

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.40 of 2011

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Against the judgment of conviction dated 25.11.2010, and order of sentenced dated 29.11.2010, passed in Sessions Trial No. 1408 of 2006/487 of 2006, arising out of Motihari (Town) Police Station case no. 236 of 2006, by the Additional Sessions Judge-cum-Fast Track Court No.-II, East Champaran at Motihari.

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Shankar Das S/O Dharikshan Das R/O Vill- Patkhauliya, Ps- Muffasil Motihari,
Distt- East Champaran

.... Appellant

Versus

The State Of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Rajendra Narayan, Sr. Advocate and
Mr. Anil Kumar, Advocate

For the State : Mr. Ashwani Kr. Sinha, Addl.P.P.

For the informant : Mr. Ram Adya Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: **HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH**)

Date: 06-03-2017

The instant appeal has been filed by the sole appellant against the judgment of conviction dated 25.11.2010, passed in Sessions Trial No. 1408 of 2006/487 of 2006, arising out of Motihari (Town) Police Station case no. 236 of 2006, whereby the learned Additional Sessions Judge-cum-Fast Track Court No.-II, East Champaran at Motihari convicted the appellant under sections 302, 307 and 34 of the IPC. For the offence under section 302 IPC, the appellant vide order, dated 29.11.2010 has been sentenced RI for life along with a fine of Rs.10,000/- and in



default, to undergo additional imprisonment for six months. For the offence under section 307 IPC, the appellant vide order, dated 29.11.2010 has been sentenced to undergo 10 years imprisonment along with a fine of Rs.5000/- and in default, to undergo additionally imprisonment for six months. For the offence under section 341 IPC, the appellant vide order, dated 29.11.2010 was sentenced to undergo 1 month SI. However, all the sentences were directed to run concurrently.

2. The prosecution case, in short, as made out in the fard beyan of Nandu Prasad (PW 1) s/o Late Jag Prasad, resident of village Patkhaulia, Police Station Motihari Muffasil, District East Champaran at Motihari recorded by the S.I. K.K.Sahani of Motihari Town Police Station on 5.10.2006 at about 8.15 AM at Sadar Hospital, Motihari, in short, is as follows:-

The informant Nandu Prasad stated that there was land dispute between his uncle Banarsi Prasad and Dharichchan Das (father of the appellant) for about last three years. The previous day on 4.10.2006 at 7 PM, his Chachi Ugni Devi W/o Banarsi Prasad, went to throw ash in that disputed land in village Patkhaulia, which led to altercation and marpit in between the sides. One Shankar Das (the appellant) of the other side was the



first to approach Thana for lodging case. The police soon thereafter came to the village and made enquiry and also took representation for instituting case. After registering cases from both sides brought them to Sadar Hospital, Motihari for treatment.

3. After providing preliminary treatment, police brought the informant, his cousin Raja Prasad and the appellant Shankar Das to thana. After duly checking their persons, police locked them in one Hajat. Some police men and Choukidar were also on duty. In the night, the informant awoke because of mosquito bite. After sometime, he enquired from the constable on duty about the time, who answered that it was 3 O'clock in the night. The informant again went to sleep. At about 3.30 AM, all of a sudden, Raja Prasad fell on informant and he hurriedly got up. He found Raja Prasad badly injured, who was being inflicted knife blows by Shankar Das. When the informant intervened, he too was assaulted with the knife on his right Panjara and left hand. He raised hulla upon which the constable and Choukidar on duty arrived. They tried to unlock the Hajat but Shankar Das threatened that if any one tried to enter inside the Hajat, he would kill them by the knife. The Constable and the Chaukidar raised alarm and called other police personnel, who entered into the Hajat after unlocking the gate and caught Shankar Das and saved Raja Prasad



from being further assaulted. The informant and Raja Prasad were thereafter taken to the Sadar Hospital by police constable. Raja Prasad was senseless and the doctor treating him at Sadar Hospital, Motihari declared him dead.

4. The fard beyan of the informant was read over to him and finding the same to be correct he put his left thumb impression on it. On basis of the fard beyan of the informant, Town Police Station case no. 236 of 2006, dated 5.10.2006 under sections 341, 324, 307 and 302 IPC was registered at about 8.15 AM. Police prepared inquest report, marked as exhibit 7, at about 9.47 AM on the same day and sent the dead body of Raja Prasad to the Sadar Hospital, Motihari for post mortem examination. Investigation of the case was taken over by Krishna Kumar Sahani, PW 14 who is the IO of the case. Soon after taking over the investigation, he prepared inquest report (exhibit 7) of the deceased on the same day and sent the dead body for post mortem examination to Sadar Hospital, Motihari. In course of investigation, the IO took statements of the informant Nandu Prasad, the officer-in-charge Md. Amanullah, SI of Police of Muffasil Police Station and other police personnel of the Muffasil Police Station, residing in the same premises. He also prepared injury report of the informant. Police seized the knife said to be



used in the commission of crime and prepared a seizure list of the same on completion of the investigation. Police submitted charge sheet under sections 302, 307 and 341 IPC. Learned Magistrate took cognizance of the offence and committed the case to the court of sessions for trial. Charges were framed against the appellant under sections 302, 307 and 341 IPC, to which he pleaded not guilty and claimed to be tried.

5. The prosecution, in support of its case, examined as many as 16 witnesses and also adduced documentary evidence including the fard beyan, FIR, inquest report and the post mortem report. The prosecution also brought on record material exhibits like knife etc. The defence examined one witness, the appellant in support of its case. On consideration of materials on record, the trial court convicted the sole appellant under sections 302, 307 and 341 IPC and sentenced him as already noticed in the earlier paragraphs.

6. It is relevant to state that the occurrence took place in the police Hajat of Muffasil Police Station, Motihari, as such, investigation of the case was done by PW 14 Krishna Kumar Sahani, Sub-inspector of Town Police Station, Motihari. The prosecution examined as many as 16 witnesses in support of its



case.

7. Out of 16 witnesses PW 1 Dinesh Rai is Chaukidar of Basmanpur Panchayat and at the relevant time he was sleeping in the “Varanda” of Muffasil Police Station, Motihari. PW 4 Umesh Singh is the Thana Munshi who has claimed to be an eye witness along with the informant Nandu Prasad (PW 11). PW 2 Panchdeo Singh, ASI, PW 5 Jokhan Pathak, ASI, PW 8 Maheshwar Paswan, SI, PW 12 Saifuddin Ahmad, SI were posted at Muffasil Police Station, Motihari at the relevant time and have claimed to have seen a part of the occurrence. PW 3 Ram Vyas Ojha is a formal witness. He was a constable posted in the Town Police Station, Motihari. He produced one blood stained *Chaku* before the court, which was marked as exhibit 1. PW 6 Nagendra Ram is constable in the Muffasil Police Station, Motihari. PW 7 is Md. Amanullah, officer-in-charge of Motihari Muffasil Thana. PW 9 Dr. Maya Shankar was posted at Sadar Hospital, Motihari on 5.10.2006 and had conducted post mortem on the dead body of Raja Prasad at about 1 PM and found as many as six injuries on the person of the deceased, two on the chest, one each on the neck, shoulder, wrist etc. The heart and lungs of Rama Prasad were punctured and were sufficient to cause death. PW 10 Raghunath Singh is an official in the Muffasil Police Station .PW 11 Nandu Prasad is the informant.



PW. 12 Saifuddin Ahmad is the ASI in the Muffasil Police Station, Motihari. PW 13 is Dr. Shambhu Prasad, who was posted at Sadar Hospital, Motihari at the relevant time i.e. on 5.10.2006 and about 4.30 AM, he examined the injuries on person of Nandu Prasad, the injured and found two injuries on his person, one penetrating wound 1" x ¼" x ½" on the upper part of left arm and the other penetrating wound 1" x ½" x 1 ½" on the right lower back. PW 14 is Krishna Kumar Sahani, the I.O. of the case. PW 15 Prabha Kant Thakur is formal witness, whereas PW 16 Birendra Narayan Singh also a formal witness.

8. PW 1 Dinesh Rai is Chaukidar of Basmanpur Panchayat. He is a chance witness. He has stated that at the relevant time on 4.10.2006 at 8.30 AM, he was sleeping in the Varandah of the Muffasil Police Station, Motihari. At about 3.30 AM, Thana Munshi of the Muffasil thana Umesh Singh (PW 4) woke up and informed that Rama Prasad, Nandu Prasad and Shankar Das are raising hulla. On the instruction of PW 4, he went to call the officer-in-charge of Muffasil thana Md. Amanullah and other police personnel. On his call, police immediately rushed to the Hajat. They saw Shankar Das wielding knife in his hand and was threatening that he would kill if anyone will try to open the Hajat. They found Rama Prasad and Nandu Prasad in an injured



condition. After some efforts, police succeeded in overpowering Shankar Das by throwing a blanket on him. The knife was snatched from his hand by the police, thereafter both the injured, namely, Rama Prasad and Nandu Prasad were sent to Sadar Hospital, Motihari. Injured Rama Prasad was declared dead by the doctor. PW 16 Birendra Narayan Singh, SI prepared seizure list in respect of recovery of the knife. Dinesh Rai (PW 1) and Umesh Singh (PW 4) put their signatures on the seizure list and a copy of the same was given to the accused Shankar Das. In the cross-examination, he stated that he is Chaukidar of Basmanpur Panchayat which is 9 kilometers away from the Muffasil Police Station and he comes to the Thana generally after interval of 8 days. He stated that on the date of occurrence he had come to the Muffasil Police Station at 12 Noon and no other Chaukidar had come to the police station on that date.

9. Apart from PW 1 Dinesh Rai, PW 4 Umesh Singh has claimed to be the eye witness of the occurrence. He stated that on 4.11.2006, he was posted in Muffasil Police Station as Literate constable. In the night of 4.5.2006 he was sleeping just next to the Hajat in the Muffasil Police Station. At about 3.30 AM he woke up on the hulla coming from the Hajat side. He saw the appellant Shankar Das stabbing Rama Prasad with a knife. When other



person Nandu Prasad, who was also locked up in the same Hajat, tried to save him, he too was assaulted by accused Shankar Das. This witness saw the occurrence in his torch light as well as in the bulb burning near by. He immediately shouted and asked Shankar Das to hand over his knife to which he did not agree. When this witness tried to open the Hajat, he was threatened by Shankar Das who was wielding his knife. Around that time, the Chaukidar Dinesh Rai (PW 1) went running and arrived with Md. Amanullah (PW 7), the officer-in-charge of the Muffasil Police Station and other police personnel. After some efforts, Shankar Das was overpowered and knife was retrieved from him. The two injured Raja Prasad and Nandu Prasad were taken out from the Hajat and were sent to the Sadar Hospital, Motihari for treatment. In course of treatment, Rama Prasad died. PW 16 prepared seizure list of the knife on which he signed as a witness.

10. Now we take up the evidence of the informant Nandu Prasad (PW 11), who at the relevant time, was locked up in the Hajat along with Rama Prasad and appellant Shankar Das. In the cross-examination, this witness denied the suggestion of the defence that in the lock up there was some altercation between Raja Prasad and Shankar Das and taking advantage of the same, Nandu Prasad tried to stab Shankar Das but on account of



darkness, by mistake he stabbed Raja Prasad, his own cousin.

11. PW 11 is the informant and an eye witness to the occurrence. It is an admitted position that on the relevant night he was locked up in the Hajat along with appellant Shankar Das and his cousin Raja Prasad. He stated that before locking them in the Hajat at about 9 PM in the night police had searched their person. The informant stated that when he and Shankar Das were being locked in the same Hajat, he protested pleading that the latter should be shifted somewhere else, which went unheeded. The informant subsequently too fell asleep. In the middle of the night he woke up as Raja Prasad fell on his body. He saw Shankar Das stabbing Raja Prasad with knife. When the informant tried to save him, he too was assaulted on his left arm and right side of the chest. He raised hulla, whereupon Thana Munshi Umesh Singh (PW 4) and Chaukidar Dinesh Rai (PW 1) came. When these two persons tried to open the gate of the Hajat, appellant Shankar Das warned them from entering into the Hajat. However, they overpowered by throwing a blanket on him and then snatched the knife from him. Injured Raja Prasad and Nandu Prasad were taken to the Sadar Hospital, Motihari for treatment. On seeing Raja Prasad, doctor declared him dead. Police came to the hospital and took his statement. He further stated that while they were



locked up in the Hajat, no one had come to meet him, though Madan Singh, Chandrika Das, Nirmala Devi, Lakshman Das and Ramdayal Das had come to meet appellant Shankar Das. They also met the police staff. He stated that he identified those persons in the bulb light of the office room. In the cross examination, he stated that his father and Banarsi Prasad happen to be maternal brother. He further stated that Banarsi Prasad was having land dispute with the father of Shankar Das. He stated that in the evening of 4.10.2006 an altercation and marpit took place between both the parties as Ugni Devi w/o Banarsi Prasad had gone to throw ash in the disputed land. Apart from this witness, PW 5 Jokhan Pathak, who was posted as Sub-inspector in the Muffasil Police Station at the relevant time and was sleeping in the same Police Station premises, has stated that at 3.30 AM PW 1 Dinesh Rai called him in the Hajat, whereafter he along with PW 2 Panchdeo Singh, PW 6 Nagendra Ram, PW 7 Md. Amanullah, PW 8 Maheshwar Paswan, PW 10 Raghunath Singh, PW 12 Saifuddin Ahmad, PW 16 Birendra Narayan Singh went to the Hajat. They saw blood stained knife in the hand of appellant Shankar Das, whereas other two persons, Raja Prasad and informant Nandu Prasad locked in the Hajat, were in injured condition. Condition of Raja Prasad was precarious. Thereafter,



they overpowered Shankar Das and retrieved knife from him. Injured were sent to the Sadar Hospital, Motihari where Rama Prasad was declared dead. Statements of PW 2 Panchdeo Singh, PW 5 Jokhan Pathak, PW 8 Maheshwar Paswan, PW 10 Raghunath Singh, PW 12 Saifuddin Ahmad, PW 16 Birendra Narayan Singh, all police personnel, are to the same effect. As such, we do not examine them separately.

12. PW 9 Dr. Maya Shankar conducted the post mortem on the dead body of the deceased on 5.10.2006 at about 1 PM. He has also noticed as many as six knife injuries on the person of the deceased. According to him, the injuries are sufficient to cause immediate death. According to this witness, rigor mortis was present which tallies with the time mentioned in the prosecution case. It is relevant to state that on dissection, heart and lungs were found punctured. He also found heart and lungs of the deceased Raja Prasad punctured which were sufficient to cause death.

13. PW 13 Dr. Shambhu Prasad is the doctor who examined the injured informant Nandu Prasad (PW 11) on 5.0.2006 in the Sadar Hospital, Motihari. He found two injuries on his person, one penetrating wound 1" x ¼" x ½" on the upper part of left arm and the other penetrating wound 1" x ½" x 1 ½" on the right lower



back. He proved the certified copy of photo copy of the injury report.

14. Mr. Rajendra Narayan, learned Senior counsel appearing for the appellant, has assailed the impugned judgment on a number of grounds. He submits that on 4.10.2006, all the three persons, namely, the deceased Raja Prasad, the informant Nandu Prasad and the appellant Shankar Das were locked in the Hajat of Muffasil Police Station at about 9 PM and before this they had indulged in altercation and marpit for which they had lodged case and counter case in the same Police Station. Learned counsel submits that even in this situation, police placed them in one and same Hajat. It is even more surprising that before putting them in the Hajat, the police had searched their bodies, still one of inmates of Hajat, Shankar Das possessed a knife by which he allegedly assaulted Raja Prasad and the informant Nandu Prasad. All this makes the prosecution case doubtful, that Shankar Das assaulted the deceased in the Hazat.

15. Learned counsel submits that in fact at the time of locking up the deceased at about 9 PM, some altercation took place between Umesh Singh, Thana Munshi (PW 4) and the informant Nandu Prasad (PW 11). Taking it to be an affront,



Thana Munshi (PW 4) brought an outsider into the Hajat, who assaulted informant and his cousin Raja Prasad, resulting into death of the latter. However, the defence rather suggested to PW 4 that the informant Nandu Prasad tried to kill the appellant Shankar Das due to enmity, but because of darkness in the Hajat, he accidentally assaulted his cousin Raja Prasad. Thus the defence has taken plea which are contradictory in nature.

16. On the other hand, the informant Nandu Prasad, PW 11 stated that 3 to 4 persons had come to the Muffasil Police Station in the night on 4.11.2005 and met appellant Shankar Das locked in the Hajat. The circumstances indicate that these persons may have given knife to the appellant Shankar Das, by which he assaulted Raja Prasad and the informant Nandu Prasad, due to land dispute. The fact is corroborated by a number of witnesses, namely, PW 2 Panchdeo Singh, PW 5 Jokhan Pathak, PW 6 Nagendra Ram, PW 7 Md. Amanullah, the officer-in-charge, PW 8 Maheshwar Paswan, PW 10 Raghvansh Singh and PW 12 Saifuddin Ahmad who all stated that on call of the local Chaukidar they reached the Hajat at about 3.30 AM in the morning and saw blood stained knife in the hand of the appellant. They also saw two other persons locked in the Hajat who were in



the injured condition.

17. The two diametrically inconsistent pleas of the defence that (a) in fact due to darkness in the Hajat, Nandu Prasad by mistake stabbed Raja Prasad or (b) an outsider brought by Thana Munshi (PW 4) stabbed Raja Prasad, all bereft of merit and have no leg to stand.

18. The defence next argued that the prosecution case narrated in the FIR loses its credibility as the same was lodged after preparation of the inquest report of the deceased. Elaborating his submission, learned counsel submits that the fard beyan was lodged on 8.15 AM in the Sadar Hospital, Motihari, whereas the I.O. in his evidence stated that he prepared inquest report and then recorded the fard beyan of the informant. In our view, the plea of the defence is only to be noticed to be rejected. It would appear from the inquest report that the same was prepared at 9.40 AM on 5.10.2006, whereas FIR was lodged at about 8.15 AM. It appears that there is some bona fide mistake in the statement of the IO as he stated that he prepared inquest report and then took the fard beyan of the informant, which runs contrary to record.

19. The appellant had argued that PW 9 Dr. Maya Shankar in his evidence stated that he conducted post mortem on the dead



body on 5.10.2006 at about 1 P.M., however, the post mortem report is dated 7.10.2006. Thus the post mortem report does not inspire confidence and the same should be held to be illegal. We find that the doctor has explained that earlier he had written the details of the post mortem examination on a plain paper, which he recorded in the format on 7.11.2006, as such there is discrepancy in the date which is bona fide. In our view, merely because the post mortem report has been prepared after two days of the post mortem of the deceased, the same would not wipe off the authenticity of the post mortem report, as it was a mere irregularity on the part of the doctor. The witnesses have stated that the deceased was stabbed by knife leading to his death. The inquest report also shows that the deceased sustained as many as four injuries, which corroborates the post mortem report. Thus the plea of defence that the post mortem report is not credible, is bereft of merit and is rejected.

20. Learned counsel for the appellant has also argued that PW 16 produced a knife in the court which was not sealed but only wrapped in a piece of paper and as such it cannot be said with any amount of certainty that that the knife was one which had been used in the commission of crime. In our view, even if the version of the defence is accepted, this would not go to the



root of the prosecution case in view of credible evidence of witnesses on the point. The defence too has not disputed that the deceased was done to death by knife blows.

21. The defence has also argued that it has come in the evidence that the Home guard Jawans as well as Special Armed Forces Jawans were deployed in the premises but none of them were examined. In our view, the number of witnesses examined in a criminal trial would not be of much importance, if the evidence of witnesses, who have been examined, inspires confidence and are trustworthy. As such, non-examination of home guards or the Special Armed Forces would not cast any doubt in the credibility of prosecution case.

22. Situated thus, we find that it is an admitted case that altogether three persons, namely, the informant Nandu Prasad, deceased Raja Prasad and appellant Shankar Das, were locked in the Hajat. It is also not in dispute that there was land dispute between the father of Raja Prasad (deceased) and father of appellant Shankar Das, and the informant is the own cousin of Raja Prasad, who was stabbed to death. Besides this, the time of occurrence and place of occurrence have also not been disputed by the accused persons. The defence has given two theories.



According to the one theory, informant has accidentally stabbed Raja Prasad on account of darkness in the Hajat, while he was trying to attack the appellant. The other theory given by the defence in its own deposition is that the exchange of words had taken place between Thana Munshi PW 4 and the informant Nandu Prasad (PW 11) at the time of locking all of them in the same Hajat.

23. The defence of the appellant cannot be accepted as it gives two different theories which are unpalatable and contrary to each other and makes the defence case vulnerable.

24. We have carefully scrutinized the evidence of the prosecution side and considered the evidence of witnesses in totality. We find that the prosecution has been able to establish the case against the defence beyond all reasonable doubt. As such, we do not find any reason to interfere with the judgment of conviction, passed by the learned trial court. The appellant who is in custody for more than ten and half year, would remain in custody to serve out the remaining part of the sentence including remissions. However, the amount of fine awarded to the appellant under sections 302 and 307 of the IPC is reduced from Rs.10,000/- to Rs.3,000/- and Rs.1000/- respectively and in



default of payment of fine, appellant would under go additional imprisonment for two months under each count. However, all the sentences would run concurrently.

(Samarendra Pratap Singh, J)

(Arun Kumar, J)

Shashi.

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