

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.372 of 1995

(Arising Out of judgment dated 26th September, 1995 passed by learned 2nd Additional District & Sessions Judge, Vaishali in Session Trial No. 77/1994)

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Dinesh Paswan, son of Eshwar Paswan, resident of village – Sehan, P.S. – Goroul,
District – Vaishali.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Param Hansh Singh, *Amicus Curiae*

For the State : Mr. Abhimanyu Sharma, A.P.P.

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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: 12-04-2018

This criminal appeal has been preferred for setting aside the judgment dated 26th September, 1995 passed by learned 2nd Additional District & Sessions Judge, Vaishali (hereinafter referred to as the “learned Trial Court”) in Session Trial No. 77/1994 by which the learned Trial Court has been pleased to hold the appellant guilty of committing murder of the deceased Nawab Mian @ Nanhki Mian under Section 302 of the Indian Penal Code, he has been convicted accordingly and sentenced to undergo life imprisonment.

2. The prosecution case in short as appearing from the fardbeyan of the informant Md. Hameed Mian is that the informant and the deceased had their land at village Sehan Muhammadpur side by side and both of them had got a



borings in their field but the boring of the accused Dinesh Paswan was out of order. Dinesh Paswan asked the informant to irrigate his land also on which the informant is said to have replied that the irrigation machine was to remain there for 3-4 days then he will irrigate the field of the accused. It is alleged that on the date of occurrence also accused Dinesh Paswan had pressurized the informant to irrigate his land but the informant again assured him that he will irrigate the field later on, on this Dinesh Paswan retorted that if he fails to irrigate his land, he will have to face the consequences.

3. The informant alleged that he had gone to market and on return to his house when he went to his boring, he saw that machine was not working. On enquiry from his son Md. Laddan and nephew Md. Ful Mohammad, they replied that the machine had developed problem and stopped working suddenly. Meanwhile, father of the informant Nawab Mian @ Nanhki Mian came there at about 7.15 in the evening. The informant went to his house along with his aforesaid son and nephew at about 7.40 p.m. for taking meal. At about 8.00 p.m. both son and nephew came again to the said field carrying food for their grandfather Nawab Mian. They saw that accused Dinesh Paswan along with two unknown persons was assaulting their grandfather on which they raised alarm and



rushed towards their house, they were threatened by the accused persons that if they would raise alarm, they shall also be beaten. It is claimed that two boys went to the home and informed that the accused Dinesh Paswan was assaulting his grandfather. Thereafter, informant and co-villager Jagarnath Singh, Kamlesh Singh, Ram Baran Singh and other co-villagers went running there and saw the deceased lying in injured condition who disclosed that Dinesh Paswan and two other persons had assaulted him and they found the injuries on his chest and face caused by sharp cutting weapons. Thereafter father of the informant died.

4. The informant went to the police station, got recorded his fardbeyan (Exhibit-4) and on the basis of his fardbeyan Goroul P.S. Case No. 208/1992 under Section 302 of the Indian Penal Code was instituted against the accused. On completion of investigation, a charge-sheet was filed and the learned Chief Judicial Magistrate, Hazipur at Vaishali took cognizance of the offences and committed the case to the court of sessions. Charge was framed against the accused-appellant who pleaded not guilty and claimed to be tried. His defence was false implication due to previous enmity.

5. The learned trial court found that on analysis of the deposition of 13 witnesses produced on behalf of the



prosecution, the motive of the accused Dinesh Paswan against the informant for not irrigating his land was quite clear. Different prosecution witnesses had deposed on the point of identification of the appellant and the learned trial court found that P.Ws. 6 & 7 have identified the appellant from a very short distance and it was not unnatural for P.Ws. 6 & 7 to bring meal for the deceased because for that purpose the informant and the P.Ws. 6 & 7 had gone to their house to take meal and to send meal for the deceased who was left behind in the field.

6. The contention of the defence that there is no reliable evidence on the point of identification was rejected by the learned trial court. It was the contention of the defence that the means of identification had not been produced in the court and the object of identification has been developed only in the court by introducing a lantern which too was not produced in the court. The learned trial court rejected the said contention as the evidence of P.Ws. 6 & 7 who were the grand children of the deceased were found consistent. P.Ws. 6 & 7 have very consistently stated the fact of assault by this appellant, the learned trial court found that they are trustworthy and believable prosecution witnesses. Their evidence as eye witnesses are corroborative to the fact and



also the genesis of the case was proved that is quarrel for irrigating the land of the appellant. The Investigating Officer (in short the "I.O.") (P.W.13) had found the boring of the deceased near the place of occurrence and the place of occurrence has also been fully established.

7. In course of trial, the learned trial court also considered a very important question about the dying declaration of the deceased who had stated that the cause of death was due to assault given by this appellant with a Hasuli. The informant and other prosecution witnesses in their deposition stated that they reached near the deceased Nawab Mian, he was alive and he asked for water and had stated this fact to them. The evidence of the informant and P.Ws. 6 & 7 on this point was contested by the defence stating that the house of the informant and witnesses is at a distance of about 1 k.m. and if the prosecution story is believed that P.Ws. 6 & 7 went to place of occurrence for giving meal to their grandfather and saw accused assaulting him with Hasuli and they ran back to their house and then after hearing *Hulla* other prosecution witnesses reached at the spot and the deceased was alive and asked for water, it seems not sound to reason.

8. The learned trial court however found that P.W.12, the doctor, who had performed the post mortem of



the dead body of the deceased had very clearly admitted in his cross examination that in case of such injuries when the right ventricle is injured death may be caused within 2-3 minutes if no aid is provided, hence it was quite impossible that the deceased had been able to give statement to the prosecution witnesses after such a long time having sustained such grave injuries which were sufficient to cause death in the ordinary course of nature. The learned trial court did not accept the version of the prosecution on this point because it was found that in the instant case statement of the witnesses were not immediately made rather deceased is said to have stated about his death to the witnesses who reached there after sometimes. It was held that in view of the statement of the doctor that deceased might have died within 2-3 minutes the medical evidence would go against ocular evidence, but having said so, the learned trial court also held that it does not mean that their evidence should be brushed aside on this point alone. The later part of the evidence of the prosecution witnesses was found not free from doubt and hence the trial court did not accept the evidence on the point of dying declaration.

9. On a close appreciation of the evidences the learned trial court held that the prosecution had been able to prove the genesis of the case, the I.O. (P.W.13) had in course



of evidence recovered the blood-stained cloths of the deceased i.e. shirt, Gamcha and Hasuli from the house of the accused. The Hasuli was stained with blood, however it was not sent to chemical examination. The learned trial court found that the place of occurrence in this case was fully established by the evidence of the I.O. which corroborates ocular evidence and the F.I.R.

10. Contention of the defence that because the seized articles blood stained earth and blood stained Hasuli, shirt and Gamcha were not sent for chemical examination, hence that cannot be relied upon and the recovery does not have any meaning was rejected by the learned trial court. The trial court found that the instant case is not based on circumstantial evidence rather it is based on direct evidence of the eye witnesses, hence the issues raised by the defence citing certain judgments of the Hon'ble Supreme Court were not helpful to them and the trial court accepted the plea of the prosecution relying upon the judgment of the Hon'ble Supreme Court reported in AIR 1979 SC page 831 that failure to send axe used for committing murder for confirming that the blood was human blood is not fatal to the prosecution if further reliable evidence is available. The prosecution also relied upon the judgment of the Hon'ble Orissa High Court



reported in Criminal Law Journal 1991 Orissa 220, and in the case of Ram Avtar Rai and others vs. State of Uttar Pradesh reported in AIR 1985 SCC (Criminal) 156.

11. In view of the above findings, the learned trial court convicted the appellant.

12. In appeal before us , learned counsel representing the appellant would submit that in this case the learned trial court has not been able to appreciate the evidences available on the record. According to learned counsel, the trial court has not accepted the prosecution story that the deceased Nawab Mian was alive when the P.Ws. 6 & 7 reached to the place of occurrence for giving meal to their grandfather. Thus, if this part of the evidence of the prosecution witnesses were not believed by the learned trial court, in absence of any proof of the means of identification and other corroborative evidences the learned trial court has erred in holding that the genesis and manner of occurrence of the case is proved. It is submitted that the learned trial court has also erred in accepting the seizure list of the Hasuli and blood-stained cloths and blood-stained earth. Even though those seized articles were not sent for forensic examination, it is submitted that the appellant has been made accused in this case only because of prior enmity.

13. On the other hand, learned A.P.P. representing



the State would submit that in this case the prosecution witnesses are consistent and the two grand children of the deceased who have deposed as P.Ws. 6 & 7 have been consistent on the point of assault made by this appellant with Hasuli and the injuries caused on the chest have also been proved from the post mortem report (Exhibit-3). The manner of occurrence as narrated by P.Ws. 6 & 7 have been duly proved beyond all reasonable doubts. It is also submitted that recovery of weapon Hasuli and blood stained cloths from the house of the appellant have been duly proved by the P.Ws. 8 & 9.

14. Having heard learned counsel representing the appellant and learned A.P.P. for the State and upon perusal of the records received from the learned trial court, we find that in this case there are at least two eye witnesses namely, P.Ws. 6 & 7 who happened to be the grand children of the deceased. They had gone to the boring carrying meal for their grandfather Nawab Mian (since deceased) at about 8.00 p.m. and from the close distance they could identify this appellant assaulting their grandfather. No material contradiction has been brought to the notice of this court in the evidence of P.Ws. 6 & 7 who have narrated the manner of occurrence.

15. The I.O. (P.W.13) has in course of investigation



visited the place of occurrence and found that there was a boring. There was a hut and in that very hut father of the informant was lying dead on straw (pual) which was stained with blood and at a distance of 15-20 yards north – east corner there was field of informant where lies his boring. The I.O. has given the boundary of the hut which has not been contradicted by the defence. P.W.13 has proved the inquest report which has been marked as Exhibit-6 and also proved the seizure list which is marked as Exhibit-3.

16. P.W.13 had seized the blood stained Hasuli and cloths from the house of this appellant which this appellant has not been able to explain in his statement under Section 313 Cr.P.C. The ocular evidence of P.W.6 and P.W.7 have been corroborated from the post mortem report proved by P.W.12 Dr. Harendra Tiwari. The injuries caused to the deceased Nawab Mian, where injury no. 1 & 2 were caused by sharp penetrating objects such as Hasuli meant for cutting palm and those injuries were sufficient to cause death in the ordinary course of nature. The post mortem report has been marked as Exhibit-2. P.W.1 has been found to be reliable on the point of quarrel regarding irrigation and going of the witnesses Md. Ful Muhammad (P.W.6) and Laddan Mian (P.W.7) with meal for the deceased as also on the point that these two witnesses



came back raising hulla about the assault on the deceased by the accused persons. The seizure list witnesses P.W.8, Jagdev Kuwar, has stated that in his presence the I.O. had recovered a palm cutting Hasuli, a Gamcha and one shirt from the house of the accused which were stained with blood and seizure list was prepared before him and he had put his signature on the same which was marked as Exhibit-1. P.W.9 is also a witness on the point of seizure from the house of the appellant.

17. In course of his statement under Section 313 Cr.P.C., the appellant has not been able to explain the recovery of blood stained Hasuli and cloths from his house. A question was put to him as to whether the blood stained Hasuli and cloths were recovered from his house, he has simply answered it in negative whereas there are independent prosecution witnesses P.Ws. 8 & 9 who have deposed in support of seizure of the Hasuli and blood stained cloths from the house of the appellant.

18. In these circumstances, on the face of the materials which are available on the record, upon analyzing the entire evidences we find that the learned trial court has rightly come to a conclusion that the prosecution has been able to prove the guilt of the appellant beyond all reasonable doubt.

19. We do not find any merit in this appeal. This



appeal is, accordingly, dismissed.

20. The appellant is on bail, his bail bond is cancelled. He is directed to surrender forthwith to undergo the remaining period of sentence. The Superintendent of Police, Vaishali at Hazipur, is directed to take the appellant in custody and produce him in the court of learned Chief Judicial Magistrate, Vaishali at Hazipur.

21. Let a copy of this order be also sent to the learned Chief Judicial Magistrate, Vaishali at Hazipur for further action.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.05.2018
Transmission Date	03.05.2018

