

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.864 of 2012

Arising Out of PS. Case No.-7 Year-2010 Thana- GOVINDPUR District- Nawada

Sahdeo Yadav, Son of Late Gujar Mahto, Resident of Village- Kamalpur, P.S.-
Govindpur, District:- Nawada

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Dr. Alok Kumar Alok, Advocate Mr. Pramod Kumar Verma, Advocate Mr. Ranjit Kumar Thakur, Advocate
For the State	:	Mr. Ashwani Kumar Sinha (App)

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 10-07-2018

We have heard parties and perused the records of this case.

This appeal has been filed assailing the judgment of conviction and sentence dated 08.08.2012 passed by Additional District and Sessions Judge-1, Nawadah in Sessions Trial No. 451 of 2010/ 31 of 2012 arising out of Govindpur P.S. Case No.07/2010 by which the appellant has been convicted for the offenses punishable under Sections 302/34, 448/34 of the Indian Penal Code and he has been sentenced to undergo rigorous imprisonment for life with a fine of Rs.10,000/- under Section 302



of the I.P.C. and in default of payment, he has further been sentenced to undergo simple imprisonment for six months.

The prosecution case, in brief, is that, on 7.2.2010 at about 6 p.m. the she-goat of Sahdeo Yadav had died and for that son of the Sahdeo Yadav, namely, Pramod Yadav and Vinod Yadav and his wife Nirmala Devi came to the house of the informant and started using filthy language and also threatened to kill. In the meantime, the informant's father Brahmdeo Mahto returned to his home from Govindpur Bazar and seeing the father of the informant, accused person again started using filthy language. Then the informant, to avoid any further quarrel, took her father inside the house and shut the door. In the meantime, Sahdeo Yadav armed with knife jumped into the house of the informant through boundary wall by using bamboo stairs and following him, his wife Nirmala and both sons, Pramod Yadav and Vinod Yadav and Ramnandan Yadav @ Rami Yadav, who was slaughtering the she-goat, also scaled and jumped in her *Angan*. Nirmala Devi and her both sons Pramod Yadav and Vinod Yadav and Ramnandan Yadav @ Rami Yadav caught the hand of Brahmdeo Yadav. Thereafter, when informant tried to save her father, the accused Sahdeo Yadav gave piercing knife blow in the abdomen of Brahmdeo Yadav. As a result of which, Brahmdeo Yadav became unconscious, upon which, the



informant came out and started crying. When she came back in her house, she found that her father was lying dead on the earth. Thereafter, all the accused persons fled away through the main road. The villager Siya Devi had seen the accused persons fleeing away from the house of the informant.

On the basis of aforesaid fardbeyan, the FIR was registered under Sections 457/302/504/34 of the Indian Penal Code vide Goivindpur P.S. Case No. 07 of 2010 against the co-accused including the appellant. The police took up the investigation of the case. After investigation, the police submitted charge sheet against the appellant. Thereafter, the Chief Judicial Magistrate took cognizance of the offence under Sections 302/448, 504/34 of the I.P.C and committed the case to the court of sessions, where charges were framed for the offence under Sections 302/34, 448/34, 504/34 of the I.P.C, to which, the accused person pleaded not guilty. Thereafter, trial started against the appellant.

During trial, the prosecution has examined altogether ten witnesses in support of its case. P.W. 1 is Dr. Raj Kishore Prasad, P.W. 2 is Rajkumar Paswan, P.W. 3 is Rinku Devi, P.W. 4 is Siya Devi, P.W. 5 is Parmeshwar Prasad, P.W. 6 is Umesh Prasad, P.W. 7 is Sumeshwar Lakada, P.W. 8 is Ram Vijay Kumar, P.W. 9 is Kailash Prasad and P.W. 10 is Md. Islam.



The defence has examined altogether four witnesses in support of its case. D.W. 1 is Shyam Sundar Prasad Yadav, D.W. 2 is Sunita Devi, D.W. 3 is Pramod Kumar and D.W. 4 is Vinod Prasad.

The trial court after hearing learned counsel 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, judgment of conviction and order of sentence, as aforesaid, has been passed.

Now this Court is required 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?

P.W. 1, who is the doctor, has stated in his testimony that there is charred wound but when it is compared with postmortem report, it appears that in the postmortem it is written that type of wound is penetrating. P.W. 2, is the Investigating Officer. Apart from other things, he has stated in his evidence that the deceased was wearing *Dhoti and Kurta*. Most importantly, he has stated that there was no blood found at the place of occurrence. P.W. 3, Rinku Devi, who is the informant of the case, has supported the First Information Report and has stated in detail that she-goat of the



family of Sahdeo Mahto ate the manure which was kept by them and as a consequence of that she died. This infuriated the family of Sahdeo Mahto and all the accused persons started abusing came into the house of the deceased and Sahdeo Mahto gave knife blow upon the deceased i.e. is the father of the informant. P.W. 4, Siya Devi, who happens to be wife of the brother of the deceased, has also supported the prosecution case. However, she has stated that she was in her house and on hearing alarm, she ran towards the house of the deceased and saw Rinku Devi, who was crying and specifically she had stated that no other person was present in the house. Her testimony raises a question upon account of occurrence given by the eye witness at the place of occurrence. In her cross-examination she has stated that she came after the death of the deceased and at that point of time only Rinku Devi was present. Thus, she could not see any accused/convicted person in the house and not only that she also did not see any other person present at the place of occurrence who are claiming to be the eye witnesses for example, P.Ws. 6, 7 and 8 who claim to be chance witnesses to have seen the occurrence. Of course, there are certain lacuna in investigation also. During the course of examination none of the witnesses have stated that blood was oozing out from the dead body and it was found sprayed upon the floor of the place of



occurrence which would have ordinarily happened, if a dagger injury was inflicted upon someone. That apart, in view of the testimony of Siya Devi, P.W. 4, it does not appear that any other persons were eye witness to the occurrence save and except Rinku Devi. Surprisingly, the first investigating officer i.e., P.W. 2, Rajkumar Paswan has stated in his evidence that the deceased was wearing *Kurta and Dhoti*, whereas, the second investigating officer, who has been examined as P.W. 7, has stated in the inquest report which is written in his handwriting that the deceased was wearing checked *Lungi* and red coloured printed underwear which the first investigating officer has not supported. In the inquest report also, it is written that from the left side of abdomen the intestine was coming out of the wound but it is not stated that there was any blood sprayed over the place of occurrence. This of course raises some doubt as to whether actually the occurrence has taken place at the place of occurrence shown by the prosecution or not?

It is to be noted further that in the inquest report it is stated that the same was prepared at 8:00 P.M. in the night in the light of gas lamp. It is further to be noted that according to the F.I.R., the informant came to the place of occurrence at about 6:00 P.M., informant came to the police station at 6:30 P.M. in evening and



given written complaint but the F.I.R. has been registered at about 10:00 P.M., i.e., after preparation of inquest report at the house of the deceased. This is supported by the testimony of the P.W. 3, in which she has stated that she went to the police station to lodge the complaint.

It is intriguing when the written report was given at 6:00 P.M., itself why F.I.R. was registered after visiting the place of occurrence at about 10:00 P.M.? P.W. 5, who is one of the witnesses of the inquest report and his son P.W. 8 have not stated anywhere as to why they were present at the time of occurrence at the place of occurrence at the brother-in-law's (Sarhu) house of P.W. 5 ? Moreover, P.W. 4, Siya Devi, who happens to be the sister of the deceased, has completely denied the presence of anybody save and except informant Rinku Devi at place of occurrence at the time of occurrence or even after passage of some period thereafter.

Learned counsel for the appellant has pointed out the aforesaid lacuna to impress upon us that in fact the place of occurrence shown in prosecution case is not exactly the place of occurrence as in such case blood must have been found there which was absent as per the testimony of the investigating officer.



Per contra, Sri A.K. Sinha, learned APP appearing for the State, has submitted that there may be some flaw in the investigation but that cannot go to the benefit of the accused persons specially in view of deposition of the Rinku Devi, P.W. 3, who is the informant and who has stood the test of cross-examination.

On analysis of the aforesaid facts and circumstances of the case, we are of the opinion that in view of the evidence of Rinku Devi regarding the manner of occurrence, place of occurrence and in participation of the accused person being the main assailant, she cannot be disbelieved and on that count there is only eye witness, the prosecution case cannot be thrown away. The ocular evidence supported by the medical evidence of the postmortem also suggests that the occurrence occurred with the help of knife.

However, at the same time, it would have to be considered by us as to whether the conviction should be under Section 302 or it can be held to be culpable homicide not amounting to murder under the exceptions carved out under Section 300 of the Indian Penal Code and thus, the conviction should be under Section 304 part I ? There is no doubt that merely a single blow is there as no repetition of blow has been found. Apart from the above, it is also apparent from the F.I.R. as well as the testimony of the P.W. 3, i.e.



the informant that the triggering point of the occurrence was the fact that she- goat of the other side consumed fertilizer due to which she died and which infuriated the family of Sahdeo Mahto as a result of which they came into the courtyard of the deceased and Sahdeo Mahto had given one blow by knife. It is also important to note here that he was using the knife for dressing the she-goat for consumption and seeing the informant under hit of anger, he came to the courtyard and that led to the occurrence. It is also pertinent to mention here that D.W. 1, Shayam Sundar Prasad Yadav has stated that the father of deceased Brahmdeo and assailant-appellant were full brothers.

Considering the entire fact and circumstances, we are of the opinion that the occurrence can be held to be under exception carved out under Section 300 IPC, i.e., culpable homicide not amounting to murder as we are of further view that the occurrence had taken place due to sudden provocation and on the fit of anger, the appellant Sahdeo Mahto made an assault upon the deceased. It is not a case that he brought the knife from somewhere and gave a knife blow rather he was working with the knife and the death of his she-goat infuriated him. In the fit of anger, he made assault with full knowledge that it may cause death but without intention to cause death as only single blow was made.



Accordingly, in our considered opinion, in the present case, the conviction has to be altered/modified from Section 302 to Section 304 Part I of I.P.C. and though sentence for imprisonment of life has been awarded but the same is required to be altered to the period of incarceration undergone by the the appellant as the office has reported that he has already completed 8 years 2 months and 26 days in custody.

As a result, this appeal is dismissed with modification/alteration in conviction from Section 302 IPC to Section 304 Part I IPC and his sentence is reduced to the period already undergone by him in custody.

Since, the appellant is in jail custody, he is directed to be released forthwith, if not wanted in any other case.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
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