

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1045 of 2017

(Against the Judgment of conviction dated 20.06.2017 and the order of sentence dated 23.06.2017 passed by the Presiding Officer, F.T.C. No. I, Nalanda at Biharsharif in Sessions Trial No. 186 of 2005 arising out of Silaon (Nalanda) PS. Case No.-124 Year-2004)

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Pintu Kumar @ Chandra Prakash Verma, Son of Late Suresh Prasad, R/o Village- Sarilchak, P.S.- Nalanda, District- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with

Criminal Appeal (DB) No. 788 of 2017

Arising Out of PS. Case No.-124 Year-2004 Thana- SILAW District- Nalanda

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Chinta Devi W/o late Suresh Prasad, Resident of Village- Sarilchak, P.S.- Nalanda, District- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with

Criminal Appeal (DB) No. 1340 of 2017

Arising Out of PS. Case No.-124 Year-2004 Thana- SILAW District- Nalanda

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Sunil Prasad @ Ram Prakash Verma, son of Late Suresh Prasad, resident of Village- Saril Chak, P.S. and District- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Akhileshwar Prasad Singh, Sr. Advocate
		Mr. Bipin Kumar
For the State	:	Mr. Ajay Mishra, A.P.P.
		Mr. Abhimanyu Sharma, A.P.P.
		Mr. Satya Narayan Prasad, A.P.P.
For the Informant	:	Mr. Bal Bhushan Choudhary

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

(Per : HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)



Date : 13-07-2018

1. Heard learned counsel for the appellants and learned Additional Public Prosecutor, appearing on behalf of the State.

2. The above appeals have arisen out of the Judgment of conviction dated 20.06.2017 and the order of sentence dated 23.06.2017 passed by the Presiding Officer, F.T.C. No.1, Nalanda at Biharsharif in Sessions Trial No. 186 of 2005 arising out of Silaon (Nalanda) P.S. Case No. 124 of 2004, whereby and whereunder the appellants have been awarded sentence to undergo life imprisonment for the offence under section 302/34 of the Indian Penal Code with a fine of Rs. 10,000/- (Ten Thousand) and in default of which, further undergo rigorous imprisonment for two years.

3. The facts of the case, in brief, is that the informant, Maya Devi, wife of the deceased, gave her *fardbeyan* before the Sub-Inspector of Nalanda Police Station on 08.05.2004 at about 4:00 pm. stating therein that on 05.05.2004, her husband, Mahendra Prasad told to Jagarnath Ravidas to plough his field but Jagarnath refused to plough his field as he had to plough field of Surens Mahto. She further stated that on the reply of Jagarnath, villagers Kapildeo Prasad, Tejeshwar Kumar, Rajendra Ravidas and others commented that Jagarnath will not plough field of



Mahendra Prasad but plough the field of Suresh Mahto as there was rumor in village that Jagarnath Ravidas has illicit relation with wife of Suresh Mahto. This word was communicated by Jagarnath Ravidas to wife of Suresh Mahto then wife of Suresh Mahto threatened to give lesson. She further alleged that in the morning of 16.05.2004, the above named accused persons were hidden in *Khalihan*, when her husband was going to his *Khalihan* to tie up bundle of wheat crop at about 5:00 am. She further alleged that all the above named accused persons with common intention knocked down her husband and sat on chest and assaulted him by means of lathi, danda and bricks on his whole body. They did not give him any moment to cry. She has further stated that Pawan Kumar saw the occurrence and cried. The villagers went there then accused persons fled away. She further stated that her husband sustained injuries and became unconscious. He was brought to P.M.C.H. Patna for treatment but he could not be admitted. Thereafter, injured (deceased) was brought to clinic of Dr. Pradeep Kumar in Patna where he died on 07.05.2004 during the course of treatment.

4. On the basis of the aforesaid *fardbeyan* of the informant/Maya Devi, Silaon (Nalanda) P.S. Case No. 124 of 2004 was registered against the accused persons under section 302/34 of the Indian Penal Code. After investigation, the Police submitted



charge-sheet against all the accused persons on 21.08.2004 and thereafter, cognizance has been taken under section 302/34 of the Indian Penal Code and the case was committed to the Court of Sessions for Trial on 04.03.2005. On 11.11.2005, charge was framed under the aforesaid section against all the accused persons, including the appellants to which they pleaded no guilty and claim to be tried.

5. During trial, the prosecution has examined altogether 12 witnesses. P.W. 1/Pawan Kumar, P.W. 2/Sujata Kumari, P.W. 3/Mahesh Prasad, P.W. 4/Lakhan Mahto, P.W. 5/Maya Devi, who is the informant, P.W. 6/ Raj Kumar Prasad, P.W. 7/Ram Briksha Prasad, P.W. 8/Dr. Mehilal Singh, P.W. 9/Diloo Lohar, P.W. 10 Shyam Kishore, P.W. 11/Jai Prakash and P.W. 12/Sidhi Nath Mahto. P.W. 1 and P.W. 5 are the eye witnesses.

6. In order to establish the charges, the prosecution has proved the following documents as Exhibits :-

Exhibit – 1 Signature of the informant

Exhibit – 2 Postmortem Report

Exhibit – 3 Fardbeyan

Exhibit – 4 Formal First Informant Report

Exhibit– 5 Contents of para-3 of the case diary regarding Inquest Report.



Exhibit – 6 Certified Copy of the Enrollment Register

Exhibit – 7 Certified Copy of Judgment

Exhibit – 8 Certified Copy of FIR & Charge-sheet.

7. The statements under section 313 of the Code of Criminal Procedure were recorded, in which the appellants have denied the allegations and claimed themselves to be innocent.

8. The Defence did not produce any witness on its behalf though the accused persons denied the facts and the manner of occurrence and said that they are innocent and have falsely been implicated in the present case.

9. Before Proceeding further, it would be necessary to firstly examine the evidence of the prosecution witnesses :-

P.W. 1/Pawan Kumar, who is the brother of the deceased, has stated in his evidence that in the morning on 06.05.2004 at 5:00 am. he was watering on his house. On the cry of Akali Devi (not examined) “*mar rahal-mar rahal*”, he went there and saw that Sunil Kumar, Indu Kumar and their mother Chinta Devi were pulling his brother by tying rope on his neck. On seeing him, the accused persons left the rope and started assaulting on the head and chest of his brother by bricks. Besides him, Rajendra (not examined), Maya Devi/P.W. 5, Tishwar Prasad (not examined) and many others reached there then the accused



persons fled away. He saw his brother laying in unconscious condition.

This witness took his brother to Dr. Mathura Prasad at Biharsharif. Doctor advised to take him to P.M.C.H., but he did not give any treatment. This witness took his brother to P.M.C.H., Patna but there also he was not admitted and was told to take him to Dr. Pradeep at Kankarbagh. Thereafter, he took his brother to Dr. Pradeep where he was given treatment, but on 07.05.2004 at 7:00 P.M. in the evening, his brother died.

This witness took papers from the Doctor, obtained the report and thereafter went to Nalanda Police Station where wife of the deceased lodged the case.

This witness, in his cross-examination, has stated that there is a big Hospital in Biharsharif, but he did not take his brother there. He also stated that there was mark of rope on the neck of his brother and there was injury on his leg also. He also stated that he did not try to save his brother, villagers also did not try to save him, although they all had reached there within 15 seconds.

P.W. 5/Maya Devi is the informant and wife of the deceased. She has re-stated her statement as made in the First Information Report, which is not necessary to be reiterated.



This witness has proved his signature (Exhibit-1) on the *fardbeyan*. In her cross-examination, she stated that her husband had no enmity with the accused persons. She has also stated that she saw blood oozing out from the wound on his leg. She further stated that no one is ready to give evidence due to fear because two witnesses namely, Tejeshwar and Shiwam Chaudhary, have been killed by Sunil Kumar and his brother-in-law.

P.W. 2/Sujata Kumar, P.W. 3/Mahesh Prasad, P.W. 4/Lakhan Mahto, P.W. 6/Raj Kumar Prasad, P.W. 7/Ram Briksh Prasad. P.W. 11 Jay Prakash and P.W. 12/Siddhi Nath Mahto ; all the above witnesses have not given any statement on the occurrence and the prosecution have declared them hostile.

P.W. 8 Dr. Mahi Lal Singh has stated in his evidence that on 08.05.2004, he was posted at Sadar Hospital, Biharsharif and on that date, he had conducted *postmortem* of the deceased, Mahendra Prasad and found the following *ante mortem* injuries on his body :

External Injuries :

i. Abrasion 1" x 1/4" on the right side of face with browning crust;

ii. Abrasion 1" x 1/2" on the back right hand with browning crust;

Both the injuries were caused by Hard and Blunt substance; Age of both injuries within 24 to 48 hours;



iii. Bruise 3" x 1" on the left side of head, caused by hard and blunt substance, beneath the bruise there was extrusion of blood;

On dissection :

The skull- there was haemorrhage and blood over large area of surface of the left side brain under the meninges;

Death in his opinion was due to shock and brain haemorrhage as a result of above mentioned injury no. 3.

Time elapsed since death – 6 to 12 hours.

P.W. 9/ Dilloo Lohar, who is the investigating Officer of this case, has stated in his evidence that on 08.05.2004, he was In-charge of Nalanda Police Station. On that day, Maya Devi had come to the Police Station and got her statement recorded on the basis of which, Nalanda P.S. Case No. 124 of 2004 was registered. This witness has proved the fardbeyan (Exhibit-3), Formal F.I.R. (Exhibit-4) and copy of Inquest Report, which is recorded at para-3 of the case diary.

This witness has also proved the place of occurrence, which is a *Khalihan*.

He has also stated that due to transfer, he handed over the investigation of the case to the Officer-in-charge, Shyam Kishore Yadav.

In his cross-examination, he stated that Inquest Report was prepared in original as well as in carbon copy but neither the



original nor the carbon copy is attached in the case diary. He also stated that he did not find any blood at the place of occurrence. He did not find any mark of pulling of person on the earth. There was no stone-bricks in the *Khalihan*. Stock of straw was not scattered.

P.W. 10/Shyam Kishore Yadav, who is the second Investigating Officer of the case, has stated in his evidence that on 15.07.2004, he took over charge of investigation of this case and submitted the charge-sheet.

10. Learned counsels appearing for the defence have submitted that the entire occurrence is false, investigation is full of flaw and the Postmortem Report prepared by the Doctor is biased one. Therefore, prayer has been made for setting aside the judgment of conviction and order of sentence.

11. In support of the above submissions, learned counsel has drawn the attention of the Court on the following points :-

i) F.I.R. has been lodged after two days of the alleged occurrence. In the Formal F.I.R., date of occurrence was recorded as 08.05.2004, which was later modified as 06.05.2004, which creates doubt.

ii) In course of going from Biharsharif to Patna, Nalanda Police Station comes in the way, but no necessity was felt for giving information of the alleged occurrence there.



iii) It is surprising that a person, who is seriously injured and on deathbed, is brought to P.M.C.H., Patna from Biharsharif for treatment, but instead of admitting him there, he was referred to a Private Doctor. There the injured remains admitted for two days and then he dies. But neither anything has been brought on record as to under what conditions the injured had come there; and what treatment was given to him, nor the concerned Doctor was produced as a witness.

It is also surprising that without giving first aid to a person, who was on deathbed, he was brought to Patna from Biharsharif, whereas witnesses have stated that there is a big Government Hospital in Biharsharif.

The Doctor, who had firstly seen the injured at Biharsharif, has also not been produced as witness.

iv) The witnesses have stated about pulling the deceased by tying rope on his neck, about injury and blood oozing from the leg, but in the postmortem, the Doctor did not find any such injury.

Besides that, the Doctor found only two abrasions and one bruise on the body of the deceased and in his opinion, the cause of death is the above mentioned bruise. The Doctor gave clear opinion about the aforesaid two abrasions that these injuries have been caused within 24 to 48 hours, but with regard to bruise,



which in his opinion, is the reason of death, does not give any opinion as to when it has been caused.

v) The Investigating Officer does not find any piece of rope or bricks. He also does not recover any blood stained soil.

vi) The alleged occurrence has been supported by the wife of the deceased and her brother only. All other independent witnesses have turned hostile.

vii) There is no motive behind the alleged occurrence since according to First Information Report, Kapildeo Prasad, Tejeshwar Prasad and Surendra Ravidas had passed comments upon the appellant Chinta Devi, not the deceased.

12. Learned counsels appearing on behalf of the prosecution opposed the above submitted points and contended that the evidence of the prosecution is complete, two of the witnesses are eye witness of the occurrence and the evidence of the Doctor and Investigating Officer corroborates the same.

13. Having heard the submissions advanced on behalf of the parties and considering the entire evidence, we find force in the submissions advanced on behalf of the defence and we agree with the same. The benefit of doubt should have been given to the appellants and accordingly, they are given the benefit of doubt.



Accordingly, these appeals are allowed. The Judgment of conviction dated 20.06.2017 and order of sentence dated 23.06.2017 passed by the Presiding Officer, Fast Track Court-I, Nalanda at Bihar Sharif in Sessions Trial No. 186 of 2005 arising out of Silaon (Nalanda) P.S. Case No. 124 of 2004 are, hereby, set aside.

Since the appellants are in custody and their conviction and sentence have been set aside, it is, hereby, directed to release them forthwith, if not wanted in any other case.

(Arvind Srivastava, J)

(Rakesh Kumar, J)

(Rakesh Kumar, J)

Shailendra/-

AFR/NAFR	NAFR
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