

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 313 of 1994

Arising out of P.S. Case No. - 70 Year - 1993 Thana - null District - MADHEPURA

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1. Jhagru Jha, S/o Shoba Kant Jha, resident of village Chakdah, P.S. Rajnagar,
District Madhubani
 2. Raman Jha @ Ramanji Jha, S/o Dhaneshwar Jha, resident of village Sivipatti,
P.S. Rajnagar, Distt. – Madhubani
 3. Pramod Purvey, S/o Jivach Purvey, resident of village Dhakjari, P.S. Arer,
District Madhubani

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Murari Narayan Chaudhary, Advocate

For the Respondent : Mr. Ashwini Kumar Sinha, A.P.P.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE BIRENDRA KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIRENDRA KUMAR)

Date: 17-01-2018

The above named appellants have been convicted under Section 302/34 of the Indian Penal Code by judgment dated 04.05.1994 and sentenced to undergo imprisonment for life by order dated 06.05.1994 passed in Sessions Trial No. 174 of 1993 arising out of Madhubani (Town) P.S. Case No. 70 of 1993 by the Court of learned 4th Additional Sessions Judge, Madhubani. The conviction and sentence are under challenge in this appeal.

2. The prosecution case, as disclosed in the *fardbeyan* of Ram Kripal Yadav (P.W. 4) recorded at Sadar Hospital, Madhubani at 11:45



hours on 03.03.1993, is that on the same day at about 11:00 a.m. in the private bus stand, Madhubani, the above named accused and co-accused Kripa Jha (who absconded before trial) dragged the deceased Jagannath Singh from the tea stall of Bau Jha and committed several dagger blow at the different vital parts of the body causing death of Jagannath Singh on the way to hospital. The reason for the occurrence is disclosed as dispute between the deceased and the appellant Jhagru Jha for agency of buses plying from the said private bus stand. The *fardbeyan* further recites that besides that informant, P.W. 1 Phool Kumar Singh, P.W. 2 Ramnath Yadav and P.W. 3 Sanjay Singh and others also witnessed the occurrence. The *fardbeyan* aforesaid is marked as Ext. 3.

3. The prosecution examined altogether 11 witnesses to prove the charge. P.W. 4 Ram Kripal Yadav, the informant of this case fully supported the prosecution case as eye-witness of the occurrence by deposing that on 03.03.1993 at about 11:00 a.m. the informant, who was also an agent of some different bus, was doing his work at the said bus stand. When he reached near the tea stall of Bau Jha, saw that Jagannath Singh was caught by co-accused Kripa Jha and appellants Jhagru Jha, Raman Jha and Pramod Purvey were assaulting him with *Chhura* (dagger). Jagannath Singh fell down and the accused-appellants fled away. Thereafter, the informant along with others took the deceased to the hospital. However, the victim succumbed to the injury before treatment. P.W. 1 Phool Kumar Singh has deposed that on 03.03.1993 at



about 11:00 a.m. deceased Jagannath Singh was sitting at the tea stall of Bau Jha. At the same time, appellants Jhagru Jha, Raman Jha, Pramod Purvey and co-accused Kripa Jha came there. Deceased Jagannath Singh was in-charge agent of a bus named as “Pahari Nagin” and Jhagru had taken the charge of agency of said bus by inducing the owner of the bus that Jhagru would ply the bus daily, though the permit was for plying the said bus on alternate day. That was the reason for dispute between the deceased and Jhagru. He further deposed that Jhagru ordered to drag the deceased out side the tea stall. Thereafter, Kripa dragged Jagannath Singh out side and then Jhagru, Raman and Pramod indiscriminately assaulted with dagger to Jagannath Singh. The witness raised alarm. Thereafter, Rameshwar Yadav (not a witness of occurrence in this matter) slapped him and the witness fell down. This witness further deposed that P.W. 5 Bipin Kumar Singh, P.W. 2 Ramnath Yadav, P.W. 3 Sanjay Singh and the informant were also there. The victim was carried to the hospital where the Doctor declared him dead. P.W. 2 Ramnath Yadav had deposed that on 03.03.1993 at about 11:00 a.m. he was also present at the place of occurrence as he was engaged in calling and persuading the passengers to ride on the particular bus named as “Santosh Bus”. After sometime, he reached near the tea stall of Bau Jha. He saw that Kripa Jha was holding the deceased and appellants Jhagru Jha, Raman Jha and Pramod Purvey were assaulting him with dagger. By sustaining injury Jagannath Singh fell down. Thereafter, this witness and



others took the victim to the hospital. P.W. 3 Sanjay Singh has deposed that on the date of occurrence at about 11:00 a.m. as soon as he reached near the tea stall of Bau Jha situated near the southern gate of the bus stand, he saw that Kripa Jha, Jhagru Jha, Raman Jha and Pramod Purvey were quarreling with Jagannath Singh. At that time, Jagannath Singh was inside the tea stall. Co-accused Kripa Jha dragged Jagannath Singh from the tea stall and then appellants Jhagru Jha, Raman Jha, Pramod indiscriminately assaulted with dagger to Jagannath Singh who fell down. The appellants fled away. Thereafter, this witness and others took the victim to the hospital where the Doctor declared dead. P.W. 4 Ram Kripal Yadav and P.W. 5 Bipin Kumar Singh have supported the manner of occurrence disclosed in the FIR as eye-witnesses of the occurrence.

4. We have carefully gone through the cross-examination of the above five eye-witnesses but there is nothing to disbelieve their presence at the time of occurrence nor there is anything even to remotely suggest that there is some strong motive against them to depose against the appellants.

5. P.W. 6 Subodh Narayan Yadav though, had supported the occurrence as eye-witness before the police, however, turned hostile in the court. P.W. 7 Dr. Vijay Bihari Prasad along with a Board of Doctors had performed the post-mortem examination on the dead body of Jagannath Singh on 03.03.1993 itself at 02:25 p.m. The Doctor found seven penetrating and incised wounds on the vital part of the body of the



deceased which was cause of death. The post-mortem report has been marked as Ext. 2. We are not referring the details of the injuries herein for the reason that the same are fully referred in the trial court judgment and this is not disputed that murder of Jagannath Singh was committed by causing injury with dagger on vital parts of the body including chest and stomach. Moreover, the evidence of defence witnesses which would be discussed hereinafter would reveal that murder of Jagannath Singh was committed by giving him dagger blow by two unknown persons on the same date and place as asserted by the prosecution.

6. P.W. 8 Ramdeo Yadav and P.W. 10 are witnesses of seizure. P.W. 8 has deposed about the seizure of certain articles from the office of appellant Jhagru Jha in the same bus stand including some weapons of offence by the police and P.W. 10 Lalan Kumar Singh has supported the seizure of bloodstained soil by the police from the place of occurrence. P.W. 11 Devendra Kumar Singh is a formal witness who has proved the document.

7. P.W. 9 Dineshwar Prasad Singh is Investigating Officer of the case. The witness has deposed that on examination of the place of occurrence he had found a lot of blood and had seized the bloodstained soil. He further supported the investigation done by him including recording the statement of the witnesses. This witness has supported preparation of inquest report (Ext. 5) at about 12:00 noon on 03.03.1993 itself at the hospital wherein details of the injuries apparently noticed on



the dead body is recorded which is consistent with the injury found by the Doctor. The witness further deposed that he had ensured the statement of the eye-witnesses, P.W. 1 to 3, recorded under Section 164 of the Code of Criminal Procedure (in short the 'Cr.P.C.') before the Magistrate.

8. There is nothing in the cross-examination of eye-witnesses to suggest that the witnesses were not consistent with their statement under Section 164 of the Cr.P.C. nor there is any serious inconsistency with the statement before the police telling upon their trustworthiness or to doubt the prosecution case.

9. The defence of the appellants is that due to old enmity, the appellants have falsely been implicated in this case. The deposition of the defence witnesses is to the effect that murder of Jagannath Singh was committed by some unknown person by giving dagger blow and the appellants were falsely implicated due to enmity. The statement of the appellants, recorded under Section 313 of the Cr.P.C., also indicates denial of the involvement of appellants in the occurrence.

10. D.W. 1 Shekhar Chaudhary, D.W. 3 Vinoy Kumar Yadav, D.W. 4 Ganganath Jha and D.W. 7 Sita Ram Yadav have deposed that they saw that two unknown motorcycle borne criminals gave dagger blow to Jagannath Singh as a result whereof he died.

11. D.W. 2 Pramod Kumar Singh, D.W. 5 Mohan Jha, D.W. 6 Rajendra Paswan, D.W. 9 Arun Jha does not claim to be eye-witness of



the occurrence. However, they claimed that due to old enmity, the appellants have falsely been implicated in the case. D.W. 8 Bhagwan Dutta Jha, D.W. 10 Mahadeo Panjiyar and D.W. 11 Gulab Mishra are formal witnesses.

12. The learned trial court has concluded that the eye-witnesses produced by the prosecution are wholly reliable and the defence witnesses are not acceptable for disbelieving the eye-witnesses.

13. Learned counsel for the appellants submits that the learned court below has not properly considered that the so-called eye-witnesses produced by the prosecution are interested witnesses and inimical to the appellants, in fact, no one had seen the occurrence, rather subsequent to the occurrence, the witnesses were set up.

14. On careful consideration of the evidence, we are of the view that the aforesaid submission has got no merit. We noticed consistency between the time of occurrence and immediate rush to the hospital along with the victim as well as statement to the police about the occurrence in the hospital itself disclosing name of the culprits and other eye-witnesses. We further noticed that the defence witnesses have simply stated that they saw that unknown persons have committed the murder. However, none of the defence witness took any step to inform to the police about the commission of cognizable offence or any step for rescue of the victim. Therefore, apparently, they are set up witnesses whose statement was admittedly recorded by the police after about 10 days of



the occurrence. There is nothing on the record to substantiate that the prosecution eye-witnesses are interested witness. There is no material to substantiate that they were not present at the time of occurrence. Hence, in our view, they are wholly reliable and trustworthy. Though, there is some cross-examination putting suggestion to the prosecution witnesses regarding enmity between the witness and the appellants which the prosecution witnesses have denied. Moreover, only for the reason of enmity their trustworthiness cannot lose force when they are consistently corroborating each other as eye-witness of the occurrence. It is well settled that enmity cuts both ways. It may be a ground for commission of the occurrence as well as reason for false implication. In the present case, the eye-witnesses are not chance witnesses. They are regular worker in the same bus stand not attached in the business with the deceased or the appellants, rather have independent business of identical nature. Therefore, it cannot be argued that the prosecution witnesses had some reason to falsely depose against the appellants.

15. Next submission of the learned counsel for the appellants is that Bau Jha the owner of the tea stall where the occurrence took place has not been examined which is a serious lacuna in the prosecution case. Moreover, an employee of Bau Jha, has been examined in this case as defence witness no. 3 and he has deposed that the murder was, allegedly, committed by some unknown person.

16. The plurality of the witness is not the required of law to



prove the criminal charge. Only requirement is trustworthiness of the witnesses produced. If single witness is wholly reliable, conviction can be based/sustained on the basis of his evidence. In the present case, the prosecution eye-witnesses have consistently supported the occurrence and allegation against the appellants which is fully corroborated by the medical evidence. Hence, we are of the view that only for non-examination of Bau Jha, the prosecution case cannot be thrown away.

17. Next submission of the learned counsel for the appellants is that this is not a case of preplanned murder. Hence, at worst, this may be treated as culpable homicide. The prosecution evidence does not disclose that the occurrence took place at the spur of moment. The appellants were carrying dagger before hand when they all came at the tea stall of Bau Jha. Hence, their intention can be gathered from their act aforesaid. Since, there was office of the appellants at the same place, the quarreling might have started first and thereafter due to aggravation, they could have brought the weapon from the office to commit the crime alleged but in the present case all were armed with *Chhura* from before and they came together in a preplanned manner. Therefore, it cannot be inferred that they were not intending to commit murder from very beginning. Accordingly, we do not find any merit in the aforesaid submission.

18. Learned counsel for the respondents submits that the judgment of the learned trial court is consistent with the acceptable evidence on the record. Hence, the same requires no interference.



19. On careful consideration of the entire material brought on the record and discussed above, we are of the view that the prosecution has proved the charge under Section 302/34 of the Indian Penal Code against the appellants to warrant conviction and sentence. The learned trial court has passed a reasoned judgment supported by evidence. Hence, requires no interference.

20. Accordingly, this appeal stands dismissed. Bail and bail bond of the appellants stand cancelled and it is directed that let all appropriate steps be taken for apprehension of the appellants to serve out the sentence awarded.

(Birendra Kumar, J)

Dr. Ravi Ranjan, J. :- I agree

(Dr. Ravi Ranjan, J)

Kundan/-

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