

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.63 of 2015

Arising Out of PS.Case No. -41 Year- 2012 Thana -PASRAHA District- KHAGARIA

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1. Mohan Das S/o Vidya Sagar Das resident of village - Bari Balia, P.S. Balia,
District - Begusarai

2. Arjun Das S/o Shyamdeo Das resident of village - Ramjanpur Dhabauli, P.S.
Muffasil Begusarai, District - Begusarai

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Chandramauli Chourasia, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 08-08-2017

Both the appellants, namely, Mohan Das as well as Arjun Das have been found guilty for an offence punishable under Section 307/34 IPC and each of them has been sentenced to undergo RI for 7 years as well as to pay fine of Rs. 5,000/- in default thereof, to undergo SI for two months additionally vide judgment of conviction dated 11.12.2014 and order of sentence dated 16.12.2014 passed by 3rd Additional Sessions Judge, Khagaria.

2. PW-6, Shyam Sunder Sah while was admitted at Emergency Ward, Sadar Hospital, Khagaria on 12.06.2012 at about 6.15 AM before O/C, Pasraha PS, alleging inter alia that on 11.06.2012 at about 6.00 PM while he was at his house, Mohan Das and Arjun Das called him to receive Rs. 6,000/-. When he reached at Balia and demanded Rs. 6,000/- which they owed against electrical items whereupon Mohan Das directed him to come to his Sasural where payment will be made. Then thereafter, all the three proceeded



over motorcycle. As soon as they were south to Pasraha Railway Crossing, Mohan Das parked his motorcycle. After getting down therefrom, Mohan caught hold of him while Arjun repeatedly gave Chhura blows. Then thereafter, he was thrown on the ground and Chhura blow was given over his neck in order to slit. Subsequently thereof, finding him dead, they escaped therefrom. Later on, Pasraha police came, lifted him to the hospital where treatment was done.

3. On the basis of aforesaid Fard-e-beyan, Pasraha PS Case No. 41/2012 was registered followed with investigation as well as submission of the charge-sheet whereupon, trial commenced and concluded in a manner, subject matter of the instant appeal.

4. The defence case, as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is of complete denial. Furthermore, it has also been suggested that the victim happens to be of lecherous personality and he might have sustained injuries during course thereof, and as, he was owing money for which, appellants were persistently demanded, implicated in this case. However, the defence had not placed oral as well as documentary evidence.

5. In order to substantiate its case, prosecution had examined altogether 9 PWs out of whom PW-1, Ganesh Sah, uncle of informant/victim PW-2, Rajendra Rajak, co-villager, PW-3 Pankaj Singh, a seizure list witness, PW-4, Bikash Kumar, brother of victim, PW-5, Sabita Devi, mother of the victim, PW-6, Shyam Sunder Sah,



informant/victim, PW-7, Ashutosh Kumar, I.O. PW-8, Dr, Dharmendra Kumar and PW-9, Ajay Singh, another seizure list witness. Side by side, had also exhibited Ext-1, signature of seizure list witness, Ext-1/1, seizure list, Ext-1/2, signature of seizure list witness, Ext-2, signature of FIR attesting witness, Ext-2/1, Fard-e-beyan, Ext-3, Formal FIR, Ext-4, Charge-sheet, Ext-5 and 5/1, injury reports.

6. As stated above, the appellant had not entered into defence by way of adducing oral as well as documentary evidence.

7. Before coming to scrutinize the evidence having been adduced on behalf of prosecution, first of all, status of the witnesses has to be taken into consideration. PWs, 1, 2, 4, 5 who have stated that on being informed, they came from their place to Khagaria Sadar Hospital where the victim had disclosed regarding occurrence having been committed at the end of appellants. PWs-2 and 9 are the seizure list witnesses which was prepared by the Investigating Officer on 12.06.2012 at about 5.30 AM relating to the items seized from the place of occurrence and those are, one knife, one pair sandal, one glass plank of helmet containing blood stain. PWs- 6, 7 and 8 are relevant in order to substantiate the case of the prosecution.

8. From the record it is evident that informant was lifted from the alleged P.O. by the police, PW-7 and the informant further stated that during course of treatment at Sadar Hospital, Khagaria, he



became unconscious. At the other end, there happens to be complete silence why not Fard-e-beyan was recorded. The same was not recorded at Hospital after arrival of other family member. In likewise manner, the Investigating Officer, PW-7 though claimed to have lifted the victim PW-6 from the place of occurrence, but is silent over source of information. Moreover, the totality of the materials having produced by the prosecution has to be seen to search out whether the same happens to be sufficient to justify the finding recorded by the lower court.

9. Now proceeding ahead, first of all, evidence of PW-8, Dr. Dharmendra Kumar is to be considered. From the injury report Ext-5, it is evident that he had not mentioned the time of examination although it happens to be dated 12.06.2012 and found the following injuries:-

1. Abdominal cut at mid abd. C- omentum outside of size 1' x ½" x peritoneal deep.
 2. Lt. hand thumb and all four finger cut, all about 1"x1/2"x skin deep.
 3. Neck cut 3 in no. 1st – 3" x ½" x skin deep. 2nd – 1 ½" x ¼" x skin deep. 3rd - 1 ½" x ¼" x skin deep.
1. Cause of injury caused by sharp cutting instrument.
 2. Time elapsed within 12 hours (over writing).
 3. Nature of injury reserved as patient was referred to specialized treatment.



10. On 14.08.2012, Ext-5/1, the doctor , PW-8, had issued supplementary injury report on the basis of finding recorded by Dr. Ashok Kumar Sharma (not on the record) and on the basis thereof, injury no.1 was identified to be grievous in nature while injury no.2, and 3 simple in nature.

11. Save and except, having some sort of discloser at his end that the house of PW-6 lies 2 Kilometres away from his clinic (para-6), nothing has been brought up on record. However, it is apparent that the finding so recorded by the doctor is not his own finding rather it happens to be a finding given by the Dr. Ashok Kumar Sharma. Neither Dr. Ashok Kumar Sharma has been examined nor the injury report issued by him has been made an exhibit of the record, on account thereof, the opinion of the doctor concerning nature of injuries could not be said legally admissible.

12. Now the 2nd sequence relating to the present case appears from the evidence of Investigating Officer, PW-7. The occurrence is of dated 11/12.06.2012, neither PW-6 nor PW-7 could be able to disclose that at which hour he was lifted from the place where he was lying in an injured condition although PW-7, at para-8 had stated on his own that injured was lifted by him and was sent to the hospital for treatment. Furthermore, from Ext-1/1, seizure list, it is apparent that it was prepared on 12.06.2012 at 5.30 AM. So, the Investigating Officer (PW-7) was very much confused on that very



score and in likewise manner happens to be PW-6, the informant. From para-24 of PW-7 it is evident that his native place Ratanpura as well as village-Bishanpur home village of informant, lies at the distance of 3-4 Kilometres. That has got relevancy in the background of the fact that the Investigating Officer, PW-7, at para-21, had stated that he had gone on leave on 12.06.2012 and remained up to 15.06.2012. From para-22, he had stated that in the morning of 15.06.2012, he proceeded from his house to join his duty. At 7.20 AM, he reached at Kalpna Nursing Home where, in Room No.6, the informant was being admitted for treatment. In para-23, he had further stated that before his departure from Kalpana Nursing Home, he had recorded further statement of the informant, statement of witnesses, Bikash Kumar, Savita Devi, Jaiprakash Yadav and others. So, the aforesaid activity, that means to say, right from registration of the case dated 12.06.2012 up to 15.06.2012, this witness PW-7 was on leave and that happens to be the reason behind that at para-25, he had stated that he is unable to say whether the investigation having been carried out during availing casual leave is legally permissible or not, he is unable to explain. It happens to be a matter of common parlance that whenever a Government Servant goes on leave, he is not expected to discharge his official function until and unless circumstances so necessitates. No extra ordinary circumstance has been placed at the end of PW-7 to justify his action and on account thereof, his activity happens to be contrary to the Police Manual, and on that score, could



be considered as collusive one.

13. Therefore, conduction of impartial investigation at the end of PW-7 has become under mark of interrogation, which the prosecution is under obligation to explain. During course of adjudging the same, it has been found that PW-7 had not disclosed whether the seizure list Ext-1/1 which was prepared on 12.06.2012 at about 5.30 AM, after transmitting the informant to the Sadar Hospital or before the same. In likewise manner, there also happens to be absence at the end of PW-7, over source of information regarding presence of PW-6 at the place of occurrence and at which time, because of the fact that PW-7 had not disclosed with regard to entry of such event under station diary. Moreover, from Ext-2/1, (Fard-e-beyan) it is apparent that same was recorded at 6.15 A.M. by Dhruv Kumar, ASI, Pasraha PS at Sadar Hospital, Khagaria. From Ext-2/1, it is evident that same was recorded in presence of family member and till then informant was in sense, then non recording of Fard-e-beyan at an earliest is not at all found explained.

14. Now coming to the other aspect, it is evident from the seizure list that the Chhura which was seized did not contain blood stain. In para-4 of his cross-examination, he had stated the place of occurrence to be lonely place which lies 150 yard south to the Pasraha Railway Crossing having copious blood but he had not mentioned with regard to trampling mark if any found during course of



inspection of the place of occurrence. In para-9, he had further stated that he had not seized blood stain from the place of occurrence.

15. PW-6 is the informant who had stated that the occurrence is of dated 11.06.2012 at about 9-10 PM. Mohan Das had called him to Balia. There was dues persisting against Arjun Das. Arjun was also present. He was called upon to receive the amount. Then thereafter, Mohan instructed him to come to his Sasural where payment will be made. Then thereafter, all the three sat over the motorcycle and proceeded to Sasural of Mohan Das. When they reached over 14 No. Road, Pasraha, Mohan stopped the motorcycle on the pretext to urinate. He also got down and proceeded to urinate at the other side of road and during course thereof, Mohan caught hold of him from behind and Arjun began to assault with the knife. Then thereafter, the accused persons dragged him in a ditch and then began to inflict knife blow. They have also snatched away Golden Hanuman from his neck. They have also taken away mobile perceiving him dead, they both fled away over motorcycle. He remained there whole night. In the morning, two persons came who saw him. They gave water. Inquired from him and then dialed at his house whereupon, his brother and uncle came. He also dialed Pasraha PS. Police came and lifted him to Khagaria Hospital where his Fard-e-beyan was recorded. Thereafter, he was taken to the clinic of Dr. Ashok Kumar Sharma at Begusarai where he was admitted. After 72 hours he regained sense. He was discharged after 15 days. During cross-examination, at para-



10, he had stated that he is unable to show what had happened during course of his unconsciousness. The police official took his evidence. Again disclosed that he became unconscious at the hospital. In para-11, he had stated that police had arrived at the place of occurrence at about 5.45 AM. At that very time, so many villagers had assembled there. In para-16, he had stated that he proceeded to Begusarai at about 6.00 PM. He had disclosed to Arjun Das that the road happens to be unsafe but he was not inclined to accept. In para-20, he had stated that first of all occurrence took place over road and then, thereafter, in a ditch. Accused persons have not given any opportunity to raise alarm. However, he protested, even then, he was assaulted. In para-21, he had further stated that at about 6.00 PM, he had taken beer at Mansarovar Hotel, Balia. In para-24, he had further stated that he along with Arjun happens to be friend for 12-13 years. They have never quarreled. In para-26, he had stated that he had not borrowed money from Arjun Das rather he had given loan to him. He had taken Rs. 10,000/- from Mohan which was returned back. In para-27, he had stated that he had talked with Arjun even twice and thrice after 6.00 PM. In para-32, he had stated that native place of Investigating Officer happens to be in a same direction and so, while going to his house, he met with him. In para-36, he had stated that Mohan happens to be brother-in-law of Arjun. In para-38, he had further stated that while in a way to Sasural of accused from Balia, they had stayed at Hotel Mansarovar where they took one bottle of beer. They had not



taken wine. Again in para-39, he had stated that they had not stayed anywhere during midst thereof. They were not intoxicated on account of consumption of beer. In para-42, he had stated that he was sitting in the middle. In para-43, he had stated that Arjun Singh was agent of Rose Valley Bank and he used to visit his place daily as he was one of the depositors. In para-44, he had stated that at the time of occurrence only three persons, i.e. accused persons as well as he himself were present.

16. As stated above from the evidence of PW-6, he had shown the place of occurrence to be road as well as ditch but, from the place of occurrence incorporated by PW-7, it is evident that he had not mentioned the fact whether place of occurrence happens to be ditch as well as road. As per his objective finding, the place of occurrence happens to be main road lying 150 yards south to Pasraha.

17. Now coming to the other aspect, it is evident that Fard-e-beyan was not recorded till arrival of family members of the victim and no explanation is found for that. In likewise manner, the conduct of Investigating Officer, PW-7, also appears to be suspicious as, even being on casual leave, got himself involved in investigation, and for that, again no explanation, reason has been assigned. Moreover, presence of PW-7 or any police official at the place of occurrence without having any supportive document or reference at least, the station diary entry which would have played an important



role in the background of nexus having in between informant as well as the Investigating Officer is also found missing. Furthermore, though the nature of injury is not at all relevant for adjudicating upon the offence punishable under Section 307 of the IPC but, in the facts and circumstances of the case, as well as perceiving the conduct of the Investigating Officer, it was prudent at the end of the prosecution to have examination of Dr. Ashok Kr. Sharma in order to expose the conduct of the PW-6, informant who had stated that after arrival at the hospital, he became unconscious and regained the same after 72 hours. Though from the evidence of PW-8, it is evident that he had found three injuries over the person of PW-6 but the manner whereunder prosecution case has been flashed and inconsistency coupled with illegal activity of the Investigating Officer, the ultimate beneficiary would be the appellants.

18. Consequent thereupon, the judgment impugned is set aside. Appeal is allowed.

19. Appellants are on bail, hence they are discharged from its liability.

(Aditya Kumar Trivedi, J)

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Transmission Date	

