared if we go through the evidence of the I.O. (P.W.-7) who inspected both the roof top of the house of the informant as well as the place where the assault on the deceased had first begun on the relevant date and time of occurrence. The I.O. did not find any construction near the house of



the informant obstructing the view.

9. Before we consider the evidence further, it would be pertinent to emphasize here that the prosecution and the accused(s) seem to be agnate. A motive has been alleged by the prosecution for commission of the crime by the accuseds. The informant is the son of Sudarsan Giri. Suryanath Giri was brother of Sudarsan Giri. He died leaving behind his widow and two married daughters. The widow of Suryanath Giri had entrusted the informant with all the responsibilities of the cultivation of the land falling in the share of her husband. We also find from the evidence on record that there was already separation between the brothers of the father of the informant. The accuseds are the descendents of another brother of Suryanath Giri. They had an eye over the property of Suryanath Giri who had no son. The prosecution has alleged that as the land of Suryanath Giri was looked after by the informant, the appellants were carrying grudge against them and in fact had also held out threats earlier to take revenge for having taken over the land of the share of Suryanath Giri.

10. P.W.-5 in his examination-in-chief has stated that on 13.08.2011 at about 5 o'clock in the evening, he was at his roof top. His son (deceased) had gone to the nearby pond to ease. As it was a rainy day, he watched his son from the roof top. In the meantime he could see the appellants appearing near his son and started assaulting him with bricks, stones and also by knives. His son (victim) raised cry



whereafter he alongwith his wife scaled down from the roof top and rushed to the place of occurrence. His brother (P.W.-2) and son (P.W.-1) besides his father (not examined) who were present at the *darwaja* of the house also followed him. When they reached the place of occurrence, they could see the accuseds dragging his son to the back part/portion of the temple where they continued to assault him. Seeing him and other witnesses, they fled away. P.W.-3 is his wife. She too was present at the roof top providing food to her husband. In the meantime, she could hear the cry of her son from the nearby pond. She too rushed to the place of occurrence along with other family members who were present at the *darwaja* and saw the appellants engaged in assaulting his son with brick, stones and knife. The victim was being dragged to the western part of the temple. However, seeing the witnesses, the appellants escaped therefrom. P.W.-1 is the son of the informant who was playing at the *darwaja* of the house whereas P.W.-2 Rajesh Giri and his grandfather (not examined) were also present. Hearing the screaming of the injured and seeing the informant rushing towards the pond, they too followed the informant and saw the assault being perpetrated on the victim by the accuseds. Awadhesh Kumar is a co-villager who has stated that he could know from the witnesses that the victim was assaulted by the accused persons on the relevant date near the pond.

11. It is argued that the wife (P.W.-3) has not claimed to



have seen the first part of the occurrence from the roof top when the accuseds are said to have assaulted the victim while he was near the bank of the *pokhar*. If she has not been able to witness from the roof top, it is wholly unlikely for the informant to witness the same from the roof top. Keeping in view the aforesaid criticism of the counsel for the appellants, we have perused her evidence. She was present at the roof top and was providing food to her husband. It is natural on her part not to see the first part of the assault on the deceased as she must be busy in providing food to her husband. Further, it cannot be read from her deposition that she was unable to see the victim from the roof top. The husband (P.W.- 5) has clearly deposed that he was constantly following his four and a half year old son as he had gone to the bank of the pond and there was chance of his slipping into the pond as it was rainy season. We do not find much substance in the submission of the appellants that if the wife of the informant has not claimed to have witnessed the first part of the occurrence from the roof top, the claim of the informant (P.W.-5) of having witnessed the first part of assault on his son should be disbelieved.

12. P.Ws.-1 and 2 are the two witnesses whose presence at the house on the relevant date and time of occurrence would not be viewed with suspicion. These witnesses have, in a very natural way, deposed that when the informant and his wife (P.W.-3) ran down from the roof top and rushed towards the place of occurrence, they too on



hearing the cry of the victim from near the pond followed the informant and saw later part of the assault made on the victim by the accuseds. We do not find any serious contradiction in their evidence. We have carefully perused their cross-examinations along with the evidence of the I.O. (P.W.-7). These witnesses claimed to have seen the continued assault on the victim by the accuseds when they reached there.

13. Not much has been argued on the place of occurrence by the appellants. We find from the evidence of the P.Ws.-1, 2, 3 and 5 as well as the objective finding of the I.O. (P.W.-7) that the place of occurrence as well as the time occurrence have been firmly established.

14. P.W.-8 is the Autopsy Surgeon who held post mortem and proved the report (Ext.-8). During the relevant time, he was posted as Professor in the Department of Forensic Science in P.M.C.H. and conducted post mortem examination on the dead body of Amarjeet Giri aged about four and a half years and found the following ante-mortem external and internal injuries:-

- “1. Multiple abrasion was found all over the scalp and face at places.
2. 7 (seven) stich wound ranging from 3/4" length to 1" long found on Rt temporo-parietal area of scalp.
3. 5 (five) stich wound ranging from 3/4" - 1" long was found on left temporo-perietal area of scalp.
4. Rt ear tube was found lacerated 1/4" x 1/4"”



The cause of death according to him was the head and abdominal injuries. These injuries in his opinion were caused by hard and blunt substance. In his cross-examination, he has, however, stated that few injuries may be possible by fall of the deceased on hard surface.

15. The finding of the Autopsy Surgeon supports the prosecution case narrated by the informant (P.W.-5) as well as P.Ws.- 1, 2 and 4. It is the prosecution case that the deceased was assaulted by bricks, stones and knife. The opinion with regard to injury nos. 2 and 3 which were stitched was, however, not expressed by him. It may be noted here that the victim was given first aid at Sadar Hospital, Bhojpur at Ara. In our view, the post-mortem report (Ext.-8) substantially prove the time and nature of injuries as well as the weapon used to assault the deceased.

16. Much has been stated about the lodging two F.I.Rs. firstly at Sparsh Hospital in Patna and thereafter by the Officer-in-charge of the Udwantnagar (Gajraj) Police Out Post on 15.08.2011. The informant himself has admitted about making statement before the Police at the Hospital upon the death of his son. There is nothing unnatural in recording the statement of the informant by the Police in Patna when it was reported by the Hospital that the deceased had died an unnatural death. Upon return of the informant with the dead body, the local police arrived and recorded his fardbeyan. We find that pursuant to the recording of the statement of the informant (P.W.-5) at



Sparsh Hospital, the Police carried out the death inquest proceeding and forwarded the body for post-mortem examination. No further investigation was pursued. The inquest report as well as the post-mortem report was later forwarded to the Udwantnagar Police Station where formal F.I.R. was registered pursuant to the recording of the fardbeyan by Gajraj Police Out Post which was made part of the investigation report. Only one investigation was carried out. In Ext.-4, the informant has alleged about assault on his son on the said place of occurrence by the appellant Vishundeo Giri and his son appellant Munna Giri who were seen assaulting him with knife. As he reached the place of occurrence on seeing the same from the roof top, both of them escaped from the precincts of the temple. It has been argued that two facts have distinctly appeared from perusal of Ext.-4. Appellant Chinta Devi was not alleged as one of the accuseds involved in the assault on the victim. Secondly, the allegation was of assault by knife whereas in Ext.-6, Chinta Devi has also been named as an accused with a general allegation that she too was participating in the assault. In Ext.-6, the informant has stated about assault by bricks and stones as well as knife. Chinta Devi was the alone female accused. Had she participated in the crime, it was easy for the informant to identify and remember her as one of the assaulters. Appellant Chinta Devi is aunt of the informant. The background under which the occurrence had taken place has already been noticed above. On the subsequent day,



when the present F.I.R. was lodged, she has also been named as one amongst the accuseds. We find substance in the submission of the Counsel for the appellants that her involvement with general allegation in Ext.-6 is an obvious embellishment with a view to rope in the entire family which is a tendency in the criminal case recognized by the Court. As the informant had roped in appellant Chinta Devi in Ext.6, the eye witnesses have named her also as one amongst the accuseds. Her involvement in the crime becomes doubtful.

17. Reading between the lines, the Counsel for the appellants has also contended that there was no allegation of causing injury by bricks and stones in Ext.4. We consider it a minor omission. The death of the son of the informant had occurred only few minutes prior to his statement (Ext.-4). That apart, the purpose of F.I.R. is to report as first version of the time, place and manner of occurrence and the involvement of the accused. It is not an encyclopedia where every detail is to be stated. The purpose of F.I.R. is to initiate an investigation on the basis of an allegation setting out the aforesaid facts. We may in this regard refer to the judgment reported in ***A.I.R. 1997 SC 768 (Rattan Singh Vs. State of H.P.)***. On close scrutiny of the materials on record including the evidence of P.W.-5, we do not find any material contradiction in the case put up by the prosecution insofar as appellants Vishundeo Giri and Munna Giri is concerned. In



our considered view, the prosecution has been able to prove the charge against appellants Vishundeo Giri and Munna Giri beyond shadow of reasonable doubts.

18. The contention of the appellants is that even accepting the prosecution case, no case under section 302 IPC would be sustainable. We don't find any substance in such submission. The accuseds had chosen vital parts of 4 ½ years son of the informant to assault. The autopsy surgeon found as many as 12 stiched wounds on his scalp/temporal/parietal area. We have, thus, no hesitation to conclude on this point against the defence. The accuseds/appellants had the requisite intention to do away with his life.

19. For the reasons stated above, the conviction and sentence imposed on appellants Vishundeo Giri and Munna Giri is upheld. Appeal preferred on their behalf is dismissed. Appellant Chinta Devi is given the benefit of doubt and acquitted of the charge. Appeal on her behalf is allowed and the conviction recorded against her is set aside. She is discharged from the liabilities of the bail bonds.

(Kishore Kumar Mandal, J)

Sanjay Kumar, J I agree.

(Sanjay Kumar, J)

Pankaj/-

AFR/NAFR	NAFR
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