

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction dated 17.09.2011 and order of sentence dated 20.09.2011 passed by Shri Sudhakar Singh, learned Additional Sessions Judge, F.T.C.-II, Sitamarhi in Sessions Trial No. 569 of 2009 / 172 of 2009, arising out of Riga P.S. Case No. 138 of 2009)

Criminal Appeal (DB) No.215 of 2012

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Nathuni Thakur, son of Nanhu Thakur, resident of Village- Ramnagra, P.S.- Reega, District- Sitamarhi.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Ms. S. B. Verma, Amicus Curiae

For the Respondent/s : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 11-01-2018

This jail appeal has been filed on behalf of the sole appellant Nathuni Thakur, son of Nanhu Thakur, against the judgment of conviction dated 17.09.2011 and order of sentence dated 20.09.2011 passed by learned Additional Sessions Judge, F.T.C.-II, Sitamarhi in Sessions Trial No. 569 of 2009 / 172 of 2009, arising out of Riga P.S. Case No. 138 of 2009, whereby the appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo RI for life and fine of Rs.10,000/-.

2. This jail appeal was filed under Section 374 of the



Cr.P.C. On 01.03.2012 the appeal was admitted and the lower Court records was called for. The Court admitted this appeal and appointed Mr. Ravindra Kumar Sinha, A.O.R. No. 0040 to appear as Amicus Curiae to assist the Court. When the appeal was listed for regular hearing neither the Amicus Curiae Mr. Ravindra Kumar Sinha, who appointed vide order dated 01.03.2012 nor any other counsel appeared. Under the aforesaid circumstance, we requested Ms. Shashi Bala Verma, learned Advocate to assist the Court as Amicus Curiae in this jail appeal considering the fact that the appellant Nathuni Thakur was apprehended in this case on 25.08.2009 and remained in custody for more than 8 years and is still in jail custody.

3. The present case was registered on the written petition filed on behalf of one Bimla Devi on 24.08.2009. In the written petition the informant has alleged that on 20.08.2009, at about 5.00 P.M. Nathuni Thakur (appellant) came to her house and asked her son Parmeshwar Kumar to accompany him and thereafter he gave Chhura blow near brick kiln, in order to commit murder of her son. She claimed that on hearing halla she along with her Dewar (P.W. 1) and other villagers reached the brick kiln of Ashok Prasad where she saw her son in injured condition and Nathuni Kumar was fleeing away and thereafter she along with others took her son for treatment to Sadar Hospital, Sitamarhi and thereafter to S.K.M.C.H., Muzaffarpur and



finally to P.M.C.H., Patna where treatment of his son is going on. In the fardbeyan, she has stated that due to treatment of her son at P.M.C.H., Patna she could not report the matter earlier and when she come back from Patna, people told her that Nathuni Kumar (the boy, who gave Chhura blow) was apprehended by the mob and was also assaulted.

4. On the basis of the aforesaid fardbeyan, formal F.I.R. was registered under Sections 326, 307 of the Indian Penal Code vide Riga P.S. Case No. 138 of 2009. Subsequently, on 26.08.2009 Parmeshwar Kumar succumbed to the injuries while undergoing treatment at P.M.C.H., Patna.

5. The police after investigation submitted charge-sheet against the appellant under Section 302 of the Indian Penal Code. Thereafter cognizance was taken and the case was committed to the Court of Sessions on 09.12.2009 and on framing charge the appellant Nathuni Thakur pleaded not guilty and was thus put on trial.

6. On behalf of the prosecution 10 witnesses were examined. Out of the aforesaid 10 witnesses P.W. Mishri Lal Sah is the uncle of the deceased. P.W.2 Lallan Sah is the author of the written report forming the basis of the F.I.R. P.W. 3 is Laxman Sah, P.W.4 is Chandeshwar Sah. P.W.5 Nageshwar Sah is the brother of the deceased, P.W.6 is Vijay Kumar, P.W. 7 Bimla Devi is the



informant of the case. P.W.8 is Ramashankar Prasad, P.W. 9 Dr. Pankaj Kumar is the doctor, who conducted the post-mortem of the deceased and P.W.10 Anand Kumar is the investigating officer of the case.

7. Ms. Shashi Bala Verma, learned Amicus Curiae appearing on behalf of the appellant in this jail appeal submitted that the present case is highly suspicious. The occurrence took place on 20.08.2009, but the written report on behalf of the informant was submitted to the Riga police only on 24.08.2009. In the written report, there is specific statement that the victim Parmeshwar Kumar was taken to Sadar Hospital, Sitamarhi for treatment and thereafter he was taken to S.K.M.C.H., Muzaffarpur and thereafter treated at P.M.C.H., Patna, but surprisingly enough in this medico legal case neither the police was informed while undergoing treatment at Sitamarhi nor S.K.M.C.H., Muzaffarpur nor even at P.M.C.H., Patna, which creates doubt about the prosecution case and under the aforesaid circumstance, the chance of false implication after due deliberation and improvement is most probable. The story built up in the F.I.R. does not inspire confidence, as the conduct of the informant and other family members, who were examined in this case as witness kept mum for four days and not reporting the case of giving Chhura blow by the appellant for four days is most unnatural, artificial and



suspicious. Ms. Verma referred to the deposition of prosecution witnesses. P.W.1, the uncle of the deceased, who in his deposition stated that on the date of occurrence he was returning after seeing the field on Bataidari and when he returned near the brick kiln of Ashok Prasad he heard halla from the south and saw Chhedi, Lalan Thakur, Nathuni Thakur, Nanhu were assaulting the deceased Parmeshwar Sah. This witness has mentioned that Nathuni Thakur is also known as Chhedi Thakur. In his deposition he has mentioned that he reached the brick kiln of Ashok Prasad while returning from watching field of Bataidari where the informant in her written complaint has stated that on hearing halla she along with this witness (P.W.1) and others visited the place of occurrence i.e. the brick kiln of Ashok Prasad, therefore, according to Ms. Verma there is contradiction in the version of the informant and P.W.1 on the point of hearing halla and reaching the place of occurrence.

8. Ms. Verma next submitted with reference to the deposition of the witnesses examined on behalf of the prosecution, that P.W.1 has stated in his deposition in the Court that Nanhku Thakur, Lallan Thakur, Chhedi Thakur and two others have assaulted the victim. P.W.2, the author of the written complaint forming basis of F.I.R. claims that he and Budhu Sah reached the place of occurrence first, but Budhu Sah was not examined in this case. This witness has



stated that he has not seen Nathuni assaulting Parmeshwar, but Parmeshwar told him that Nathuni has caused injury. P.W.3 Laxman Sah has claimed that he reached the place of occurrence on hearing halla from the brick kiln and when he reached there he saw Nathuni Thakur, Nanhu Thakur and two others. This witness has stated that the injured Parmeshwar has disclosed the name of Nathuni and Nanhu Thakur, who have assaulted him. This witness has also claimed that Budhu Sah was present when he reached the place of occurrence. P.W.4 Chandeshwar Sah has claimed that he reached the place of occurrence on hearing halla and saw Nathuni assaulting Parmeshwar by Chhura. P.W.5 Nageshwar Sah, the brother of the victim, has claimed that he reached the place of occurrence and saw his brother restless and he was lifted from there and taken to residence. According to this witness Nathuni was equipped with rod in his hand whereas his father was equipped with brick and stone in his hand.

9. P.W.6 Vijay Kumar has stated before the Court that he heard that Parmeshwar was assaulted by Nathuni and when he reached there Parmeshwar was badly injured and he was assaulted by brick and Chhura by Nathuni and then referring to the deposition of P.W.7 (informant) Ms. Verma submitted that this witness in the fardbeyan has stated that Parmeshwar was assaulted by Nathuni, whereas in the Court she has stated that when she reached there (place of



occurrence), she saw Nathuni and Nanhu Thakur were assaulting Parmeshwar. P.W.8 Ramashankar Prasad in his deposition has stated that he heard that Nathuni Thakur has assaulted Parmeshwar.

10. Referring to the deposition of the aforesaid witnesses, Ms. S. B. Verma submitted that from the deposition of different witnesses it appears that they claimed that the deceased was assaulted by four persons, but there is no explanation why only appellant Nathuni was charge-sheeted by the police and only he was sent up for trial and convicted by the trial court. Referring to the deposition of P.W.1 and P.W.7 she submitted that from their version there is contradiction on the point of acquiring knowledge of the incident and reaching the place of occurrence. She submitted that in the peculiar facts and circumstances of the case any reasonable man can come to their conclusion that none has seen the occurrence. The actual assailant was not known and only as an after thought the name of the appellant was mentioned in the written complaint and he was implicated in this case for the reasons indicated in the deposition of P.W.5, the brother of the deceased, who has deposed in the court that Nanhku and he went to Puna in 2006 and started working as carpenter. After 2-3 months when Nanhku Thakur was returning he gave Rs.5000/- to him to deliver the same to his residence but Nanhku Thakur has not delivered that amount and claimed that the same was



stolen and that was the reason there was grudge, as the informant's side used to raise demand for payment of Rs.5000/- given to Nanhku by P.W.5.

11. Ms. S. B. Verma referring to the aforesaid circumstance submitted that the aforesaid story of difference between the informant and the appellant is the reason for false implication of the appellant in the present case and that is the reason there was inordinate delay in lodging the F.I.R., since no one has seen the occurrence and it is mysterious how and why in a medico legal case the police was not informed either at Sitamarhi, or at Muzaffarpur or at P.M.C.H., Patna where the victim was treated. Referring to the deposition of the investigating officer, she submitted that the investigating officer has stated in his examination that he has not found any blood stain at the place of occurrence. The investigating officer has also stated in the court that the villagers have intercepted the appellant and they took him to police station. Ms. Verma referring to the post-mortem report submitted that from the post-mortem report it appears that the case of death was injury caused by hard and blunt object and its impact. The head injury caused by hard and blunt substance. Ms. Verma submitted that in the present case there is contradiction in the version of the prosecution witnesses. Some of the witnesses says that the occurrence took place near the brick kiln of



Ashok Prasad whereas the others have deposed that the occurrence took place in the brick kiln of Subhash Prasad. In the instant case nothing was recovered from the alleged place of occurrence and all the witnesses are close relative and not a single independent witness was examined. She submitted that in case of highly interested witnesses like the present one, the court is required to examine the deposition of the witnesses with utmost care and circumspection.

12. Referring to the deposition of P.W.9 Ms. Verma submitted that there is no definite opinion as to the cause of death, as the doctor has opined that only the Surgeon can give definite opinion, however, P.W.9 has admitted that there was no sharp cutting injury caused by any substance, which is alleged to have been used by this appellant for the commission of crime. The post-mortem report stands contrary to the version of the witnesses.

13. Mr. Abhimanyu Sharma, learned APP appearing on behalf of the State admitted the fact that in medico legal case the prosecution has not been able to explain why not the police was informed either at Sitamarhi, or at Muzaffarpur or at P.M.C.H., Patna. He has also not been able to explain the contradiction in the version of P.W.1 and P.W.7 in the matter of reaching the place of occurrence. He has also not been able to explain if Nathuni, Nanhku and two others have inflicted injury on the victim then why only Nathuni was charge-



sheeted and tried in this case. Mr. Sharma also failed to explain the discrepancy in the version of the witnesses as to use of weapon and the injury found on the person of the victim in the post-mortem report.

14. We have considered the materials available on the record. This jail appeal was preferred by the appellant, who has remained in custody for nearly 8 years. In this case, the witnesses are highly interested witnesses. There is no independent witness. From closer scrutiny of the evidence, it appears that every one reached the place of occurrence after the actual assault. As from their version, it appears that they have suspected involvement of the appellant on the ground that he was found fleeing away from the place of occurrence. We also find substance in the submission of learned counsel appearing on behalf of the appellant that the investigating officer has not found any blood stain at the place of occurrence. The delay of four days in submitting the written report to the Riga police station in a medico legal case is difficult to digest. In this case, the basis of the F.I.R. is written complaint in the hand writing of Lalan Sah (P.W.2). This P.W.2 in his deposition has not explained as to why not the information was furnished to the police station earlier. From reading of the written complaint, it appears that on 24.08.2009, the written complaint was submitted to the police station when the appellant was intercepted by the villagers.



15. Thus, in the totality of the facts situation, it appears that the appellant was named in this case at the instance of the people, who intercepted on 24.08.2009 and thereafter complaint was written by P.W.2 Lalan Sah and submitted to the police station.

16. We have also analyzed the deposition of the witnesses and find no explanation as to why only the appellant was charge-sheeted in this case when the witnesses claimed to have seen giving Chhura blow by this appellant and others actively participated in the occurrence assaulting the injured. The exclusion of other persons against whom there is allegation of assault by the prosecution witness is mysterious. The deposition of P.W.5 is indicative of the fact that there was difference on account of non-delivery of Rs.5000/- sent by him through Nanhku at his village home is equally a ground of suspecting involvement of the appellant with the crime. Considering the totality of the facts situation, we find apparent contradiction in the deposition of the witnesses as to the manner of commission of crime, place of occurrence, the circumstances of the witnesses reaching the place of occurrence and contradiction in their version are unexplained and the inordinate delay in reporting the occurrence to the police creates serious doubt about the improvement of the prosecution case.

17. Thus, in the totality of the facts situation, we are of the view that the contrary version as to the place of occurrence, the



variance of the witnesses in the manner of commission of crime, the contradictory version of the eye witnesses and the injury report, which totally ruled out use of Chhura, which is definite case of the prosecution causing injury by this appellant to the victim. The cumulative effect of all the aforesaid circumstances leads to only one conclusion that the possibility of false implication of the appellant cannot be ruled out on account of difference between the family of the informant and the appellant due to non-delivery of Rs.5000/- sent by P.W.5 through Nanhku to his village home. When two views are possible, one which suggest involvement of the accused and the other view, which is equally probable and suggest innocence and false implication due to previous difference and grudge then the Court is required to adopt the view, which leads to innocence of the accused.

18. Thus, in the facts and circumstance discussed hereinabove, we are of the view that the conviction of the appellant in the present case, which was lodged after inordinate delay of four days is presumed to be after due deliberation on account of grudge, is not safe, accordingly, we allow the appeal, set aside the judgment of conviction and order of sentence passed by the trial court and acquit the appellant from the charge leveled against him.

19. Since it is a jail appeal, we direct release of the appellant forthwith, if he is not required otherwise in any other case.



20. Let the 1st and last page of the judgment be handed over to Ms. Shashi Bala Verma, who appears in this appeal, as Amicus Curiae for needful.

21. The Patna High Court Legal Services Authority is directed to pay the fixed remuneration to Ms. Shashi Bala Verma, who is appearing in this appeal, as Amicus Curiae.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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