

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.544 of 2008

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Md. Javed, S/o Late Md. Aziz, Resident of village – Nirpur, P.S. Patepur,
District Vaishali

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Sri Sanjay Kumar Singh, Advocate

Sri Binod Kumar Singh, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 16-08-2018

1. The sole appellant, was convicted and sentenced by judgment of conviction dated: 19.03.2008 for commission of offence under Section 302 of the Indian Penal Code , 1860 (hereinafter referred to as the “I.P.C.”) and by order dated – 26.03.2008 he was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5000/-. In default of payment of fine, he has further been directed to undergo rigorous imprisonment for six months. The order of sentence was passed for commission of offence under Section 302 of the I.P.C. The appellant by the trial court was given set-off in terms of provision under Section 428 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) for the period



during which he had already undergone custody. The appellant was tried in Sessions Trial No. 535 of 2006 [arising out of Patepur P.S. Case No. 61 of 2006, corresponding to G.R. Case No. 2046 of 2006] and he was held guilty and sentenced by learned Sessions Judge, Vaishali at Hajipur (hereinafter referred to as the “trial judge”).

2. Short fact of the case as per First Information Report, is that on 07.07.2006 at about 20.30 Hours (8.30 P.M.) Md. Anbarul Haque / P.W. 8 (father of the deceased) gave his fardbyan to the Sub Inspector of Police Sri Rajesh Kumar (P.W. 12) of Patepur Police Station at Patepur Police Station itself. In the fardbyan the informant disclosed that his daughter namely- Ruhi Parveen, aged about 15 years, on the same day at 3.15 P.M. was returning after appearing in the Examination from Patepur High School. At about 3.15 P.M. South of High School on North East brick soling road near Pinku brick -kiln from back side Md. Javed (appellant) speedily arrived and stopped his daughter and taking out knife from his pocket forcibly asked her to go with him. Informant's daughter was accompanied by Shabana Praveen (P.W. 4) and one another girl, whom informant was not knowing. While his daughter refused to go with the appellant, the accused /appellant repeatedly gave 4-5 knife blows with intent to



kill her. After receiving the said injuries her daughter fell down and started squirming. Her two friends after witnessing this occurrence raising alarm started fleeing away. Md. Javed (appellant) after being convinced that daughter of informant was dead, fled away. After hearing alarm many persons assembled there and lifting his daughter she was immediately shifted to Patepur Hospital where she was provided primary medical aid and from there on Ambulance the informant with her (victim's) brothers- Riyaz Alam (P.W. 5) and Saddam Hussain (P.W. 9) and Md. Jawed, S/o Md. Shad (P.W. 7) proceeded for Patna for better treatment, however, on way over Mahatma Gandhi Setu injured – Ruhi Parveen died. The informant further stated that his daughter in Patepur Hospital was not in a condition to make any statement, however, on way, for sometime, she re-gained her consciousness and told the informant and her brothers about the occurrence. After her death the informant carried dead body to Sadar Hospital, Hajipur and leaving the dead body he went to Police Station for giving his statement. The informant claimed that Md. Javed (appellant) with intent to commit some unforeseen occurrence had tried to forcibly take away his daughter and on opposition she was attacked by knife with intent to kill her. The fardbyan was read over to the informant and after finding the



same as correct the informant put his signature on the fardbyan. As witness to the fardbeyan Md. Riyaz Alam (P.W. 5) , Md. Jawed (P.W.7) and Saddam Hussain (P.W. 9) put their signature. After recording fardbyan on the same day i.e. on 07.07.2006 a formal F.I.R. vide Patepur P.S. Case No. 61 of 2006 was registered at 20.30 Hours for the offence under Section 302 of the I.P.C. against the sole appellant.

3. During investigation itself the appellant was apprehended and after finding sufficient material against him on 25.09.2006 charge -sheet was submitted by the Police. Thereafter, on 23.10.2006 learned Chief Judicial Magistrate took cognizance of offence and on 20.11.2006 the case was committed to the court of Sessions. After commitment the case was numbered as Sessions Trial No. 535 of 2006, and thereafter, on 13.12.2006 charge under Section 302 of the I.P.C. was framed against the appellant.

4. During the trial to establish its case from the prosecution side altogether thirteen witnesses were examined. Out of thirteen witnesses, P.W. 1 (Mahendra Thakur), P.W. 2 (Shiv Shankar Sah), P.W. 5 (Md. Riyaz Alam), P.W. 6 (Dr. Shankar Prasad Singh) and P.W. 7 (Md. Jawed) are hearsay witnesses. Besides being hearsay witness, P.W. 1 (Mahendra Thakur) and P.W. 5 (Md. Riyaz Alam) are also witness on the point that the



appellant was seen immediately after the occurrence while fleeing away carrying knife. P.W. 3 (Usha Kumari) and P.W. 4 (Shabana Praveen) who were friends of the deceased and coming back along with the deceased after appearing in the Examination are eye witnesses to the occurrence. P.W. 9 (Saddam Hussain) is a formal witness and he has simply proved his signature on the fardbyan, which was marked as Ext. ¼. P.W. 8 (Anwarul Haque) is the informant of the case. P.W. 10 (Dr. Aadarsh Kumar) on the date of occurrence i.e. 07.07.2006 was posted as Medical Officer in Patepur Hospital & Additional Primary Health Centre. This witness had firstly examined the injuries of the injured / victim and he proved the injury report , which was marked as Ext. 3. P.W. 10 at the time of examination of the victim had noticed at least three incised wound. This witness had examined the injuries of the injured/ victim immediately after the occurrence, and thereafter, the injured was referred to P.M.C.H. P.W. 11 (Dr. Amresh Kumar) on 08.07.2006 had conducted post – mortem examination on the dead body of the deceased. At the relevant time he was posted as Civil Assistant Surgeon in Sadar Hospital, Hajipur and he proved the post- mortem examination report, which was marked as Ext. 4. P.W. 12 / Rajesh Kumar (Sub Inspector of Police) had recorded fardbyan of the informant and he proved his signature on the



fardbyan, which was marked as Ext. 1/5 and he also proved the inquest report, which was prepared on the Ambulance by which the dead body was brought back from Mahatma Gandhi Setu and inquest report was marked as Ext 5. P.W. 13 (Vinay Ram) was the Officer - In-charge of Patepur Police Station and he conducted investigation, recorded statement of witnesses and he also submitted charge- sheet.

5. After closure of prosecution evidence, circumstances and evidences brought on record during the trial were explained to the appellant and his statement under Section 313 of the Cr.P.C. was recorded on 03.09.2007. In his statement recorded under Section 313 of the Cr.P.C. he denied the charge, however, in his defence he took a plea that he was in love with the deceased and also claimed to be innocent.

6. Sri Sanjay Kumar Singh , learned counsel for the appellant after placing entire evidences has argued that prosecution has completely failed to establish its case beyond all reasonable doubt, and as such, according to learned counsel for the appellant, it is a fit case for extending benefit of doubt to the appellant. Sri Sanjay Kumar Singh, learned counsel for the appellant has also argued that it appears that marriage of deceased was earlier settled with the cousin brother of the



deceased, and subsequently, since the deceased denied to marry she was done to death by her cousin brother Md. Jawed and the appellant who is having same name, i.e. Md. Jawed, hailing from poor background, was fixed by the prosecution. Learned counsel for the appellant has strenuously argued that in the case prosecution has miserably failed to establish even the place of occurrence. He submits that the Investigating Officer (P.W. 13) in his evidence has not at all whispered as to whether he had noticed any blood mark at the place of occurrence. No explanation has been given by the prosecution as to under what circumstances at the time of preparation of inquest report registration no. of the Ambulance was also not recorded. By way of referring to the aforesaid evidences it has been argued that it is a fit case in which at least the appellant may be extended benefit of doubt and the judgment of conviction and sentence may be set aside.

7. Sri Ajay Mishra, learned Additional Public Prosecutor submits that the case is very much specific and the prosecution has established its case beyond all reasonable doubt. He submits that in this case evidence of only two witnesses who have been examined as eye witness was sufficient for holding the appellant guilty. According to Sri Ajay Mishra , learned A.P.P. it is specific case that the deceased on the date of occurrence was returning



after appearing in Examination with her two friends, who have been examined as P.W. 3 and P.W. 4. In their presence the appellant from back caught hair of the deceased and forcibly the appellant tried to carry her and on refusal this appellant gave repeated knife blows on the deceased. After noticing such occurrence the friends of the deceased firstly orally requested the appellant not to do so, thereafter, both witnesses started fleeing away. One witness i.e. Shabana Praveen (P.W. 4) after the occurrence raising alarm fled away to her village, whereas, P.W. 3 fled towards Patepur market. Sri Ajay Mishra, learned A.P.P. further submits that hearsay witnesses have specifically stated that after the occurrence they saw the friends of the victim fleeing away and thereafter, they arrived at the place of occurrence and saw the daughter of informant in seriously injured condition having incised injuries. Sri Ajay Mishra, learned A.P.P. has also drawn our attention to the evidence of P.W. 1 (Mahendra Thakur) and P.W. 5 (Md. Riyaz Alam) on the point that immediately after the occurrence they saw the appellant fleeing away carrying knife in his hand. He submits that prosecution case is also established on the basis of evidence of P.W. 10 (Dr. Aadarsh Kumar) who had given First Aid to the injured and as per his advice the injured was referred to P.M.C.H., however, on way to



P.M.C.H. she died, and thereafter, her dead body was brought to Sadar Hospital, Hajipur. According to Sri Ajay Mishra, learned A.P.P. during post-mortem examination also accusation was corroborated. In sum and substance, it has been argued that prosecution evidence is vividly clear that in the case there was none else than the appellant who had committed the crime, and as such, the learned trial judge in view of direct evidence has rightly passed the judgment of conviction and sentence vide the impugned judgment, which requires no interference.

8. Besides hearing learned counsel for the parties, we have also examined the evidences on record and after going through the same we are of the considered opinion that the judgment of conviction and sentence requires no interference. However, before recording that, it would be necessary to firstly discuss the evidences of P.W. 4 (Shabana Praveen) who was along with the deceased and P.W. 3 (Usha Kumari) at the time of occurrence. P.W. 4 (Shabana Praveen) in her evidence has stated that the date and time of occurrence was 07.07.2006 at about 3.15 P.M. At that very time she along with Ruhi Parveen (deceased) and Usha Kumari (P.W. 3) were returning after appearing in the Examination from Sri Ramchandra High School, Patepur. While they reached near Piku brick- kiln from back side the appellant



arrived and caught hair of Ruhi Parveen and forcibly asked her to follow him, which was refused by Ruhi Parveen, then the appellant firstly threatened that she will be killed, thereafter, the appellant taking out knife from his pocket started inflicting knife blows continuously which hit on the chest, neck and arm etc. of Ruhi Parveen and due to the said injuries she fell down and blood started oozing out. This witness further stated that due to fear she started fleeing away raising alarm towards her house, whereas, Usha Kumari fled towards Patepur market. She disclosed that while they were fleeing away they were raising alarm that Md. Javed has inflicted knife blow to Ruhi Parveen and also they were crying for her help. She further stated that injured in the same night at about 10.00 P.M. died. This witness in paragraph – 4 of her evidence has also identified the appellant in dock. This witness was cross -examined at length, however, on examination of her cross -examination it appears that instead of drawing anything to create doubt on her evidence, certain facts have been brought on record which are against the defence itself. In paragraph - 20 of her cross –examination she has stated that while she was fleeing away Mahendra Thakur (P.W. 1), Shiv Shankar Sah (P.W. 2) and Md. Riyaz (P.W. 5) who were known to her were also seen and met her. Again in paragraph - 24 of the



cross -examination she stated that she had informed about the occurrence to Mahendra Thakur , Shiv Shankar Sah and Md. Riyaz. On examination of the evidence of P.W. 4 it is evident that this witness was with the deceased at the time of occurrence and at the same time she was being accompanied by Usha Kumari, who was examined as P.W. 3. Accordingly, it would be necessary to examine the evidence of Usha Kumari also. Usha Kumari (P.W. 3) in her evidence has reiterated that at the time of occurrence she along with the deceased and P.W. 4 were returning from Ramchandra High School, Patepur after appearing in Examination, and thereafter, in her presence occurrence had taken place. She almost deposed like P.W. 4. This witness also identified the appellant in court, which fact has come in paragraph - 3 of her evidence. This witness was given some suggestions as if deceased was in love with the appellant/ Md. Javed and she was exchanging love letters amongst them. This witness in paragraph - 18 of her cross- examination has categorically stated that at the place of occurrence she had noticed huge quantity of blood. In paragraph - 30 of her cross -examination she categorically disclosed that Examination started at 10.30 and continued up to 1.00 P.M. and again Second Shift started from 1.30 P.M. and continued up to 3.00 P.M. She further clarified in



paragraph - 31 that First Shift was Examination for “Maths” Paper and it was Half Yearly Examination. In paragraph - 32 of her cross -examination one very pertinent fact has come to the fore that in the night of the occurrence itself there was heavy rain, and as such, if for the time being it is supposed that the Investigating Officer failed to notice blood mark at the place of occurrence, there is every possibility that due to heavy rain blood had already washed away from the place of occurrence, and as such, the argument which was advanced by learned counsel for the appellant that at the place of occurrence no blood mark was found may not raise any question on the prosecution case.

9. The informant /P.W. 8 (Anwarul Haque) in his evidence has proved the fardbyan, which was marked as Ext. 2 and he also proved his signature on the inquest report , which was marked as Ext. 1/3. This witness has reiterated the fact which was disclosed in the fardbyan. Of- course, this witness was also cross-examined at length, but on examination of his entire evidences we are of the view that in cross -examination the defence completely failed to extract anything to create doubt on the credibility of P.W. 8.

10. P.W. 1 (Mahendra Thakur), P.W. 2 (Shiv Shankar Sah), P.W. 5 (Md. Riyaz Alam), P.W. 6 (Dr. Shankar Prasad



Singh) and P.W. 7 (Md. Jawed) are hearsay witnesses and also those witnesses after the occurrence had reached the place of occurrence. Besides this, P.W. 1 (Mahendra Thakur) and P.W. 5 (Md. Riyaz Alam) had seen the appellant immediately after the occurrence while he was fleeing away carrying knife in his hand.

11. Witnesses have deposed that since the injured was still alive, she was firstly carried to Additional Primary Health Centre, Patepur where she was given First Aid by P.W. 10 (Dr. Aadarsh Kumar). Dr. Aadarsh Kumar on 07.07.2006 was posted as Medical Officer in Patepur Hospital and Additional Primary Health Centre. He has proved the injury report, which was marked as Ext. 3. In his evidence he clarified that of- course he had examined the injured on 07.07.2006, however, by mistake he wrote the date incorrectly as 08.07.2006. However, this witness categorically clarified that it was simply a mistake of pen. This witness had noticed at least three incised injuries on the injured, and thereafter, the injured was referred to P.M.C.H. for her better treatment. Subsequently, on way to hospital (P.M.C.H.), as per the evidence, the injured died and her dead body was brought back and it was left in Sadar Hospital, Hajipur, and thereafter, informant went to the Police Station and gave his fardbyan. It has come in evidence that the injured from Patepur after



providing First Aid was referred to P.M.C.H. through Ambulance and on the same Ambulance her dead body was brought back and inquest report was prepared on the Ambulance which was kept in Sadar Hospital, Hajipur. Thereafter, on 08.07.2006 post-mortem examination was conducted on the dead body of the deceased by P.W. 11 (Dr. Amresh Kumar). Dr. Amresh Kumar on 08.07.2006 was posted as Civil Assistant Surgeon, Sadar Hospital, Hajipur. During post-mortem examination he found the following ante-mortem injuries on the person of the deceased:-

“(I) Incised wound over posterior aspect of neck size 4”x1”x bone deep red colour.

(II) Incised wound at right lower chest near coastal margin with tailing size 3 ½” x 2” x communicating with peritartial cavity, dull red.

(III) Incised stitched wound over right lateral chin 3”x1”x bone deep

(IV) Multiple incised wounds over right elbow, three in number. (A) 5” x 2”x bone deep (B) 4” x 2” x muscle deep (C) 3 ½” x 1” x muscle deep

Intracath found introduced in left cubical fossa

On dissection:-

Head- The meningess, scalp, skull bones and brain matter were intact.

Thorax and Abdomen- Thoracic cage was intact. Lungs and heart were intact. All the chambers of heart were empty. The stomach contained about 100 ml of pre-digested food.

There was an incised wound about 4” length involving right lobe of liver with haemo peritorieum. The loops of small & large guls contain gas and faecal matter. The spleen is intact. The uterus is small and non gravid. The bladder was empty. The viscera was pale. Rigor mortis was present in all four limbs.

Time elapsed since death: within 24 hours from P.M. examination



Cause of death – Shock and haemorrhage specially due to injury no. II causing injury to the liver.

Weapon used:- sharp and pointed weapon such as dagger and knife.”

He further proved the post- mortem examination report which was in his writing and signature and the same was marked as Ext. 4. In his cross- examination in paragraph- 6 he clarified that the deceased was earlier provided First Aid .

12. P.W. 12 / Rajesh Kumar (Sub Inspector of Police) in his evidence has stated that as per order of the Officer -In-Charge he recorded fardbyan of the informant and he proved his signature on the fardbyan, which was marked as Ext. 1/5 and he also proved the inquest report , which was marked as Ext. 5.

13. On examination of entire evidences available on record we are of the considered opinion that there is no inconsistency in the evidences and prosecution has specifically established its case beyond all reasonable doubt. Accordingly, the learned trial judge after being fully satisfied with the prosecution case has passed the judgment of conviction and sentence. We are of the considered opinion that there is no error in the judgment of conviction and sentence passed by the learned trial court warranting interference. Accordingly, the judgment of conviction and sentence dated - 19th March , 2008 and 26.03.2008



respectively passed in Sessions Trial No . 535 of 2006 arising out of Patepur P.S. Case No. 61 of 2006 corresponding to G.R. Case No. 2046 of 2006 by learned Sessions Judge , Vaishali at Hajipur is hereby affirmed and the Appeal stands dismissed.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
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