

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.734 of 2011

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1. Md. Kamruddin, s/o Ied Mohammad R/O, Vill.-Bhagwanpur, Muslim Tola, P.S.-Rajnagar, Dist.-Madhubani.

2. Md. Aziz Ali Hasan R/O, Vill.-Bhagwanpur, Muslim Tola, P.S.-Rajnagar, Dist.-Madhubani

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant No.1 : Mr. Md. Shahnawaz Ali, Adv, Mr. Shambhoo Kumar 'Suman', Adv

For the Appellant No. 2 : Mr. Uday Bhanu Roy, Adv and Mr. Baleshwar Kumar, Adv

For the State : Mr. S.B.Verma (App)

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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: 24-03-2017

Heard learned counsel for the parties.

2. Both the appellants have been convicted for the offences punishable under Sections 302/34 of the Indian Penal Code vide judgment dated 27.06.2011 passed by the Additional District & Sessions Judge (F.T.C-II), Madhubani, in Sessions Trial No. 70 of 2010, sentencing them to undergo rigorous imprisonment for life and pay fine of Rs. 5000/- each, and in default of payment of fine to



undergo further two years rigorous imprisonment.

3. The prosecution case in short as made out in the *fardbeyan* of Haleema Khatoon w/o Late Md. Murtuza of village Bhagwanpur Muslim Tola, P.S. Raj Nagar, District-Madhubani, recorded by S.I. Jai Prakash Singh of Raj Nagar P.S. on 01.05.2010 at about 8:30 am at the door of Haleema Khatoon in Bhagwanpur village is that the informant, Haleema Khatoon has stated that her husband Md. Murtuza was posted as Hafeez in Madarsa Islahul Muslamein, Bhagawanpur and she is working on the post of 'Asha Bahu' at Centre No. 5 of Ward No. 1 of village Bhagwanpur. Furthermore, they are issueless and her deceased husband had adopted Abdul Wahid, the son of his Brother-in-Law as their son. On 30.04.2009 at about 9:00 pm, both of them after taking their food, slept with their adopted son, Abdul Wahid, in the open Oshara of their house. At about 12 pm in the night they woke up momentarily but again slept. At about 1:00 am on hearing some sound, she again woke up and saw Md. Kamaruddin and Md. Aziz, both residents of village-Bhagwanpur, Muslim Tola, P.S. Raj Nagar, armed with Tengari standing in front of them and one of them namely, Md. Kamaruddin assaulted her husband on his face with Tengari first, whereafter Md. Aziz also assaulted him with Tengari on his head. On account of the injury, blood started oozing from the wound. Her



husband died instantly. She raised hulla whereupon the accused fled threatening her with dire consequence. The informant stated that one year back there was some altercation between her husband, Md. Murtuza and Md. Aziz as latter had opened his window on the land of the informant. There was also dispute with Ali Hasan, father of Md. Aziz over Palm tree, which was settled by the local villagers through panchayati. Md. Aziz being aggrieved with the settlement, always used to threaten them with dire consequence.

4. On the basis of her fardbeyan police registered Raj Nagar P.S. Case No. 106 of 2009 dated 01.05.2009 under Sections 302/34 of the Indian Penal Code.

5. The police in course of investigation submitted inquest report. He took further statement of the informant as well as statement of other witnesses under Section 161 of the Cr.P.C, inspected the place of occurrence which was a open Oshara of the deceased house where he found his dead body. The police obtained the post mortem report and finding the case to be true against the two appellants and submitted chargesheet against them. The learned Magistrate took cognizance of the offence and committed the case to the court of Session for trial. Charges were framed for the offences punishable under Sections 302/34 of the Indian Penal Code to which they pleaded not guilty and claimed to be tried. The case of the



defence under Section 313 of the Cr.P.C is complete denial of the offence. The defence also examined two witnesses namely Md. Anis who stated that Haleema Khatoon was earlier divorced by her deceased husband Md. Murtuza. He has further stated that Haleema Khatoon was having illicit relationship with Md. Tahir, who in conspiracy with her killed the deceased. The evidence of DW-2, Abdul Rashid, is also to the effect that Haleema Khatoon was divorced by the deceased and later on she in conspiracy with Md. Tahir, had killed him. However, we find from the evidence of these witnesses that Haleema Khatoon, again began to live with Md. Murtuza who never raised any objection or protest to her living with him. The trial court on consideration of materials on record convicted both the appellants under Sections 302/34 of the Indian Penal Code.

6. Mr. Shahnawaz Ali, appears for the appellant no. 1 and Mr. Uday Bhanu Roy, appears on behalf of the appellant no. 2.

7. Learned counsels appearing for the appellants submit that there is no eye witness to the occurrence other than the informant. An adverse inference should be drawn as the prosecution has not examined the adopted son of the informant, who was admittedly sleeping alongwith the informant and the deceased Md. Murtaza, when the latter was assaulted in the night of 30.04.2009. They next submit that another important witness Md. Tahir, the



Brother-in-Law of the deceased, who lived in the nearby house was also not examined. They further submit that Haleema Khatoon, was divorced and it was not proper that she was living with the deceased husband lateron. They submit that chain of circumstances is not complete to bring home charge against the appellants.

8. On the other hand, Mr. A.K. Sinha, learned counsel appearing on behalf of the State has supported the prosecution case. He submits that it is not the quantity but the quality of evidence which is material in a criminal trial. He submits that conviction can be sustained even on the testimony of a solitary witness. He further submits that the post mortem report has fully supported the prosecution case and the defence has not been able to extract any material contradiction to render the evidence of the informant unworthy or unreliable.

9. We have heard learned counsel for the parties. The defence has not disputed the prosecution case that the informant was sleeping in her open Oshara along with her husband and 10 years adopted son on a Palang. At about 1:00 am, she woke up on hearing some sound. The informant in her evidence stated that she saw two persons i.e. the two appellants, standing in front of the Cot armed with Tengari. She has also stated in her evidence that Md. Kamruddin, appellant no. 1, assaulted her husband on his face with



Tengari followed by Md. Aziz, appellant no. 2, who has assaulted on his head, on account of which blood profused.

10. The prosecution in order to substantiate its case has examined in all 14 witnesses and also adduced oral evidence. Out of these 14 witnesses PW-1 to PW-11 have been turned hostile. The prosecution case as such hinges on the evidence of three witnesses namely, informant Haleema Khatoon, PW-13, the investigating officer, Jai Prakash Singh PW-14 and Dr. Chandrakant Singh PW-12, who conducted the post mortem examination on the dead body of the deceased on 01.05.2009.

11. In a nutshell, the prosecution case is based on the testimony of single eye witness, namely Haleema Khatoon.

12. Learned counsels appearing on behalf of the appellants have argued that the evidence of Haleema Khatoon is not supported by any other prosecution witness and also suffers from material discrepancies. In the case of *Jarnail Singh vs State of Punjab* reported in *2009(3) S.C.C 391*, the Hon'ble Supreme Court observed that conviction can be sustained on evidence of solitary eye witness, if its testimony inspires confidence. The Hon'ble Apex Court cautioned that while placing reliance on the testimony of the single witness, the court must scan the evidence cautiously and only if the evidence is found trustworthy then in such cases, the Court



can safely sustain the conviction as what is required is not the quantity but the quality of evidence.

13. In the light of the law laid down by the Hon'ble Apex Court *Jarnail Singh (supra)*, we would now examine the evidence of the informant, Haleema Khatoon. In her evidence, Haleema Khatoon, while supporting the prosecution case stated that while she was sleeping on Palang in the open Oshara along with her husband, Md. Murtuza and his adopted son, Abdul Wahid in the night of 30.04.2009 and 31.04.2009, she woke on some rattling sound at 1:00 am. She saw both the appellants armed with Tengari in the torch light standing in front of them. Appellant No. 1, Md. Kamaruddin assaulted her husband on his face with Tengari first, whereafter appellant no. 2, Md. Aziz, also assaulted him with Tengari on his head and on account of the injury, blood flowed from the wound. She raised hulla. The accused persons fled threatening her with dire consequences. Thereafter the police came and recorded her fardbeyan.

14. In her cross-examination, Haleema Khatoon stated that the house of Md. Aziz is just in front of her house and Md. Aziz has opened window in her premises to which they had protested a year back. There was quarrel with respect to Palm tree with the father of the appellant no. 2, Md. Aziz. She has further stated that on



account of the said enmity, Md. Aziz in association with Md. Kamruddin came to her house in the night of 30.04.2009 at about 1:00 am and killed her husband by assaulting him with Tengari on his face and head.

15. We further find that informant's evidence has been fully corroborated by the evidence of Doctor PW-12, who stated that the deceased died due to injuries on his face. The time elapsed since death recorded in the Post Mortem Report fully tallied with the time of occurrence mentioned in the FIR. PW-14, Mr. Jai Prakash Singh, the Investigating Officer, who came early in the morning found the dead body of Md. Murtuza in his open Oshara. There was blood in his body and Toshak, which he seized.

16. It has been argued on behalf of the appellants that no weight can be given to the seizure of Toshak as the I.O. did not prepare any seizure list. In our view the I.O. ought to have prepared seizure list, but non preparation of seizure list would in no manner make the prosecution case unreliable. In face of consistent evidence of the informant which is duly corroborated by medical evidence and evidence of I.O., who found blood on toshak on which the deceased was sleeping when he was shot dead. The appellants did not also deny that there was dispute with Md. Aziz since last one year prior to the occurrence.



17. We thus find that the prosecution has succeeded in proving the charge against the appellants beyond all reasonable doubts, and as such we uphold the judgment of conviction and sentence against the appellants.

18. In the result, this appeal fails and is, accordingly, dismissed. The appellants who are in custody would serve the remaining part of their sentence.

(Samarendra Pratap Singh, J)

(Arun Kumar, J)

Ranjan/-

AFR/NAFR	NAFR
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