

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.986 of 2018

Arising Out of PS. Case No.-193 Year-2006 Thana- BARHARA District- Bhojpur

1. Kariya Singh @ Vishal Kumar Singh Son of Shailendra Singh
 2. Bhola Singh @ Manish Kumar Singh Son of Ajay Kumar Singh
- Both resident of Village- Keshopur, P.S.- Barhara, District- Bhojpur.

... .. Appellants

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellants	:	Mr. Sanjay Singh, Advocate
		Mr. Ramchandra Sahni, Advocate
For the State	:	Ms. Shashi Bala Verma, APP
For the informant	:	Mr. Chandan Kumar Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date : 03-02-2020

Heard Mr. Sanjay Singh, learned counsel for the appellants, Ms. Shashi Bala Verma, learned counsel for the State being assisted by Mr. Chandan Kumar Verma, learned counsel for the informant.

2. This appeal is directed against the judgment of conviction and order of sentence dated 27.07.2018 and 31.07.2018 respectively passed by the learned Additional District & Sessions Judge-IV, Bhojpur, Ara in Sessions Trial



No.221 of 2011 arising out of Barhara P.S. Case No.193 of 2006 whereby the appellants have been convicted for the offences punishable under Sections 302 read with 149, 323 and 148 of the Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.25,000/- each under Section 302 of the IPC and in default to undergo a further period of rigorous imprisonment for three months, rigorous imprisonment for two years and to pay a fine of Rs.2000/- each under Section 148 of the IPC and in default to undergo a further period of imprisonment for two months and imprisonment for one year and to pay a fine of Rs.500/- each under Section 323 of the IPC and in default to undergo a further period of imprisonment of one month. All the sentences have been ordered to run concurrently.

3. Barhara P.S. Case No.193 of 2006 dated 08.09.2006 was instituted on the basis of *fardbeyan* of Renu Devi (P.W.2) which was recorded by the Sub-Inspector of Police, Ara Town Police Station, namely, Moti Choudhary on 08.09.2006 at 7.30 p.m. at Sadar Hospital Ara wherein she has alleged that on 08.09.2006, at about 4 p.m., she was sitting in her orchard along with her deceased husband Girja Shankar Singh, brother-in-law (*dewar*) Bisheshwar Singh and grand



father-in-law Shiv Govind Singh. In the meantime, her co-villagers Dev Kumar Singh, Nitish Kumar, Kariya Singh (appellant no.1), Bhola Singh (appellant no.2), Priti Kumari, Geeta Kumari and Shobha Devi being variously armed came there and started abusing her husband Girja Shankar Singh. When her husband protested and asked them not to abuse, then Dev Kumar Singh and Shobha Devi accosted others to kill her husband. On the instigation of the aforesaid Dev Kumar Singh and Shobha Devi, Nitish Kumar Singh by means of a sword shoved it in the left armpit of her husband. Kariya Singh and Bhola Singh also assaulted by means of *lathi* as a result of which her husband fell down and started writhing in pain. Thereafter, the accused persons said that work has been done and they escaped towards their houses. She along with others took her husband to Sadar Hospital Ara, but the doctor declared her injured husband brought dead. The occurrence of offence was witnessed by the co-villagers. The motive for the occurrence was enmity existing from before between the parties. On the date of occurrence, at 12 noon, her calf had entered into the maize field of the accused persons and the accused Dev Kumar Singh had injured the calf by means of sickle for which her husband had made a complaint to the accused persons and



the accused persons threatened him of dire consequences.

4. On the basis of the aforesaid oral statement of the informant, a formal FIR was registered on 08.09.2006 at 9.30 p.m. and investigation was taken up.

5. After completion of investigation, the investigating officer submitted charge sheet for the offences punishable under Sections 147, 148, 149 and 302 read with 34 of the IPC against four persons, namely, Dev Kumar Singh, Ritesh Kumar Singh, Kariya Singh and Bhola Singh and continued investigation as against other accused persons.

6. On receipt of the police report filed under Section 173(2) of the Code of Criminal Procedure (for short 'CrPC'), the learned Chief Judicial Magistrate, Ara took cognizance of the offences and after supplying police papers as mandated under Section 207 of the CrPC committed the case to the Court of Session for trial.

7. It would be pertinent to note that even before the order of commitment, accused Dev Kumar Singh died. Hence, the case against him was dropped on 10.12.2010. It would further be pertinent to note that since Nitish Kumar Singh was declared a juvenile in conflict with law, his case was separated and sent to Juvenile Justice Board for inquiry and



disposal.

8. The trial court framed charges against these two appellants under Sections 302/34, 302/149, 323 and 148 of the IPC.

9. In order to establish charges, the prosecution examined three witnesses. They are P.W. 1 Bisheshwar Singh, brother of the deceased, P.W. 2 Renu Devi, wife of the deceased and the informant and P.W. 3 Dr. Amrendra Kumar Singh, who conducted post mortem examination on the body of the deceased.

10. P.W. 2 Renu Devi, the informant has stated in her deposition that on the date of occurrence, at about 4 p.m., when she reached in the orchard, scuffle was going on. According to her deposition, accused Dev Kumar Singh along with Shobha Devi, Ritesh Singh, Geeta Kumari, Priti Kumari, Kariya Singh and Bhola Singh were assaulting her husband Girja Shankar Singh by means of knife, sword and sickle. When she tried to rescue her husband from assault, Shobha Devi, Geeta Kumari and Shobha Devi pushed her as a result of which she fell down. She has stated that Dev Kumar Singh and Shobha Devi were accosting others to kill her husband whereafter Nitish Kumar @ Ritesh Kumar pierced sword in the armpit of her



husband and twisted the same. After assault, Kaushal Singh and Manji Singh took her husband to Sadar Hospital where the doctor declared him brought dead. She has further stated that her statement was recorded by the police officer in the hospital and she had put her signature on that which has been torn. Bisheshwar Singh had also put his signature on the *fardbeyan* which was proved by her and marked as Ext.1.

11. In cross-examination, she has stated that the accused Dev Kumar Singh is not her agnate and in between her house and the house of Dev Kumar Singh, there is a lane and by the side of the house of Dev Kumar Singh, house of other accused persons is situated. She has further stated that she does not go out of her house. However, on the date of occurrence for the first time, she had gone to her orchard along with accused persons when they were raising *hulla*. She admitted that when she reached at the place of occurrence, she saw bleeding injury on the person of her husband. She admitted that when she reached there, her husband had already lost consciousness. She has denied the defence suggestion that she has falsely deposed before the court.

12. P.W. 1 Bisheshwar Singh is the brother of the deceased. He has stated that on 08.09.2006, at about 4 p.m., he



was at his residence. On hearing *hulla*, he went to mango orchard of Girja Shankar Singh where Nitish Kumar, Dev Kumar, Shobha Devi, Geeta Kumari, Priti Kumari, Kariya Singh, Bhola Singh being variously armed with *bhala* and *danda* were raising *hulla*. He stated that Dev Kumar Singh and Shobha accosted others to kill Girja Shankar Singh upon which Nitish Singh assaulted with sword causing injury in the chest of Girja Shankar Singh as a result of which he fell down and the accused persons said that work has been done and they escaped. He stated that he took the injured to hospital where the doctor declared him dead.

13. In cross-examination, he admitted that when he heard *hulla* about the murder, he was in his house. He has further admitted that when he reached in the orchard, injured Girja Shankar Singh was lying on the ground and the accused persons had already left the place. He has also admitted that when he reached near his brother Girja Shankar Singh, he found profused bleeding from his chest and he was already dead. He has further stated that he took his brother to the Sadar Hospital. He admitted that at Barhara, there is a hospital and a Police Station, but no information was given to the police station and the injured was directly taken to Sadar Hospital on a



commander jeep. He has denied the defence suggestion that he has falsely deposed before the court.

14. Apart from aforesaid two witnesses, Dr. Amrendra Kumar Singh, the doctor, who conducted post mortem examination on the body of the deceased Girja Shankar Singh was examined as P.W. 3. He has stated that post mortem examination of the deceased was done at Sadar Hospital Ara on 09.09.2006 at 7.10 a.m.. He found the following ante mortem injuries on the body of the deceased:-

- “(i) A penetrating wound 1 ½” x ½ x cavity deep on left side axilla 1/2” lateral to anterior axillary fold;
- (ii) Clotted wound in both nostril; and
- (iii) a bruise 3”x2” on the dorsal surface of left arm 2” above elbow joint.”

15. P.W. 2 has stated that time elapsed since death was 3 to 6 hours and, in his opinion, cause of death was due to shock and haemorrhage caused by sharp and pointed substance. He has proved the post mortem report, which was marked as Ext.2.

16. In cross-examination, he has stated that injury no. 1 cannot be caused by fall except fall on a pointed sharp weapon.



17. After examination of P.W.3, the prosecution case was closed and the statements of the appellants were recorded under Section 313 CrPC. The appellants pleaded their innocence and stated that they were not present at the place of occurrence when the alleged offence was committed.

18. The defence did not examine any witness on its behalf in order to prove their innocence.

19. On completion of the trial and after hearing the parties, the trial court passed the impugned judgment of conviction and sentence as stated above.

20. Assailing the impugned judgment passed by the trial court, Mr. Sanjay Singh, learned counsel appearing for the appellants submitted that the allegation of assault causing death is on Nitish Kumar, who gave fatal blow of sword on the deceased. The said allegation is also supported by the postmortem report and the opinion of medical expert. However, Nitish Kumar having been declared juvenile in conflict with law has been acquitted by the Juvenile Justice Board. He submitted that though there is evidence that several persons had witnessed the occurrence of offence, no independent witness has been examined on behalf of the prosecution. He has further contended that independent charge sheet witnesses, namely,



Shiv Govind Singh, Vishun Deo Singh and Sunaina Devi have been withheld by the prosecution without giving any plausible explanation for the same. He contended that it is not known as to why Kaushal Singh and Manji Singh, who are said to have taken the victim to hospital were not made charge sheet witnesses and were not examined during trial. He contended that even the investigating officer of the case has not been examined during trial. According to him, non-examination of the independent witnesses and the investigating officer has greatly prejudiced the case of the defence. He submitted that due to non-examination of the investigating officer even the place of occurrence could not be proved. He has further stated that two witnesses P.Ws. 1 and 2 have contradicted each other in material particular on vital aspects of the case. According to him, the witnesses examined during trial are wholly unreliable and, hence, the trial court ought to have recorded the judgment of acquittal instead of convicting and sentencing the appellant.

21. On the other hand, Ms. Shashi Bala Verma, learned counsel appearing for the State being assisted by the learned counsel for the informant submitted that the trial court has properly appreciated the evidences adduced during trial and it has rightly convicted the appellants for the charges under



Section 302/149, 323 and 148 of the IPC. She has contended that P.W. 1 and P.W. 2 are eye witnesses to the alleged commission of murder and have fully corroborated the allegations made in the FIR. According to her, the prosecution is consistent so far as the evidence that the appellants were also armed with *lathi* and had participated in commission of assault upon the deceased is concerned. According to her, the medical evidence also corroborates the case of the prosecution.

22. We have heard learned counsel for the parties and carefully perused the evidences on record.

23. It would be evident from the discussions made hereinabove that in the FIR, the informant has alleged that at the time of occurrence of murder, she was sitting along with her deceased husband Girja Shankar Singh, brother-in-law Bisheshwar Singh (P.W.1) and grand father-in-law Shiv Govind Singh in the orchard, but P.W. 1 Bisheshwar Singh, brother of the deceased has stated in his deposition that when assault upon the deceased took place, he was at his residence and he went to orchard on hearing *hulla*. Similarly, the informant has herself stated in her deposition that when she went to the orchard, she saw that her husband was being assaulted by Dev Kumar Singh.



24. It would further be evident that in the FIR, it was alleged that Dev Kumar Singh and Shobha Devi had accosted others to kill her husband upon which accused Nitish Kumar shoved sword in the left armpit of the deceased and the appellants assaulted by means of *lathi*, but P.W. 1 Bisheshwar Singh has not corroborated the allegation made against the appellants. He has not even whispered that the appellants assaulted the deceased by means of *danda*. He has stated that when he reached in the mango orchard, he saw Nitish Kumar, Dev Kumar, Shobha Devi, Geeta Kumari, Preeti Kumari and the appellants being variously armed with *bhala* and *danda* were raising *hulla* and Dev Kumar and Shobha accosted others to kill her husband upon which Nitish Kumar by means of sword shoved in the chest of Girja Shankar Singh as a result of which he fell down whereafter the accused persons escaped from the place of occurrence.

25. We further find that P.W. 2 Renu Devi has not stated a word in the FIR that Dev Kumar Singh, Shobha Devi, Geeta Kumari, Priti Kumari and Ritesh Singh had also assaulted the deceased Girja Shankar Singh, but, while being examined before the Court during trial, she has stated that when she reached in the orchard, she found that Dev Kumar Singh



was assaulting her husband by means of knife, sword and sickle. She has further stated that her husband was also being assaulted by Shobha Devi, Geeta Kumari and Priti Kumari and the appellants. She has completely changed her version from the FIR by stating that her husband was being assaulted with knife, sword and sickle by Dev Kumar Singh. It was never the case of the informant in the FIR. She has made herself wholly unreliable by saying that all the accused were assaulting the deceased when she reached at the place of occurrence.

26. We also find that P.W. 3, the doctor, who conducted the post mortem examination on the body of the deceased found only penetrating wound and a bruise on the body of the deceased. He has attributed the death due to shock and haemorrhage caused by sharp and pointed substance. He has not found any antemortem injury on the body of the deceased caused by hard and blunt substance such as like *danda*. The evidence of P.W. 3 is not in alignment with the oral testimony of P.W.1 and P.W.2. Thus, we find that the informant (P.W.2) has contradicted her own statement as made in the FIR while being examined as witness during trial.

27. Similarly, P.W. 1 and P.W. 2 have contradicted each other in material particular. Further, the oral



evidence given by P.W. 1 and P.W. 2 is not being supported by medical evidence. When there are inconsistencies in the oral and medical evidence and the witnesses contradict each other in material particular, the prosecution case becomes suspicious. When the prosecution case becomes suspicious, the conviction of the accused would become highly unsafe.

28. While saying so, we are mindful of the fact that when there is a contradiction between direct evidence, that is, evidence by an eye witness and medical evidence, the authenticity of the medical evidence is questioned. The value of medical evidence is accepted as evidence by an expert, but the prosecution case when weakened in the court, it would not be safe to convict.

29. Apart from what has been stated above, we also find substance in the submission of learned counsel for the appellants that the non-examination of the investigating officer has seriously prejudiced the case of the defence, as the defence has been denied the opportunity to contradict the prosecution witnesses from their previous statements recorded under Section 161(3) of the CrPC.

30. Keeping in mind the discussions made above, we find that the trial court has completely erred in



appreciating the evidence adduced during trial. It failed to appreciate that in criminal cases, the burden of proving the guilt of an accused is upon the prosecution. It failed to appreciate that an accused is not required to establish his case beyond reasonable doubt. It also failed to appreciate that the requirement of law is that the conviction should be certain and not doubtful.

31. The impugned judgment of conviction and order of sentence dated 27.07.2018 and 31.07.2018 respectively passed by the learned Additional District & Sessions Judge-IV, Bhojpur, Ara in Sessions Trial No.221 of 2011 cannot be sustained. They are set aside, accordingly.

32. The appellants, who are in custody, are hereby acquitted. They are directed to be released forthwith, unless they are required to continue in detention in some other case.

33. Before parting with this judgment, we must take note of the fact that while passing the judgment and order impugned, the trial court had recommended for payment of compensation to the victim under the Bihar Victim Compensation Scheme, 2014 and had directed that a copy of the judgment and order be communicated to the Secretary, District



Legal Services Authority, Bhojpur, Ara so that payment of compensation be made to the victim in terms of the Scheme.

34. Learned counsel for the informant has stated that till date, the victim has not been paid compensation as recommended by the court below.

35. Section 357-A was inserted in 2009 in the CrPC to give effect to the Victim Compensation Scheme. The Scheme made way for an institutionalized payment of compensation to the victim by the State for any loss or injury caused to him by the offender.

36. In the matter of **Laxmi vs. Union of India [(2016) 3 SCC 669]**, the Supreme Court had directed that under Section 357-A of the CrPC all State should prepare a scheme.

37. In the light of the direction given by the Supreme Court in the case of **Laxmi** (supra), the Bihar Victim Compensation Scheme, 2011 was framed.

38. As certain amendments were found necessary in the Bihar Victim Compensation Scheme, 2011, in exercise of powers conferred by Section 357-A of the CrPC, the State of Bihar made the Bihar Victim Compensation Scheme, 2014 (for short 'the Scheme of 2014') superseding the Bihar Victim Compensation Scheme, 2011 for the purpose of granting



compensation to the victims or their dependents, who sustain damage or hurt due to offences and who are in need of rehabilitation.

39. The term ‘victim’ has been defined under clause 2(g) of the Scheme of 2014 as under:-

“2(g) “*Victim*” means victim as defined under Section 2(wa) of the Code of Criminal Procedure, 1973 (2 of 1974).”

40. The term victim defined in Section 2(wa) of the CrPC means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression ‘victim’ includes his or her guardian or legal heir.

41. Thus, it would be relevant that term ‘victim’ has already been extended to include the dependents who sustain damages or hurt due to the offences.

42. It would be clear from clause 3(3) of the Scheme of 2014 that the Law Department has been made Nodal Department for regulating, administering and monitoring the Scheme. It would further be clear from clause 3(5) of the Scheme of 2014 that the fund of the Scheme has to be operated by the Members Secretary, State Legal Services Authority.

43. Clauses 4 and 5 of the aforestated Scheme



which provide eligibility and procedure for grant of compensation respectively read as under:-

“4. Eligibility for compensation. -

A victim shall be eligible for the grant of compensation where.-

(a) a recommendation is made by the Court under sub sections (2) and (3) of Section 357-A of the Act or the offender is not traced or identified, and where no trial takes place, such victim may also apply for grant of compensation under sub-section (4) of Section 357-A of the Act;

(b) the victim/claimant report the crime to the officer incharge of the police station or any Judicial Magistrate of the area within 48 hours of the occurrence. Provided that the District Legal Services Authority is satisfied, for the reasons to be recorded in writing, may condone the delay in reporting;

(c) the offender is traced or identified and where trial has taken place, the victim/claimant has co-operated with the police and prosecution during the investigation



and trial of the case;

(d) the crime on account of which the compensation is to be paid under this scheme should have been occurred within the jurisdiction of Bihar State.

5. Procedure for grant of compensation.-

(1) Whenever a recommendation is made by the Court under sub-section (2) of Section 357-A of the Act or an application is made by any victim or his dependent under sub-section (4) of Section 357-A of the Act to the District Legal Services Authority, the District Legal Services Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim and arising out the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness of the claim. After verifying the claim and by conducting due enquiry, the District Legal Services Authority shall award compensation within two months, in accordance with provisions of this scheme;

Provided that to the victim of the acid attack Rs. 1,00,000/-(one lac rupees) shall be paid to the victim within fifteen



days of the information of occurrence and rest Rs. 2,00,000/-(two lac rupees) shall be paid within the two months from the aforesaid payment.

(2) The District Legal Services Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expense etc. The compensation may vary from case to case depending on fact of each case.

(3) The quantum of compensation to be awarded to the victim or his dependents shall be as per Schedule.

(4) The cases covered under Motor Vehicles Act, 1988 (59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under the Scheme.

(5) The District Legal Services Authority, to alleviate the suffering of the victim, may order for immediate first aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the



officer-incharge of the police station or Magistrate of the area concerned, or any other relief, as it may deem fit.

(6) Compensation received by the victim from the Central/State Government, insurance company in relation to the crime in question, namely, insurance, *exgratia* and/or under any other Act or any other State run scheme, shall be considered as part of the compensation amount under this scheme and if the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of Fund.”

44. The procedure under the Scheme of 2014 has been kept simple to achieve the object of the Scheme.

45. Where a recommendation is received from the Court or an application is made by the victim, the District Legal Services Authority has to examine the case and verify the contents of the claim with regard to loss or injury caused to the victim arising out of the reported criminal activity and after due inquiry has to decide genuineness of claim and award compensation. A time bound procedure has been prescribed to decide the claim of the victim within two months.



46. It would further be evident from perusal of the various clauses of the Scheme that no rule or guideline has been made for determining the amount of compensation. An upper limit has been set under the Schedule of the Scheme which prescribes compensation for the loss of life, acid attack and rape or loss or injury due to severe mental agony to women and child victims in cases like human trafficking, human bad behaviour, kidnapping and molestation etc. as well as grievous hurt as defined under Section-320 of India Penal Code.

47. In the instant case, since there is no dispute regarding loss of life of the husband of the informant and the trial court has already made recommendation for payment of compensation to the victim in terms of the Scheme, in case, payment of compensation has not been made to the victim till date and, in case, she files an application along with certified copy of the judgment passed in the present case before the Secretary, District Legal Services Authority, Bhojpur, Ara, he shall be required to make payment of compensation to the victim within one month from the date of receipt/production of a copy of the application. The Member, Secretary Legal Services Authority, Bihar, Patna is also directed to personally look into the matter and ensure compliance of the order passed by this



Court within the stipulated period of time.

48. With the aforesaid observations and directions, the appeal stands allowed.

49. Interlocutory applications, if any, stand disposed of

(Ashwani Kumar Singh, J)

(Partha Sarthy, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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