

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.543 of 1993

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1. Banwari Manjhi, son of Badri Manjhi
 2. Ram Deep Manjhi, s/o Sumangal Manjhi, both are resident of village-Mohiuddinpur, P.S. Nagarnausa, District-Nalanda

... .. Appellant/s

Versus

The State Of Bihar

.... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Amish Kumar, Amicus Curiae

For the Respondent/s : Ms. Shashi Bala Verma, A.P.P.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date : 12-10-2017

In this Criminal Appeal two appellants have challenged the judgment of conviction and order of sentence dated 19th October, 1993 passed by Sessions Judge, Nalanda at Biharsharif in Sessions Trial No. 147 of 1992 arising out of Chandi P.S. Case No. 204 of 1992 whereby the appellants were convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

2. The prosecution case as per the fardbeyan of the informant Rameshwar Manjhi is that on 18.6.1991 at about 4 PM the informant was going for cutting earth along with his deceased son, Anuj Manjhi aged about 7 years and when he reached near the door of Brij Manjhi he found the accused Banwari Manjhi and Ramdip Manjhi standing there holding Hasua (sickle) in their



hands, who abused him and surrounded him and shouted to kill him. The informant however, managed to run away but his son was caught by the two accused persons and was assaulted by means of Hasua and was thrown on the earth. Later the informant heard hulla in the village that his son had been killed. Then he went to see his son and while he was going to see his son the other accused persons namely, Nandey Manjhi, Jagdish Manjhi, Sumangal Manjhi, Narasingh Manjhi, Rama Manghi Manjhi, Nawal Manjhi and Shyam Bali Manjhi surrounded him near the door of Brij Manjhi armed with weapons and they also shouted to kill the informant. The informant raised alarm whereupon the witnesses Chandradip Manjhi, Sheo Balak Manjhi, Rajan Manjhi, etc. rushed to the place of occurrence and the accused persons fled away.

3. The police after investigation submitted charge sheet against 9 persons including the appellants for offence under Section 302, 307, 149 and 114 of the Indian Penal Code. However, out of 9 persons, against whom charge sheet was submitted, the trial court acquitted rest of the accused against whom the police has submitted charge sheet.

4. On behalf of the prosecution 7 witnesses were examined. P.Ws. 6 and 7 are formal witnesses, P.W.1 is the Doctor of the



case, P.Ws. 2,3,& 4 are the material witnesses. I.O. has been examined as Court Witnesses No.1.

5. The trial court after scrutiny of the evidence adduced by the prosecution and on consideration of the post-mortem report found that the prosecution has been able to bring home the charges beyond all reasonable doubt against the appellant, Banwari Manjhi and Ramdip Manjhi.

6. Mr. Amish Kumar, appearing as Amicus curiae on behalf of the appellants has submitted that the face of the case appears to be ugly but on scrutiny of the evidence and materials on record, the conviction of the appellants cannot be sustained. The Trial Court has committed error in convicting the appellants. He has drawn our attention to the inquest report in the instant case. The inquest report was not prepared at the place of occurrence but at the police station which is 6 km away from the alleged place of occurrence. From perusal of page 34 of the paper book which is inquest report, it is evident that the inquest report was prepared in the campus of the police station, so the police has done perfunctory investigation in this case as he has not visited the place of occurrence to prepare the inquest report.

7. Mr. Amish Kumar then invited our attention to the post-mortem report. He submitted that the occurrence in the case took



place on 18.6.1991 at 4 PM and post-mortem was done on 19.6.1991 at 4.40 PM. and as such he submitted that the post-mortem report which was conducted after 24 to 36 hours of the death renders the whole prosecution case mysterious as the doctor has opined that the rigors mortis was absent in both lower and upper limb. He submitted that rigor mortis starts within six hour of the death and in the month of June the occurrence is alleged to have taken place and finding rigor mortis absent in both lower and upper limb falsifies the manner of occurrence. He has drawn our attention to the deposition of the Doctor P.W. 1 and referring to his cross-examination he submitted that during the cross-examination of the Doctor, the doctor has admitted the suggestion of the defence that the as a result of drowning also death would be caused due to asphyxia which was the cause of death recorded by the doctor in the instant case.

8. Mr. Amish Kumar referring to the post-mortem report, which was conducted after 24 hours of the alleged incident and the specific case of the doctor that rigors mortis was absent and the possibility of death on account of drowning is possible submitted that this factual matrix was overlooked by the trial court. He also referred to the cross-examination of the doctor wherein he admitted that on dead body no external mark of strangulation was



noted. The doctor in his cross-examination has noted that no mark of throttling or pressure on neck or back was noticed. The evidence of the doctor during the cross-examination was that the injuries found on the dead body would not be caused by sickle which is commonly used for cutting grass. This opinion of the Doctor runs contrary to the specific prosecution case that the deceased was done to death by instrument like sickle used for cutting grass.

9. Mr. Amish Kumar pointed out that in the instant case P.W. 2 was cited as eye witnesses to the occurrence who, in his deposition in para-5 has stated that when he reached the place of occurrence approximately 35 persons were present. He has stated that he cannot name the persons who were at the spot. He has stated that when he reached the place of occurrence, accused persons were there and the Ramanuj was also there and due to fear he did not take step to free him and he returned from that place. In view of the specific stand that he returned from the place of occurrence, he cannot be relied upon as eye witness. In para-6 of his deposition he has stated that after half an hour he saw the dead body thrown in the ditch. Therefore, he cannot be cited as eye witness and no reliance can be placed at his deposition about the



manner of commission of crime and involvement of the accused persons in the commission of crime.

10. P.W.3 who was cited as another witness has stated in para-5 of his deposition that he was engaged in doing repair works of the hutment of Rajendra Babu of the village and he remained there from 6 AM to 6 PM. he allegedly reached the place of occurrence thereafter. Mr. Amish Kumar submitted that since the occurrence took place at 4 pm and admittedly this witness claims to have reached the place of occurrence after 6 pm i.e. two hours after the occurrence and as such he cannot be taken as eye witness and his version cannot be further relied upon for the reasons that from his own account when he reached the place of occurrence he stated that except him and victim and the accused persons no one was there at the spot. In one breath he said that he returned back from that place. On the other hand, he says that he has seen the accused persons equipped with Bhala, Gadasa, etc. and they were in a drunken condition. He has stated in para-12 that the victim was done to death by Hasua (sickle), which is used for cutting grass, but no blood stain fell from the dead body.

11. The third witness who has been cited as eye witness of the incident is P.W. 4 who has stated in para-6 of his deposition that when he reached the place of occurrence 50-100 people of the



village were present. He does not recollect the name of all those who were present but he mentioned the name of P.Ws. 2 and 3, who were present according to P.W. 4 at the place of occurrence. It is seen from the deposition of P.W. 2 and 3 that P.W. 2 returned from the place of occurrence before the actual occurrence, P.W. 3 has stated that he reached the place of occurrence at 6 P.M. and thereafter he returned whereas the occurrence took place at 4 pm. Therefore, the claim of the P.W. 4 that he is eye witness cannot be relied upon as the statement of P.Ws. 2 and 3 that they left the place of occurrence before the actual occurrence and claim of P.W. 4 that he was present does not inspire confidence. Learned counsel for the appellants submitted that in fact in the instant case no one has seen the occurrence and the case of the prosecution is based on the basis of mere suspicion.

12. Mr. Amish Kumar also referred to cross-examination of the witnesses and referred to the illicit relation of Rameshwar Manjhi the informant of the case with the wife of one Jagdish Manjhi and that is why the appellants have been made accused in the instant case as Jagdish Manjhi was one of the accused made in the instant case but he was ultimately acquitted by the trial court.

13. Thus on the strength of the deposition of the so called eye witnesses, P.Ws. 2,3 and 4 and the contradiction in the medical



report, Mr. Amish Kumar submitted that the appellants have been convicted in the instant case only on the basis of suspicion. The cumulative effect of the contradictory version of the witnesses and the opinion of the Doctor that death may be caused due to drowning, even after 24 hours in the month of June rigors mortis was not present in the dead body, specific allegation of the prosecution that the crime was committed by the weapon like sickle which is used for cutting grass and the definite opinion of the doctor that no such injury was found on the dead body creates serious doubt about the manner in which the prosecution has alleged the occurrence of the time.

14. Mr. Amish Kumar submitted that in the totality of the fact situation one cannot safely come to the conclusion that the appellants have committed crime and throttled the victim or caused injury by sickle which is definite case of the prosecution stands contradicted by the specific statement of the doctor who ruled out the possibility of use of sickle used for cutting grass as no such injury was found and he ruled out the case of any throttling on the dead body as the doctor has categorically admitted in his cross-examination that no external mark of strangulation was noticed or no mark of throttling or pressure on both the sides of the neck or back portion of the head was noticed.



15. In addition thereto the fact that absence of rigor mortis on dead body even after 24 hours suggest that the death of the deceased was due to throwing in the ditch which was also accepted as possible cause of death by the Doctor. Referring to the entire facts and circumstances which creates serious doubt about the manner of commission of crime and referring to the fact that in the instant case charge sheet was submitted against 9 persons but the trial court has acquitted seven persons, he submitted that the trial court has not appreciated the totality of the fact situation and the circumstances while convicting the appellants. He submitted that the chain of events and circumstances creates serious doubt about the manner of commission of crime by the appellants and the attending fact and circumstances suggest that death was caused not in the manner as the prosecution has pleaded but the story of death due to drowning in the ditch was more plausible but the same was not considered by the trial court.

16. The learned Additional Public Prosecutor appeared on behalf of the State has submitted that the trial court has convicted the appellants on appreciation of the evidence but during the course of hearing he accepted the contradiction in the version of the eye witnesses as to the time of occurrence and the manner of occurrence. He could not be able to satisfy about the specific case



of the prosecution of throttling and cutting by sickle, a grass cutter, which was totally negated by the doctor during his cross-examination. He has also not been able to explain the mystery of absence of rigor mortis in the dead body even after 24 hours of the occurrence in the month of June.

17. We have heard the parties and considered the entire facts and circumstances, we find substance in the submission of learned Amicus curiae that in the instant case the chain of events and the attending facts and circumstances as well as medical evidence run contrary to the specific pleading of the prosecution. We also find substance in the submission of learned Amicus curiae that in the instant case inquest report was not prepared at the place of occurrence but at the police station which is 6 kms. away from the place of occurrence.

18. We also noticed that the doctor, as suggested by the defence that there is possibility of death due to drowning, has accepted the same as possible. We also noticed from the deposition of the Doctor that there was no throttling mark and the injury was not possible from the instrument like sickle which is used for grass cutting. Thus, the medical evidence and the expert opinion runs contrary to the prosecution version.



19. We have also examined the deposition of the so called eye witnesses to the occurrence. From the deeper scrutiny of their deposition it is evident that none of them have seen the commission of the crime.

20. Taking into consideration the totality of the fact situation, we have no manner of doubt that the appellants have been able to make out a case that the other view of commission of the crime contrary to as set up by prosecution is equally probable. we find substance in the submission of the learned counsel for the appellants that in a situation when two views are possible, one as pleaded by the prosecution about involvement of the appellants in the commission of the crime and the other view of false implication due to the illicit relationship of the informant with the wife of Jagdish Manjhi, who was acquitted by the trial court and the possibility of commission of crime in a manner other than suggested by the prosecution inasmuch as death may be caused due to drowning is possible, we also find that the specific case of prosecution as to use of weapon like sickle was ruled out by the Doctor, the fact that no throttling mark was noticed, no external injury was noticed on the neck of the deceased, we are of the considered view that in such a situation, the appellants deserve



benefit of doubt as death of deceased is possible in a different manner due to accident and drowning is equally possible.

21. Accordingly, we allow the appeal giving benefit of doubt to the appellants in view of the fact that prosecution case is not supported by medical evidence as discussed above and as such prosecution has not been able to establish the guilty beyond all reasonable doubt.

22. The appeal is allowed. The judgment of conviction and order of sentence dated 19th October, 1993 passed by Sessions Judge, Nalanda at Biharsharif in Sessions Trial No. 147 of 1992 arising out of Chandi P.S. Case No. 204 of 1992 is set aside and the appellants are discharged from the liability of the bail bonds.

23. Before we part with this case, we record our sense of appreciation for the able assistance rendered by Mr. Amish Kumar, Amicus Curiae. Let a copy of the judgment be handed over to Mr. Amish Kumar who has assisted the Court as Amicus Curiae.

(Rajendra Menon, CJ)

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(Anil Kumar Upadhyay, J)

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