

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.836 of 2012

Arising Out of PS. Case No.-44 Year-2011 Thana- DIGHWARA District- Saran

Bharat Sah, son of Late Budha Sah, resident of Village- Dighwara, P.S.-
Dighwara, District- Saran (Bihar). Appellant.

Versus

The State of Bihar. Respondent.

Appearance :

For the Appellant : Mr. Manoj Kumar, Advocate.
For the Respondent : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
AND

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 26-02-2019

Heard Mr. Manoj Kumar learned counsel for the
appellant and Mr. Ajay Mishra learned Additional Public
Prosecutor for the State on this criminal appeal.

2. This criminal appeal has been preferred against
the judgment and order of conviction dated 11.06.2012 and
order of sentence dated 14.06.2012 passed by the learned
Additional Sessions Judge-XI, Saran at Chapra in Sessions Trial
No. 604 of 2011/76 of 2011, arising out of Dighwara P.S. Case
No. 44 of 2011, whereby the learned Trial Court convicted the
accused Bharat Sah under Section 302 of the Indian Penal Code
(hereinafter in short referred to as the 'I.P.C.') and sentenced him
to undergo rigorous imprisonment for life and also slapped him
with a fine of Rs.5000/- and in default of payment of fine to



further undergo imprisonment for six months under Section 302 I.P.C.

3. The factual matrix of the case is that Dighwara P.S. Case No. 44 of 2011 was instituted under Section 302 I.P.C. against accused Bharat Sah on the basis of fardbeyan of Nibha Kumari, daughter of Bharat Sah (appellant), recorded by S.I. Bindeshwar Prasad, S.H.O. of Dighwara P.S. on 17.04.2011 at 10:15 PM near the house of the informant with the allegation in succinct that on 17.04.2011 at around 5 PM her father, namely, Bharat Sah arrived at the house consuming liquor in inebriated condition and entered into a quarrel with her mother. Her father is mentally disturbed and sometimes behave like an insane person. In course of brawl her father took out knife from the house whereupon she stepped out of the house scaringly and made alarm for the help. In the mean time, on the screaming of her mother she again entered into the house and found the neck of her mother bleeding and lying on the ground and swarming and her father absconded. On the hulla, locals congregated there and rushed her mother to Dighwara hospital where the doctor referred her to the Patna Medical College & Hospital, Patna finding her condition precarious but her mother succumbed to her injury arriving at Patna. She has claimed that her father is



squarely responsible for the occurrence.

4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against the accused Bharat Sah under Section 302 I.P.C.

5. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions and after commitment and on transfer finally the case came in seisin of the learned Additional Sessions Judge-XI, Saran at Chapra for trial.

6. Charge against the accused Bharat Sah was framed under Section 302 I.P.C. Charge was read over and explained to him by the Court to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether eight prosecution witnesses, namely, Akalu Sah as P.W.1, Jaglal Sah as P.W.2, Chandrawati Devi as P.W.3, Rajesh Sah as P.W.4, informant Nibha Kumari as P.W.5, Santosh Kumar as P.W.6, Dr. Muneshwar Prasad Singh, who had conducted the autopsy of the cadaver of the deceased as P.W.7 and I.O. Bindeshwar Prasad as P.W.8. The prosecution has also filed and proved some



documents by way of documentary evidence in the case.

8. The statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence and has taken the plea of alibi. The accused has neither adduced any ocular nor documentary evidence in buttress of his 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 the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict Bharat Sah 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 reasonable doubts or not.

12. It is submitted by learned counsel for the appellant that admittedly there is land dispute between the father and uncle of the informant. The informant does not happen to be eye witness of the occurrence. She has seen only accused appellant fleeing away from the place of occurrence after the occurrence. I.O. has not recovered any bloodstained knife or



bloodstained attire of the deceased and as such no objective evidence has been brought on record by the prosecution. As per the account of the informant she has witnessed only one injury on the neck of the deceased but the doctor conducting the autopsy of the cadaver of the deceased has found five injuries on the person of the deceased. Hence the ocular evidence does not stand corroborated by the medical evidence. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellant beyond all reasonable doubt by adducing trustworthy, convincing and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellant by the learned Trial Court is liable to be set aside and the appellant is entitled to be acquitted.

13. Per contra, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that the informant happens to be eye witness of the occurrence and she has supported the prosecution case in toto. The ocular evidence also stands corroborated by the medical evidence as the doctor has found penetrating injury on the neck of the deceased and the learned Trial Court correctly appreciating the facts and evidence 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 case has examined six material witnesses in the case. Out of them Akalu Sah (P.W.1), Jaglal Sah (P.W.2) and Chandrawati Devi (P.W.3) have turned hostile, while Rajesh Sah (P.W.4) and Satosh Kumar (P.W.6) are hearsay witnesses of the case as Rajesh Sah (P.W.4) has stated in para-8 of his cross-examination that his niece (Nibha Kumari-informant) gave information of the occurrence to him on telephone. Moreover, the informant has not corroborated the factum of divulgence of the aforesaid occurrence to P.W.4 on telephone. Hence, for want of corroboration the aforesaid statement of P.W.4 is not admissible in evidence even as a hearsay witness of the case. Likewise Santosh Kumar (P.W.6) has stated in para-2 of his cross-examination that his brother-in-law Upendra informed him about the occurrence on telephone. He had not seen the occurrence rather has deposed on the basis of listening the occurrence. Moreover, the said Upendra Kumar has not been examined by the prosecution and he has not come forward to corroborate the factum of divulgence of occurrence



to P.W.6 on telephone. Hence, for want of corroboration, the aforesaid statement of P.W.6 is also not admissible in evidence even as a hearsay witness of the case. Said witness has also not been interrogated by the police during the course of investigation as stated by him in para-7 of his cross-examination.

15. Now, the only witness left to be examined is the informant Nibha Kumari (P.W.5). From perusal of examination-in-chief of the informant Nibha Kumari (P.W.5), it appears that she has stated that at the time of occurrence she was at her house located at Dighwara. Her father Bharat Sah, uncle Laxman Sah and aunt Chandrawati Devi started brawling with her mother Asha Devi. Her father took out knife. Then she stepped out of the house and started making hulla. Responding hulla 4-5 persons arrived there. Thereafter, she entered into the house and witnessed her uncle and aunt escaping from the house and her father also absconded. When she entered into the house she found the throat of her mother bleeding. She called 4-5 persons there and rushed her mother to the hospital. The doctor of the said hospital referred her to the Patna. Her mother succumbed to the injury on the way to Patna. Then she took the dead body of her mother to P.S. Dighwara, where her statement



was recorded. She has proved her signature on the fardbeyan marked as Ext.1. From perusal of the aforesaid examination-in-chief of the informant, it appears that actually the informant had not seen the occurrence of assault on her mother by her father as following the brawl between her father, uncle and aunt at one side and her mother on other side and taking out knife by the father she stepped out of the house to make hulla. After making hulla, when she entered into the house she noticed her uncle and aunt escaping from the house and her father absconded and her mother lying on the ground sustaining bleeding injury on her throat. The informant in para-2 of her cross-examination has stated that there was quarrel between the accused persons and her mother over partition of land. Her mother had asked Laxman for the partition. She had not asked her father for the partition. The aforesaid statement of the informant indicates that there was no dispute or differences between the deceased and the appellant rather it was between the deceased and uncle of the informant, namely, Laxman. As per the aforesaid statement as given by her in her examination-in-chief, uncle and aunt of the informant were indulged in the quarrel with the deceased at the time of occurrence and they were found escaping from the house immediately after the occurrence. The aforesaid facts and



circumstances of the case and the statement of the informant indicates towards the complicity of the uncle and aunt of the informant in the occurrence and not towards the appellant as there was no differences and dispute between the deceased and the appellant and the deceased had not claimed the partition of the property from the appellant, who happens to be husband of the deceased, and the informant has not seen the appellant assaulting the deceased by means of knife and her testimony cannot be relied upon to hold conviction of the appellant.

16. As per account of the informant (P.W.5) as given by her in para-3 of her examination-in-chief, at the time of occurrence besides the accused person and her mother, Moti and sister-in-law of the Moti were present there but the aforesaid two persons, who happen to be most competent witnesses of case, have not been examined by the prosecution rather withheld by him and no plausible and convincing reason has been ascribed by the prosecution for their non-examination, hence adverse inference is drawn against the prosecution.

17. As per account of Santosh Kumar (P.W.6) as given by him in para-6 of his cross-examination, he has witnessed blood at P.O. but from perusal of the testimony of the I.O., it appears that I.O. has nowhere stated about finding or



recovery of any blood at the place of occurrence. He has not even seized the bloodstained attire of the deceased or knife used in the assault. Thus, no objective evidence has been brought on record by the prosecution.

18. As per the prosecution case, as adumbrated in the fardbeyan and deposition of the informant, the informant has witnessed only one injury on the neck of her mother, but from perusal of the postmortem report, marked as Ext.2, and the evidence of the doctor (P.W.7), who conducted the autopsy of the cadaver of the deceased, it appears that the doctor has found altogether five injuries on the person of the deceased. Out of them three are visible penetrating injuries on the neck, shoulder and skull of the deceased. Thus, the aforesaid unreliable ocular evidence of the informant also does not stand corroborated by the medical evidence.

19. In the aforesaid facts and circumstances of the case and the discussions made by us herein above, we find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case and complicity of the appellant in the occurrence beyond all reasonable doubt by adducing convincing, cogent, consistent and worth credence evidence. Hence, the impugned judgment and order of conviction and



sentence passed by learned Trial Court against the appellant is set aside and the appellant is acquitted of the charge levelled against him giving him benefit of doubt. As the appellant is in custody, he is directed to be released forthwith from the custody, if not wanted in any other case. Accordingly, this criminal appeal is allowed.

(Rakesh Kumar, J.)

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.03.2019
Transmission Date	06.03.2019

