

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.193 of 1995

.....

{Against the Judgment of conviction and sentence order dated 24.06.1995 passed by the learned 2nd Additional Sessions Judge, Purnia, in Sessions Trial No.157 of 1993/Trial No.24 of 1995}.

Sk. Kamal @ Daloo, son of Sk. Liyakat, resident of village-Sahidganj Goriyari Tola, Police Station-Bhawanipur, District-Purnia.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

Appearance :

For the Appellant	:	Mr. Amarendra Kumar, Amicus Curiae.
For the State	:	Mr. S.N. Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 04-05-2018

Heard the parties.

2. This criminal appeal has been preferred against the Judgment of conviction and sentence order dated 24.06.1995 passed by the learned 2nd Additional Sessions Judge, Purnia, in Sessions Trial No.157 of 1993/Trial No.24 of 1995 by which and whereunder he convicted the sole appellant for the offences punishable under Sections 302/34 of the Indian Penal Code and, accordingly, sentenced him to undergo rigorous imprisonment for life for the above stated offences.



3. P.W.4 Chamaili Devi gave her fardbeyan to A.S.I. S.P. Singh of Bhawanipur Police Station on 05.08.1991 at 08.30 A.M. to this effect that before four days, her she-goat had entered into the paddy field of the appellant upon which the appellant and his brother, namely, Sheikh Sameer started abusing her, which was opposed by her and being annoyed with the above stated opposition, both the aforesaid persons started taking away her she-goat but, anyhow, she snatched her she-goat from the clutches of the appellant and his brother. The appellant and his brother gave threatening to her and in the evening of the previous day, the maternal nephew of the appellant had again given threatening to her mother-in-law. She further stated that on 04.08.1991 at about 11.00 P.M., the appellant alongwith the F.I.R. named accused Israil Dhuniya, Irfan and Sameer came and, at that time, the appellant was armed with Chhura, Israil was armed with Garasa, whereas rests two were armed with lathi. The aforesaid persons started assaulting her husband by means of Garasa and Chhura. She made protest but, in the meantime, the appellant cut the neck of her husband by means of Chhura. She also sustained injuries on her both hands by Garasa. She raised alarm, which attracted Gholak Mochi (P.W.3), Rudal Ram (P.W.1), Luxman Ram (P.W.2) and Bhikhari



Ram (P.W.6) and seeing them, the above stated appellant and his associates fled away from there.

4. On the basis of the above stated fardbeyan of P.W.4, Bhawanipur P.S. Case No.69 of 1991 was registered under Sections 302/34 of the Indian Penal Code and on the same day, the formal F.I.R. was drawn up, which was put before the Additional Chief Judicial Magistrate on 06.08.1991.

5. The Investigating Officer took the charge of investigation and after completion of investigation, submitted the charge-sheet against the appellant and others. The cognizance of the offence was taken and the case was committed to the court of sessions in usual way.

6. However, only the appellant was put on trial before the learned 2nd Additional Sessions Judge, Purnia, and, accordingly, stood charged for the offences punishable under Sections 302/34 of the Indian Penal Code.

7. In course of trial, the prosecution examined, altogether, 9 witnesses and got exhibited the fardbeyan, post-mortem report etc. One court witness was also examined as court witness no.1.

8. The Statement of the appellant was recorded under Section 313 of the Code of the Criminal Procedure in



which he denied the prosecution story. No evidence was adduced on behalf of the appellant in support of his defence but from perusal of the trends of cross examination of the prosecution witnesses as well as the statement recorded under Section 313 of the Code of the Criminal Procedure, we find that the defence of the appellant was total denial of the prosecution story.

9. The learned trial court, having perused the evidences, available on the record, passed the Judgment of conviction and sentence order in the manner, as we have already stated above.

10. Learned Amicus Curiae appearing for the appellant challenged the impugned Judgment of conviction and sentence order, arguing that there were several contradictions in the depositions of the prosecution witnesses but the learned trial court failed to take notice of that contradictions. He further submitted that there was no source of identification and the prosecution, in course of trial, developed this story that the appellant and others entered into the room though the aforesaid fact had not been stated by P.W.4 in her fardbeyan. He further submitted that except P.W.4, none of the prosecution witnesses claimed to have seen the actual occurrence and they have only



stated that they saw the appellant and other accused, while they were fleeing from the place of the occurrence but, admittedly, the alleged occurrence took place in the dark night and there was no source of light. He further submitted that the Investigating Officer has not been examined in this case, which had caused serious prejudice to the defence and, therefore, only on the basis of the sole deposition of P.W.4, it was unsafe for the trial court to pass the Judgment of conviction and sentence order.

11. On the other hand, learned Additional Public Prosecutor for the State refuted the above stated submissions, arguing that P.W.4 is an injured witness and she had sustained injuries in the alleged occurrence. He further submitted that, according to the prosecution case, the alleged occurrence took place inside the room of the deceased and at the time of the occurrence, except the deceased and P.W.4, none was present there and, therefore, the deposition of P.W.4 cannot be doubted. It is further submitted by him that P.W.1, P.W.2, P.W.3, P.W.6 and P.W.8 very clearly stated that having heard the noise of P.W.4 and the deceased, they rushed to the house of P.W.4 and saw the appellant and his associates, while they were fleeing from the place of the occurrence. He further submitted that the



statement of P.W.4 is corroborated by her injuries, which have been proved by P.W.9 and, moreover, the post-mortem report of the deceased as well as deposition of P.W.4, both go to show that the deceased was brutally killed by the appellant and his associates and, therefore, there is no scope to interfere into the impugned Judgment of conviction and sentence order.

12. Having heard the contentions of both the parties, we went through the records.

13. P.W.1, P.W.2, P.W.3, P.W.6 and P.W.8 claimed that they had seen the appellant and his associates coming out from the house of the deceased just after the alleged occurrence. All the aforesaid witnesses are the resident of the same village and their houses are situated in the close vicinity of the house of the deceased and, therefore, it is quite natural that having heard the noise of the deceased and P.W.4, they went to the house of the deceased and saw the appellant and other accused and, therefore, we do not find any ground to doubt the credibility of the above stated prosecution witnesses.

14. P.W.4 is the informant of this case as well as the sole eye witness of the killing of her husband. This witness stated that at the time of the alleged occurrence, she along with her husband was in her house and, in the meantime, the



appellant alongwith three other F.I.R. named accused entered into her house and the appellant as well as his associates started assaulting her husband. She stated that the appellant assaulted her husband by means of Chhura, whereas the accused Israil assaulted her husband by means of Garasa. She further stated that she tried to save her husband but the accused Israil assaulted her by means of Garasa. However, she was cross examined at length by the defence but the defence failed to elicit any material to shake the credibility of P.W.4. The statement of P.W.4 is corroborated by the deposition of P.W.5, who had conducted the post-mortem examination on the dead body of the informant's husband. P.W.5 found, altogether, four cut injuries on the person of the deceased and out of the above stated four injuries, two injuries were found on the neck of the deceased, whereas remaining two injuries were found on the occipital region as well as temporal region. The doctor opined that the cause of the death of the deceased was head injury as well as the injuries on the right side of the neck. Therefore, the conjoint reading of the depositions of P.W.4 and P.W.5 goes to establish that on the alleged date of the occurrence, the deceased had sustained cut injury at the hands of the appellant and the accused Israil. The presence of P.W.4 in her room is quite



natural and, moreover, her presence at the place of the occurrence cannot be doubted because P.W.9., who had examined P.W.4 after the alleged occurrence, found, altogether, five injuries on her person. Although the nature of the above stated five injuries are simple but the aforesaid injuries cannot be said to be self inflicted and, therefore, in our view, the prosecution has proved its case beyond all shadows of reasonable doubts.

15. No doubt, the Investigating Officer was not examined before the trial court but there is nothing on the record to show that any prejudice was caused to the defence due to non-examination of the Investigating Officer and, therefore, we are of the view that only on account of non-examination of the Investigating Officer, the prosecution case cannot be thrown out in the dustbin.

16. On the basis of aforesaid discussions, we are of the view that this criminal appeal is devoid of merit and, accordingly, this criminal appeal stands dismissed and the impugned Judgment of conviction and sentence order are, hereby, confirmed. The sole appellant is on bail. His bail bonds stand cancelled and he is directed to surrender before the trial court within six weeks from today and if he does so, the learned



trial court shall take him into custody and send him jail so that he could serve his sentence.

17. It is made clear that if the sole appellant fails to surrender before the trial court within the above stated period, the learned trial court shall take all effective and positive steps to procure the arrest of appellant and after procurement of arrest of appellant, the learned trial court shall send him to jail for serving the sentence.

18. Let the copy of the first page and last page of this Judgment be handed over to the learned Amicus Curiae for needful.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
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