

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.843 of 2013

Arising Out of PS. Case No.-57 Year-2011 Thana- JHAJHA District- Jamui *

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Jitendra Kr. Mathuri @ Jitu, son of Bigan Mathuri, resident of village -
Pipradih, P.S. - Jhajha, District - Jamui

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Sri Prakash Mahto, Advocate
For the Respondent/s : Sri Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 26-02-2019

1. The sole appellant, who has been convicted and sentenced in Sessions Trial No. 354 of 2011 has preferred the present appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) against his judgment of conviction and sentence. The appellant by judgment dated- 28.06.2013 has been held guilty and convicted for commission of offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”) and by order dated: 01.07.2013 he has been sentenced to undergo imprisonment for life under Section 302 of the I.P.C. and to pay a fine of Rs. 10,000/-. In case of default in payment of fine he has been directed



to further undergo simple imprisonment for two years. The judgment of conviction and sentence was passed by Sri Jai Ganesh Singh, learned Adhoc Additional Sessions Judge IV, Jamui (hereinafter referred to as the “trial judge”) in Sessions Trial No. 354 of 2011 (arising out of Jhajha P.S. Case No. 57 of 2011).

2. Short fact of the case is that on 24.06.2011 at 8.45 A.M. Sub Inspector of Police – Rajendra Paswan (not exsamed) of Jhajha Police Station recorded fardbyan of Ashok Kumar Jaiswal (P.W. 9) - husband of the deceased. In the fardbyan the informant disclosed that while he was on Jhajha Railway Station he was informed that his wife -Reeta Devi was stabbed by the appellant and she was carried to Referral hospital. On getting such information he reached to the Referral hospital and saw that her wife was being provided medical aid. Subsequently, considering seriousness of the injuries doctor of Referral hospital asked to immediately carry her to Patna Medical College And Hospital. Thereafter, he hired an ambulance and he along with Anil Prasad Raut (not examined), P.W. 6 – Sunita Devi, W/o Manoj Kumar Jaiswal, P.W. 7 – Sunita Devi, W/o Mantu carrying the injured on ambulance moved for Patna. It is case of the informant that on way the injured regained consciousness and she disclosed that while she was on her खिचरी फरोस shop (grocery shop) the appellant due



to old grudge arrived there and started abusing with other three unknown accused persons and had stabbed her and on alarm being raised he fled away. After some time on way to P.M.C.H. she succumbed to the injuries. Thereafter the dead body was brought back to his house. The occurrence had taken place on 23.06.2011 at 9.00 P.M. (night) and on the next morning i.e. on 24.06.2011 Police arrived and recorded fardbyan of informant in his house in village – Pipradih. On the basis of the said fardbyan on 24.06.2011 at 11.30 A.M. a formal F.I.R. vide Jhajha P.S. Case No. 57 of 2011 was registered for the offence under Section 302, 34 of the I.P.C. against the appellant and three unknown accused persons. During investigation the appellant surrendered on 15.07.2011. Police during investigation after finding the case true against the appellant on 31.07.2011 submitted charge sheet against the appellant. On 16.08.2011 learned Chief Judicial Magistrate, Jamui took cognizance of the offence and the case was committed to the court of Sessions on 23.08.2011 and it was numbered as Sessions Trial No. 354 of 2011. On 28.09.2011 charge under Section 302 of the I.P.C. was framed. The appellant denied the charges and claimed to be tried.

3. During the trial to prove the case on behalf of prosecution altogether eleven witnesses were examined. Out of



eleven witnesses P.W. 1, P.W. 2, P.W. 5 and P.W. 6 were examined claiming to be eye witnesses to the occurrence whereas P.W. 3 – Rajesh Kumar Jaina, P.W. 4 – Hippi Prasad Mathuri have been examined as hearsay witness and P.W. 7 – Sunita Devi, W/o Mantu besides hearsay witness was examined as witness before whom the deceased before her death had disclosed regarding the entire occurrence and involvement of appellant. P.W. 8 – Kailash Sah is a formal witness who is witness to the inquest report and he proved the inquest report which was marked as Ext. 1. P.W. 9 – Ashok Kumar Jaiswal is informant of the case and he is witness on the point that deceased before him in presence of P.W. 7 – Sunita devi and other witnesses before her death had disclosed regarding the occurrence and involvement of the appellant. He also proved the fardbyan which was marked as Ext. 2. Dr. Rajesh Kumar – P.W. 10 on 24.06.2011 was posted as Medical Officer in Jamui Sadar Hospital and on the same date i.e. on 24.06.2011 at 1.20 P.M. he conducted post- mortem on the dead body of the deceased and he also proved the post- mortem report which has been marked as Ext. 3. P.W. 11 - Rajiv Kumar on 24.06.2011 was posted as Sub Inspector of Police, Jhajha Police Station and he was entrusted with the investigation of Jhajha P.S. Case No. 57 of 2011. After



investigation and collecting material he submitted charge sheet with the approval of senior officials.

4. After completion of the prosecution evidence on 12.03.2012 the appellant was questioned regarding incriminating circumstances and evidences and his statement was recorded under Section 313 of the Cr.P.C. in which he claimed to be innocent. Learned trial judge after appreciating entire evidence has passed impugned judgment of conviction and sentence which has been assailed in the present appeal.

5. Sri Prakash Mahto, learned counsel for the appellant after placing entire evidence has argued that prosecution has not been able to establish its case beyond all reasonable doubts. He submits that though P.W. 1, P.W. 2, P.W. 5 and P.W. 6 have claimed to be eye witness to the occurrence, on examination of their evidence it is evident that they are not ocular witness to the entire occurrence, rather at best, it can be said that they had seen the appellant after the occurrence while he was fleeing away, otherwise, the claim of their being eye witness to the actual occurrence has got no credence. He further submits that it is true that prosecution has proceeded as if in the case there was oral dying declaration of the deceased but such oral dying declaration has not been consistently proved by all those witnesses in whose



presence it was alleged that she disclosed regarding the occurrence and as such, according to Sri Mahto, learned counsel for the appellant the story of dying declaration comes under cloud of doubt. He further submits that injury on the person of the deceased was sufficient to draw an inference that she was not in a position to make such statement as it has been stated that before death she disclosed regarding the occurrence. It has also been argued that during investigation the Investigating Officer has not prepared any seizure list to show regarding recovery of blood mark or weapon used in the occurrence. In sum and substance, it has been argued that prosecution has not been able to establish its case beyond all reasonable doubts, and as such, the judgment impugned requires interference.

6. On the contrary, Sri Ajay Mishra, learned Additional Public Prosecutor submits that it is full proved case of the prosecution that in the occurrence on a trivial issue the appellant had committed the crime and eliminated the wife of the informant brutally by stabbing. He submits that evidence of P.W. 1 & P.W. 2 is very much specific on the point that before the occurrence both the witnesses had gone to the grocery shop of the deceased for purchasing something in the meanwhile they noticed that appellant arrived there and started abusing and in their presence the



deceased was brutally stabbed and thereafter he fled away. Besides evidence of P.W. 1 and P.W. 2 there are other witnesses who had seen the appellant fleeing away immediately after the occurrence. He submits that even ignoring the case of oral dying declaration the evidence of eye witnesses as well as witnesses who have seen the appellant fleeing away was enough for passing judgment of conviction and sentence, and as such, there is no reason to interfere with the judgment of conviction and sentence.

7. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record and after going through the same, we are of considered opinion that learned trial judge has rightly passed judgment of conviction and sentence which requires no interference. However, before proceeding further it would be necessary to discuss the evidence of prosecution witnesses.

8. During the trial, P.W. 1 & P.W. 2 have come forward as eye witness to the occurrence. P.W. 1 – Lakhan Yadav in his evidence has stated that on 23.06.2011 at about 9.00 P.M. occurrence had taken place. At that very time he was on the grocery shop of Reeta Devi (deceased) for purchasing some articles. In the meanwhile, Jitu Mathuri arrived there and started using filthy language against Reeta Devi. At that very time Gore



Lal Pandit (P.W. 2) was also present there. Jitu was with other three accused persons. There were altogether four accused persons. This witness tried to restrain the appellant from using filthy language however Jitu Mathuri intruded into the shop. Till that time this witness and Gore Lal Pandit had got down from the shop. He heard the cry of Reeta Devi then he and Gore Lal Pandit also went inside the shop and saw that Jitu Mathuri had inflicted knife on the left rib, right knee and chest. After inflicting knife blow Jitu Mathuri with his companion fled away. Reeta Devi was carried to Government hospital wherein she was treated and then she was referred to Patna for better treatment. She died on way to Patna. This witness was cross examined at length however in cross-examination also he clarified that one day after the occurrence Police recorded his statement. In paragraph no. 20 of his cross-examination he stated that at about 8.45 P.M. he had reached the shop. On examination of his entire cross-examination we do not find anything which may create any doubt on the evidence of this witness.

9. Similarly, P.W. 2 – Gore Lal Pandit has corroborated the fact like P.W. 1. He too was cross-examined at length but nothing could be extracted to create doubt on his evidence.



10. P.W. 3 – Rajesh Kumar Jaina in his evidence has stated that at the time of occurrence he was inside his house. On hearing *hulla* he came out and saw that Reeta Devi had fallen in injured condition. She had fallen on the back side of the door of the shop. He went there and saw one boy fleeing away carrying knife. At that very time some one raised alarm that Jitendra after stabbing was fleeing away along with knife. This witness identified the appellant in dock. In paragraph – 9 of his cross examination he reiterated that he could identify only one person who was carrying knife however earlier prior to the occurrence he had not seen the said accused. In his cross -examination it has come that he arrived at the place of occurrence after about five minutes of the occurrence. His evidence can be considered only to the extent that in the shop the deceased was assaulted and she was lying in injured condition.

11. P.W. 4 – Hippi Prasad Mathuri is a hearsay witness and neighbour of the informant and he stated that on the date and time of occurrence after hearing *hulla* he came out and saw that Reeta Devi in pool of blood was lying on the back side of her shop. Reeta Devi was crying that she was stabbed. She was naming Jitendra Kumar as the person who had stabbed her. In paragraph no. 5 of his cross examination he clarified that



appellant had not stabbed Reeta Devi in his presence rather he heard from witnesses. His evidence can be noticed upto to the extent that immediately after the occurrence the injured in his presence had disclosed the name of appellant as assailant.

12. P.W. 5- Manoj Kumar Jaiswal and his wife P.W. 6 – Sunita Devi in their evidence have stated that they had gone to the shop of the deceased and after purchasing some articles while they were returning they heard sound of cry of deceased and went there and thereafter they saw the accused person fleeing away. P.W. 5 and P.W. 6 have stated that on the date and time of occurrence they were at the shop of deceased and purchasing something. In the meanwhile appellant arrived there and started abusing Reeta Devi. He (appellant) was saying that he was removed from the vendorship and he will not spare the deceased. P.W. 5 claimed that he persuaded the appellant on the date of occurrence at 8.45 P.M. and thereafter the appellant was disbursed from there. They further disclosed that while after purchasing some articles they were returning they heard the sound of cry of the injured and then runningly they arrived there and saw that the appellant was brutally inflicting knife blows on Reeta Devi. However, on attention being drawn to his previous statement it has come that they had only seen the appellant fleeing away immediately after



the occurrence. The said fact has also been corroborated during examination of the Investigating Officer – P.W. 11. In paragraph no. 14 and 15 of his cross examination this fact has come that those witnesses have only stated that they had seen the appellant fleeing away after the occurrence.

13. P.W. 7 – Sunita Devi, W/o Mantu in her evidence had categorically stated that she along with informant and other witnesses while carrying the injured on ambulance and proceeding to P.M.C.H., the injured (deceased) after gaining consciousness had disclosed as to how the appellant had injured her by stabbing. P.W. 7 is witness to oral dying declaration of the deceased. Same fact has also been corroborated in the evidence of P.W. 9 - Ashok Kumar Jaiswal (informant) of the case. P.W. 9 – Ashok Kumar Jaiswal has reiterated what he had stated in his fardbyan and he too has stated that on way to P.M.C.H. after the injured regained her consciousness had disclosed that she was stabbed by the appellant. Besides this, he has proved fardbyan which was marked as Ext. 2. This witness was cross examined however nothing could be extracted to raise any doubt on the evidence of P.W. 9.

14. P.W. 10 – Dr. Rajesh Kumar on 24.06.2011 was posted as Medical Officer in Sadar Hospital, Jamui and on the



same day at 1.20 P.M. he conducted post – mortem examination on the dead body of the deceased. In conducting post -mortem examination he noticed following facts:-

“I. Stab wound located at left axilla 1/2” x 1/4” x bone deep in dimension.

II. A medial distal thigh just above knee on left side another stab wound 1/4” x 1/4” x bone deep dimension.

III. Stab wound over lower part of chest, left lateral to G.P. sternnum 1/2” x 1/4” x 4” obliquely placed stabbing the ventricle of heart.

2. On dissection – chest cavity filled with fresh blood.

3. Stomach – filled with red colour fluid.

4. Lungs – Pale

5. Spleen – Pale

6. Liver – Pale

7. Kidney – Pale

8- Uterus – Small in size

9. All above injuries were ante mortem in nature and caused by sharp pointed weapon such as dagger.

10. In my opinion – death has been caused by above mentioned injuries

11. Time elapsed since death – till holding P.M. - within 48 hours.”

Besides this, he proved the post-mortem report which was marked as Ext. 3. On examination of the evidence of doctor as well as post-mortem report the oral evidence appears to be corroborated by medical evidence since three injuries were noticed on the person of the deceased.

15. P.W. 11 – Rajiv Kumar on 24.06.2011 was posted as Sub Inspector of Police, Jhajha Police Station. During his evidence he proved endorsement of Officer- in- charge of the Jhajha Police Station on the formal F.I.R., which was marked as Ext. 2/1. He also proved formal F.I.R. which was marked as Ext. 4. In his



evidence he stated that after being entrusted with the investigation he recorded restatement of the informant and he visited place of occurrence. In paragraph no. 8 of his evidence he deposed that at the time of inspection of the place of occurrence on floor and Southern wall he had noticed blood mark however it was difficult to get it and as such no seizure list was prepared. After collecting evidences with the approval of senior Police officials he submitted charge sheet.

16. P.W. 8 – Kailash Sah is a formal witness who has only proved the inquest report which was marked as Ext. 1.

17. On examination of the entire evidence it is established that prosecution has been able to establish its case beyond all reasonable doubts. The occurrence was seen by P.W. 1 and P.W. 2 and they in their evidence had consistently stated as to how the appellant stabbed the deceased. Besides this, there are witnesses on the point that immediately after the occurrence the appellant was seen fleeing away from the place of occurrence. During the trial the prosecution witnesses have proved the oral dying declaration of the deceased which was made by deceased while she was being carried to P.M.C.H. On way when she regained consciousness had disclosed the fact as to how the appellant had stabbed her. It is to be noted that before reaching



P.M.C.H. on way she succumbed to the injuries, and as such, her such oral dying declaration is unquestionable.

18. In view of entire evidence on record, which we have discussed hereinabove, we are of opinion that the prosecution has proved its case beyond all reasonable doubts, and as such, there is no reason to interfere with the judgment of conviction and sentence. Accordingly, the Appeal stands dismissed.

(Rakesh Kumar, J)

(Prakash Chandra Jaiswal, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12-03-2019
Transmission Date	12 -03-2019

