

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1401 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- BHOJPUR

=====
Hari Narayan Singh, son of Radha Kishan Singh, resident of village- Bhimpura,
P.S.- Sandesh, District- Bhojpur.

.... Appellant

Versus

The State of Bihar

.... Respondent

=====
Appearance :

For the Appellant : Mr. Mahendra Prasad Bhartee, Advocate
Mr. S.K. Bhartee, Advocate

For the State : Mr. Ashwani Kumar Sinha, A.P.P.

=====
CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARUN KUMAR)

Date: 05 -07-2017

The appeal is directed against the judgment of conviction under Section 302 of the Indian Penal Code against the sole appellant passed on 19th November, 2010 and order of sentence dated 20th November, 2010 of life imprisonment by Additional District and Sessions Judge, F.T.C.- Vth, Ara.

2. Being aggrieved by the said judgment of conviction and sentence, the present appeal has been filed by the appellant.

3. The prosecution case in brief as narrated by Santlal Ram, the informant as well as the victim of the case in his fardbeyan given before the police in the Government hospital, Sandesh is that in the night of 7.9.1983 at 10.30 P.M., he was sleeping in his Bailthara after having his dinner. He woke up on hearing sound of foot steps on



dry lives. In the meanwhile, Hari Narayan Singh, co-villager stabbed with knife in his abdomen as a result of which intestine bulged out from the abdomen. On alarm raised by the informant, his son Dharmendra Kumar (P.W.2), Jugul Ram (P.W.1) and many other co-villagers turned up but the accused managed to escape. The informant identified the accused in the light of burning lamp. The incident took place as a few days back, the accused Hari Narayan Singh had purchased some articles from informant's shop and a sum of Rs.10/- was due. As the informant reminded the appellant for the money, he entered into verbal dual and threatened him with dire consequences.

4. On the basis of the oral statement of the informant, police lodged Sandesh P.S. Case No.104 of 1983 under Sections 307 and 324 of I.P.C. However, the informant Santlal Ram died on 13.9.1983 in the Sadar Hospital, Ara during course of treatment and consequently Section 302 of I.P.C. was added. Postmortem of the deceased was done by Dr. I.B. Sinha (P.W.4) and on conclusion of the investigation, police submitted charge sheet against the sole accused under Section 302 of I.P.C. The cognizance of the offence was taken by Chief Judicial Magistrate and case was committed to the court of Sessions for trial. Charge was framed under Section 302 of I.P.C. against the accused Hari Narayan Singh who pleaded not guilty and claimed to be tried. On consideration of materials on record the trial



court convicted the appellant under Section 302 of I.P.C.

5. Learned counsel appearing on behalf of the appellant submitted that the informant in F.I.R. has stated that several villagers turned up after the accused stabbed him, but not a single independent witness has been examined in this case. He further submitted that Dharmendra Kumar (P.W.2) in his cross examination stated that no quarrel took place between his father (the deceased) and the accused Hari Narayan Singh. He further stated that he reached the place of occurrence along with Jangi Ram and Jugul Ram as such there would be no eye witness to the occurrence. Moreover it was a dark night and according to this witness, the village Chaukidar was first person, who informed the police station regarding the occurrence but, he has not been examined by the prosecution. The Investigating Officer of the case too has not been examined; causing prejudice to the accused because attention of contradictions creeping in evidence of prosecution witnesses could not be drawn to the I.O. The police has also not seized lamp in the light of which the accused was identified by the informant (the deceased).

6. The case of defence is that the informant was assaulted by unknown thieves but seizing the opportunity the appellant has been falsely implicated in the case due to enmity. This stand of defence is apparent from the suggestion given by the defence



to prosecution witnesses during cross examination. Learned counsel further submitted that appellant was juvenile on the alleged date of the occurrence as Dharmendra Kumar (P.W.2), son of the informant has admitted in paragraph-12 that 1-2 years ago since the day of occurrence, accused was student of a primary school.

7. *Per contra*, Mr. Ashwani Kumar Sinha, learned A.P.P. submitted that the informant identified the appellant, who had stabbed him. The witnesses have supported the case of the prosecution. The informant Santlal Ram, who sustained fatal injury of knife blow in his abdomen and died on account of said injury after six days of the occurrence, while undergoing treatment in the hospital, could not be examined; but his fardbeyan is dying declaration, which is admissible in evidence under Section 32(1) of the Indian Evidence Act. Eye witnesses P.W.1, P.W.2 and P.W.3 have supported the prosecution case and there is no vital contradiction in their testimony to disbelieve them. Moreover, Dr. I.B. Sinha (P.W.4), who has conducted the postmortem over the dead body, has also found stitched wound on the right side of the abdomen 4" long and puss draining through the wound and in his medical opinion, death has been caused by shock as a result of generalized peritonitis. He also submitted that the plea of juvenility was never taken earlier by the appellant and even at this stage, no document was produced to show date of birth or age



of the appellant. He was examined under Section 313 Cr.P.C. by the Court on 15.3.2002 and he has disclosed his age as 35 years and the court too has assessed his age as same; so his age on the day of the occurrence dated 7.9.1983 was 18 ½ years approximately and was adult at that point of time, the day of occurrence.

8. The issue of juvenility after taking plea as such before this Court, the concerned Juvenile Justice Board was directed to make enquiry in accordance with the concerned law and rules to ascertain the age of the appellant on the alleged date of occurrence. The report so submitted by the Principal Magistrate, J.J. Board, Ara on the basis of his birth certificate given by the school in which his age was recorded as 20.1.1965 found the appellant major precisely 18 years 7 months and 18 days old on the alleged date of occurrence of this case, i.e., on 7.9.1983.

9. Now let us examine the evidence of the prosecution in order to ascertain whether it is reliable and trustworthy and has proved the charge under Section 302 I.P.C. against the sole appellant. Prosecution on its side has examined four witnesses, namely, Jugal Ram (P.W.1), Dharmendra Kumar (P.W.2), Jangi Ram (P.W.3) and Dr. I.B. Sinha (P.W.4), who has conducted postmortem examination on the dead body of Santlal Ram, the informant. Out of these only Jugal Ram (P.W.1) and Dharmendra Kumar (P.W.2), son of the



informant have seen Hari Narayan Singh fleeing away from the place of occurrence immediately after the assault. The place of occurrence is 'Bailthara' where cattles are kept and also in one room a grossary shop was run by the deceased and the house of the informant are only at a short distance of 12-13 paces away from that place. P.W.1, Jugal Ram was in the Dalan of Jangi Ram (P.W.3), which is adjacent to the place of occurrence. P.Ws.1, 2 and 3 reached at Bailthara (cattle shed) after hearing sound and raised alarm and saw the appellant fleeing away from there and identified him in light of lantern. On reaching there, the informant Santlal Ram also disclosed to them that because Hari Narayan Singh, the appellant, who has stabbed him in the abdomen and these witnesses found intestine of the informant coming out of the abdomen, they tied the abdomen with a towel and thereafter, brought him to the nearest Government Hospital at Sandesh 10 kms. away from the village of the informant in the night itself and fardbeyan was recorded by Mr. Ramanand Ram, Officer-in-Charge of the Police Station. P.Ws.1, 2 and 3 have not seen the actual assault by the appellant, but P.Ws.1 and 2 immediately rushed there after hearing the painful cry of the informant and found the appellant running away from there. Moreover, Santlal Ram, the informant died after six days of the occurrence while undergoing treatment due to the abdominal injury caused of stabbing by the appellant and according to



the doctor (P.W.4), who conducted autopsy on 13.9.1983 found the cause of death shock as a result of generalized peritonitis. Peritonitis is inflammation of the thin lane of tissue with covers inside of abdomen and most of its organs. The information is usually the result of the fungal or bacterial infection caused by an abdominal injury. The infection can spread and become life threatening if it is not treated promptly.

10. Another important aspect of the case is the fardbeyan (oral statement) given by Santlal Ram, the informant of the case to the Inspector of Police at Sandesh Hospital in the night at 2.15 A.M., only after four hours of the occurrence. One of the attesting witness to the statement of the informant, i.e., his son in his deposition, has also proved that his father gave this statement to the Police Officer in the hospital. Santlal Ram, the informant died subsequently after six days during the course of treatment, while he was shifted to Ara Government Hospital, so he could not be examined during trial but the statement comes under the purview of dying declaration in view of Section 32(1) of the Indian Evidence Act. Section 32(2) of the Indian Evidence Act reads as follows :-

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.-

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense



which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases :-

(1) when it relates to cause of death.- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.”

11. In view of the said section, a dying declaration is the statement by a person stating cause of his death or as to any of the circumstances resulting in his death and it becomes relevant under Section 32(1) of the Evidence Act. Now, it is to be ascertained whether the said dying declaration in the instant case is truthful or not. This is also fact that this statement of the informant neither has been recorded by a Magistrate nor in presence of a Magistrate nor in presence of a doctor. There is no certificate by doctor whether the informant was conscious and in such a mental condition to give the statement. How so ever the circumstances show that there was only one stab injury on the abdomen of Santlal Ram (the informant) and immediately he was brought to Primary Health Centre, Sandesh by his female members on a cot in the night and after reaching there, the Police Officer was informed and he has taken his statement as a



fardbeyan. Though he required to have as a precaution to take the certificate from the attending doctor relating to his consciousness and mental condition but the latches on the part of the Police Officer would not render his statement unreliable, if, it is otherwise found credible and also corroborated by other witnesses as in this case, it is corroborated by P.W.1 and P.W.2, namely, Jugal Ram and Dharmendra Kumar, who reached at the place of occurrence immediately hearing the cry of the informant and found the appellant fleeing away.

12. In case of **Chacko vs. State of Kerala** reported in **2003(1) SCC 112**, the Apex Court has held as follows :-

“ It is always not necessary that a dying declaration should be certified by a doctor before the reliance could be placed on the same but then in the absence of any such certificate, the Court should be satisfied that from the material on record it is safe to place reliance on such un-certified declaration.”

13. It appears that this statement was taken by the Police Officer immediately after reaching the informant's bed at the Primary Health Centre and for the said reason, the fardbeyan is to be treated as dying declaration and there is no point to disbelieve it merely because it was not certified by the doctor relating to his consciousness and mental condition of the informant. Besides this, there is corroborative evidence also as the appellant was seen fleeing away by P.W.1 and P.W.2 and informant also disclosed name of the appellant as his



assailant. In the present case, non-examination of Investigating Officer does not prejudice the case of the defence in view of the credible dying declaration of the informant. Besides this there is no material contradictions in the evidence of P.W.1 and P.W.2. Situated thus, we are of the considered view that the charge under Section 302 I.P.C. has been proved by the prosecution against the sole appellant beyond reasonable doubt. Therefore, conviction of the appellant, namely, Hari Narayan Singh under Section 302 I.P.C. as well as the sentence of life imprisonment awarded by the trial court is confirmed. The appellant would further undergo the remaining part of his sentence.

14. In the result, this appeal is dismissed.

(Arun Kumar, J)

I agree.
Samarendra Pratap Singh, J.

(Samarendra Pratap Singh, J)

N.H./-

AFR/NAFR	AFR
CAV DATE	28-02.2017
Uploading Date	05-07-2017
Transmission Date	05-07-2017

