

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 364 of 1994

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

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Nagesh Singh, son of Brahamdeo Singh, resident of Village Gardi, P.S. Madanpur,
District Aurangabad

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Amrit Anunay, Advocate (Amicus
Curiae)

For the State : Mr. Shiwesh Ch. Mishra, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 07-03-2018

1. Heard learned amicus curiae appearing for the
appellant as well as learned Additional Public Prosecutor for the State.

2. This criminal appeal has been preferred against the
judgment of conviction dated 20.07.1994 and sentence order dated
25.07.1994 passed by learned 3rd Additional Sessions Judge,
Aurangabad in Sessions Trial No. 102 of 1993/ 07 of 1993 by which
and whereunder he convicted the sole appellant for committing the
murder of deceased Tapeshwari Devi and accordingly, sentenced him
to undergo rigorous imprisonment for life under Section 302 of the
Indian Penal Code.

3. PW-11, namely, Vikas Singh gave his ferdbeyan to



PW-12 on 23.12.1992 at about 01:00 P.M. at Madanpur police station to this effect that on 22.12.1992 at about 07:00 P.M., the sole appellant assaulted his mother Tapeshwari Devi by means of garasa as well as with back of garasa as a result whereof, his mother sustained injury. He further claimed that when he tried to save his mother, he was also assaulted by the appellant. However, after the aforesaid occurrence, he as well as others brought his mother to his home but could not go to police station to lodge the case just after the occurrence as no vehicle was available to go to concerned police station which was at the distance of 17 kms. In the next morning, the PW-11 brought his mother to Madanpur Hospital where she was declared brought dead and thereafter PW-11 went to police station and lodged the first information report.

4. On the basis of aforesaid ferdbeyan, Madanpur P.S. Case No. 155 of 1992 under Section 302 of the Indian Penal Code was registered. The matter was investigated by the PW-12 and after completion of investigation, charge sheet was submitted. The cognizance was taken and the case was committed to the court of sessions in usual way.

5. The sole appellant stood trial and accordingly, he was charged for the offence punishable under Section 302 of the Indian Penal Code.



6. The prosecution, in course of trial, examined, altogether, 13 witnesses and also got exhibited post mortem report, inquest report and other relevant documents. The statement of appellant was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution story and claimed his false implication on account of land dispute.

7. The learned trial court having considered the evidences available on the record convicted and sentenced the appellant in the manner as we have already stated.

8. It would appear from perusal of the lower court record that PW-1 Naresh Singh @ Triveni Singh, PW-7 Kamla Singh, PW-8 Santat Singh, PW-9 Madhav Singh and PW-11 Vikas Singh claimed that they reached on the place of occurrence having heard the noise of the deceased and all the above stated witnesses admitted that they had not seen the actual assault on the deceased. Furthermore, we find that out of the aforesaid prosecution witnesses, PW-7 and 8 have been declared hostile. However, PW-3 claimed that on the alleged date of occurrence, the deceased had come to his shop to purchase one match-box and 100 gm. soda and after purchasing the same, she left the shop.

9. PW-2 has stated nothing and he has been tendered by the prosecution.



10. PW-5 and PW-6 are daughters in law of the deceased and both the aforesaid witnesses stated that when deceased was brought to her home, they noticed that deceased was in injured condition and deceased disclosed the name of appellant as assailant and also stated that it was appellant, who had assaulted her.

11. PW-13 is doctor who had conducted the post mortem examination on the corpus of the deceased and this witness found injuries on the person of the deceased.

12. Although, PW-10 claimed that he had seen the actual killing of the deceased but admittedly, PW10 is son of the deceased and moreover, PW-11 who is another son of the deceased and informant of the present case has admitted in his cross examination that deceased was brought home after the alleged occurrence by PW-4 and at that time he as well as his brother Gopal Singh (PW-10) were at their home.

13. So far as so-called dying declaration of the deceased before PW-5 and PW-6 is concerned, the deposition of PW-11 is relevant in this regard because PW-11 has admitted in his cross examination that when the deceased was brought home by PW-4, she was in unconscious state and she remained unconscious till night. Therefore, in the aforesaid circumstance, it is difficult to believe on the testimony of PW-5 and PW-6 and in our opinion, it would be



unsafe to confirm the conviction of the appellant on the statement of PW-5 and PW-6.

14. After scrutinizing the entire evidences available on the record, we find that not a single prosecution witness has claimed to have seen the actual assault on the deceased and, therefore, we have no option except to set aside the impugned judgment of conviction and sentence order.

15. Accordingly, this criminal appeal is allowed and the impugned judgment of conviction dated 20.07.1994 and sentence order dated 25.07.1994 are, hereby, set aside. The sole appellant is on bail. He is discharged from the liabilities of his bail bonds.

16. Copy of first and last page of this judgment be handed over to learned amicus curiae for needful.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

SHAHZAD/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	14.03.2018
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