

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.424 of 1994

Arising Out of PS.Case No. -61 Year- 1993 Thana -Kushaikote District-
GOPALGANJ

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1. Gorakh Choudhry

2. Badsah Choudhry

Both sons of Chandradeo Choudhry, resident of village Khajuri, Eastern Tola,
P.S. Kuchaikot, District Gopalganj.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 10-07-2018

This Criminal Appeal has been preferred for setting aside the judgment dated 22.08.1994 passed by learned Additional Sessions Judge, IIIrd, Gopalganj (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 309 of 1993/2 of 1994. By the impugned judgment, the learned trial court has held the appellants guilty of the offences under Sections 302/34 of the Indian Penal Code and they have been sentenced to undergo rigorous imprisonment for life.

2. So far as these two appellants namely Gorakh Choudhry and Badsah Choudhry are concerned, according to the



Fardbyan of the informant (P.W. 7), while she was returning with her husband and two years old child after purchasing medicines on 24.05.1993 at about 06:00 PM, when she reached near the Sasamusa school, accused (1). Ramji Choudhry, (2). Hari Lal Choudhry, (3). Gorakh Choudhry and (4). Badsah Choudhry surrounded her husband. Accused Hari Lal Choudhry who was having knife in his hand asked his brother Ramji Choudhry (dead) who was armed with a gun to shot at her husband as a revenge. On this Ramji Choudhry fired from the gun which hit her husband Tulsi Prasad on his back because he was fleeing away.

3. According to the informant when her husband fell down in the field after getting shot on his back, the present appellants Gorakh Choudhry and Badsah Choudhry who were lashed with *Farsa* in their hand attacked on the neck of her husband from behind and they cut down the neck from the back side. The informant alleged that on Hulla near by people assembled but the accused persons went away from the place of occurrence. On the basis of the *Fardbyan* (Ext. 2) a formal first information giving rise to Gopalganj in Kushaikota P.S. Case No. 61 of 1993 G.R. No. 994/93 was registered for the offences under Sections 302/34 of the IPC read with Section 27 of the Arms Act.

4. After investigation police submitted a charge-sheet



against the accused persons, cognizance was taken and the records were committed to the court of Sessions for trial. The accused persons were charged for the offences under Section 302/34 of the Indian Penal Code. One of the accused Ramji Choudhry (dead) was separately charged under Section 27 of the Arms Act.

5. In course of trial, prosecution examined altogether 8 witnesses. P.W. 7 (Chandrakali Devi) is the wife of the deceased and informant of this case. P.W. 1 is the doctor who had held postmortem examination of the dead body of deceased. There is another prosecution witnesses such as Indrashan Prasad (P.W. 6) who is brother of the deceased and Sanjay Kumar (P.W. 4) who is nephew of the deceased. P.W. 8 is the Investigating Officer (I.O.)

6. The learned trial court having examined the evidences available on record came to a conclusion that the prosecution has been able to prove the guilt of the accused beyond all reasonable doubts. Learned trial court found that the doctor (P.W. 1) had noticed one firearm injury on the back of the chest of the deceased with fracture of 7th rib on back of right side of chest. There was also an exit wound which was lacerated on the chest cavity with inverted margin followed by fracture of sternum. A bullet was also recovered from the skin. The learned trial court took note of the other injuries and found that there were three incised wounds in the back of



skull of the deceased on the back of right shoulder and on the front of the right shoulder. The medical evidence was fully supporting the ocular evidence in form of the eye witness who was non-else but wife of the deceased. The I.O. had also found blood in the field where the dead body was lying, the trial court has found that all the accused persons came together with an intention to kill the deceased Tulsi and the manner in which the assault took place did not leave any room for doubt that all the accused persons had common intention and they had come with a preplan to kill the deceased.

7. While assailing the impugned judgment of the learned trial court, learned counsel representing the appellants submits that the learned trial court could not appreciate that injury no. 3 found by P.W. 1 is a lacerated wound which cannot be caused by *Farsa*. It is submitted that even though P.W. 2 says that 8-10 persons were present at the place of occurrence when he reached there, no independent witness could be examined in course of trial. It is also submitted that the informant failed to produce the doctor's prescription showing that she had gone for treatment of her son to a doctor and medicines were purchased and thereafter she along with her husband and the minor son was returning together when the alleged occurrence took place. It is further submitted that the deceased was a veteran criminal and was involved in the murder case of the



father of the accused.

8. On the other hand, learned A.P.P. representing the State submits that it is a open and shut case. The informant is an eye witness and also wife of the deceased. She has narrated the entire occurrence and the manner of occurrence which are finding support from the postmortem report proved by P.W. 1.

9. Learned A.P.P. submits that the postmortem report clearly shows that the cause of death due to shock and hemorrhage arising out of the cumulative effect of the injuries created by firearm and sharp cutting substance.

10. Having heard learned counsel for the appellants and learned A.P.P. for the State as also on perusal of the evidences available on the record, we find that the evidence of the informant (P.W. 6) cannot be discarded. P.W. 6 is the wife of the deceased and has narrated the entire manner of occurrence whereunder these two appellants are said to be lashed with *Farsa* and had given *Farsa* blow on the back side of the neck when the husband of the informant fell down after receiving firearm shot on the back side of his chest. The statements made in the *Fardbyan* (Ext. 2) have not only been proved by the informant (P.W. 6) without any contradictions rather even the other prosecution witnesses have supported the prosecution case.

11. We also find from the postmortem report proved by



P.W. '1' that it fully corroborates the ocular evidence and further we are of the view that the informant being wife of the deceased cannot think of falsely implicating someone in place of real culprit who killed her husband.

12. Even though learned counsel submits that the informant had not personally gone to the police station and the *Chaukidar* who had informed this occurrence to the police station has not been examined in course of trial, we are of the view that the learned trial court has rightly examined this submission of the defence and held that non-examination of the *Chaukidar* will be of no consequence. It was for the Investigating Officer to make the *Chaukidar* as witness and if he failed in this connection, that will not take away the veracity of the testimony of the informant about the alleged occurrence. We agree with the submission of the learned A.P.P. that it is a open and shut case in which the learned trial court has rightly convicted the appellants on the basis of the materials available on record.

13. We find no error in the impugned judgment. The appeal is dismissed.

14. The appellants are on bail by virtue of order dated 23.12.1998 passed in this appeal. The bail bonds of the appellants are hereby cancelled, they are directed to surrender forthwith, failing



which the Superintendent of Police, Gopalganj shall arrest the appellants within a period of 7 days from the date of receipt/ communication of the copy of the order and shall produce them before the learned Chief Judicial Magistrate, Gopalganj for undergoing the remaining sentences.

15. Let a copy of this order be also sent to learned Chief Judicial Magistrate, Gopalganj for taking further action to procure presence of the appellants and to send them jail for undergoing the remaining sentence.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-
Ved/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.07.2018
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