

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.663 of 2016

In
CRIMINAL APPEAL (DB) No.751 of 2016

Arising Out of PS. Case No.-166 Year-2013 Thana- NAWADA MUFFASIL District- Nawada

Guddu Thakur @ Guddu Kumar son of Rajendra Thakur, resident of village-
Chhatani, P.S.- Rajauli, District- Nawada.

... .. Appellant/s

Versus

The State Of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Baban Roy, Advocate as an Amicus Curiae.
For the Respondent/s : Mr. Binod Bihari Singh, Additional P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 19-09-2019

1. None appeared on behalf of the appellant. On account thereof, learned counsel Sri Baban Roy has been requested to assist the court as an amicus curiae.

2. Appellant Guddu Thakur alias Guddu Kumar vide Judgment of conviction dated 21.06.2016 and order of sentence dated 23.06.2016 has been found guilty for the offence under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of ten years as well as pay fine appertaining to Rs.5000/- in default thereof to undergo simple imprisonment for two months additionally, under Section 326 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years, under Section 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for



three years, Under Section 341 of the Indian Penal Code to undergo rigorous imprisonment for one month with a further direction to run all the sentences concurrently by the Additional Sessions Judge-III, Nawada, in Sessions Trial No. 88 of 2014/09/16 arising out of Nawada, Muffasil P.S. Case No. 166 of 2013.

3. Poonam Kumari (P.W.5), gave her Fardbeayan on 21.12.2013 at about 8 A.M. disclosing therein that in the preceding night at about 10.00 P.M. while all the family members have gone to asleep, her sister, Tusi Devi aged about 20 years gone to serve meal to her husband Guddu Thakur who did not take meal. After sometime, her brother-in-law directed her sister to bring meal. As soon as her sister gone to her brother-in-law with food, her brother-in-law began to assault her sister with Chura repeatedly as a result of which, her sister shouted. She immediately became unconscious due to her injury. All the family members rushed and found her brother-in-law indulged in assaulting the victim (her sister) with Chura. Her sister has been lifted to Sadar hospital, Nawada and therefrom, she has been referred to Patna. The other family members along with co-villagers anyhow managed to apprehend her brother-in-law Guddu Thakur alias Guddu Kumar and, kept him confined whole night. They have also informed the



police and, after arrival of the police she is recorded her fardbeyan side by side, the villagers her brother-in-law Guddu Thakur alias Guddu Kumar is also been produced. It has further been disclosed that during course of apprehension, the villagers have thrashed the Guddu Thakur alias Guddu Kumar on account thereof, he has sustained hurt.

4. After registration of Nawada Muffasil P.S. Case No. 166 of 2013, investigation commenced and concluding the same, charge-sheet has been submitted, whereupon trial commenced and concluded by way of Judgment impugned, subject matter of instant appeal.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial.

6. It has also been pleaded that the injured Tusi Kumari had developed illicit relationship with the co-villagers whereupon, she was not at all inclined to accompany with her husband, and having been protested at the end of the appellant over extra marital affairs the villagers assaulted him as well as the victim and then, got involved in this case with false and frivolous allegation. However, nothing has been adduced in the defence.



7. Altogether eight P.Ws have been examined in order to substantiate its case at the end of the prosecution who are P.W.1 Laxhman Thakur P.W.2 Sunil Thakur, P.W.3, Kanti Devi, P.W.4, Tusi Kumari (victim) P.W.5, Poonam Kumari (informant) P.W.6 Shyam Kishore Thakur, P.W.7 Dr. Akhilesh Kumar Mohan and P.W.8 Chandra Bhushan Kumar Jha, side by side has also exhibited, Exhibit-1 signature of informant over fardbeyan, Exhibit-2 injury report, Exhibit-3 charge-sheet, Exhibit-4 Formal F.I.R. As stated above nothing has been adduced in the defence.

8. While assailing the Judgment of conviction and sentence, it has been submitted at the end of learned Amicus curiae that the finding so recorded by the lower Court is not sustainable in the eyes of law whereupon it is fit to be set aside. In order to justify such plea it has been submitted that after going through the evidences of the respective PWs, it is evident that victim had stayed only four/five days after her marriage at her Sasural then, she came back to her Maiyka and since thereafter she remained without any legal reason. It is nowhere disclosed at the end of the witnesses including that of injured that she was inclined to join the society of the appellant and the reason is obvious on account of indulging under illicit relationship with her



co-villager and in the aforesaid background, she was not inclined nor she welcomed the appellant on his arrival.

9. The dubious character of the prosecution is found duly exposed as, no motive is there that means to say none of the witnesses has disclosed that appellant was very much aggrieved nor the victim has disclosed that she was ever taunted, tortured. None of the family members disclosed that there was any demand none has shown any kind of innocence so, the motive for causing occurrence is not at all substantiated and this probabalises the defence version with regard to victimization of the appellant as he protested her extra marital relationship. The rest witnesses have stated that they have gone to sleep in a room to leave only the appellant as well as victim. Victim has not disclosed that appellant was armed with any weapon since before. There happens to be specific disclosure that the appellant had kitchen knife in his hand and so, it was at the end of the victim to eliminate the appellant but any how he escaped and that happens to be reason behind presence of the injury having over the person of the appellant during course of scuffle which took place while appellant was protecting himself. It has also been pleaded in an alternative that in the background of suggestion it is apparent that victim was seen in compromising position with her, whereupon appellant protested



and in the aforesaid background villagers came and assaulted the victim as well as the appellant and that happens to be reason behind that although victim was taken to hospital, appellant did not though fardbeyan speaks about presence of injury over the person of the appellant. It has further been pleaded that the defence did not share burden like prosecution, rather only on the factum of preponderance of probability the version is to be narrated by way of dethroning the persecution version which, the defence succeeded. So submitted that in the background of the aforesaid nature of the evidence, the Judgment of conviction and sentence would not survive. Thus, the same is fit to be rescind.

10. On the other hand, learned Additional Public Prosecutor submitted that in terms of Section 134 of the Evidence Act, it is the quality not the quantity which attracts for proving the facts in issue. The facts in issue is having the murderous attack on the victim Tusi Devi and so it is the evidence of Tusi Devi which has got relevance. She has been examined as P.W.4 and during course of her examination/cross-examination the appellant failed to subsist her testimony and that being so, the Judgment impugned is fit to be confirmed.

11. P.W.7, the doctor who had examined the victim on 20.12.2013 at about 11:30 P.M found the following injury;



“1. Incised wound 2cm x 1/2 cm x 1cm deep, on the upper part of neck right side.

2. Incised wound 2cm x 1/2 cm x 1cm deep, on the upper part of neck on the right side.

3. Incised wound 2cm x 1cm x 2 cm deep, on the lower part of neck right side.

4. Incised wound 2cm x 1/2 cm x bone deep, on left side of face.

5. Incised wound 2cm x 1/2 cm x bone deep on left side of face.”

12. Injury no. 1, 2 and 3 on the right side of neck are grievous in nature and caused by sharp cutting weapon while injury no. 4 and 5 on the left side of face are simple in nature and caused by sharp cutting weapon. Time of injury within six hours. Injury no. 1, 2 and 3 bleed profusely. Patient refer to P.M.C.H. Patna. Doctor has also found these injuries could be caused by a knife. During cross-examination nothing substantial has been procured in order to create doubt over the findings so recorded by the doctor himself.

13. P.W.4, is the victim herself, she during her evidence has stated that on the alleged date and time of occurrence, while she was at her Naihar and her husband was also there, she took



meal to him whereupon, Guddu (husband) disclosed that at the present moment he is not willing to take meal. Then, thereafter, all the family members took meal. When other family members have gone to sleep, then thereafter, her husband demanded meal. As soon as, she gone near him with the meal, Guddu caught hold her finger and then, began to give indiscriminate kitchen knife blow causing injury over her neck, cheek left side. After sustaining injuries, she fainted. She regained her sense at P.M.C.H. After regaining sense she came to know that Guddu was apprehended by the villagers with the help of her family members and, on the following morning he was handed over to the police. Identified the accused. During cross-examination in para 4 she has stated that she was married two years ago. In para 5 she has stated that she stayed 4-5 days after the marriage at her sasural. In para 6 she has stated that now she is not ready to live with Guddu Thakur. Two brothers, father and wife of a brother is the family members at her Sasural. There was no partition in the family. In para 8 she has stated that Guddu Thakur used to visit her Maikie frequently. In para 9 she has stated that she has got no complain since before the occurrence against her husband. In para 10 there happens to be topography of her house. In paras 11 and 12 she has stated that her statement was recorded at PMCH. After regaining sense, she has



disclosed with regard to her assault to her parents who were present there. In para 13 she has disclosed that she had not entered in brawl with her husband before the occurrence nor she had tried to flee away from there just after sustaining injuries, she fell down and became unconscious. Guddu had caught hold her finger till she was conscious, she denied the suggestion that Guddu Thakur insisted upon to come to Sasural as his father was alone which she denied. She also denied the suggestion that on date of occurrence, Guddu had gone to Bidai and during course thereof he had seen her in compromising position with her paramour whereupon, the villagers assaulted her as well as Guddu Kumar. She also denied the suggestion that no such kind of occurrence had ever taken place.

14. P.W.8 is the Investigation Officer of the case. During course of his examination in chief, he has stated that on 21.12.2013 he was posted at Nawada Muffasil Police Station. After registration of the case, investigation was entrusted to him and during course thereof, he recorded further statement of the informant, visited the place of occurrence which happens to be the house belonging to the informant/ her parents having northern front. The happens courtyard in the middle of the house and the room lies around the aforesaid courtyard. In a room by west to the



courtyard, found blood. He disclosed boundary of the house as east Madan Thakur, West Yugal Singh, north road, south Lalan Singh. Recorded statement of relevant witnesses. Recorded statement of the injured on 08.01.2014, procured injury report and then, submitted charge-sheet after completing investigation. During cross-examination in para-9 he has stated that he had not mentioned at whose instance he had inspected the place of occurrence. In para-12 he has stated that he had not measured the area whereupon blood was spread over. He had not mentioned in case diary when occurrence took place. He had not mentioned the fact in the case diary regarding discharge of the victim from P.M.C.H. and any effort having at his end in procuring injury report from Patna. There happens to be contradiction relating to the statement of Laxman Thakur. Then he denied the suggestion that he had conducted faulty investigation.

15. P.W-5 is the informant, sister of the victim. She during her examination-in-chief has stated that after taking meal, all the family members gone to sleep in the night of 20.12.2013. During course thereof meal was also offered to the brother-in-law Guddu Thakur, who at that moment declined. After sometime, Guddu Thakur demanded meal and, when her sister gone there, Guddu Thakur caught hold her sister and began to give



indiscriminate knife blow causing injury over her neck, cheek as a result of which, there was profused bleeding. Her sister became unconscious. On cry raised by her all the family members arrived and then lifted her to Sadar hospital while, with the assistance of villagers Guddu Thakur was apprehended and remained confined till arrival of the police on the following day before whom she gave her fardbeyan as well as Guddu Thakur was also produced. Identified the accused. During the cross-examination at para 10 she has stated that on the fateful night she had taken meal prior to Guddu Thakur, she came to know about the occurrence after half hour. In para 12 she has stated that Guddu Thakur had come to her place twice or thrice and at that every occasion, he was properly attended. In para-15 she has stated that before arrival of the police Tusi Devi was already taken to hospital. In para 16 she has stated that when police came to her house only she was there. In para 17 she has stated that she had not gone along with Tusi to hospital. She denied the suggestion that during course of statement before the police she had not mentioned that Guddu Kumar had given thrice knife blow over neck of her sister and twice over her cheek. She has also denied the suggestion that her sister had developed illicit relationship with her paramour and, the same was resisted by the Guddu Thakur whereupon, villagers have assaulted her



sister as well as Guddu Thakur. She denied the suggestion that Guddu Thakur was adamant to accompany her sister to his house since before but her sister was refusing on the aforesaid pretext.

16. P.W-2 is the father while P.W-3 is the mother of the injured. During examination-in-chief they all have substantiated the allegation to the effect that after hearing shout of injured to save they have rushed inside the room where they saw Tusi in pool of blood unconscious. On the other hand, Guddu Thakur was armed with kitchen knife. Then they have taken the injured to hospital. Guddu hidden himself behind the Kothi, villagers arrived and Guddu was apprehended. Victim was referred to the P.M.C.H. by the doctor of Sadar hospital, Nawada. During cross-examination P.W-2 at para 11 has disclosed that she (victim) had sustained injury neck as well as cheek near eye. Blood was coming out. They have seen Guudu Thakur. P.W.3 at para -8 has stated that Guddu Thakur used to visit her place. In para- 9 she has stated that the injured Tusi Devi had some sort of complaint against Guddu Thakur but, they have not taken it seriously. When they reached in the room after hearing cry of the victim, they have seen victim lying over the ground in an injured condition. Blood was oozing out. In para-12 she has stated that she had no grievance with the Guddu. They both denied the suggestion that



Tusi Devi was carrying illicit relationship with co-villager whereupon, Guddu Thakur protested as a result of which the victim as well as the Guddu Thakur both were assaulted by the villager.

17. P.W.-1 and P.W.-6 are co-villager and they have during course of their evidence substantiated that after hearing uproar coming out from the house of the Sunil Thakur, they along with others rushed and found Tusi in an injured condition lying over the ground being unconscious in a room. Blood was oozing out. Guddu Thakur was hiding behind the Kothi, was apprehended. Injured was taken to Sadar hospital. During cross-examination, nothing substantial has found.

18. During course of statement recorded under Section 313 of the Cr.P.C., the accused/appellant denied the whole event and then stated that as he protested over extra marital affair of the Tusi Devi (injured) whereupon he has been falsely implicated in this case.

19. After having minute scrutiny of the evidence available on the record, it is apparent that injury over the person of P.W.-5 is found duly substantiated from the evidence of P.W.-7 and, during course of suggestion to the injured P.W.-5, there happens to be an admission by way of suggestion with regard to



presence of injury, but with an explanation that in the background of objection have been raised at his end of an extra marital affairs the villagers assaulted both of them. None came forward on that very score nor the appellant on his own availed the opportunity to prosecute in accordance with Section 315 Cr.P.C.. On the other hand, when the evidence of P.W.-3, P.W.-2, P.W.3 and P.W.-4 are properly gone through, it is apparent that they have corroborated the evidence of the injured P.W.5. It is evident that injured witness categorically substantiated the allegation and during course of cross-examination, it is evident that defence could not be able to demolish their testimony may be able to exploit any incriminating material whereupon the accusation is found duly substantiated.

20. Now coming to the finding recorded by the learned Lower Court, it is evident that so far as Section 307 is concerned, the same found duly substantiated in the background of the fact that the appellant was knowing since before that Chura is a deadly weapon and further, the part have been attacked at the end of the appellant being the delicate part of the body, whereupon repeatedly blow wherein coupled with the fact that at the first occasion he refused to take meal and then, after taking of meal by all the family members and, going to bed then asking for meal is suggestive of the fact that he had already made his mind to



demonstrate and, in pre-planned manner directed the injured to bring meal at a time when she was alone in order to execute his intention when he was carrying since before without any provocation and, in the aforesaid background the finding with regard to the Section 307 of the I.P.C. is found duly substantiate.

21. In **Vasant Vithu Jadhav Vs. State of Maharashtra** reported in **2004 (2) Cr.L.J. 1786**, it has been held in para 12 and 13 as under;

“12. In Sarju Prasad V. State of Bihar (AIR 1965 SC 843) it was observed in para 6 that mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of S. 307.

13. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of S.307, I.P.C. The determinative question is intention or knowledge, as the case may be, and not nature of the injury.”



22. Because of the fact that the applicability of Section 307 I.P.C. did engulf the injury (irrespective of its nature) as it suggests intention of an accused on account thereof, asking for different punishment for the aforesaid injury did not find prudent whereupon the finding of the lower Court relating to Section 324 as well as 326 of the I.P.C is not at all found justified and to that extent, the finding so recorded by the learned lower Court is set aside. That means to say, the finding recorded by the learned lower Court relating to Section 307 as well 341 of the I.P.C. is hereby maintained in consonance with the sentence so inflicted, therefore, and in terms thereof, the appeal is partly allowed. Appellant is in custody which he will remain till saturation of period of the sentence.

23. First and last page of the judgment be given to learned amicus curiae for the needful.

(Aditya Kumar Trivedi, J)

T.Kr./-Rahul
Misra

AFR/NAFR	NAFR
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