

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.534 of 1994

{Against the Judgment of conviction and sentence order dated 05.10.1994 passed by the Sessions Judge, Gopalganj, in Sessions Trial No.21 of 1993}.

1. Badan Dhanuk, son of Nakched Dhanuk.

2. Lalan Dhanuk, son of Swaminath Dhanuk.

3. Pravesh Dhanuk, son of Garhan Dhanuk.

All residents of village- Reotith, P.O. Reotith, P.S. Baikunthpur, District-Gopalganj.

... .. Appellants.

Versus

State of Bihar

... .. Respondent.

with

Criminal Appeal (DB) No. 585 of 1994

Ganesh Sah alias Mahesh Sah, son of Sheonath Sah, resident of village-Rewatia, P.S. Baikunthpur, District-Gopalganj.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

Appearance :

(In Criminal Appeal (DB) No. 534 of 1994):

For the Appellants : Mr. Mahesh Narayan Parbat, Senior Advocate.
Mr. Shashi Bhushan Prasad, Advocate.

For the State : Mr. S.C. Mishra, A.P.P.

(In Criminal Appeal (DB) No. 585 of 1994):

For the Appellant : Mr. Manu Shanker Mishra, Advocate.
Mr. Nityanand Jha, Advocate.

For the State : Mr. Suresh Mishra, Advocate.
Mr. S.C. Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR

MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 16-03-2018

Since both the above stated criminal appeals arise out of



the same Judgment of conviction and sentence order dated 05.10.1994 passed by the learned Sessions Judge, Gopalganj, in Sessions Trial No.21 of 1993, therefore, both the above stated criminal appeals have been heard together and are being disposed of by this common Judgment.

2. P.W.2 Laichi Devi gave her fardbeyan to P.W.5 on 23.03.1992 at about 04.00 A.M. to this effect that in the previous night, i.e., on 22.03.1992 at about 08.00 P.M., she was cooking meal in her house, while her husband was sitting in his courtyard. In the meantime, the appellant Badan Dhanuk raised alarm that his buffalo let untied and having heard the aforesaid alarm, her husband came out of the house and she also followed him. She further stated that her husband was going to catch the buffalo but the appellants caught him and, thereafter, the appellant Ganesh Sah alias Mahesh Sah gave dagger blow at his chest, as a result whereof her husband fell down on the ground and died then and there. The appellants alongwith dagger fled away towards west-east side. She raised alarm, which attracted Rajesh Kumar Singh (P.W.3) and Ragho Pandey as well as others, who witnessed the occurrence. She stated that the appellants committed the alleged crime on account of previous litigation and enmity.



3. On the basis of the aforesaid fardbeyan, a police case for the offences punishable under Sections 302/34 of the Indian Penal Code was registered and formal F.I.R. was drawn up against the appellants.

4. P.W.5 took the charge of investigation. He visited the place of occurrence, arrested the appellant Ganesh Sah alias Mahesh Sah and on the basis of his confessional statement, recovered the dagger, which had been used in committing the alleged crime. He also seized the blood stained earth and sent the same for chemical examination. However, after completion of all the formalities, he submitted the chargesheet against the appellants. The cognizance of the offence was taken and the case was committed to the court of sessions for trial in usual course.

5. All the appellants were put on trial before the learned court below. Accordingly, appellant Ganesh Sah alias Mahesh Sah stood charged for the offence punishable under Section 302 of the Indian Penal Code, whereas the remaining appellants were charged for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code.

6. In course of trial, the prosecution examined altogether 5 witnesses and also got exhibited some documents



as documentary evidence.

7. The statements of the appellants were recorded under Section 313 of the Code of the Criminal Procedure in which they denied the prosecution story.

8. The defence also got examined two witnesses and got exhibited some documents in support of the defence.

9. The learned trial court having scrutinized the evidences available on the record and having relied upon the testimonies of the prosecution witnesses convicted the appellant Ganesh Sah alias Mahesh Sah for the offence punishable under Section 302 of the Indian Penal Code and the remaining appellants for the offences punishable under Sections 302/34 of the Indian Penal Code and, accordingly, sentenced them to undergo rigorous imprisonment for life.

10. Learned counsels for the appellants challenged the impugned Judgment of conviction and sentence order, arguing that not a single independent witness was examined by the prosecution and both the so-called eye witnesses are related with the deceased. Continuing their submissions, they submitted that P.W.1 is daughter, whereas P.W.2 is the wife of the deceased and, moreover, P.W.1 was aged about 9 years at the time of the alleged occurrence and her capacity and intelligence



as well as her understanding of the obligation on an oath was not tested by the learned trial court before recording her evidence and, therefore, no reliance can safely be placed upon her testimony as she might be tutored by her mother and interested persons.

11. They further submitted that the Investigating Officer admitted that he seized the blood stained earth and sent the same for chemical examination but no report was produced by the prosecution in course of trial and, therefore, the prosecution failed to establish that the death of the deceased was caused by dagger, which was said to be recovered in this case.

12. They further submitted that the defence has brought the injury report of the appellant Ganesh Sah alias Mahesh Sah. The defence has also brought the fardbeyan of the appellant Ganesh Sah alias Mahesh Sah. They further submitted that both the above stated documents go to show that the appellant Ganesh Sah alias Mahesh Sah sustained injury on the alleged day of the occurrence and, subsequently lodged the case against the deceased. They further submitted that, as a matter of fact, it was deceased and his son-in-law, who assaulted the appellant Ganesh Sah alias Mahesh Sah and a free fight had taken place between the parties in which the deceased sustained the fatal



injury, as a result whereof he died but P.W.2 lodged a false case against the appellants suppressing the real facts. They further submitted that P.W.2 did not disclose in her fardbeyan about the injuries sustained by the appellant Ganesh Sah alias Mahesh Sah but, in course of trial, she improved her statement, saying that she had given one danda blow to the appellant Ganesh Sah alias Mahesh Sah but, as a matter of fact, the aforesaid improvement is after thought story, just to demolish the factum of free fighting.

13. Learned counsels for the appellants further submit that, admittedly, the appellant Ganesh Sah alias Mahesh Sah is agnate of the deceased and so far as the remaining appellants are concerned, they have no concern with the family of the deceased and, as a matter of fact, they have been implicated in this case on account of previous litigation and enmity. They further submitted that the previous litigation and enmity has been admitted by P.W.2, not only in her fardbeyan but also in her deposition.

14. On the other hand, learned Additional Public Prosecutor for the State supported the impugned Judgment of conviction and sentence order, arguing that P.W.1 and P.W.2 are quite natural witnesses because when the occurrence took place,



P.W.1 and P.W.2 being daughter and wife of the deceased were present there. He further submitted that so far as P.W.3 is concerned, admittedly, he reached at the place of the occurrence after assault and saw the deceased lying in a pool of blood, therefore, all the above stated three material witnesses are quite natural and their presence on the place of the occurrence cannot be doubted. He further submitted that P.W.4 has proved the post-mortem report of the deceased and the post-mortem report of the deceased also corroborates the prosecution case and, moreover, P.W.5 has proved the place of the occurrence and recovered the dagger, which had been used in committing the murder of the deceased. He further submitted that so far as Ext.A and Ext.B are concerned, the appellant Ganesh Sah alias Mahesh Sah lodged the case against the deceased and others in a planned way with an object to save his skin from the present case. He further submitted that the defence failed to produce the doctor, who had first examined the appellant Ganesh Sah alias Mahesh Sah and, moreover, the prosecution witnesses explained the injury of the appellant Ganesh Sah alias Mahesh Sah in course of trial and, therefore, only on the ground of institution of a case by the appellant Ganesh Sah alias Mahesh Sah against the deceased and others, the prosecution case cannot be



doubted.

15. Having heard the contentions of both the parties, we went through the impugned Judgment. We find that P.W.1 Punam Kumari is daughter of the deceased and at the time of the alleged occurrence, she was aged about 10 years. Furthermore, we find that the learned trial court failed to test the prudence of P.W.1 and without testifying her prudence, recorded her statement.

16. No doubt, P.W.1 has supported the prosecution story and stated that it was appellant Ganesh Sah alias Mahesh Sah, who gave dagger blow causing death of her father but, in our view, it is unsafe to totally rely upon the evidence of P.W.1 unless her deposition is corroborated by other witnesses because, admittedly, she was aged about 9 years at the time of alleged occurrence and her capacity and intelligence to understand the questions and give rational answers thereto were not tested by the trial court before recording her deposition.

17. P.W.2 Laichi Devi is the wife of the deceased. She also supported the prosecution case and narrated the events of the occurrence, saying that the appellant Ganesh Sah alias Mahesh Sah gave dagger blow causing the death of her husband. She further stated that when the appellant Ganesh Sah



alias Mahesh Sah gave dagger blow to her husband, she assaulted him by means of danda, as a result where of he sustained injury on his head. P.W.2 has explained the injuries found on the person of the appellant Ganesh Sah alias Mahesh Sah.

18. Further, we find that the statement of P.W.1 is corroborated by P.W.2. It is undisputable that both the aforesaid witnesses were present in their house at the time of the alleged occurrence. P.W.5 has proved the place of the occurrence and stated that the place of occurrence was situated in front of the house of the deceased. Therefore, the aforesaid fact goes to show that P.W.1 and P.W.2 had witnessed the alleged occurrence.

19. P.W.3 Rajesh Kumar Singh claimed that just-after the alleged occurrence, he reached on the place of occurrence and found the deceased lying in a pool of blood. The statement of P.W.3 corroborates the timing of the alleged occurrence as well as the the statements of P.W.1 and P.W.2.

20. After careful consideration of the evidences, available on the record, we find that the deceased was killed on 22.03.1992 at about 08.00 P.M. The appellant Ganesh Sah alias Mahesh Sah {in Criminal Appeal (DB) No.585 of 1994} claimed



that the deceased and his son-in-law had assaulted him and, in that course, the deceased sustained injury. The learned trial court considered the above stated aspect and observed that even if the story of private defence, as set up by the appellant Ganesh Sah alias Mahesh Sah {in Criminal Appeal (DB) No.585 of 1994} is accepted, then also, it is obvious that the appellant Ganesh Sah alias Mahesh Sah {in Criminal Appeal (DB) No.585 of 1994} exceeded the limit of his private defence.

21. The appellants in Criminal Appeal (DB) No.534 of 1994 claimed that they were falsely implicated by P.W.2 on account of previous litigation and enmity. The materials, available on the record, go to show that according to the prosecution case, only the appellant in Criminal Appeal (DB) No.585 of 1994 was armed with dagger and so far as the remaining appellants are concerned, there is nothing on record to show that they were carrying any weapon at the time of the alleged occurrence or had used any weapon in assaulting the deceased. P.W.1 and P.W.2 claimed that the appellants in Criminal Appeal (DB) No.534 of 1994 caught the deceased when he came out of his house and except the aforesaid material, there is nothing against the appellants in Criminal Appeal (DB) No.534 of 1994.



22. The previous litigation and enmity of the deceased with the appellants in Criminal Appeal (DB) No.534 of 1994 is admitted and, therefore, the possibility of their false implication in the present case cannot be ruled out and it is unsafe to hold them guilty for want of corroborative evidence because except P.W.1 and P.W.2, no one has come to say about the involvement of the appellants in Criminal Appeal (DB) No.534 of 1994 in the alleged occurrence. So far as the appellant in Criminal Appeal (DB) No.585 of 1994 is concerned, he is agnate of the deceased and there is nothing on record to show that the deceased had enmity with the appellant in Criminal Appeal (DB) No.585 of 1994 and, therefore, in the present case, the benefit of doubt cannot be granted to him particularly, in the circumstances, when P.W.1 and P.W.2, categorically, stated about his involvement in the crime.

23. It is specific case of the prosecution that the appellant in Criminal Appeal (DB) No.585 of 1994 had given single dagger blow causing the death of the deceased and he had not repeated the blows, therefore, we are of the view that, at best, the appellant in Criminal Appeal (DB) No.585 of 1994 could have been convicted for the offence punishable under Section 304(I) of the Indian Penal Code.



24. Admittedly, the alleged occurrence had taken place on 22.03.1992 and near about 25 years have already passed. The appellant in Criminal Appeal (DB) No.585 of 1994, namely, Ganesh Sah alias Mahesh Sah, remained in jail custody for more than 2 years and 7 months during pendency of trial and this appeal. Furthermore, it is an admitted position that the appellant Ganesh Sah alias Mahesh Sah {in Criminal Appeal (DB) No.585 of 1994} is an agnate of the deceased and, therefore, in our view, the ends of justice would be served, if he is sentenced to the period already undergone by him in course of trial and during the pendency of these appeals.

25. On the basis of the aforesaid discussions, the appellants in Criminal Appeal (DB) No.534 of 1994 are acquitted of the charges giving benefit of doubt to them and, accordingly, the impugned Judgment of conviction and sentence order in respect of the appellants {in Criminal Appeal (DB) No.534 of 1994} is set aside. They are on bail, therefore, they are discharged from the liabilities of their bail bonds.

26. So far as the appellant in Criminal Appeal (DB) No.585 of 1994 is concerned, his conviction is converted under Section 304(I) of the Indian Penal Code and, accordingly, he is sentenced to undergo the period, already undergone by him.



Accordingly, the impugned Judgment of conviction and sentence order in respect of the appellant {in Criminal Appeal (DB) No.585 of 1994} stands modified.

27. In the aforesaid manner, both the above stated criminal appeals stand disposed of.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	AFR
CAV DATE	NA
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