

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1037 of 2012

Arising Out of PS.Case No. -57 Year- 2008 Thana -null District- MADHUBANI

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Sanjay Ram, son of Laturi Ram, resident of village Goarpar, P.S. Bihariganj,
District Madhepura. Appellant.

Versus

The State of Bihar. Respondent.

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Appearance :

For the Appellant : Mr. Praveen Kumar Agrawal, Advocate.

For the Respondent : Mr. Ashwini Kumar Sinha, A.P.P.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date: 29-03-2018

Heard learned counsel for the appellant and learned
A.P.P. for the State.

2. This criminal appeal has been preferred against the judgment and order of conviction dated 14.08.2012 and order of sentence dated 24.08.2012 passed by the Ad hoc Additional Sessions Judge No.5, Madhepura in Sessions Trial No.155 of 2008, arising out of Bihariganj P.S. Case No.57 of 2008, whereby the learned trial Court convicted the accused-Sanjay Ram for the offence punishable under Sections 302 & 307 of the Indian Penal Code (hereinafter in short referred to as 'IPC') and sentenced him to undergo rigorous imprisonment for life and also slapped him with a fine of Rs.10,000/- under Section 302 IPC and also sentenced him to undergo R.I. for 10 years and



slapped him with a fine of Rs.5000/- under Section 307 IPC and in default of payment of fine further undergo S.I. for one year. Both the sentences were directed to run concurrently.

3. The factual matrix of the case is that Bihariganj P.S. Case No.57 of 2008 was instituted under Section 302/324/307 IPC against Sanjay Ram on the basis of fardbeyan of Baso Devi, wife of Laturi Ram recorded by S.I. Ashok Kumar, Officer-in-Charge of P.S. Bihariganj on 01.05.2008 1:00 PM at the door of informant Baso Devi with the allegation in succinct that the daughter-in-law of the informant, namely, Rinku Devi was cooking in the house while the informant was chatting at the house of her brother located at a bit distance from her house, in the mean time, at around 12'o clock, she listened screaming from her house. Responding the same when she rushed to her house, she witnessed her son, Sanjay Ram assaulting his wife Rinku Devi by means of spade. He also assaulted his daughter Vandana Kumari aged about 5 years and his son, Pradeep Kumar by means of spade who succumbed to their injuries. Sanjay Ram with intention to do away with the life of Rinku Devi gave her several spade blows making her injured. On making alarm by the informant, locals rushed there then Sanjay Ram left the scene along with the spade. The bone of contention



is said to be that Sanjay Ram always used to enter into brawl with his wife over domestic matter. He had also extended threatening of dire consequences to the entire family and due to the aforesaid family feud he committed the murder of his daughter and son and assaulted his wife by means of spade with intention to do away with her life.

4. The aforesaid case was investigated by the police and on conclusion of investigation I.O. submitted chargesheet under Section 302 and 307 of IPC against the accused Sanjay Ram.

5. On receiving the case diary and chargesheet and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions. After commitment of the case and on transfer, finally the case came in seisin of Ad hoc Additional Sessions Judge-V, Madhepura for trial.

6. Charge under Sections 302 and 307 was framed against the accused. Charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether nine prosecution witnesses, namely, Janardan Ram as P.W.1, Shakuntala Devi as P.W.2,



Sikandar Yadav as P.W.3, Jagarnath Yadav as P.W.4, informant Baso Devi as P.W.5, Dr. Bipin Kumar Gupta, who conducted the autopsy of cadaver of the daughter and son of the appellant, as P.W.6, victim Rinku Devi as P.W.7, I.O. Sheo Sagar Singh as P.W.8 and Dr. Pradeep Kumar Jha, who had examined the victim Rinku Devi, as P.W.9. Out of the aforesaid witnesses P.W.1 and P.W.5 (informant) turned hostile. In documentary evidence, the prosecution has filed and proved some documents.

8. Statement of the accused was recorded under Section 313 Cr.P.C. The case of the defence is complete denial of the occurrence claiming himself to be quite innocent. The defence did not adduce either any ocular or documentary evidence in buttress of its case.

9. After hearing the parties and perusing the record, the learned trial Court passed the impugned judgment and order of conviction and sentence as detailed in earlier paragraph.

10. Being aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence, the convict Sanjay Ram has preferred this criminal appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellant beyond all shadow of doubt or not.



12. It is submitted by learned counsel for the appellant that the informant of the case, namely, Baso Devi (P.W.5) has turned hostile and has not supported the occurrence and other material witnesses, barring the victim Rinku Devi, do not happen to be eye witness of the occurrence. The solitary eye witness Rinku Devi happens to be mother of the deceased and highly interested witness of the case and her testimony does not stand corroborated by any other witness of the occurrence. It is further submitted that the I.O. has not seized the incriminating spade at the place of occurrence. It is also submitted that the appellant is mad and he cannot be convicted for the alleged offence. Thus, the prosecution has utterly and miserably failed to establish the prosecution case beyond all reasonable doubt, hence the appellant is entitled to be acquitted.

13. On the other hand, learned A.P.P. for the State advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that though the informant has turned hostile but victim Rinku Devi, who happens to be injured of the case, has fully supported the case. The prosecution case has also been corroborated by the other witnesses and it also stands corroborated by medical evidence. The learned trial Court, after correctly appreciating the



facts of the case and material available on record, has rightly passed the impugned judgment and order of conviction and sentence, which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. From perusal of record, it appears that to substantiate its case the prosecution has examined six material witnesses in the case. Out of them P.W.1-Janardan Ram and P.W.5-Baso Devi (informant) turned hostile, while P.W.2-Shakuntala Devi happens to be hearsay witness of the case and P.W.3-Sikandar Yadav and P.W.4-Jagarnath Yadav do not happen to be eye witness of the occurrence as P.W.2-Shakuntala Devi has stated in her examination-in-chief itself that she had seen two children i.e. one son and one daughter of Sanjay Ram (appellant) slitted but she had not witnessed their assailant. She had heard that Sanjay Ram had eliminated them. In para-9 of her cross-examination, she has denied to have witnessed any occurrence. In para-4 of her examination-in-chief, she has further stated that she had divulged to the police that she had heard that Sanjay Ram had committed murder of his children. But she has not disclosed the name and identity of the source of information. Rather in para-6 of her cross-examination, she has stated that none had divulged him personally about elimination



of his children by Sanjay Ram. None has come forward in corroboration of divulgence of the aforesaid occurrence to the said witness. Hence, for want for corroboration the aforesaid evidence of P.W.2, even a hearsay witness, is not admissible in evidence. In para-8 of her cross-examination, she has also stated that she had never witnessed any spar between the appellant-Sanjay Ram and his wife.

15. P.W.3-Sikandar Yadav in his examination-in-chief has simply stated that Sanjay Ram eliminated his one son and one daughter. He has also divulged to the police about elimination of his son and daughter by Sanjay Ram. He has also stated that Sanjay Ram had given spade blow on the neck of his wife but, in the said examination-in-chief, he has not specifically stated about witnessing of the aforesaid occurrence by him. Moreover, in para-5 of his cross-examination, he has stated that on the date of occurrence he had stepped out of his house for Bihariganj market and was standing on the road located in front of the house of Sanjay Ram for tempo. He got the tempo in the noon and proceeded to Bihariganj. In para-9 of his cross-examination, he has further stated that on the same day he regressed from the market at 6 PM and on regression from the market he had not gone to the house of Sanjay Ram. He had not



interacted anyone of his village and he had rushed to the Madhepura by motorcycle. As per the prosecution case, occurrence is of 12'o clock but as per the aforesaid account of the said witness he had not rushed to the house of the informant at that time rather had gone to Bihariganj market and had regressed to the house at 6 PM and then further proceeded to Madhepura on motorcycle. He has also not stated about listening of screaming from the house of the informant and listening of any occurrence either at the time of leaving for Bihariganj market or on regression from there. Thus, the said witness neither happens to be eye witness nor hearsay witness of the occurrence.

16. P.W.4-Jagarnath Yadav has stated in his examination-in-chief that at the time of occurrence he was regressing from his maize field and rushed to the house of Sanjay Ram listening hulla and witnessed a child murdered on the threshold and another at the courtyard, and a lady injured and writhing sustaining injury in her neck. The aforesaid statement of P.W.4 indicates that he had not witnessed the occurrence of assault on the aforesaid persons by Sanjay Ram and had also not witnessed Sanjay Ram at the place of occurrence rather had arrived at the place of occurrence after



culmination of the occurrence and decamping of appellant from place of occurrence. Though in para-3 of his examination-in-chief he has stated that Sanjay Ram had escaped after assaulting his children and wife but he has not divulged as from where he came to know about the aforesaid aspect of the case. Moreover, in para-6 of his cross-examination he has candidly stated that he had not seen anyone slitting and escaping. Thus, the aforesaid statement of P.W.4 eloquently indicates that the said witness is also not the eye witness of the occurrence.

17. The only witness left to be examined is the victim-Rinku Devi (P.W.7). From perusal of the testimony of the said witness, it appears that in her examination-in-chief she has fully supported the occurrence by stating that Sanjay Ram always used to abuse her. As she did not cough up the demand of money made by Sanjay Ram he snatching his 1½ years old son, namely, Pradeep Kumar from her lap slitted by means of spade. When her daughter Vandana Kumari escaped scaringly he made her fell down by his leg and then committed her murder by means of spade and also assaulted her thrice by means of the said spade in the courtyard inflicting injury on her head, temple, ear and face and her teeth was also broken. The said witness was subjected to cross-examination, but from perusal of the cross-



examination of the said witness, it appears that nothing convincing and cogent has been elicited in cross-examination of the said witness having potential to rule out her testimony regarding witnessing of the occurrence of committing murder of her two children by Sanjay Ram and also assaulting her by him by means of spade inflicting injury to her. It is settled law that even on the testimony of the solitary eye witness conviction of the accused can safely be made provided his/her testimony is wholly unblemished and reliable. As the said witness happens to be injured of the occurrence. Hence, she happens to be competent eye witness of the occurrence and in view of not eliciting of any convincing and cogent material in her cross-examination having potential to shatter her testimony, her presence at the place of occurrence and witnessing of the occurrence cannot be ruled out. Thus, in view of the facts and circumstances of the case, we find and hold that the said witness has fully supported the occurrence by adducing trustworthy, cogent, reliable and unblemished evidence.

18. I.O. Sheo Sagar Singh (P.W.8) has established the place of occurrence. He has also stated about recovery of the blood stained incriminating spade by digging out from the earth at the instance of appellant. He has also stated about seizure of



the blood from the place of occurrence.

19. Though the informant has turned hostile and has not supported the occurrence but as the victim Rinku Devi (P.W.7) has fully substantiated the occurrence, hence the factum of turning hostile by the informant, in our considered opinion, is not going to shatter the prosecution case by any stretch of imagination.

20. From perusal of the injury report of the aforesaid witness and autopsy report of the deceased, namely, Pradeep Ram and Vandana Kumari and testimony of Dr. Pradeep Kumar Jha (P.W.9), who had examined the victim and Dr. Bipin Kumar Gupta, who had conducted the autopsy of the cadaver of the two deceased, it appears that the Dr. Pradeep Kumar Jha (P.W.9) has found (i) one sharp cut injury of dimension of 6" x 2" x bone deep on the middle of the scalp, (ii) one sharp cut injury on the left side of scalp of the dimension of 4" x 2" x bone deep and (iii) one lacerated injury on front of neck of the dimension of 6" x 2" x muscle deep. All caused by sharp cutting weapon and grievous in nature. While Dr. Bipin Kumar Gupta (P.W.6) has found sharp cutting injury of the dimension of 2½ x ½" deep to bone on the left side of neck, below left ear. Muscle in the line of injury was cut major blood vessel was cut at the side of injury



as ante mortem injury on the person of the deceased Pradeep Ram and has opined the cause of death as hemorrhage and shock due to above injury caused by sharp heavy weapon. He has also found (i) one sharp cutting wound of the dimension of 4" x 1" deep to bone on left side of face horizontally cutting left ear in middle, red in colour. (ii) sharp cutting wound on scalp in the middle of the dimension of 4½" x 1" x deep to bone. (iii) sharp cutting wound on scalp 1" left to above wound of the dimension of 3" x 1" x deep to scalp as ante mortem injury on the person of the deceased Vandana Kumari and has opined the cause of death as brain injury, hemorrhage due to aforesaid injury caused by sharp heavy weapon. Thus, the ocular evidence also stands corroborated by medical evidence.

21. Albeit the defence has taken the case that the appellant was mad at the time of occurrence, hence he had no sense and understanding of committing the aforesaid occurrence and he cannot be convicted due to the aforesaid reason but the burden to prove that the appellant was mad at the time of occurrence squarely lies on the shoulder of the appellant. He had to discharge the aforesaid burden by getting him examined by medical board but he has not taken any effort in this regard. Moreover I.O. in para-12 of his cross-examination has stated



that at the time of apprehension of appellant-Sanjay Ram he was behaving normally and was not under influence of any intoxicated substance. In the aforesaid aspect of the case, we find and hold that the appellant was not mad rather was sane at the time of occurrence.

22. In view of the facts and circumstances and discussions made by us hereinabove, we find and hold that the prosecution has fully substantiated its case and succeeded to bring home the charge levelled against the appellant beyond all reasonable doubt by adducing trustworthy, reliable, cogent and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned trial Court is upheld and this appeal is, accordingly, dismissed.

(Dr. Ravi Ranjan, J.)

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
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