

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.76 of 2013

Arising Out of PS.Case No. -22 Year- 2009 Thana -KHAIRA District- SARAN

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Hasim Mian S/o Late Abdul Gafar Mian Resident of Village Nagara Bazar, P.S. Khaira (Nagra), District Saran (Bihar).

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manoj Kumar

For the Respondent/s : Mr. S.N. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

And

HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SANJAY KUMAR)

Date: 15-03-2017

1. The sole appellant stood charged under Section 302/34 of the Indian Penal Code for having voluntarily caused murder of Rani Kumari sister of the informant Kundan Sah (P.W.11) by inflicting *fasuli* injuries on her neck. On trial, the learned trial court vide judgment dated 12.12.2012, passed in Sessions Trial No. 466 of 2009 held him guilty under Section 302 of the Indian Penal Code and vide order of sentence dated 15.12.2012, he was sentenced to undergo R.I. for life with fine in the sum of Rs. 5,000/- having default clause. In this appeal, the aforesaid judgment and conviction has been assailed.
2. We have heard Mr. Manoj Kumar learned counsel for the appellant and Mr. S.N. Prasad learned APP for the State.
3. The prosecution case, as unfolded in the *fardbeyan* is that on



14.03.2009, one Asraf Mian came at the house of the informant for charging his mobile. The informant refused, whereupon he was assaulted. The cousin brother of the informant came and intervened into the matter and he too was also assaulted by one Rauf Mian. The matter was reported to police and thereafter it was settled by the intervention of Officer-in-Charge of Nagara O.P. It is, further, said that in course of compromise the aforesaid persons uttered that the people of his community were being tortured as non-intervened into the matter and so they will do according to their desire. In the night of 14.03.2009, the accuseds Jahangir Sai, Ashraf Mian, Bhageran@ Nur Alam came at the shop of the informant and threatened to finish his family members. The informant on 22.03.2009 at about 12:45 PM was sitting in his Tea & Sweet shop where his sister Rani Kumari (deceased) was standing near the almirah. In the meanwhile, the appellant Hasim Mian armed with *fasuli* and two others entered into his shop and on the exhortation of other co-accuseds, the appellant assaulted his sister Rani Kumari with *fasuli* on her neck. She fell down. Thereafter, the accuseds moved towards informant to assault him. The informant raised alarm, whereupon the nearby people came to his shop and thereafter the appellant and other co-accused persons fled away. The victim was moved to Sadar Hospital, where, in course of treatment, she died.

4. The S.H.O., Sone Lal Singh, recorded the *fardbeyan* of the



informant at the Sadar Hospital itself and forwarded the same at Khaira P.S., on the basis of which, the Khiara P.S Case No. 22 of 2009 was registered. In course of investigation, the dead body was sent to Sadar Hospital where the doctor (P.W.10) conducted autopsy. The doctor found incised wound about 5"x 2" bone deep on upper part of right side of neck. The autopsy report is on record as Ext-3. The Investigating Officer inspected the place of occurrence and recorded the statement of witnesses and on finding the accusation true, the charge-sheet was led. The learned Magistrate took cognizance of the offence and on commitment, the record came on the file of the trial Judge where charges were framed and read-over to the appellant to which he pleaded not guilty and claimed to be tried.

5. The prosecution in order to establish the case beyond shadow of reasonable doubt produced twelve witnesses. Out of them, P.W.1 (Baliram Prasad), P.W.2 (Jalaluddin), P.W.3 (Ramashankar Yadav), P.W.4 (Satish Prasad), P.W.5 (Md. Faruque), P.W.6 (Fakhre Alam @Milad), P.W.7 (Sunil Kumar), P.W.8 (Umesh Kumar Gupta) were projected as the eyewitness to the occurrence. P.W.10 (Dr. Ashok Kumar Sinha) is the Medical Officer, who conducted autopsy on the cadaver.

6. The prosecution has proved the signature of witnesses Baliram Prasad and Sunil Kumar on fardbeyan (Ext. 1 and 2). The autopsy



report has been marked as Ext.3. The signatures of other witnesses on fardbeyan have been marked as Ext. 1/1, Ext. 1/2, and 1/3. The signature of S.H.O. on formal F.I.R. has been marked as Ext. 1/4 and the death inquest report as Ext.5.

7. On conclusion of the evidence, the learned trial Judge 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 appellant beyond shadow of reasonable doubt and convicted him in the manner stated above.

8. The judgment of conviction recorded by the trial court has been criticized by the appellant on diverse counts. It was submitted that the appellant is innocent and has been implicated in this case only to save the actual culprit. The prosecution has failed to establish the manner of occurrence as also the assault allegedly committed by the appellant. The witnesses are not the eye witness to the occurrence. Their evidence on the manner of assault is contradictory. The prosecution has also failed to prove the motive of the appellant. The appellant is a vagabond having no place of his own and he used to beg for his livelihood. There is neither any enmity nor any reason to assault/commit murder of the victim.

9. Learned APP, on the other hand, supported the impugned judgment. He submitted that the prosecution has proved the case by convincing and reliable evidence. The occurrence of assault took



place in the day-light at about 12:45 PM in a shop on the village road where several shops are situated. The witnesses who came to support the prosecution case have their own shops/houses adjacent to the shop of the informant and the occurrence of assault took place in their presence. All the witnesses are eye witness to the occurrence and they had no grudge against the appellant to speak against him. The prosecution has proved the place of occurrence as well as manner of occurrence beyond shadow of doubt. There is absolutely no contradiction in the statement of witnesses and the prosecution has proved the case beyond shadow of any reasonable doubt.

10. In view of the submissions made by both the parties, now we shall examine the evidence on record to ascertain whether the prosecution has been able to establish the guilt of the appellant beyond shadow of doubt.

11. The death of the deceased (Rani Kumari) by injury caused on her neck on the date and at the time of occurrence is not much in dispute. The doctor (P.W.10) in his evidence as well as in autopsy report (Ext-3) has found as follows:

(i) One incised wound about 5"x 2" bone deep on upper part of right side of neck of the deceased which was anti-mortem.

On dissection:-

- (i) Trachea cut.
- (ii) Fracture of C2 vertebra.



- (iii) Cut through of carotid vessels on right side.
- (iv) All viscera intact and pale.
- (v) Bowel- Empty
- (vi) Bladder-Empty

12. The autopsy was conducted on 22.03.2009 at 04:40 P.M. In *fardbeyan*, the informant (P.W.11) has stated that he was present at the counter of his shop and his sister was standing near Almirah. In the meanwhile, appellant gave *hasuli* blow on the neck of his sister on account of which she fell down and started screaming. The appellant moved towards him, whereupon he raised alarm which attracted local people who came and moved the victim to hospital.

13. All the witnesses examined in this case are either residents of same locality adjacent to the shop of the informant or having their shops in front/by the side of the shop of the informant. Their evidence on the point of manner of assault by this appellant is consistent and nothing has been elicited in their cross-examination to discredit their testimony either on the presence of witnesses at the place of occurrence or on the manner of occurrence as stated by the informant in his *fardbeyan* or in his evidence before the trial court. In the evidence of witnesses, it has come that the appellant used to sit on the shop of the informant. He used to beg for his livelihood. The informant (P.W.11) at paragraph 8 has stated that just two months before the occurrence, this appellant along with other accuseds had



came at his shop and had quarreled with him as he did not permit him to charge the mobile at his shop. The witnesses seeing the occurrence was also hearing the alarm of the informant came to his shop and thereafter the appellant escaped from the place of occurrence. The occurrence of assault took place in the noon at about 12:45 PM at the shop. The witnesses examined in the case are either shopkeepers or neighbours of that place of occurrence. They are well known to the appellant as he is resident of same place and he used to visit at the shop of the informant. So there is no doubt of identification of appellant by the witnesses.

14. The Investigating Officer (P.W.12) at paragraph 4 of his evidence has vividly explained the place of occurrence where the appellant inflicted *fasuli* blow on the neck of the deceased. The place of occurrence is shop situated at Nagara Bazar. He immediately rushed to the place of occurrence and arrested the appellant along with the blood stained *fasuli* in his hand from a maize crop field situated at a distance of 150-200 yards from the place of occurrence. The police station situates at a distance of about 4 kilometer from the place of occurrence. The learned counsel for the appellant did not point out any contradiction in the statement of witnesses given in Court as well as the statement given under Section 161 of Cr.P.C. at the time of investigation. In face of consistent ocular evidence of witnesses, the motive to commit assault by the



appellant is of little importance. In the evidence of P.W.4 at paragraph 2, it has come that the appellant is a cruel person and he used to beg for his livelihood. It has also come that he used to sit on the shop of the informant and take food. He along with other had quarreled with the informant on earlier occasions. The said fact suggests that he was keeping grudge against the informant and the deceased for which they had threatened to finish his family. In his statement given under Section 313 of Cr.P.C., he has disclosed his occupation as begging. He has claimed false implication in the case, but he has not put his case of his false implication. 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 of Cr.P.C. is not a mere formality. Answers given by the accused to the questions put to them during such examination has 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 particularly in face of the convincing and unimpeachable evidence of independent witnesses.

15. 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 appellant beyond shadow of



reasonable doubt. The learned trial court rightly found and held the appellant guilty and convicted.

16. For the reasons stated above, we do not find any merit in the appeal. Accordingly, the appeal is dismissed.

(Sanjay Kumar, J)

I agree.

rohit/-

(Kishore Kumar Mandal, J)

AFR/NAFR	NAFR
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