

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 1006 of 2012

Arising Out of PS. Case No.-117 Year-2010 Thana- Piprahi District- Sitamarhi

1. Priyanka Devi W/o Vivek Singh,
2. Chhotu Kumar @ Akhlesh Singh, S/o Chandeshwar Singh
Both resident of village – Madhopur, Police Station – Piprahi, District –
Shivhar.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants : Sri Vikramdeo Singh, Advocate
Sri Raj Bansh Dubey, Advocate

For the State : Mr. Abhimanyu Sharma (A.P.P.)

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 12-12-2018

Two appellants have preferred the present appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) against judgment of conviction and sentence dated 29-06-2012 and 04-07-2012 respectively, passed by Sri Jagannath Rai, learned 1st Additional District & Sessions Judge-cum-Special Judge, Sitamarhi (hereinafter referred to as “Trial Judge”) in Sessions Trial No. 36 of 2011 (arising out of Piprahi P.S. Case No. 117 of 2010). By the said judgment, both the appellants were held guilty and convicted



for commission of offence under Sections 302/34 of the Indian Penal Code, 1860 (hereinafter referred to as “I.P.C.”). By order dated 04-07-2012, the learned Trial Judge sentenced both the appellants under Sections 302/34 of the I.P.C. to undergo rigorous imprisonment for life and to pay a fine of Rs. 20,000/- (twenty thousand) each. In case of default in payment of fine, they have been directed to further undergo simple imprisonment for two years.

2. Short fact of the case is that on 12-12-2010 at 9:00 AM, the officer incharge of Piprahi Police Station namely Sri R. Mishra (P.W.5) recorded *fardbeyan* of Manisha Devi (P.W.3) wife of late Mukesh Kumar Singh (deceased). The said *fardbeyan* was recorded in the house of the informant in village – Madhopur. The informant (P.W.3) in her *fardbeyan* stated that in the preceding night at about 6:30-7:00 PM, her husband Mukesh Kumar Singh (deceased) had gone back side of his house near bamboo orchard for correcting the light of generator. As soon as he reached there, the wife of Vivek Singh (younger brother of the husband of informant) namely Priyanka Singh (appellant no. 1) and her another younger *devar* (brother of husband) Chhotu @ Akhilesh (appellant no. 2) inflicted blow of iron *daw* on the head of her husband with a view to kill him. The head of the husband



was badly injured and blood started oozing out. Her husband was sent for treatment to S.K.M.C.H., Muzaffarpur, where during treatment in the night itself he died. The reason for the occurrence was explained by the informant that Priyanka (appellant no. 1) was having illicit relation with Chhotu @ Akhilesh (appellant no. 2), which was being opposed by her husband and with a view to take revenge, both the accused persons by giving blow through iron daw had killed her husband and while fleeing away, they concealed the daw in the house. The informant claimed that Priyanka Devi (appellant no. 1) and Chhotu @ Akhilesh Singh (appellant no. 2) with common intention had killed her husband. The said *fardbeyan* was read over to her and after finding it correct, the informant put her signature on the *fardbeyan*. As a witness, one Mohan Singh (not examined) had also put his signature on the *fardbeyan*.

3. On the basis of *fardbeyan*, on the same date i.e. 12-12-2010, a formal F.I.R., vide Piprahi P.S. Case No. 117 of 2010, was registered for offence under Sections 302, 34 of the I.P.C. against both the appellants. During investigation, accusation was found true and as such, on 31-12-2010 chargesheet was submitted against both the accused/appellants and thereafter, on 04-01-2011 learned Sub Divisional Judicial



Magistrate, Sheohar took cognizance of the offence. After completion of formalities under Section 207 of the Cr.P.C., the case was committed to the court of sessions on 19-01-2011 and thereafter, it was numbered as Sessions Trial No. 36 of 2011. In the case, on 14-02-2011 joint charge was framed against both the appellants under Sections 302/34 of the I.P.C.

4. To establish its case on behalf of the prosecution, altogether six witnesses were examined. Out of six witnesses, P.W.2 Sunaina Devi (mother of the deceased as well as mother of appellant no. 2) and P.W.3 Manisha Devi (informant and wife of the deceased) were examined as eye-witnesses to the occurrence. P.W.1 Chandeshwar Singh (father of the deceased and father of appellant no. 2) immediately after the occurrence arrived at the place of occurrence and in injured condition, the deceased disclosed that he was attacked by both the appellants. This witness is also witness to the seizure list relating to seizure of *shawl* of the appellant no. 1 (Priyanka), her broken pieces of bangles, towel and blood soaked soil. P.W.4 Birendra Kumar Singh is the hearsay witness and also witness to the seizure list in respect of recovery of iron daw concealed beneath the cot of appellant no. 1. P.W.5 Ramashish Mishra on 12-12-2010 was officer incharge of Piprahi Police Station and P.W.6 Dr. Bipin



Kumar on 12-12-2010 at 2:15 PM had conducted *post-mortem* on the dead body of the deceased. He proved the *post-mortem* report, which was marked as Ext.7.

5. After completion of the prosecution evidence, on 23-06-2012, evidences and circumstances brought on record during the trial were explained to both the appellants and their statement under Section 313 of the Cr.P.C. was recorded, in which, they claimed to be innocent and also claimed about false implication, however; no witness was examined on behalf of the defence.

6. Sri Vikramdeo Singh, learned counsel assisted by Sri Raj Bansh Dubey, learned counsel for the appellants, after placing entire evidence, has argued that it was a case of false implication. He submits that the prosecution has not come out with true story, rather the prosecution has suppressed the first version of the case. Referring to evidence of P.W.1 Chandeshwar Singh, he has argued that this witness in his evidence has stated that while the injured was carried to S.K.M.College & Hospital, Muzaffarpur, Police Officer of Ahiyapur Police Station had recorded his *fardebayan*, however; said *fardebayan* was suppressed by the prosecution and this is the reason that the case has been



initiated on the basis of *fardbeyan* of the wife of the deceased, who was examined as P.W.3.

7. Learned counsel for the appellant further submits that though recovery of daw was shown from the house of the appellant, but fact remains that the daw can be found in the premises of anyone. He submits that neither in the seizure list, it was indicated that daw was stained with blood nor the said daw was sent for chemical examination to the Forensic Science Laboratory. Accordingly, learned counsel for the appellants tried to persuade the Court that prosecution has not been able to establish its case beyond all reasonable doubt and as such, it is a fit case for interference with the judgment of conviction and sentence.

8. Sri Abhimanyu Sharma, learned Addl. Public Prosecutor, while opposing the appeal, has argued that it is crystal clear case of the prosecution, which cannot be examined with any doubt. He submits that P.W.1 is none else but father of the deceased as well as own father of appellant no. 2. This witness in categorical term has stated that immediately after hearing the cry, he rushed to the place of occurrence and saw his son (deceased) in injured condition and to him the injured described that he was inflicted injury by both the appellants. Sri



Sharma submits that besides the case based on the evidence of eye-witness, the case is also based on oral 'dying declaration'. He further submits that P.W.2 (mother of the deceased as well as mother of appellant no. 2) has also supported the prosecution case to the extent that while after hearing cry, she following the informant reached to the place of occurrence, she saw both the accused persons fleeing away. Similarly, P.W.3 (informant) is the eye-witness and she too had seen both the appellants after committing crime fleeing away. The informant (P.W.3) was also informed by the deceased that both the appellants had inflicted injury on her husband. P.W.4, who is an independent witness and hearsay, is also witness to the seizure list in respect of seizure of iron daw, which was concealed under the cot of appellant no. 1. Sri Abhimanyu Sharma has further argued that though all the witnesses have consistently deposed what they have stated during investigation, from the defence side, no adequate cross-examination was done. Meaning thereby that all the witnesses had stood the test of credibility of their evidence.

9. Besides hearing learned counsel for the parties, we have minutely examined entire evidence and after going through the same, *prima facie*, we are of the opinion that the learned Trial Judge has rightly passed judgment of conviction and sentence



warranting no interference. However, it would be necessary to discuss the evidences, which have come during the trial.

10. P.W.3 Manisha Devi is the informant and wife of the deceased. In her evidence, she stated that occurrence had taken place on 11-12-2010 in the evening in between 6:30-7:00. At that very time, she was cooking. Her husband was operating generator and for doing some work in generator, he had gone backside of the house. Both the appellants, with pre-planned manner, were present there and gave blow of iron daw on the head of her husband and brutally injured him. Her husband started crying. Thereafter, she, her mother-in-law (P.W.2), father-in-law (P.W.1) and her children rushed there and saw that appellant no. 1 Priyanka (appellant no. 1) carrying blood stained *dabiya* was fleeing away towards eastern side. Her husband was carried to hospital, from where, he was referred to Muzaffarpur. This witness stated that her husband disclosed that Priyanka and Chhotu (both appellants) had assaulted her husband. She further stated that in between Priyanka and Chhotu, there was illicit relation, which was being opposed by her husband, otherwise there was no dispute. She further stated that while her husband was under-treatment, he died at 11.00 hrs. in the night in S.K.M.C.H., Muzaffarpur. It was further clarified that her



husband was three brothers namely Vivek, Akhilesh (appellant no. 2) and Mukesh (deceased). Priyanka (appellant no. 1) was wife of Vivek. On the next date, the police came to the place of occurrence and recorded her statement, on which, P.W.3 put her signature, which was marked as Ext.1/2 and she also proved the signature of one another witness Mohan Singh (not examined) on the *fardbeyan*. In paragraph – 5 of her evidence, she stated that during search, from the house of Priyanka (appellant no.1), a daw was found, which was under a cot regarding which, a seizure list was prepared in her presence. On the seizure list, Mohan Singh (not examined) and Birendra Singh (P.W.4) put their signature. At the place of occurrence, police also found blood stained shawl of appellant no. 1, towel, broken piece of bangles and blood soaked soil. This witness was cross-examined at length, however; on going through the same, it is evident that nothing could be extracted to see her evidence with any doubt, however in paragraph – 10 of her cross-examination, she stated that till being carried to Sheohar hospital, her husband was conscious and after Sheohar, she was not allowed to go ahead, since repeatedly she was crying and again-and-again was fainting. This witness denied the suggestion that her husband died due to accident and due to land dispute, the appellants were falsely implicated.



11. P.W.1 Chandeshwar Singh (father of the deceased and appellant no. 2) stated that on the date and time of occurrence, he was sitting with Ramadhar (not examined) and having some discussion, in the meanwhile, he heard the sound that Mukesh was attacked. The said sound was coming from the house of this witness, then he immediately rushed there and saw that his son Mukesh was in injured condition and blood was oozing out. At that very time, the injured was conscious and on being asked, he said that Chhotu @ Akhilesh (appellant no. 2) and Priyanka (appellant no. 1) both had assaulted him. Firstly, a rod blow was given on his head and thereafter, he was inflicted daw blow. He too stated that Priyanka and Chhotu were having illicit relation, which was being opposed by Mukesh (deceased). In paragraph – 3 of his evidence, he stated that on the next date, police arrived and recorded *fardbeyan* of his daughter-in-law (P.W.3) and from the place of occurrence, police recovered shawl of Priyanka (appellant no. 1), towel, red colour broken bangles and blood soaked soil. Regarding the same, the seizure list was prepared, which was signed by him as well as one Anil Singh (not examined). His signature on the seizure list was marked as Ext.1 and signature of Anil Singh (not examined) was marked as



Ext. 1/1. This witness too was cross-examined, but nothing could be extracted to create any doubt on his evidence.

12. P.W.2 Smt. Sunaina Devi is mother of the deceased as well as appellant no. 2 (Chhotu @ Akhilesh). She stated that on the date and time of occurrence, while her son Mukesh (deceased) was operating generator and providing electricity to others, the accused persons (appellants) had cut the wire. While the deceased went for starting generator, both the appellants caught him and injured him. On hearing alarm, this witness went nearer to Mukesh (deceased) and saw that he was in pool of blood. She too inquired from the injured, then he (deceased) said that Chhotu and Priyanka (both appellants) had assaulted him with *dabiya*. This witness too has stated that both the appellants were having illicit relation, which was being opposed by Mukesh (deceased). She too stated that at the place of occurrence, bangles of Priyanka and shawl etc. were found. This witness too was cross-examined, however; in cross-examination in paragraph – 9 she stated that while she reached the place of occurrence, she saw that both the appellants were fleeing away.

13. P.W.4 Birendra Kumar Singh in his evidence has stated that the date of occurrence was about 14 months back in the evening at 7.00 hrs. Mukesh Singh was slashed by Chhotu @



Akhilesh Singh and Priyanka and Mukesh was sent for his treatment to Sheohar from where, he was referred to Muzaffarpur where he subsequently died. He deposed that the said information was given by Sri Chandeshwar Singh (P.W.1), then this witness went to the house of Mukesh in the village – Madhopur. On the next date of the occurrence, Darogaji of Piprahi Police Station had come and from beneath the cot of Priyanka's (appellant no. 1) room, one blood-stained *dabiya* was recovered. In his presence as well as in presence of Mohan Singh Sarpanch (not examined), Darogaji had prepared seizure list, on which, he had put his signature, which was earlier marked as Ext. 1/5. He stated that Mukesh Singh (deceased) was elder brother of the husband of Priyanka. The name of husband of Priyanka was Vivek Singh. Third brother of Mukesh was Chhotu @ Akhilesh Singh (appellant no. 2). The reason for the occurrence was explained by this witness that in between Priyanka and Chhotu, there was illicit relation. Mukesh was running S.T.D. Booth and he was opposing the said illicit relation and this was the reason for his murder. This witness identified both the appellants in the court. In paragraph – 5 of his cross-examination, this witness stated that after the occurrence, he heard that murder of Mukesh had taken place due to illicit relation of accused persons. This witness is



hearsay witness and he deposed that he got information regarding the occurrence and involvement of the appellants from the mouth of P.W.1 Chandeshwar Singh, who in his evidence has already stated that the deceased before his death had given oral dying declaration before him that in the occurrence both the appellants were involved. This witness besides hearsay witness is also witness to the recovery of blood-stained dabiya from the house of appellant no. 1.

14. P.W.6 Dr. Bipin Kumar on 12-12-2010 was posted as Tutor in the department of F.M.T. at S.K.Medical College, Muzaffarpur and on the same date at 2:15 PM, he conducted *post-mortem* examination on the dead body of the deceased. In *post-mortem* examination, this witness has found following ante-mortem injuries and facts:-

“1. One incised wound over middle of face extending from left lower part of ear upto right middle part of ear 8” x 1½” x bone deep. Wound margins were clear cut, cutting skin, muscles and blood vessels. There was cut marks over under lying facial bone with cut and fracture of nasal bone.

2. Incised wound over right side of chin and lower lip 4” x 2” x bone deep. Wound margins were clear cut, cutting skin, muscles, blood vessels and lip lower with lower palate. There was cut marks over lower palate.

3. Incised would over top of head 5” x 1½” x bone deep. Wound margins were clear cut - on opening the skull



cavity there was fracture of skull bone with extra-dural haematoma.

4. Incised wound 3" x ½" x muscle deep over back of left ear. Wound margins were clear cut.

Opinion – The deceased died due to haemorrhage, comma and shock as a result of above mentioned injuries. Injuries were caused by heavy sharp cutting weapon.

Time since death - Within 12 to 24 hours from the time of examination."

This witness also proved the *post-mortem* report, which was in his pen and signature and same was marked as Ext.7. This witness had denied the suggestion given by the defence side that there was possibility of such injury due to fall of the deceased on such hard and penetrating articles.

15. P.W.5 Ramashish Mishra on 12-12-2010 was officer incharge of Piprahi Police Station. He proved formal F.I.R., which was marked as Ext.2. He also proved *fardbeyan* of the informant, which was marked as Ext.3. He proved the seizure list in respect of recovery of daw from the house of appellant no. 1, seizure list relating to recovery of shawl of appellant no. 1, towel, broken bangles of the appellant no. 1 and blood soaked soil found at the place of occurrence and the same was marked as Ext.5. He also proved the inquest report, which was prepared in Emergency ward of S.K.M.C.H., Muzaffarpur on 12-12-2010 at 13.05 hrs. (1:05 PM). After recording *fardbeyan*, he took up



investigation and in paragraph – 5 of his evidence, he stated that after the *fardbeyan*, he took up investigation and during investigation, he recovered blood stained iron daw from the room of appellant no. 1 Priyanka Devi situated in village Madhopur. He also recorded re-statement of the informant and then inspected the place of occurrence. In paragraph – 6 of his evidence, he has described about the place of occurrence, which was behind the house of the informant near the place, where the deceased had gone for correcting the generator where he was attacked by the appellants. At the place of occurrence, he had noticed blood and lady's shawl, bangles etc. for which seizure list was prepared. He recorded statement of witnesses and also accused. After obtaining inquest report, *post-mortem* report and finding the case true, with the approval of senior officer, he submitted chargesheet against both the appellants. This witness was not cross-examined by the appellants' side, whereas, both the appellants were participating in the proceeding and were present in court.

16. After completion of the evidence, entire circumstances were explained to both the appellants and their statement under Section 313 of the Cr.P.C. was recorded, in which, both the appellants claimed to be innocent and also



claimed regarding their false implication, however; no defence witness was produced. On examination of the entire evidence, it is evident that though, all the witnesses are consistent, nothing could be extracted in cross-examination to raise doubt on the evidence of either of the witnesses.

17. Sri Vikramdeo Singh, learned counsel for the appellants, though has argued that P.W.1 in his evidence had stated that in the hospital his statement was recorded, which was not brought on record, but fact remains that while P.W.1 was being examined, in his cross-examination, he categorically stated that his re-statement was not recorded by the police. In the case, we may not be oblivious of the fact that P.W.1 is none else but father of the appellant no. 2 and he in categorical term has stated in his evidence that while, immediately after the occurrence, he reached to the place of occurrence, the deceased gave oral dying declaration showing involvement of both the appellants. P.W.2 is mother of the appellant no. 2 and she too has supported the prosecution case and before her also, the deceased had given oral dying declaration implicating both the appellants. Similarly, P.W.3 wife of the deceased is consistent on the point that both the accused persons were seen fleeing away immediately after the



occurrence and the deceased had given dying declaration showing involvement of both the appellants.

18. Regarding the argument of Sri Vikramdeo Singh, learned counsel for the appellants that the weapon like *daw*, which was shown to be recovered from the house of the appellant no. 1, is a common article, which can be found everywhere appears to be not sustainable in the light of the evidence of P.W.3, who in her evidence, has stated that after the occurrence, she had seen this appellant i.e. appellant no. 1 (Priyanka Devi) carrying blood stained *dabiya* fleeing away and this witness has stated that the appellant had concealed the said *dabiya* in her house. This fact was corroborated by the evidence of P.W.5 Ramashish Mishra, who during investigation, had found the said *dabiya* in the house of the appellant no. 1. It is true that the prosecution has not been able to bring on record any material as to whether the said *dabiya* was sent for chemical examination to the Forensic Science Laboratory or not, but in view of specific credible ocular evidence, non-sending of *dabiya* to the F.S.L. may not be treated as a major fault warranting interference with the judgment of conviction and sentence.

19. In view of entire evidence, as we have discussed hereinabove, we are of the considered opinion that the learned



Trial Judge has rightly passed judgment of conviction and sentence, which requires no interference.

20. Accordingly, the judgment of conviction dated 29-06-2012 and order of sentence dated 04-07-2012 passed in Sessions Trial No. 36 of 2011 (arising out of Piprahi P.S. Case No. 117 of 2010) by Sri Jagannath Rai, learned 1st Additional District & Sessions Judge-cum-Special Judge, Sitamarhi is approved and appeal of both the appellants stands dismissed.

21. Since appellant no. 1 (Priyanka Devi) is on bail and her conviction and sentence has been approved, her bail-bond is, hereby, cancelled and she is directed to surrender forthwith before the court below forthwith. The court below is directed that in case, any delay occurs, he may take appropriate step for securing attendance of appellant no. 1.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.12.2018
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