

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.222 of 2003

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Brahmadeo Singh, Son of Late Indrasan Singh, Resident of Village – Khanpura
Ajmad, P.S. Thawe, Dist – Gopalganj.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Rajesh Kumar Sharma (Amicus Curiae)

For the Respondent/s : Smt. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 03-05-2018

This appeal is directed against the judgment of conviction dated 09.04.2003 and order of sentence dated 17.04.2003, passed by Shri Chiranji Singh, then Presiding Officer, Fast Track Court No. 1, Gopalganj in Sessions Trial No. 42/90, 38/2001, by which the sole appellant Brahmadeo Singh stood convicted under Section 304 of the IPC and was sentenced to undergo R.I. for seven years.

2. Prosecution case as per the fardbeyan of informant Kundan Chaudhary (P.W. 2), in short is that, the appellant, in the night of 12.04.88 at about 9. P.M. came to his house and asked his brother Nandji Chaudhary to come along with him for thrashing the wheat. At that time, he did not agree but anyhow, he agreed to go with the appellant. In the midnight, when informant woke up he found that his brother has not returned and in the next morning, when his brother did



not return, he went to the house of appellant to make enquiry about his brother Nandji Chaudhary, where he came to know that appellant had confined his brother in a room for allegation of committing theft. The informant tried to see his brother but he was not allowed and told by the family members of the appellant that appellant had gone to the police station to lodge a case and when the police would come, he would be allowed to see his brother. Thereafter, the police came and dead body of the deceased Nandji Chaudhary was brought out from a room with his legs and hands were tied by a rope and thereafter, the statement of the appellant was recorded. Thereafter, on the basis of the fardbeyan of the informant recorded on 13.04.1988, Manjagarh P.S. Case No. 74/88 was registered.

3. Police after investigation submitted charge-sheet only against appellant Brahmdeo Singh under Section 304 of the IPC. Cognizance of the offence was taken and the case was committed to the court of Sessions, which ultimately came to the file of Shri Chiranji Singh, then Presiding Officer, Fast Track Court No. 1, Gopalganj, for trial and disposal.

4. To prove its case, prosecution examined altogether seven witnesses. They are: P.W. 1 – Suresh Chaudhary, Neighbour of the informant, P.W. 2 - Kudan Chaudhary, Informant, P.W. 3 - Dharmendra Singh, declared hostile, P.W. 4 – Shyam Nandan Prasad (I.O.), P.W. 5 Mudrika Chaudhary, P.W. 6 – Dr. Rajendra Thakur,



the Doctor, who conducted post mortem examination on the dead body of the deceased and P.W. 7 – Harendra Prasad is the formal witness, who proved the formal F.I.R.

5. Apart from that following documents have been brought on record and marked as Exts 1 and 1/1 are signatures of the witnesses on the Inquest Report, Ext. 2 – Fardbeyan, Ext. 3 – Inquest Report, Ext. 4 – Seizure list, Ext. 5 – Post mortem report and Ext. 6 – Formal F.I.R.

6. From the side of defence also, one witness has been examined, namely, Shankar Shukla, who proved the formal F.I.R of Manjagarh P.S. Case No. 73/88 marked as Ext. A and complaint petition as Ext. B, filed by the appellant with respect to the occurrence of same day.

7. Defence of the accused persons is of denial of allegation and the case of the defence is that the deceased in the night of the alleged occurrence, had entered inside his house for commission of theft and was caught and on alarm large number of villagers had assembled at his house and assaulted the deceased Nandji Chaudhary, who received injuries and died in the house of appellant after receiving injuries.

8. On conclusion of trial, the Trial Court, convicted the appellant under Section 304 of the IPC sentenced him in the manner aforesaid.

9. Being aggrieved, the appellants preferred the present appeal.

10. Learned *Amicus Curiae* has assailed the judgment on the ground that the prosecution has entirely failed to prove the motive behind the occurrence and two different stories that the deceased had



illicit relationship with the daughter of the appellant and for that he was called and assaulted and due to which he died and another story that as the deceased had deposed against the appellant, has been carved out, which itself shows that the prosecution has not been able to establish the motive of appellant behind the occurrence. Further submission is that in the first part of the occurrence is that the appellant Brahmdeo Singh went to the house of informant and called his brother Nand Ji Chaudhary (deceased) from his house for thrashing the wheat, has not been found believable by the Trial Court itself, which will appear from para -21 of the Judgment of Trial Court as the Trial Court has found that there is no consistent evidence to prove the aforesaid version of the prosecution and there is no basis to accept the prosecution version, so far first part of manner of occurrence is concerned. It has also been submitted that the Trial Court has disbelieved the first part of the prosecution story and the defence has also come with a case that the deceased on the alleged date of occurrence, entered into the house of the appellant to commit theft and he was caught and assaulted by the villagers, due to which he lost his life and the appellant had also lodged a case with regard to the said occurrence as Manjhagarh P.S. Case No. 73/88, however, the said story of the defence has been disbelieved on the ground that the defence has not brought any evidence in that context, however, the Trial Court has failed to consider that the evidence of informant (P.W.



2) shows that he had gone to the house of appellant at about 7 A.M. in the next day and he came to know about the confinement of his brother Nand Ji Chaudhary by the appellant in his house and his evidence further disclosed that appellant Brahmdeo Singh had gone to police station but it appears that neither P.W. 2 nor P.W. 1 took any step to inform the police or *dafadar* at that time, which itself goes to show that the defence story is more probable than that of prosecution case. Further submission of learned *Amicus Curiae* is that in this case though evidence disclosed that large number of persons had assembled at the place of occurrence but none of them had been examined in this case and those, who have been examined are either brother or neighbour of the deceased and further there is contradiction in between the evidence of the witnesses and their evidence does not appear to be reliable. Further submission is that there is specific case of the appellant that the deceased assaulted by the villagers and the appellant was not there at the time of recovery of the dead body and as such, probability of assault by the villagers and other accused persons cannot be ruled out specially when initially others had also been made accused in this case but charge-sheet has been submitted only against the appellant and as such, in these circumstances, appellant certainly deserve the benefit of doubt. Further submission of learned *Amicus Curiae* is that as per Section 106 of the Indian Evidence Act, the prosecution has to establish its case by the cogent and reliable



evidence, which is completely missing in the present case. It has also been submitted that the present case is based only on circumstantial evidence and the chain of circumstance is also not complete and further the trial court has itself disbelieved the first part of prosecution story. It is a settled principle of criminal trial that where there is two possible views, one which is in favour of the appellant shall prevail and the trial court without considering all these facts has convicted the appellant under Section 304 of the IPC, which is not sustainable in the eye of law.

11. On the other hand, learned counsel appearing on behalf of respondent – State has supported the finding of guilt recorded by learned Trial Court and has submitted that there is consistent evidence available on record to show that appellant has called the deceased to his house on the pretext of thrashing the wheat and on the next day, when the brother of the informant (P.W. 2) did not return, he came to the house of appellant and came to know that his brother has been confined by the appellant in a room and police recovered the dead body from the room and also found several injuries on the dead body of the deceased and the dead body of the deceased was found from the house of the appellant and, hence, there is no infirmity in the judgment of trial court and conviction of appellant under Section 304 of the IPC is just and proper.

12. Heard both sides and considered the submissions made on



behalf of the parties. On perusal of the evidence, it appears that P.W. 2 is the informant in this case and he has supported the prosecution story that in the night of 12.04.88, appellant took his brother with himself on the pretext of thrashing of wheat and when his brother did not return, he went to the house of appellant, where police recovered his dead body. His evidence shows that he had gone at about 10 'O' clock in the morning and he came to know about the same and further his evidence in para 22 shows that he has not informed the police or dafadar and police came and recovered the dead body. There is also contradiction in evidence of P.W. 1 as he has stated that appellant had asked him about taking the deceased for thrashing work, whereas, the F.I.R shows that the appellant had a talk with the deceased only and further F.I.R shows that the talk was held between appellant and deceased outside the house of the deceased whereas, evidence of P.W. 1 shows that the talk was held at his *bathan*. Further evidence of P.W. 1 shows that he went there along with several other persons but he did not ask at to what had happened there.

13. P.W. 3 is also the brother of the deceased and he has also supported the prosecution case as stated above but what appears from the case of prosecution and evidence of I.O. that the appellant, in the morning of the date of occurrence i.e. on 13.04.88, had gone to the police station for reporting the matter of commission of theft in his house. The police had come in connection with enquiry of



Manjhagarh P.S. Case No. 73/88, which appears from evidence of I.O. also and in such a situation, it appears that though P.W. 1 and other family members of the deceased had knowledge that the deceased was confined by the appellant in his house but they did not take any step to inform the police or dafadar rather police came on the information given by the appellant. What further appears from perusal of para - 21 of judgment of trial court that the trial court itself disbelieved the first part of the prosecution story that appellant had taken the deceased for thrashing work and when the very genesis of the occurrence itself has not been found true by the trial court, it casts serious doubt about the manner of occurrence also. Further, no concrete motive of occurrence has been assigned and the prosecution appears to have also failed to prove the motive behind the occurrence and it appears that the trial court has based the conviction of appellant only on the ground that the dead body of the deceased was recovered from the house of the appellant and the dead body contained several injuries and the appellant has been convicted under Section 304 of the IPC and not under Section 302 of the IPC. In these circumstances the defence case that the deceased entered into the house of appellant to commit theft, in which he was caught and assaulted by several persons, seems more probable than the prosecution story as several injuries were found on the person of the deceased and other persons had also been made accused in this case but charge-sheet was



submitted only against the appellant, as such, the appellant certainly deserve the benefit of doubt as the prosecution has not been able to prove its case. A judgment of Hon’ble Supreme Court in the case of **Sharad Birdhichand Sharda v. The State of Maharashtra** reported in **AIR 1984 Supreme Court 1622** has rightly been relied upon by learned *Amicus Curiae* that in this case, there is no conclusive evidence to prove the guilt of the appellant.

14. Considering the entire discussions made above, it appears that the prosecution has not been able to prove its case against the appellant beyond all shadow of doubt.

15. The judgment of conviction dated 09.04.2003 and order of sentence dated 17.04.2003, passed by Shri Chiranji Singh, then Presiding Officer, Fast Track Court No. 1, Gopalganj in Sessions Trial No. 42/90, 38/2001, is hereby set aside.

16. As the appellants is on bail, he is discharged from liability of bail bonds.

(Vinod Kumar Sinha, J)

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AFR/NAFR	NAFR
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