

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.44 of 1994

Against judgment and order dated 10.12.1993 passed by 4th Additional Sessions Judge, Vaishali at Hajipur, in Sessions Trial No. 39 of 1991/ 9 of 1993

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Baid Nath Chaudhary, Son of late Banshi Choudhary, resident of Mohalla Bagmali, PS Hazipur Town, Distt. Vaishali

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. S Azeem, A.C.

For the Respondent/s : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 05-04-2018

Challenging his conviction ordered by learned 4th Additional Sessions Judge, Vaishali at Hajipur on 10.12.1993 in Sessions Trial No. 39 of 1991/9 of 1993 and convicting him to undergo life imprisonment for offence under Section 302 of the Indian Penal Code, this appeal has been filed by the appellant under Section 374(2) of the Code of Criminal Procedure, 1973.

It is the case of the prosecution that on 11.05.1990, PW 7 Sudama Devi had gone along with her husband Lal Babu Choudhary the deceased to witness a cinema show in the National Cinema Hall. They returned after seeing the show at 5



PM and when they returned back their daughter PW 5 Neelam Kumari informed them that the appellant Baid Nath Choudhary had come to their house and was enquiring about her father. It is said that immediately after coming home, the deceased husband of the informant left home for tapping toddy from the palm tree. He returned soon and was followed by the appellant Baid Nath Choudhary who was armed with a *Hasuli*. The appellant came, caught the hand of the informant, took him towards the pitch road and thereafter Baid Nath Chodhary pierced the *Hasuli* on the left side of the stomach of her husband. He fell down and died on the spot. It is said that the incident was witnessed by their 8 eight years old daughter PW 5 Neelam Kumari, PW 1 Kishori Choudhary, PW 2 Chandrika Choudhary and PW 3 Sahjada Khurram.

The appellant was arrested, he was prosecuted and convicted.

In the trial, the prosecution examined 12 witnesses. PW 1 Kishori Choudhary, PW 2 Chandrika Choudhary, PW 3 Sahjada Khurram who are alleged to have seen the incident. PW 4 Shakuntala Devi was a witness who came to the spot after the incident. PW 5 Neelam Kumari the daughter of the deceased who is 8 years old is an eye-witness to the incident.



PW 6 is Bhola Prasad Sah. PW 7 the informant Sudama Devi is wife of the deceased. PW 8 Murlidhar Prasad is an Assistant Sub Inspector and Investigating Officer. PW 10 and PW 11 Ganga Bishnu Sharma and Yogendra Thakur are formal witnesses and PW 12 Dr. Gyan Bhusnan who is the doctor who conducted the medical examination and post mortem of the deceased Lal Babu Choudhary.

It is the case of the appellant before this Court that none of the witnesses has witnessed the occurrence. It is stated that PW 7 Sudama Devi and Neelam Kumari PW 5 were in their house. They did not see the incident. PW 4 Shakuntala Devi, PW 2 Chandrika Choudhary and PW 3 Sahjada Khurram reached the spot after the incident and none has seen the incident. It is stated that this is a case of false implication.

We have heard learned counsel for the parties and we find that PW 1 Kishori Choudhary in his statement speaks about having seen the incident and witnessed Baid Nath Choudhary assaulting the deceased in his stomach with a *Hasuli*. This witness also says that when the incident took place, PW 5 Neelam Kumari was also there. Similar is the statement of PW 4 Shakuntala Devi, PW 2 Chandrika Choudhary and PW 3 Shajada Khurram. Apart from the



statements of these witnesses, PW 7 the informant who is the wife of the deceased, and PW 5 Neelam Kumari who is a young girl of 8 years have in all details testified about the evidence and they all categorically said that the appellant Baid Nath Choudhary pierced the *Hasuli* in the stomach of the deceased due to which he fell down and died. From the statement of PW 12 Dr. Gyan Bhushan and the medical report available on record it is seen that the deceased had sustained an incised wound 4"x2" on the left side of the lower abdominal area and his abdominal cavity was ruptured and the urinal bladder was also ruptured. The medical evidence supports the prosecution case and the evidence of all the witnesses being in conformity with the evidence of medical evidence, we see no reason to hold that the witnesses have not seen the incident and they have falsely implicated the appellant. Merely because the informant and the daughter are interested in their husband/father's case their evidence cannot be discarded. Fardbeyan and the F.I.R. were lodged immediately after the incident and the entire story of the prosecution is consistent throughout.

In view of the above, we see no reason to make any indulgence into the matter. The appeal stands dismissed. The



appellant is on bail. His bail bonds be cancelled and he be taken back into custody for undergoing the remaining period of the sentence.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

mrl./-

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