

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.240 of 1994

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Against the Judgment of conviction dated 23.03.1994 and Order of sentence dated 24.03.1994 passed by the court of Additional Sessions Judge-X, Gaya, in Sessions Trial No. 139 of 1991/ 165 of 1990.

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Anil Kumar Thakur, S/O Kamleshwari Thakur, resident of Village- Baijani, P.S.- Jagdishpur, District- Bhgalpur.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant : Mr. Gauri Shankar Prasad, Advocate.

For the State : Mr. Dilip Kumar Sinha, APP.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

CAV JUDGMENT

(Per: **HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA**)

Date: 17-01-2018:

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This Criminal Appeal is directed against the Judgment of conviction dated 23.03.1994 and Order of sentence dated 24.03.1994, passed in Sessions Trial No. 139 of 1991/ 165 of 1990, whereunder, the court of Additional Sessions Judge-X, Gaya, convicted the sole appellant for the offence under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life.

2. Prosecution case, in brief is that informant, Rajendra Choudhary, gave his Fradbeyan (Ext.1/3), on 04.09.1988, at about 1.40 A.M., at Pilgrim Hospital, Gaya, before B.S. Pandey(P.W.3),



Inspector of Kotwali Police Station, in presence of Dr. Sri Prakash Singh (P.W.1) to the effect that he along with Anil Kumar Thakur (appellant) came to Gaya from Patna boarding on Passenger Train and stayed in Room No. 10 of Madras Hotel. After taking the dinner, he along with Anil Kumar Thakur (appellant) slept in the Room No. 10. At about 1.15 A.M., in the night, informant received injury at his left temporal region then he woke up and saw that Anil Kumar Thakur (appellant) causing repeated blow through knife to him, in which, he sustained injury at his neck, forehead, nose, right forehead and chin. The informant started fleeing away to the room on raising alarm to save him then he was saved and Anil Kumar Thakur (appellant) was also apprehended. The knife, which was used by Anil Kumar Thakur (appellant), causing injury to him was lying in the room of the hotel. Anil Kumar Thakur (appellant) wanted to kill him, but he is unable to know the cause of occurrence. The informant further stated that he after reading over his Fradbeyan he put his signature in presence of Doctor, who was on duty.

On the basis of the aforesaid Fradbeyan (Ext.1/3) of informant, Rajendra Chaudhary, forwarded by Inspector, B.S. Pandey (P.W.3) Gaya Kotwali P.S. Case No. 305 of 1988 and he himself took the charge of investigation of the case being the In-charge of Gaya Kotwali Police Station and after investigation submitted the charge



sheet on 06.12.2988 under Section 302 of the Indian Penal Code against the appellant.

3. During trial, the prosecution examined, altogether, six witnesses and got exhibited the several documents. On the other hand, the defence did not examine any witness but from the trend of cross-examination of the prosecution witnesses and the statement of the appellant recorded under Section 313 Cr.P.C., the defence of the appellant appears to be false implication.

4. P.W.1, Sri Prakash Singh, has stated that in the month of April and September, 1988, he was posted as Civil Assistant Surgeon at Pilgrim Hospital, Gaya. In the night of 3/4th September, 1988, he was on duty in emergency ward in Pilgrim Hospital. At about 1.30 A.M., in the night, one injured was brought by the police. The injured disclosed his name Rajendra Choudhary, who was in conscious stage and in speaking condition. At that time, B.S. Pandey (P.W.3), Police Inspector of Kotwali Police Station was present there. Injured, Rajendra Choudhary (informant) gave his statement before B.S. Pandey (P.W.3), in which, he stated that injury was caused to him by Anil Kumar Thakur (appellant) through knife. He also disclosed that he along with Anil (appellant) was stayed in a room at Madras Hotel, in the night, Anil Kumar Thakur (appellant) started to give knife blow then he raised alarm. In the meantime, police party came and both



were caught hold and brought to the Hospital. Fradbeyan of Rajendra Choudhary (informant) recorded by the Police Inspector, B.S. Pandey (P.W.3), was read over to Rajendra Choudhary, who thereafter put his signature. This witness has further stated that he also put his signature on the Fradbeyan of Rajendra Choudhary(informant) recorded by B.S. Pandey. This witness proved his signature on the Fradbeyan of Rajendra Choudhary (informant) and proved his signature as Ext.1/1. This witness has further stated that Anil Kumar Thakur (appellant) had also sustained slight injury, who was treated by him and he proved the prescription of treatment of Anil Kumar Thakur (appellant) as Ext.2. This witness has further stated that since the injuries of Rajendra Choudhary were grievous due to that reason after first aid he was referred to Anugrah Narayan Magadh Medical College, Gaya. This witness has also stated that regarding the injury, as found on the person of Anil Kumar Thakur (appellant), requisition was prepared by B.S. Pandey (P.W.3), on which basis, he issued injury report. This witness in his cross-examination has stated that both injured were taken before him. Rajendra Choudahry (informant) had given his statement according to his sweet will. Before giving statement, he was treated by him. He further stated in his cross-examination that he put his signature on the Fradbeyan of the informant, Rajendra Choudhary, on the request of the Police Inspector and at the time of reading over



the Fradbeyan to the informant, Rajendra Choudhary, he was present and informant, Rajendra Choudahry, was in full conscious.

5. P.W.2, Samir Kumar Singh, is the Hawaldar posted at Gurudwara Town out post, Gaya at the time of occurrence. He deposed in his evidence that in the night of 3/4 September, 1988, he was on patrolling duty. In course of patrolling duty, he heard Hullah near the Madras Hotal then he proceeded there and saw one person in injured condition, who disclosed his name Rajendra Choudhary. He met to Hotel Manager, who disclosed that Rajendra Choudhary (informant) and Anil Kumar Thakur (appellant) had come in the morning at Hotel and got allotted Room No. 10. Thereafter, he went in the Room No. 10 and saw the blood stained knife and at that time appellant tried to flee away, but he was apprehended. Thereafter, Rajendra Choudhary (informant) and Anil Kumar Thakur (appellant) were taken to Pilgrim Hospital, Gaya, where Police Inspector, B.S. Pandey (P.W.3) was present and statement of injured Rajendra Choudhary (informant) was recorded. This witness has stated in his cross-examination that on 'Hullah' at the Madras Hotel, 25 to 30 persons were present, out of which, 2 to 3 were Managers. He further stated that at the time of patrolling duty, two other police officials were also with him.

6. P.W.3, Ballabh Saran Pandey, was the Police Inspector-



cum-Officer-In-Charge of Kotwali Police Station, Gaya at that time of occurrence. He deposed in his evidence that on 04.09.1988, at about 1.40 A.M., in the night, he had gone to Pilgrim Hospital, Gaya and recorded Fradbeyan of injured, Rajendra Choudahry (informant), who was in conscious stage, in presence of Dr. Sri Prakash Singh (P.W.1). After recording over the statement of Rajendra Choudhary, in presence of Dr. Sri Prakash Singh (P.W.1), Rajendra Choudhary, put his signature and he proved the signature of Rajendra Choudahry on the Fradbeyan as Ext. 1/2. He further stated that Dr. Sri Prakash Singh (P.W.1) also put his signature on the Fradbeyan of informant, which has already been marked as Ext.1. This witness has proved the Fradbeyan of informant, Rajendra Choudhary, as Ext.1/3. He further stated that Fradbeyan was sent to Kotwali Police Station through Hawaldar, Samir Singh (P.W.2) for institution of the case and he proved his forwarding report on the Fradbeyan as Ext.1/4. He further deposed that on the basis of Fradbeyan, formal F.I.R. was drawn by Sub-Inspector, C.P. Tiwary and this witness proved the formal F.I.R. as Ext.1/5. He further stated that since the case was instituted under the cognizable offence due to that reason he took investigation of the case himself and thereafter recorded the re-statement of injured-informant, Rajendra Choudhary, in the Hospital and also the statement of Dr. Sri Prakash Singh (P.W.1). At that time, Anil Kumar Thakur



(appellant) was also taken in the Hospital on arrest and he on interrogation admitted his guilt. At that time, slight injury was found on his person. He then prepared the requisition for medical examination of Anil Kumar Thakur. At that time, injured, Rajendra Choudhary (informant) was sent to Anugrah Narayan Magadh Medical College, Gaya for better treatment. He further deposed that he went to place of occurrence. The place of occurrence was Room No. 10 of the first floor of Madras Hotel situated in West to the Station Road, Gaya. The door of Room No. 10 was in West and in South of Room No. 10, there was Room No. 9. In Room No. 10, two windows without rod were found in Eastern and Northern wall. The Eastern window facing in Galary of the Hotel was found open at that time and at the frame of the window blood stain was found. In Room No. 10, two beds were found. On bed sheet of Eastern bed, blood stain was found in little space but in the bed sheet of western bed blood stain was found in large area. The blood stain was also found in between bed and the door of Room No. 10. In Room No. 10, two bags, *Paigama* and *Gangi* were also recovered. Seizure list of materials were prepared in presence of Suresh Singh, son of Rohan Singh, Village- Buniyad Bigha, P.S. Barachatti, Manager of the Hotal and Suresh Singh, son of Ramraj Singh, Village Basdih Kala, P.S, and District- Aurangabad and both put their signature on the same. This witness proved the seizure list as



Ext.3. He further deposed that thereafter he came to the Police Station with the appellant and blood stain was also found on the Kurta of the appellant, which was also seized in presence of witness, Nizamuddin and Naresh Singh and prepared the seizure list and proved the same as Ext.3/1. On 04.09.1988, at about 10 A.M, he recorded the confessional statement of Anil Kumar Thakur (appellant), on which, Anil Kumar Thakur (appellant) put his signature and he proved the confessional statement of Anil Kumar Thakur (appellant) as Ext.4 (with objection). On receiving the information of occurrence, family members and Mohallah people of informant had come at Hospital and police station. Out of which, he recorded the statement of Kailash Choudhary, Yogendra Choudhary and Bishwanath Choudhary. In course of investigation, carbon copy of inquest report of deceased was received through A.S.I., Sidheshwar Singh of Police Station Pirbahor. Thereafter, Postmortem report was obtained from Patna Medical College and after completing investigation he submitted the charge sheet against the accused under Section 302 of the Indian Penal Code. He has further stated in his cross-examination that he is not in memory whether he had made Sanha entry regarding receiving the information of the occurrence or not. He further stated that deceased and accused were brought to Hospital by Hawaldar and he did not hand over the knife at that time. He also stated in his cross-examination that he has



not detailed the time in case diary when injured was referred to Magadh Medical College from Pilgrim Hospital.

7. P.W.4, Sheo Bechan Singh, who is the In-charge of Malkhana of Kotwali, Gaya, has deposed in his evidence that on the direction of the court in Kotwali P.S. Case No. 355 of 1988, he has come with the seized knife, which is the material exhibit in the case and he proved the same as Ext.1. He also stated that due to sewage of the room of Malkhana, Knife is rusted condition, regarding which, the information was also given to the Chief Judicial Magistrate, Gaya.

8. P.W.5, Suresh Singh, has deposed in his evidence that in the night of 3/4 September, 1988, he was the Manager of Madras Hotel situated at Station Road, Gaya. One Suresh Singh, son of Ram Raj Singh, was present there as his Assistant. In the night of 3/4 September, 1988 two persons stayed in the Room No. 10, but their names are not in the memory. In the said night, he heard the sound of cry then went near the Room No. 10 and found two persons coming out to the room, out of which, one was in pool of blood, who was rushed to the Hospital by the police and another person was also apprehended by the police and taken by the police from there. After some time, the police came in the Hotel and inspected the Room No. 10 and seized the bags and knife from the room and also prepared the seizure list about the seized materials, on which, he put his signature.



This witness proved his signature on seizure list as Ext.3/1. He further stated that injured person had not disclosed the name of the assailant at that time. This witness showed his inability to identify the appellant in the Dock due to passing over much time. On the point of identification, this witness was declared hostile. On cross-examination by the prosecution, he admitted that police made query to him regarding the occurrence.

9. P.W.6, Radha Raman Singh, deposed that he was posted at P.M.C.H. on 09.09.1988. On same day, at about 10.45 A.M., he held the postmortem Examination on the dead body of Rajendra Choudahry, son of late Roushan Choudhary and found following wounds on the person of the deceased:

1. Stitched wound longitudinally on bridge of nose and forehead 6" x 1/4" x bone deep.
2. Stitched wound on forehead in left side transversely 1" above left eye 3" x 1/4" x muscle deep.
3. Multiple stitched wound on face in which smallest was 1" x 1/4" x skin deep.
4. Stitched wound over left shoulder 7" x 1/4" x muscle deep.
5. Stitched wound of left shoulder lateral to Injury No. (4) - 3" x 1/4" x Muscle deep.
6. Stitched wound on right parietal region longitudinally 4" x 1/4" x bone deep.
7. There was multiple injury on the back of neck and



different sites on scalp. Some were stitched and some were unstitched. Some were longitudinal and some were transversed, all unstitched wounds were skin deep and there were taillogs towards left side and right side in different wounds some telling to wound left side and right side in different wounds. Some felling were anterior and some were posteriorby.

8. Sharp cut of frontal bone in middle which is cavity deep.

9. Sharp cut of right parietal bone 1" lateral to seridal sehurus 3' which is cavity deep longitudinal.

10. Extradural and subdural haematone.

11. Bandage in lower portion of right leg under which stitched wound was found for scalp ray section. Cause of death head injury with sharp cutting weapon (Injury Nos. 8 and 9).

The injuries may be of dagger. The injure nos. 8 and 9 are sufficient to cause of death in ordinary course of nature. This witness proved the postmortem report as Ext.5 saying that the same is in his pen and bears his signature. He further deposed that it cannot be said that the injured may be or may not be in position to make the statement after injury.

10. Learned counsel appearing on behalf of the appellant submits that the appellant has been convicted through the impugned Judgment under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life only on the basis of the



statement of the informant/deceased, Rajendra Choudhary, which was recorded by the Police Inspector, B.S. Pandey (P.W.3), as such, the impugned Judgment is illegal. Further submission is that it would appear from the trial court record that confessional statement of the appellant was recorded just after the occurrence on his apprehending by the Police Inspector, B.S. Pandey (P.W.3), in which, he disclosed that he caused injury through knife due to not returning the money by the informant-deceased as taken by him on pretext to manage the service, the alleged injury of the deceased was caused by the appellant in grave provocation. Hence, the case would come within the purview of Section 304 of the Indian Penal Code not Section 302 of the Indian Penal Code.

11. From the evidence of P.W.2, Samir Kumar Singh, it appears that while he was on patrolling duty in the night of 3/4 September, 1988, he heard *Hullah* near the Madras Hotel then he proceeded there and saw injured, who disclosed his name Rajendra Choudahry (informant/deceased) and appellant was also there. Both were taken to Pilgrim Hospital from Hotel. B.S. Pandey (P.W.3) was present there, who recorded the Fradbeyan of injures-deceased, Rajendra Choudhary. P.W.1, Dr. Sri Prakash Singh, who was on duty in emergency ward in Pilgrim Hospital, on that very night, has stated that one injured was brought by the police, who disclosed his name



Rajendra Choudahry, who was in conscious stage and in speaking condition. After giving first aid, he was referred to Anugrah Narayan Magadh Medical College, Gaya. At that time, Police Inspector, B.S. Pandey (P.W.3) was present, who recorded his Fradbeyan/statement in his presence, in which, he detailed the story of incident and after reading over the Fradbeyan, injured-deceased, Rajendra Choudahry put his signature and he also put his signature on request of B.S. Pandey (P.W.3). He also deposed that at that time appellant was also taken there and slight injury was found on his person. He also prepared the injury report of appellant and on the requisition issued by the Police Inspector, B.S. Pandey (P.W.3). As such, obviously it is clear that at the time of giving Fradbeyan (Ext.1/3), the informant/deceased, Rahendra Choudhary was in position to give his statement, who died later on, in course of treatment after four days of the occurrence on 09.09.1988. P.W.5, Suresh Singh, who was working as Manager in Madras Hotel, also stated that in the night of 3/4th September, 1988, he heard the sound of cry in the Hotel then he reached near the Room No. 10 and saw two persons coming out from the room, out of which, one was injured and in pool of blood. The police came there and took both to the Hospital. Later on, police came in Room No. 10, from where, one knife, bags and clothes were recovered. However, this witness did not identify the appellant in the



court saying that he is not in the memory as much time has been passed after the occurrence. P.W.6, Dr. Radha Ramam Singh, who conducted the postmortem of deceased, has found 11 injuries over the corpus of informant. According to him, Injury nos. 8 and 9 were sufficient to cause the death of deceased in ordinary course of nature. As such, I find no substance in both submissions as advanced by the learned counsel for the appellant in course of argument.

It is also obvious from the testimony of P.W.5 that the occurrence had taken place in Room No. 10 of Madras Hotel and just after the occurrence the appellant was caught. Therefore, the above stated circumstance coupled with Fradbeyan which amounts to dying declaration of informant-deceased is sufficient to prove the guilt of appellant.

12. On the basis of facts and circumstances of the case and discussions made above, I find that prosecution has been able to prove its case and the charge under Section 302 of the Indian Penal Code levelled against the appellant beyond all reasonable doubt and there is no infirmity in the impugned Judgment of conviction and Order of sentence.

13. In the result, this appeal is dismissed and the impugned Judgment of conviction dated 23.03.1994 and Order of sentence dated 24.03.1994 passed by the court of Additional Sessions



Judge-X, Gaya, in Sessions Trial No. 139 of 1991/ 165 of 1990 is hereby confirmed. The appellant is on bail, therefore, his bail bonds is cancelled. The learned court below is directed to take steps for arrest of the appellant to serve out the remaining period of sentence.

(Rajendra Kumar Mishra, J)

Hemant Kumar Srivastava, J:- I agree.

(Hemant Kumar Srivastava, J)

Bhardwaj/-

AFR/NAFR	NAFR
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