

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1173 of 2012

Arising out of P.S. Case No.-56 Year-2010 Thana- UDAKISHANGANJ
District- Madhepura

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Dilip Paswan @ Dilip Kumar Paswan S/o Sudhir Paswan R/o Village -
Khara, P.S. Udakishunganj, District – Madhepura. Appellant/s
Versus

The State of Bihar. Respondent/s

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Appearance :

For the Appellant/s : Mr. Chittranjan Sinha, Sr. Advocate
: Mr. Satish Kumar, Advocate
: Mr. N.K.P. Sinha, Advocate
: Ms. Surya Nilambari, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma (APP)

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 28-06-2018

Heard learned counsel for the appellant and the State.

The appellant has filed this appeal assailing the judgment of conviction dated 02.11.2012 and order of sentence dated 08.11.2012 passed by the Ad hoc Additional Sessions Judge-III, Madhepura in Sessions Trial No. 209 of 2010 arising out of Udakishunganj P.S. Case No. 56 of 2010 by which the appellant has been convicted for the offences punishable under Section 302 of the Indian Penal Code and he has been sentenced to undergo rigorous imprisonment for life with a fine of Rs. 10,000/- and in default of payment of fine, he has to undergo further rigorous imprisonment for three months.



The prosecution story, in brief, is that on 29.05.2010 at about 10.30 P.M. the informant (P.W. 3), Ravi Kumar, who is the son of the deceased, Manju Devi, gave his fard-e-beyan before the local police at Primary Health Center, Udakishunganj alleging therein that on 29.05.2010 at about 9.30 P.M. the deceased, who is the mother of the informant (P.W. 3), Ravi Kumar went to the house of one Parasnath Gupta. She returned back to her house and, thereafter, she went to Durga Temple to offer worship. When she returned immediately then he went towards temple and saw that the appellant, Dilip Paswan was giving dagger blow upon her mother. When he raised alarm the appellant, Dilip Paswan escaped by the Splendor Motorcycle. He stated that her mother fell down after the dagger blow and place of occurrence was east of house of one Rajendra Choudhary in front of Durga Temple. She was taken to hospital with the help of persons present there. He has assigned the reason in the First Information Report that the accused, Dilip Paswan was his tenant and he was evicted from the house which had infuriated him resulting in the occurrence.

On the basis of the aforesaid fard-e-beyan, the FIR was registered as Udakishunganj P.S. Case No. 56 of 2010 under Section 302 IPC. The police took up investigation and submitted charge-sheet under Section 302 IPC. Thereafter, Chief Judicial



Magistrate took cognizance and the case was committed to the Court of Sessions where charge was framed under Section 302 IPC to which the accused pleaded non-guilty. Thereafter, trial started against the appellant.

During trial, the prosecution has examined altogether 10 witnesses, in support of the witnesses of the case, who are, namely, P.W. 1, Mithilesh Kumar, P.W. 2, Bindeshwari Prasad Gupta, P.W. 3, Ravi Kumar, the informant, P.W. 4, Shankar Sah, P.W. 5 Sanjeev Kumar Paswan, P.W. 6, Pramod Kumar Gupta, P.W. 7, Rajendra Paswan, P.W. 8, Dr. Vijay Prasad who conducted the post-mortem examination on the dead body of the deceased, P.W. 9, S.I. Brahmdeo Singh and P.W. 10, S.I. Vijay Kumar Singh.

The trial court after hearing learned counsels for the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charges against the appellant and, as such, the judgment of conviction and order of sentence has been passed.

In this appeal, there is a need to reappraise the prosecution evidence to see as to whether the prosecution has been able to substantiate its case beyond shadow of all reasonable doubts or not?



From perusal of the materials on record, such as, First Information Report and the deposition of the witnesses, it appears that there is a marked variation in the respective statements which has proved lethal to the prosecution story.

P.W. 2, Bindeshwari Prasad Gupta, who is the father of the informant has supported the version of the FIR that she returned from the marriage ceremony and again went to the temple to offer worship but he has categorically stated in paragraph 15 that at the time of occurrence he was in his house and so was his son, Ravi Kumar and both were having their supper. In the meantime, a boy came running and informed that his wife had been killed. Name of the boy has not been disclosed but it is stated in paragraph 14 that after receiving such information by the said boy, his son went to the place of occurrence and then saw that his mother was lying there and took her to hospital. The statement of the father of the informant raises a serious question upon the claim of the informant being an eye-witness of the occurrence. The informant has been examined as P.W. 3. He has supported the version of the FIR that his mother came back from the marriage ceremony and she again went to Durga Temple to offer worship but he stated that when he returned back in 5-10 minutes then he also went to Durga Temple and saw that two unknown persons



were catching hold of his mother and the appellant, Dilip Paswan struck a blow from the dagger causing injury on the breast of his mother. If this version is compared with the fard-e-beyan there is mark difference as there is no mentioning that two unknown persons were catching hold of his mother.

The Investigating Officer, who has been examined as P.W. 10, has also stated in paragraph 15 that the informant, Ravi Kumar had never stated before him that two unknown persons were catching hold of his mother and Dilip Paswan was striking blow from the dagger. The testimony of P.W. 2 raises a serious question not only regarding the informant being an eye-witness to the occurrence but also regarding the manner of occurrence.

The reason for the occurrence which has been disclosed in the First Information Report is that the accused, Dilip Kumar Paswan was once a tenant in the month of January and the accused side got that portion vacated which had infuriated him leading to the occurrence. However, the Investigating Officer, in paragraph 17 of his cross-examination has stated that though Dilip Paswan had stated before him that he got the tenanted portion vacated but he never stated specifically that Dilip Paswan was a drunkard and when they asked him to vacate the premises he did not do that but he often threatened him also. The house was vacated in the month



of January and 29th of May, 2010 is the date of occurrence and if there is no complaint even after the date of occurrence for the testimony of the prosecution witnesses that Dilip Paswan ever threatened him with dire consequences. This raises a question mark that due to this cause he could have gone to such extent nevertheless since from the testimony of his father who has been examined as P.W. 2 that at the time of occurrence Ravi Kumar was present in the house dining with him itself gives a fatal blow to the entire story of him being an eye-witness.

The second issue is as to whether the neighbour who were independent witnesses might have seen him or might have arrived after the occurrence and the priest of the temple and the persons in the house there disclosed about the place of occurrence have been examined or not?

From the perusal of the record, it appears that only four such persons were examined as P.W. 4, P.W. 5, P.W. 6 and P.W. 7 namely Shankar Sah, Sanjeev Kumar Paswan, Pramod Kumar Gupta and Rajendra Paswan but all of them have been declared hostile by the prosecution. Rajendra Choudhary has not been examined as a witness whose house is in front of the place of occurrence.



Having regard to the aforesaid facts and circumstances of the case and the and the discussion made above, we are of the view that the aforesaid lacuna which has been pointed out at the time of hearing raises a serious doubt regarding the informant being an eye-witness or the manner of occurrence but also the very factum that the accused Dilip Paswan is responsible for the murder of the mother of the informant. In our view, in such circumstances, benefit of doubt has to be given to the appellant.

In the result, this appeal succeeds. Judgment of conviction dated 02.11.2012 and order of sentence dated 08.11.2012 passed against the appellant are set aside. He is acquitted of the charge. The appellant is in jail custody, therefore, he is directed to be released forthwith, if not wanted in any other case.

This appeal is allowed.

(Dr. Ravi Ranjan, J)

Vikash/-

(S. Kumar, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

