

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No 882 of 2013

Arising Out of PS.Case No. -24 Year- 2008 Thana -BELA INDUSTRIAL District-
MUZAFFARPUR

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Md Salamat S/O Md Qurban Resident Of Village Dhiranpatti, P.O. Bela R K
Ashram, PS Bela, District Muzaffarpur.

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Ajay Kumar Thakur, Advocate with
M/s Md Imteyaz Ahmad, Babita Kumari
& Ritwaj Raman, Advocates

For the Respondent/s : Mr Satya Narain Prasad, APP

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CORAM: HONOURABLE MR JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR JUSTICE MADHURESH PRASAD)

Date: 18-01-2018

The instant appeal has been preferred against the judgment dated 02.08.2013 as well as the order dated 06.08.2013 on the point of sentence passed by Shri Kumar Prakash Sahai, Additional Sessions Judge I, Muzaffarpur (hereinafter referred to as the *trial Judge*) in Sessions Trial No 293 of 2009/718 of 2010 arising out of Bela Police Station Case No 24 of 2008 registered for the offences punishable under Sections 302, 201/34 of Indian Penal Code.

2 By the said judgment, the sole appellant has been held guilty and convicted under Section 302 of Indian Penal Code. The



other accused persons, namely, Qurban Mian and Halima Khatoon have been acquitted of all the charges leveled against them by giving them benefit of doubt. The appellant has been sentenced to undergo imprisonment for life under Section 302 as also fine of Rs 10,000/- and in default thereof to undergo simple imprisonment for one year.

3 The *Fardbayan* of the informant Asma Khatoon has been recorded on 07.12.2008 at about 8.30 in the morning at her own house and in front of the house of Gulden Mian. The prosecution case is that in the night of 06.12.2008, while the informant was in her house, she heard the cry of her brother Md Ali calling upon her to rush as he was being killed. On coming out of her house, she saw that in front of the house of Gulden Mian, on the side of the road, appellant Md Salamat, son of Qurban Mian was repeatedly stabbing her brother Md Ali with *Hasuli* (knife) while pushing him down. She further alleges that the father of the appellant Qurban Mian and mother Halima Khatoon were standing there and helping him in the assault. On alarm raised by the informant, the appellant fled away carrying her brother Md Ali on his shoulder. Thereafter, she made search for her brother who could not be found. Next morning at about 7.30 am, dead body of her brother was found lying in a ditch by the side of the road in village – Fazlipur under Rahua Panchayat within Mushari Police Station. The place, from where the body was recovered, was



one kilometer north of her house. One hour after recovery of the dead body, the *Fardbayan* of the informant was recorded. The formal first information report was drawn at 11.45 am, the same day by the then officer-in-charge Sub Inspector S K Sinha (PW 8) of Bela Police Station against all the three accused persons. After investigation, the Investigating Officer submitted the first charge sheet against Qurban Mian under Sections 302, 201/34 of Indian Penal Code on 13.03.2009. Cognizance was taken on 16.03.2009 and the case was committed to the Court of Session on 26.03.2009 and the same was registered as Sessions Trial No 293 of 2009 where after, upon transfer, came on the file of the trial Court. Charge against Qurban Mian was framed on 17.10.2010 under Sections 302/34 and 120B of Indian Penal Code to which he pleaded not guilty and claimed to be tried.

4 Supplementary charge sheet against the rest two accused Halima Khatoon and the instant appellant was submitted by the Investigating Officer on 13.10.2010. The case was, thereafter, committed to the Court of Session on 10.12.2010 where it was registered as Sessions Trial No 718 of 2010 upon transfer of case to the trial Court. Charge under Sections 302/34 and 120B of Indian Penal Code was framed against the appellant and his mother Halima Khatoon (co-accused) on 07.05.2011. They pleaded not guilty and



claimed to be tried. By order dated 07.06.2011, the two cases were amalgamated where after all the three accuseds were tried together and after closure of the prosecution case, the statement of the accused persons under Section 313 of Criminal Procedure Code was recorded on 27.05.2013.

5 The defence of the accused is complete denial of the occurrence and their false implication. No oral or documentary evidence has been adduced on behalf of the accused.

6 Altogether eight witnesses have been examined by the prosecution. PW 1 Md Ilahi is the brother of the deceased. He is not an eye witness though he claims to have reached the place of occurrence immediately after the alarm raised by the informant when the incident was disclosed to him. He has narrated the incident in the same manner as the informant. He has deposed for the first time in the Court.

7 PW 2 Md Jahangir is an eye witness. He claims to have seen the appellant assaulting the deceased. He also claims to have seen the other co-accused Qurban Mian and Halima Khatoon at the place of occurrence. The ocular account of the manner of occurrence has been narrated by PW 2 exactly as narrated by the informant. He stated about the assault by knife by the appellant aided by the other two co-accuseds and carrying away of the victim on the



shoulder by the appellant towards the north from the place of occurrence. He also states that the appellant had threatened to inflict blow on any one who would come to rescue of the deceased (victim)

8 Statement of PW 3 Md Usman was recorded one day after the incident. He claims to have reached the place of occurrence immediately after the occurrence had taken place. Upon his arrival, he saw two to four persons standing there and blood stains on the ground. He also claims to have participated in the search of the victim in the night and that information was given to husband of *Sarpanch* who had also participated in the search in the night and also narrates about recovery of the dead body from the ditch in the morning of 07.12.2008.

9 PW 4 Md Azizur is neighbour of the informant and son of Gulden Mian, next to whose house the occurrence is said to have taken place. He claims to have reached the place of occurrence upon alarm raised by the informant and states to have seen blood stains on the ground in front of his house and that the victim could not be traced in the night. He claims to have seen many other persons on his arrival at the place of occurrence. Surprisingly, in his cross-examination, he omits to mention seeing PWs 1, 2, 3 or 5 upon his arrival at the place of occurrence. He has stated that police had collected the blood-stained soil and the fact that the husband of the



Sarpanch had arrived at the night. PWs 3 and 4 both are sons of Gulden Mian in front of whose house the occurrence is said to have taken place.

10 PW 5 Md Shamsuddin claims to have heard the cry of the deceased and upon hearing such cry, he claims to have reached the place of occurrence where he saw assault to the victim by the appellant aided by his father and mother Qurban Mian and Halima Khatoon and the fact that after the victim was killed, the dead body was carried away towards the north. He states about the search made in the night and recovery of the dead body, the subsequent morning. He also states that police officials of Bela Police Station had come at the place of occurrence and seized blood-stained soil and his signature on the seizure list. He has proved the place of occurrence in front of the door of Gulden Mian by the side of the road. He has also stated about means of identification being a solar light. He is a resident across the road from the house of Gulden Mian. He has also given a description of the place of occurrence. He claims to have reached the place of occurrence first after the alarm was raised. He saw the victim Md Ali bleeding and he has stated that he too raised alarm whereupon PWs 3, 4 and Asma Khatoon (the informant) came to the place of occurrence. He has stated that he could not come to the aid of the victim since the appellant was armed with knife. He, however, has



stated that Qurban Mian and Halima Khatoon were standing five feet away from the dead body and that other than exhorting the appellant, they were not participating in the assault. He has also stated that he could not catch the accused as he was brandishing the knife.

11 PW 6 is the informant,. She is the sister of the deceased Md Ali. She has supported the prosecution case in the dock. She has also stated that she was present in the morning at the time of inquest and the fact of her examination by the police. She has given a detailed narration of the events regarding the assault with dagger by the appellant aided or abetted by his father Qurban Mian and mother Halima Khatoon. She has stated about the arrival of Md Shamsuddin (PW 5) at the time of occurrence and the fact that Md Ali was carried away on shoulder by the appellant towards Fazlipur. She has stated in paragraph 13 of her deposition regarding the injuries on the neck, back, palm and leg of the dead body of Md Ali and the presence of blood on the dead body. She has also supported the presence of large quantity of blood stains on the ground at the place of occurrence.

12 PW 7 Dr Bipin Kumar was then posted as tutor, Department of FMT at the S K Medical College, Muzaffarpur. He had conducted the post mortem on the dead body on 07.12.2008 on the same day at about 1.15 pm. He has found the following ante mortem injuries on the dead body:



1 One incised wound with clean cut margins over right side of back of head 2 ½" x 1½" x bone deep.

2 One incised wound with clean cut margins over left side of neck 2 ½" below and medially to left angle of mandible 2 ¼" x ½" x muscle deep (Trachea level) cutting the blood vessels passing through and piecing the trachea.

3 One incised wound with clean cut margins 1" medial to injury No 2 1" x ½" x muscle deep.

4 One incised wound with clean cut margins over right palm below base of right thumb 1 ½" x ½" x muscle deep.

5 One incised wound with clean cut margins over left upper arm 2" x 1½" x muscle deep.

He has opined death of the victim due to shock and haemorrhage, as a result of the said injuries caused by sharp cutting object. His evidence supports the manner of occurrence.

13 PW 8, the Investigating Officer of the case was then posted as SHO, Bela Police Station. He claims to have recorded the *Fardbayan* of the informant upon which he had obtained her thumb impression and the signatures of three witnesses Md Ilahi (PW 1), Md Jahangir (PW 2) and Md Usman (PW 3). He has also identified his signature on the same. The *Fardbayan* has been marked as Exhibit 4. He has stated to have recorded the statement of witnesses and also of inspecting the place of occurrence situated two kilometers east of the



Police Station. He has supported the place of occurrence by the side of the road in front of the house of Gulden Mian. He has given the description of the place of occurrence and has stated to have seized blood-stained soil in presence of the witnesses and of preparation of seizure list (Exhibit 6). He has stated that thereafter, formal first information report was instituted by him upon return to the Police Station. He has further stated that upon completion of investigation, he submitted the charge sheet against accused Qurban Mian and the fact of submission of supplementary charge sheet by another Investigating Officer. The prosecution witnesses had been examined by PW 8 and he has carried out all the essentials of the investigation. He has stated that even though the occurrence took place within his Police Station jurisdiction, the dead body was recovered by officials of Mushari Police Station. He saw the dead body while it was being taken on a vehicle for post mortem examination and, thereafter, at the Mushari Police Station. The inquest has apparently been prepared at Mushari Police Station at 8.45 in the morning on 07.12.2008. The same bears signature of Md Zainul, own brother of PW 1 and one other person.

14 Mr Ajay Kumar Thakur appearing for the appellant submitted that the prosecution case, as presented at the trial, is doubtful and cannot be said to have been proved beyond all



reasonable doubts. He has further urged that the time and manner of occurrence is highly improbable. Even though some of the witnesses have deposed about giving information to the husband of the *Sarpanch* but no information has been given to the police in the night after the occurrence. Such unexplained and inordinate delay in lodging the first information report renders the prosecution case doubtful and unreliable. He has further submitted that even though the allegation is that the appellant was brandishing *Hasuli* (small knife) and after having assaulted the victim, he was carrying him on his shoulder, and even though the prosecution case is that PWs 1, 2, 3, 4 and 5 had reached the place of occurrence but surprisingly, none had captivated the appellant. It is an unnatural conduct. He has further submitted that the post mortem report does not support the manner of occurrence. He has further highlighted deficiencies in the prosecution case and submitted that the earliest version of the occurrence, which must have been narrated before the Mushari Police Station where the body, upon recovery, was taken and where the inquest was conducted, has been suppressed. He has criticized the medical evidence as it has not supported the prosecution case inasmuch as no piercing wound was found. He has further expressed surprise over the fact that even though inquest is said to have been done at 8.45 am, the *Fardbayan* of the informant is said to have been recorded by the Bela Police Station



at 8.30 am. He also submitted that non-examination of the police officials from Mushari Police Station is a serious flaw in the prosecution case.

15 Shri S N Prasad, learned APP for the State, on the other hand, has submitted that PWs 2, 3, 5 and 6 all have supported the place and manner of occurrence. Medical evidence supports the case of the prosecution. Blood stains have been found by the Investigating Officer which is evident from Exhibit 6. He has relied on the deposition of the Investigating Officer, more specifically paragraph 5 thereof to explain why even though body was recovered within the jurisdiction of Mushari Police Station, the case has been lodged at Bela Police Station, because the said occurrence had taken place within the jurisdiction of Bela Police Station. He has submitted that the eye witnesses are all reliable and trustworthy and that the prosecution has brought home the charges against the appellant beyond any shadow of doubt.

16 As regards the first submission made on behalf of the appellant that the time and manner of occurrence have not been proved beyond doubt, this Court would advert to the evidence of PWs 2, 3, 5 and 6 (informant). Their evidence is consistent to the extent that the place of occurrence is in front of the house of Gulden Mian by the side of the road. The Investigating Officer (PW 8) has also



described the place of occurrence as being in Dhiranpatti Mohalla in front of the house of Gulden Mian on the side of the road. He has given a brief description of the place of occurrence and, on visiting the place of occurrence, has stated to have seen blood stains. The blood-stained soil was seized from the place of occurrence in presence of two witnesses, namely, Md Shamsuddin (PW 5) and Md Azizur (PW 4) and a seizure list (Exhibit 6) was prepared. All the witnesses have stated consistently regarding the occurrence taking place between 11 to 11.30 pm and there is no iota of doubt and it can conclusive be held that sufficient evidence has been led to establish the time and place of occurrence.

17 The second submission on behalf of the appellant is that even though the occurrence is alleged to have taken place in the night between 11 to 11.30 pm, and even though intimation was given to the husband of the *Sarpanch* but no information has been given to the police at night. It is submitted that such delay in lodging of the first information report about 9 hours later at 8.30 am in the morning casts a serious doubt on the case of the prosecution as it leaves scope for improving or embellishing the allegations and, as such, the delay is fatal to the prosecution. In support of his submissions, the counsel for the appellant has relied upon judgments of this Court in the case of *Ramu Yadav & Others –Versus- State of Bihar, Cr Appeal (DB) No*



266 of 1993 decided on 11.07.2017 as also the case of *Meharaj Singh –Versus- State of UP, (1994) 5 Supreme Court Cases 188*. The aforesaid submission has to be considered keeping in view the background of the facts of the case in hand. From the prosecution case, it cannot be conclusively proved that death of the victim occurred then and there at the place of occurrence in the night between 11 to 11.30 pm. Allegation is of inflicting knife assault on the victim and carrying him away on the shoulder by the sole appellant. There is no allegation that the victim had been done to death at the place of occurrence itself. It was in these circumstances that the informant along with other PWs and the husband of *Sarpanch* undertook a frantic and expectant search for the victim. They could not have been sure of the death at night. Since the dead body has been recovered in the morning, the first information report has been lodged. In the facts and circumstances of the instant case, delay may not be fatal to the prosecution case as the sequence of events are indicative of natural conduct of the informant and other PWs who were making a search for the victim and not sure of his death till recovery of the dead body in the morning.

18 Another submission on behalf of the appellant is that the conduct of the informant and the prosecution witnesses are unnatural inasmuch as even though the sole appellant was the only



person inflicting knife blow upon the victim, and even though the informant and other witnesses have reached the place of occurrence either during the assault or immediately thereafter, none have taken any step to captivate or apprehend the appellant. Such submission has to be viewed in the factual background of the case. The brutal and gruesome manner in which the assault is narrated by the informant and PWs leaves little room for interference by the informant or other PWs. It is only natural that having witnessed such brutal assault, normally persons would retreat and not venture to intervene.

19 The other submission made on behalf of the appellant is that the medical evidence (post mortem report) does not support the prosecution case with respect to the manner of assault. The said submission is noted only to be rejected. The specific case of the prosecution is of repeated assault by small knife (Hasuli). Again, it would be apt to reiterate that the assault witnessed by the informant and eye witness is not said to have caused the death of the victim at night itself. The case of the prosecution does not stop there. It is the specific case of the prosecution that after being subjected to repeated assault by knife, the victim was carried away by the appellant. The doctor, who had conducted the post mortem, has found five incised wounds which have been quoted above. The nature of the multiple injuries clearly suggests that the same was inflicted by a sharp cutting



object and the cause of death is also due to shock and haemorrhage, as a result of those injuries. The post mortem was conducted at 1.15 pm in the afternoon of 07.12.2008 whereas the time of occurrence is between 11 to 11.30 pm. The doctor has opined the time of death to be 12 to 24 hours before the post mortem was conducted. This covers the period of time of occurrence also. Nothing has been solicited during course of cross-examination so as to discredit the medical evidence which fully supports the prosecution case.

20 One last submission made on behalf of the appellant is that the first information report has been lodged at 8.30 am in Bela Police Station whereas from the evidence of the Investigating Officer and perusal of the inquest report, it is evident that the inquest report was prepared at Mushari Police Station at 8.45 am. It is submitted by the counsel for the appellant that there must be a first version of the occurrence recorded at Mushari Police Station at the time the inquest was conducted. He submits that this first version has been suppressed and in view of the suppression of the first version, the entire case of the prosecution is doubtful and discredited. He relies upon the judgment reported in *2000 Cr Law Journal 2982 (Mohal Lal & Others –Versus- State of Rajasthan)* and in the case of *Kanhai Mishra @ Kanhaiya Misar –Versus- State of Bihar, AIR 2001 Supreme Court 1113*. From the consistent evidence on record, it is evident that the



initial place of occurrence is in front of the house of Gulden Mian by the side of the road within the jurisdiction of Bela Police Station. It is also the case of the prosecution that the dead body was recovered within the jurisdiction of Mushari Police Station. The Investigating Officer (PW 8) has recorded the Fardbayan near the house of the informant which is within Bela Police Station. PW 2 has also stated in his deposition that information was given both to Bela Police Station as well as Mushari Police Station. The evidence of PWs 1 and 3 clearly states that when the body was recovered, the Mushari Police came and took the same to the Police Station. Appraisal of the evidence of PWs 1, 2 and 3 leaves no room for doubt that information was given to both the Police Stations as the initial place of occurrence was within Bela Police Station and recovery of the body of the victim was within the jurisdiction of Mushari Police Station. Why the information has been recorded at Bela Police Station and why investigation has been done by officials of the Bela Police Station is explained by the statement of the Investigating Officer recorded during course of cross-examination wherein he has explained that even though the body of the victim was recovered from Mushari Police Station, investigation has been undertaken by the Bela Police since the place of occurrence is within Bela Police Station. From the said evidence of the Investigating Officer, the circumstances leave no



room for doubt that the first information report was normally and naturally registered and investigated by Bela Police Station. Incidentally, it may also be noted that in the inquest report conducted on 07.12.2008 at 08.45 am, no police case number was noted/inserted. Obviously, no FIR was till then registered.

21 Considering the facts and circumstances as indicated hereinabove, this Court is of the opinion that the prosecution has established the case beyond doubt on the basis of the evidence, both oral and documentary. The submissions of the counsel for the appellant do not warrant any interference with the order of punishment recorded by the trial Court.

22 For the foregoing reasons, the conviction and sentence awarded by the trial Court is upheld and the appeal is dismissed.

(Madhuresh Prasad, J)

(Kishore Kumar Mandal, J) I agree

(Kishore Kumar Mandal, J)

M.E.H./-

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