

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.156 of 2013

Arising Out of PS.Case No. -238 Year- 2011 Thana -SIWAN MUFFASIL District- SIWAN

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Akhilesh Mishra @ Akhilesh Kumar Mishra S/O Late Bachcha Mishra Resident
Of Village- Bindusar Aakopur, P.S.- Siwan Mufassil, District- Siwan

.... Appellant

Versus

The State Of Bihar

.... Respondent

with

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Criminal Appeal (DB) No. 1157 of 2012

Arising Out of PS.Case No. 238 Year- 2011 Thana -SIWAN MUFFASIL District- SIWAN

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Jitendra Mishra S/O Late Bacha Mishra R/O Village - Aakopur, Bindusar, P.S.
Siwan Muffasil (Mahadewa), District - Siwan

.... Appellant

Versus

The State Of Bihar

.... Respondent

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Appearance :

(In CR. APP (DB) No.156 of 2013)

For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mr. Md. Imteyaz Ahmad, Advocate
Mr. Nilesh Kumar, Advocate
Mrs. Babita Kumari, Advocate
Mr. Ravi Ranjan, Advocate
Mr. Amit Kumar, Advocate

For the Respondent : Mr. Ajay Mishra, APP

(In CR. APP (DB) No.1157 of 2012)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Md. Imteyaz Ahmad, Advocate
Mr. Nilesh Kumar, Advocate
Mrs. Babita Kumari, Advocate
Mr. Ravi Ranjan, Advocate
Mr. Amit Kumar, Advocate

For the Respondent : 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 SANJAY KUMAR)

Date: 08 -03-2017



Both the appellants stood charged under Section 302/34 IPC for having voluntarily caused murder of Mukesh Yadav, the brother of the informant (P.W.-6), by means of inflicting knife injuries. On Trial, the learned Trial Court vide judgment of conviction dated 29.11.2012 passed in S.T. No. 481 of 2011 held them guilty under sections 302/34 I.P.C and vide the order of sentence dated 05.12.2012 each of them were sentenced to undergo R.I. for life with fine in the sum of Rs. 10,000/- having default clause. These two appeals assail the aforesaid judgment and order of conviction. They have been heard together.

2. The prosecution case unfolded in the fardbeyan (Ext.-2/2) recorded on 21.07.2011 at 10.30 a.m. by Sri N.K. Sinha of Siwan (Mufassil) Police Station, in brief, is that on 21.07.2011 at about 9 a.m., the brother of the informant (since deceased) was going to his field and as he reached at the tinmuhani (convergence of three roads) towards south of his house, both the appellants intercepted him and started assaulting him with knife which caused injuries to the deceased on his chin, lips and chest. As a result of those injuries, the victim fell down in an injured condition. The informant and several others witnesses rushed towards the place of occurrence on seeing the assault whereafter the accuseds/appellants left the place. The victim was immediately



carried to the Sadar Hospital, Siwan but he succumbed to the injuries on way. On recording the fardbeyan, a formal F.I.R. (Ext.5) was drawn and the investigation ensued. P.W.-5 was posted at the said hospital as Medical Officer. He conducted the post mortem on the same day and found no rigor mortis present on the body and found three ante-mortem injuries on the person of the deceased:

3. The post mortem report is on record as Ext.4. The Investigating Officer thereafter inspected the place of occurrence, recorded the statement of witnesses some of whom had already made statement at the Sadar Hospital itself and on finding the accusations true, the charge-sheet was led on 31.8.2011 whereon cognizance was taken and the case was later committed to the Court of Sessions where the charges were framed and read over to the appellants to which they pleaded not guilty and claimed to be tried.

4. The prosecution, in order to establish the case beyond shadow of reasonable doubts, produced 07 witnesses out of them P.W.-1 Janmejy Kumar Yadav, P.W.-2 Munna Yadav, P.W.-3 Ashraf Ali, P.W.-4 Bideshi Yadav and P.W.-6 Lallan Yadav (informant) were projected as the eye witnesses to the occurrence. P.W.-7 is the Investigating Officer who conducted the



investigation and led the charge-sheet. The defence also adduced oral evidence and D.W.-1 Surendra Sharma and D.W.-2 Harendra Sharma were examined. On conclusion of the evidence, the learned Sessions Judge, Siwan, on critical analysis of the evidence produced at the trial, found and held that the prosecution was able to prove the case/charge against the appellants beyond shadow of reasonable doubts and convicted them in the manner stated above. Hence these appeals.

5. We have heard Mr. Ajay Kumar Thakur, learned counsel in support of the appeals as well as Sri Ajay Mishra, APP for the State.

6. The judgment of conviction recorded by the learned trial court has been criticized by the appellants on diverse counts. It was submitted that the witnesses examined on behalf of the prosecution are interested witnesses. They have been wrongly cited as eye-witness to the occurrence. None of them had actually seen the occurrence. Their evidences on the manner of assault are contradictory. In the F.I.R., the informant has alleged that both the appellants had assaulted and caused injuries at three places on the person of the deceased. There is no allegation of catching hold of the deceased by any of the appellants. However, during trial, the



prosecution has developed the case of catching hold of the deceased by one of the appellants. It was further submitted that both the appellants are full brothers and they are quite separate in mess and business. They are even not on talking terms and so, it was not probable for the appellants to share the common intention to commit the murder of the deceased. The allegation of demand of rangdari is absurd. There was absolutely no motive for the appellants to commit murder of the deceased. The prosecution has further failed to prove the manner of occurrence and also the place of occurrence and on this count also, the prosecution case has to be disbelieved.

7. The learned APP, on the other hand, supported the impugned judgment. He submits that the prosecution has proved the case by convincing and reliable evidence. The occurrence took place in the day-light at about 9 A.M. and all the witnesses were present close to the place of occurrence. All the witnesses in one tone have stated about the manner of occurrence and there are absolutely no contradictions either on the point of their presence at the place of occurrence or their version on the manner of occurrence. The prosecution has proved the place of occurrence also which is the western flank of pitch road.



8. In view of the submissions made by both the parties, we shall now examine the evidence adduced by the prosecution to see as to whether the prosecution has been able to prove the guilt of the accused in committing the crime.

9. The death of the deceased by stab injuries is not in dispute. The Doctor, Sunil Kumar, P.W.5 in his evidence has stated that he conducted autopsy on the cadaver on 21.07.2011. He has proved the post mortem report as Ext. 3. The autopsy was conducted immediately at about 11.30 A.M. The Doctor found the following three injuries on the person of the deceased:-

“(i). Sharp cut wound over upper lip 3 inch x 1/ 2 inch x whole thickness of upper lip.

(ii) Stab wound over left side of chest near left nipple -1” x 1 / 2” x chest cavity deep.

(iii) Stab wound over left side of back in lower part 1” x 1/ 2” x 2.”

10. The Doctor has further reported that blood was present in left pleural cavity. Left lung was punctured. There was penetrating wound over right chamber of heart 3 /4” x 1 /2” deep. The cause of death has been reported to be shock due to above mentioned injuries caused by sharp penetrating object.

11. The fardbeyan of the informant was recorded on



21.07.2011 at 10.30 hours at emergency ward of Sadar Hospital, Siwan. In Fardbeyan, the informant has alleged that the occurrence of assault took place on the same day at 9.00 A.M. The informant with the help of the villagers moved the victim to Sadar Hospital which situates at a distance of six kilometers from the place of occurrence. The death of victim occurred on the way while carrying the victim to the hospital. Thus, we find that the death occurred within 1 to 1 ½ hours of the occurrence and the post mortem was conducted within an hour of the death. The Doctor has reported the death within 0 to 6 hours. Thus, it is established that the death of deceased occurred at 9 A.M. due to the stab injuries sustained by him.

12. The informant in his Fardbeyan has stated that his brother Mukesh Yadav (deceased) at about 9.00 A.M. proceeded to see his field situating towards south of his house and when he reached near Tirmuhani (convergence of three roads), the appellants caught hold of his brother and assaulted him by knife. They assaulted his brother on chin, lip and chest due to which his brother fell down. P.Ws. 1, 2, 3 and 4 claimed that seeing the occurrence of assault by the appellants and also hearing the cry of victim, they rushed to place of occurrence for his rescue. The appellants seeing the informant and witnesses escaped from there.



All the aforesaid witnesses including the informant have stated that both the appellants intercepted the victim. The appellant Jitendra Mishra caught hold of the victim and another appellant Akhilesh Kumar Mishra inflicted knife blows. The appellant Akhilesh Kumar Mishra caused three injuries. They have further stated that the victim was carried to Sadar Hospital, Siwan by a Tempo vehicle. P.W. 1 has further stated that the inquest report was prepared in his presence and he put his signature thereon. He has further stated that the victim was doing a contract business at Delhi and had visited the village for going to 'Babadham'. The appellant Akhilesh Kumar Mishra used to demand 'Rangdari' and he assaulted the victim as the said demand was not fulfilled. All the witnesses are residents of the same village. The witness P.W. 2 has stated that he along with witnesses Janmejay Yadav, Ashraf Ali and Bideshi Yadav were gossiping near the place of occurrence and hearing the cry of victim, he turned towards place of occurrence and saw the appellant Jitendra Mishra catching hold of him and Akhilesh Kumar Mishra assaulting the victim by knife. This witness and the persons present there rushed to save him and also attempted to catch the appellants, but the appellants succeeded in their escape. They carried the victim to Hospital by a tempo where the Doctor declared him brought dead. He has further stated that the police came and recorded the fardbeyand of Lalan Yadav



(P.W. 6), on which he also put his signature. His signature has been marked as Ext. 2. He has further stated that the police visited at the place of occurrence at about 1.30 P.M. and seized the bloodstained grass from the flank of the road and sandals of the deceased as per seizure list which was also signed by him (marked as Ext. 3). His statement was recorded by police at the place of occurrence itself. The witness P.W. 3 Ashraf Ali has also stated that hearing the cry of the victim, he and other witnesses ran towards the place of occurrence from a distance of about 20-25 paces. He has stated the manner of catching hold of victim and assault by the appellants. P.W. 4 Bideshi Yadav and the informant P.W. 6 have stated the manner of occurrence to this effect that they were present near the place of occurrence at a few distance and on hearing the cry, they rushed to the place of occurrence and saw the appellants assaulting the victim. The appellants seeing the witnesses escaped from the place of occurrence and thereafter, they brought the victim to the Hospital. From the evidence of these witnesses, it is established that they were present near the said Tirmuhani at some distance towards the north. From the evidence of these witnesses as also the evidence of the Investigating Officer, P.W. 7, we find that the place of occurrence is the eastern flank of a pitch road going towards Siwan from Lakridargah. The Investigating Officer, P.W. 7, at paragraph-6 has stated that the



said pitch road is running from north to south having width of 10 feet and towards the west of said road, one Vishwajeet Pandey, son of Birendra Pandey has his dilapidated house facing west. A village road goes towards the west just in front of the house of said Vishwajeet Pandey and this place is called Tirmuhani. In the evidence of the aforesaid witnesses, it has come that the occurrence of assault took place on the western flank of said pitch road. The witnesses claimed that they were gossiping towards north at a distance at about 20-25 paces. The house of the informant situates towards the north of the place of occurrence from where the victim had proceeded towards south to see his field. The Investigating Officer was shown this place of occurrence from where he collected the bloodstained grass and also seized the sandals of the deceased in presence of the witnesses. From the evidence of the informant and these witnesses, it is established that the place of the occurrence is the western flank of pitch road just in front of the house of Vishwajeet Pandey near Trimuhani. The evidence of all the witnesses on the point of manner of assault is consistent and during their exhaustive cross-examination their evidence remained unshaken.

13. Learned counsel for the appellants submitted that in the evidence of witnesses, it has come that appellant, Jitendra Mishra



was catching hold of the deceased and the appellant, Akhilesh Mishra stabbed the victim, but in the fardbeyan the informant has given a different version as regards manner of occurrence by stating that both the appellants had assaulted the victim by knife blow.

14. In the evidence of witnesses, we find that all the witnesses were on the pitch road which is straight running from north to south. They were standing at a distance of about 20-25 paces. After hearing the scream, they ran towards the place of occurrence and saw both the appellants assaulting the deceased. At the place of occurrence none, except three persons i.e. the appellants and the deceased were present so there is absolutely no confusion of being presence of any fourth person at the time of assault. All the witnesses were at the place from where the place of occurrence was quite visible and they had occasion to see all the three and also to witness the manner of assault. The evidence of the prosecution witnesses on the point of assault by these appellants are consistent and we do not find any material contradiction in their evidence as well as the statement of the informant given in his Fardbeyan.

15. In the evidence of aforesaid witnesses, we find that the



victim was doing contract business at Delhi from where he had come to visit 'Baba Dham'. The witnesses have stated that the appellants had demanded rangdari on earlier occasion which was not fulfilled and on the date of occurrence when the victim was going towards his field and reached near the place of occurrence, both the appellants came and assaulted him. The evidence of witnesses clearly establishes the motive of the appellants and their intention to commit his murder as the demand of rangdari was not fulfilled. The appellants have denied the accusations and claimed false implication. In their statement given under Section 313 of the Cr. P.C., they have simply denied their complicity in commission of murder of the deceased. The appellant Jitendra Mishra has simply stated that he is separate from his brother Akhilesh Kumar Mishra and on the date of occurrence he was neither at the place of occurrence nor had caught hold of the deceased. The appellants have although denied the accusation but have failed to explain the reason or any circumstance of their false implication in this case. In the evidence of witnesses, we do not find that the prosecution party had any enmity or grudge to lodge the case against the appellants. It has been held by the Hon'ble Apex Court in ruling reported in AIR 1997 S.C. 769 that the examination of the accused persons 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 appellants on the point of false implication has no force.

16. In view of the discussions made above, we find that the prosecution has established the charge under Section 302/34 of the Indian Penal Code against the appellants beyond shadow of doubt. The learned trial court rightly found and held the appellants guilty and convicted.

17. For the reasons stated above, we do not find any merit in the appeals. Accordingly, the appeal(s) are dismissed.

(Sanjay Kumar, J)

(Kishore Kumar Mandal, J)

ajaypd./-

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