

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.541 of 1993

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

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Md. Akil S/o Abdul Khalique R/o Village – Ratwara, P. S. Kalyanpur, District -
Samastipur

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Navin Kumar, Amicus Curiae

For the Respondent : Mr. Shivesh Ch. Mishra, APP

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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: 27-09-2018

1. The sole appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code and has been sentenced to undergo imprisonment for life vide impugned judgment of conviction and sentence order dated 07.10.1993 and 11.10.2093 respectively passed in S. T. No. 136 of 1991/ 33 of 1991 by learned 2nd Additional Sessions Judge, Madhubani and being aggrieved by the conviction and sentence order, the sole appellant has preferred this criminal appeal challenging the impugned judgment of conviction and sentence order.

2. The Jhanjharpur P. S. Case No. 23 of 1991 was registered against unknown on 02.02.1991 at 12.05 a.m., on the basis of statement of PW-9, Md. Ayub, who was Chaukidar of Kanahauli



Village. PW-9, in the mid-night of 1st- 2nd February 1991 along with his co-villagers Rahman and PW-2 Reyaz Akhtar went to Jhanjharpur Police Station and made his statement before the officer incharge of Jhanjharpur police station to this effect that on the same day at about 11.00 p.m. while he was taking rest in his house, he heard some noise and having heard the noise, he came out of the house and learnt that Dr. Dawood and Md. Sami, the son of Sadu of Dr. Dawood, had been killed. He went to the house of Dr. Dawood and found that the Dr. Dawood had been done to death by cutting his neck by dagger and Md. Sami stood stabbed to death. He also noticed that Md. Akil (appellant) had sustained injury on his finger and thumb of his left hand. PW-9 further disclosed that Md. Dawood was issueless and his relatives had greedy eyes over his house and property. PW-9, further, claimed that some day prior to the alleged occurrence, deceased Dawood had told that he would transfer his land to Ekramul and Enamul Haque which had caused annoyance to Md. Akil.

3. On the basis of aforesaid statement of PW-9, formal F.I.R. was drawn up and the same was sent to the concerned Magistrate on the same day through special messenger but the first information report was put up before the concerned S.D.J.M, Madhubani on 04.02.1991. Moreover, PW-11, Vishram Das who had recorded the statement of PW-9 and had drawn up first information report, took the charge of investigation and proceeded to the place of



occurrence along with other police officials. He reached the place of occurrence, prepared inquest reports of both the deceased persons, inspected the place of occurrence and also prepared a sketch map of the place of occurrence, which have been brought on record and has been marked as Exhibit -(X) for identification. He seized blood stained earth, one blood stained knife from a drain, blood stained pillow cover, blood stained shirt etc. He sent the seized articles for chemical examination. Subsequently, the report of Forensic Science Laboratory, Bihar, Patna was received which has been exhibited as Exhibit-10. He arrested the appellant from the place of occurrence and issued requisition for examination of injury found on the person of the appellant and, after completion of investigation, submitted charge sheet against the sole appellant.

4. The cognizance of the offence was taken and the case was committed to the court of Sessions and, accordingly, the appellant was put on trial. The appellant stood charged for the offence punishable under Section 302 of the Indian Penal Code. The charge was read over and explained to him to which he claimed to be tried.

5. In course of trial, prosecution examined, altogether, 12 witnesses and also got exhibited some documents including post mortem report and inquest report as well as got exhibited knife, pillow, shirt etc., as material exhibits. The statement of the appellant was recorded under Section 313 of the Cr. P. C, in which he denied



the prosecution story as well as claim of prosecution witnesses but he admitted that he had sustained injury on the alleged date of occurrence. The appellant also denied that the seized wrist watch, blood stained shirt belonged to him, he also denied that he had greedy eyes over the property of deceased Dawood and claimed himself to be innocent. No evidence was adduced by the appellant in support of his defence but from perusal of statement of appellant recorded under section 313 of the Cr. P. C. as well as trends of cross-examination of prosecution witnesses, it appears that the defence of the appellant was totally denial of the prosecution story.

6. Learned trial court after scrutinizing the evidences, particularly, taking notice of testimonies of PW-2, PW-3, PW-5, and PW-6 convicted and sentenced the appellant in the manner as stated above.

7. Learned amicus curiae appearing for the appellant challenged the impugned judgment of conviction and sentence order, arguing that learned trial court failed to appreciate the prosecution evidence in right perspective, as a result whereof, the learned trial court came to the wrong conclusion. Continuing his submission, he submits that PW-9 has admitted in his statement that having heard the noise, he went to the house of decease, where PW-3, PW-5, PW-6 and others were present and they disclosed about the manner of alleged occurrence but PW-9 has not stated the manner of occurrence in his



first information report as claimed by the prosecution witnesses. And therefore, the aforesaid fact clearly goes to show that the prosecution witnesses, subsequently, developed the prosecution story and implicated the appellant. He, further, submits that in course of trial, it has come in evidence that deceased Dawood was a wealthy person and PW-3, PW-5 and PW-7 had greedy eyes over the property of the deceased Dawood and furthermore, it has come in evidence that PW-3, PW-5 and PW-7 are related with each others and they had common interest in the property of the deceased Dawood. He, further, submits that the appellant was also relative of the deceased Dawood and, almost, all the prosecution witnesses admitted that the appellant used to help the deceased in his work and deceased had complete faith upon the appellant. It appears that prosecution witnesses PW-3, PW-5 and PW-7 after committing the murder of deceaseds implicated the appellant so that they could easily grab the property of deceased Dawood.

8. It is, further, submitted that as a matter of fact, none had seen the actual killing of the deceaseds and so far as the so-called seized blood stained earth, blood stained pillow cover and blood stained shirt are concerned, the appellant has, specifically, stated that seized shirt did not belong to him and, therefore, it is obvious that prosecution failed to prove his case beyond all shadow of reasonable doubts.



9. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that PW-3, PW-5 and PW-6 claimed to have seen the appellant committing murder of the deceaseds and furthermore, PW-5 and PW-6 also claimed that deceased Md. Sami had disclosed before them about the cause of his death stating that it was appellant, who gave a dagger blow to him as well as deceased Md. Dawood and, therefore the aforesaid statement of deceased Sami comes under the definition of dying declaration. He further submits that apart from the aforesaid statement as well as claim of PW-3, there were other circumstantial evidences before the trial court for convicting the appellant as there was recovery of blood stained earth, blood stained wrist watch of the appellant and furthermore, the appellant had sustained injury but failed to explain as to how he sustained injury on the alleged date of occurrence and, therefore, all the aforesaid evidences go to show that it was appellant, who committed the murder of the deceased Dawood and Sami.

10. Having heard the contention of both the parties, we went through the record. PW-1 is a doctor who did post mortem examination on the dead bodies of the deceased Md. Dawood and Md. Sami on 02.02.1991. This witness found, altogether, 14 injuries caused by sharp cutting pointed edge weapon on the person of the deceased Md. Sami and, similarly, altogether, 8 injuries were found



on the person of the deceased Dawood said to be caused by sharp cutting weapon.

11. PW-2 Reyaz Akhtar is a stranger to the family of deceased Md. Dawood but he claims that on 01.02.1991, he along with his grand mother Jabuni Nisha had gone to the house of deceased Dawood for attending a panchayat which was going to be held on 02.01.1991 in respect of dispute of a land. This witness claims that in the night of alleged occurrence, he was sleeping in the guest room of deceased Dawood, he also claims that the appellant knocked his door in the night and when he opened the door, the appellant disclosed that dacoits killed the deceased persons and had also assaulted him but he did not see any dacoits fleeing from there. PW-2 also claims that the appellant disclosed that dacoits had snatched his wrist watch and at that time the appellant was in perplexed condition. This witness claims that he along with PW-9 went to the police stations where PW-9 gave information about the alleged occurrence. This witness also claims that the inquest report of the deceased was prepared in his presence. On being cross-examined by the defence, this witness admitted at Para 10 of his cross-examination that the appellant used to reside at the house of the deceased Dawood and his relation with the deceased was very cordial. This witness also admitted at Para- 3 of his cross-examination that PW-7 Abdul Manan was also residing with the deceased Md. Dawood and, furthermore, PW-7 was son-in-law of



sister of Dr. Dawood's wife. PW-2 further admitted at Para -14 of his cross-examination that in the night of alleged occurrence, police had inquired from him about the occurrence and he had disclosed the entire thing to the police. This witness further admitted that police inquired about the occurrence from him just after recording the statement of PW-9 and, therefore, it is obvious that this witness disclosed about the alleged occurrence before the police in the night of alleged occurrence at police station. This witness admitted at Para-17 of his cross-examination that in the night of alleged occurrence, he was sleeping alone in the guest room of deceased Dawood. This witness, further, admitted that family members of deceased Dawood woke up on the alarm raised by the appellant. This witness further admitted at Para-18 of his cross-examination that when he first saw the dead body of the deceased Dawood, the dead body of the deceased Dawood was lying in court-yard of the house whereas the dead body of the deceased Md. Sami was lying on a cot in a room. The statement of this witness goes to show that he had not seen the actual killing of the deceased persons rather he woke up on the noise of the appellant and saw the dead bodies of the deceased persons. This witness also noticed injury on the hands of the appellant.

12. PW-3, Ummutun Nisha, who happens to be wife of PW-7 Abdul Manan, states before trial court that the deceased Md. Dawood had adopted her as well as her full brother Kamrul Hoda and



after adoption, she started living with deceased Dawood. This witness further states that in the night of alleged occurrence, she along with PW-4 Khurshida Khatoon was sleeping in a room of the house of the deceased and heard the sound of groaning of Md. Dawood and having heard the aforesaid sound, she woke up and tried to open the door of her room but the door of her room was locked from outside. After that, she peeped from a window and saw that deceased Dawood was lying in courtyard and appellant was giving dagger blow to him. She also claims that she saw the deceased Shami fleeing from outside the house but appellant was chasing and giving knife blows to him. This witness claims that PW-4 Khurshida Khatoon had also witnessed the aforesaid occurrence. At Para- 4 of her cross-examination, she admitted that (PW-5) Sairunnisha, the wife of deceased Md. Dawood, is full sister of her mother. This witness, further, admitted at Para- 6 of her cross-examination that the room, in which she was sleeping in the night of the alleged occurrence, had only one exit door which opens on Veranda of the courtyard and the aforesaid exit door was in the north wall of the room. This witness further admits that the guest room was adjacent north to the room in which she was sleeping and adjacent south to the aforesaid room, there was vacant land and adjacent east to the aforesaid room, there was court yard of the house of deceased Dawood. This witness further stated that there were four windows in the aforesaid room and she had witnessed the alleged



occurrence through window of east wall. This witness also admits that the courtyard of the house of the deceased was covered from all the four corners. She further claims that after the occurrence, she along with PW-4 ,PW-5 and PW-6 came in the courtyard. This witness further admits at Para- 10 of her cross-examination that when PW-9 came in the courtyard of the deceased, she as well as PW-4 ,PW-5 and PW-6 as well as appellant were present there. She further admits that in the night of alleged occurrence, the police came and inquired about the occurrence and when police came, the deadbody of deceased Dawood was lying on the Veranda. The statement of this witness goes to show that she claims to have seen the appellant stabbing the deceased persons through a window of the room in which she was sleeping. PW-11 has described the place of occurrence at Para- 4 of his examination-in-chief and stated that the court yard of the house of deceased Dawood was covered by a brick wall from west, east and north side and the height of wall was about six feet. Admittedly, the room in which PW-3 and PW-4 were sleeping, was extreme west side of the house. It is an admitted position that deceased Dawood along with Enamul was sleeping in a room which was extreme east side of the house and between the aforesaid two rooms, there was courtyard which was covered by brick walls from three side and therefore, the aforesaid location goes to show that it was not possible for PW-3 to see the occurrence from the room which was situated at west side of



the house after the brick wall of the courtyard. Moreover, the testimony of PW-3 also appears to be doubtful on the ground that she did not disclose the above stated fact before PW-9 when he came in the courtyard after the alleged occurrence. Had she been claimed herself to be eye witness before PW-9, in that event, PW-9 would have certainly disclosed the aforesaid fact in his statement but PW-9 has not even whispered that PW-3 claimed herself to be an eye witness of the alleged occurrence.

13. PW-4 Khurshida Khatoon was tendered by the prosecution and she stated nothing in her statement.

14. PW-5 Sairunnisha is the wife of deceased Dawood and PW-6 Ahmadi Khatoon is full sister of PW-5. Both the aforesaid witnesses claim that they were sleeping in a room at the time of alleged occurrence and the deceased Dawood along with Enamul was sleeping in another room and similarly, deceased Sami and appellant Akil were sleeping on a cot at Veranda. They also claim that they woke up on the alarm of Akil and they tried to come out of the room but the door of the aforesaid room was locked from outside as a result whereof they could not come in court yard. However, they came out of the room through another door and saw that the appellant was standing in front of the door and he was perplexed. The appellant disclosed that the dacoits had come and had assaulted him as a result of which he sustained injury and dacoits had snatched his wrist watch.



The appellant also disclosed that dacoits killed Dawood. Both the witnesses claim that they went in the court yard where they saw the dead body of Dawood lying in the court yard. PW-5 claims that the dead body of deceased Sami was lying towards west side whereas PW-6 claims that the dead body of deceased Sami was lying on road. The witnesses claim that deceased Sami was alive and he was brought in outer room. Sami disclosed that he as well as deceased Md. Dawood were assaulted by the appellant and after that Sami, too, died.

15. PW-5, Sairunnisha claimed that four days prior to the alleged occurrence, deceased Dawood had expressed his desire to transfer some lands to Enamul and Ekramul and the appellant had heard the aforesaid conversation of deceased Dawood. PW-5 admitted in her cross-examination that appellant used to help her husband in running his medical clinic. PW-5 further admitted that in the night of alleged occurrence, there were four male, six female and six children present in her house. She also admitted that all the above stated persons woke up and went near the dead body of deceased Dawood and in the meantime, PW-9 came there and remain stayed there for a while. She, further, admitted that when she saw the dead body of deceased Dawood, she became unconscious. This witness further stated that four to five days prior to the alleged occurrence, deceased Dawood had told her to transfer the lands in favour of Enamul and Ekramul. She, further, admitted at Para-22 of her cross-examination



that when PW-11 came at her home on the alleged date of occurrence, the appellant was present in her house but PW-11 did not enquire from her family members. She also stated that when PW-11 came, the dead body was not lying in the court yard. She further admitted at Para- 23 of her cross-examination that when she saw Sami first time, his dead body was lying on a road. She had admitted at Para- 24 of her cross-examination that the relation of the PW-7 was not cordial with the appellant. She further stated that she had not seen any injury on the person of the appellant on the night of the alleged occurrence.

16. PW-6, Admadi Khatoon admitted at Para- 6 of her cross-examination that the appellant was residing with the deceased Dawood since two months back and deceased Dawood used to maintain the appellant. She further admits at Para- 7 of her cross-examination that appellant used to help the deceased Dawood in his agriculture work and the appellant used to go to field along with the deceased Dawood. This witness admitted that she had seen the injury on the hands of the appellant and the blood was oozing out from the hands of the appellant. She further admitted that when she came out of the room, the appellant met her and disclosed about the dacoits and also stated that dacoits had fled away and she further stated that she did not come from the court yard and her sister (PW-5) was also along with her. She also admitted at Para- 12 of her cross-examination that when she saw the dead body of the deceased Dawood lying in the



court yard, except PW-5, there was no any other person and she further stated that after seeing the dead body of deceased Dawood she started weeping. She further stated that several persons assembled near Sami , who was lying there but Sami did not talk to any person rather Sami had only disclosed before her as well as PW-5 about the occurrence. However, again she admitted that when Sami talked with her, PW-5,PW-3 and PW-4 were also present there. The testimony of this witness goes to show that this witness claimed to have seen the dead body of deceased Dawood lying in the court-yard and, furthermore, this witness claimed that she as well as PW-5 found Sami lying in injured condition on road and injured Sami disclosed that appellant had given dagger blows to him as well as deceased Dawood and after that Sami died. This witness, as we have already stated, has admitted that when the deceased Sami disclosed the above stated fact, PW-3 and PW-4 were also present there but it is surprisingly, enough, that neither PW-3 nor PW-4 stated anything about the so-called disclosure made by the deceased Sami and, therefore, the testimony of this witness regarding the so-called dying declaration of deceased Sami appears to be doubtful.

17. PW-7, Abdul Manan is not an eye witness of the alleged occurrence rather he claimed that on 03.02.1991 a wrist watch beneath the quilt of deceased Dawood was seized by PW-11 in his presence and there was blood stain on the aforesaid wrist watch



and the aforesaid wrist watch was broken. This witness claimed that seizure list was prepared and he had signed the aforesaid seizure list. This witness further stated that the family members of deceased Dawood disclosed that the aforesaid wrist watch belonged to the appellant. This witness at Para-5 of his cross-examination stated that PW-4, PW-5, PW-6 and PW-3 had told him that seized wrist watch belonged to the appellant.

18. PW-8, Md. Mohiuddin is also a witness of seizure list and this witness claimed that the seized wrist watch was recovered from the bed of the deceased Dawood. This witness claimed that the aforesaid seized wrist watch belonged to the appellant. PW-7 and PW-8 both admitted that they had not gone inside the room from where the seized wrist watch was recovered. PW-8 admitted at Para-2 of his cross-examination that his sister-in-law PW-3 (Ummutun Nisha), and PW-4 (Khurshida Khatoon) had gone inside the room from where the wrist watch was seized and both the aforesaid PW-3 and PW-4 had shown wrist watch to him and in the meantime, PW-11 came there and seized wrist watch was handed over to PW-11. The testimonies of PW-7 and PW-8 go to show that the seized wrist watch was not recovered from the bed of deceased Dawood in their presence. The seized wrist watch was sent to Forensic Science Laboratory, Patna for chemical examination and the chemical examination report has been exhibited as Exhibit-10. According to the



aforesaid report, blood was found on the aforesaid wrist watch but there is nothing on the record to show that the blood found on the wrist watch was of the deceased persons of the present case.

19. PW-9, Md. Ayub, who is the informant of the present case, states that on the alleged date of occurrence at about 11 p.m having heard the noise, he went to the house of deceased Dawood where he found dead body of deceased Dawood and deceased Sami and he also noticed injury on the finger of the left hand of the appellant. This witness also states that he went to the police station and gave information regarding the occurrence. This witness at Para - 5 of his cross-examination admitted that when he reached on the place of occurrence, the appellant Akil, PW-5, PW-3, PW-4 and other women were present there and all the aforesaid persons told to him about the alleged occurrence. This witness further states that when he reached on the place of occurrence, he found the dead body of the deceased Dawood lying in the court yard while dead body of the deceased Sami was lying in the guest room. This witness also states that the deceased Dawood had not talked with his relatives in respect of transferring the lands to others in his presence. The testimony of this witness goes to show that after the alleged occurrence he reached at the place of occurrence and met the inmates of the deceased but not a single person disclosed about the involvement of the appellant in the alleged crime. As we have already stated that PW-5 and PW-6



claimed in course of trial that when they reached near Sami, he disclosed that the appellant had assaulted him as well as deceased Dawood by means of dagger and after that Sami died. PW-5 and PW-6, admittedly, did not disclose the aforesaid fact before PW-9 when PW-9 having heard the noise came in the house of the deceased after the alleged occurrence. In our view, had the deceased Sami disclosed the name of the appellant before PW-5 and PW-6 as assailant, PW-5 and PW-6 would have certainly disclosed the aforesaid fact before PW-9 and, similarly, PW-9 while lodging the F.I.R would have certainly disclosed the name of appellant before PW-11. The aforesaid circumstance creates doubt about the so-called dying declaration of deceased Sami and it appears that after institution of the present case, the PW-5 and PW-6 subsequently developed the story of involvement of appellant in the occurrence.

20. No doubt, blood stained shirt, blood stained wrist watch and blood stained dagger were seized by PW-11 and when the aforesaid seized articles were sent to F.S.L, Patna for chemical examination, it was found that the aforesaid articles contained human blood but the appellant, specifically, denied that blood stained shirt and blood stained wrist watch do not belong to him. It has come in the evidence that blood stained shirt and blood stained wrist watch were handed over to PW-11 by PW-3. Moreover, even if it assumed that blood stained shirt and blood stained wrist watch belonged to the



appellant and human blood was found on the shirt and wrist watch of the appellant, then also, it does not make any difference because prosecution has not brought any evidence to show that the blood found on the shirt and wrist watch of appellant was of the deceased persons of the present case. Moreover, it is case of the prosecution that appellant had also sustained injury and, therefore, even if, blood was found on the shirt and wrist watch of the appellant, then also, it does not support this theory that it was appellant, who committed murder of the deceased persons. So far as recovery of blood stained dagger is concerned, the prosecution claimed that the aforesaid blood stained dagger recovered from drainage and, therefore, it cannot be said that it must be appellant, who committed murder of the deceased.

21. On the basis of aforesaid discussion, we are of the view that the prosecution has failed to establish the charge leveled against the appellant beyond all shadow of reasonable doubts and the appellant is entitled to get the benefit of doubt and, therefore, in the aforesaid circumstance, this appeal is allowed and the impugned judgment of conviction and sentence order is, hereby, set aside. The appellant is acquitted of the charge framed against him giving benefit of doubt. The appellant is on bail. He is discharged from the liability of his bail bonds.

22. The copy of first and last page of the judgment be handed over to learned amicus curiae so that he could make claim for



his remuneration before appropriate authority.

(Hemant Kumar Srivastava, J)

N.K/-

(Rajendra Kumar Mishra, J)

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	27.10.2018
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