

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.216 of 2014

Arising Out of PS. Case No.-371 Year-2011 Thana- FATUA District- Patna

Sanjay Paswan, Son of Sri Namuna Paswan, R/O- Village - Mudera, P.S.-
Fatuha, District - Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Kameshwar Prasad Sinha, Advocate
For the Respondent/s : Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 04-11-2022

By this appeal, appellant/ convicted accused is challenging the Judgment and order dated 13.01.2014 and 16.01.2014 respectively passed by the learned Vth Additional Sessions Judge, Patna City, Patna in Sessions Trial No. 258 of 2012, thereby convicting him of the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life apart from a direction to pay fine of Rs.10,000/- and in default to undergo rigorous imprisonment for two years. For the sake of convenience, the appellant shall be referred to in his original capacity as “an accused”.

2. Facts in brief leading to the prosecution of the



accused gathered from the police report can be summarized thus:

(a) First Informant, Rameshwar Manjhi (P.W.2) is resident of village Mudera falling under jurisdiction of Police Station Fatuha, District Patna. His sister is married to P.W. 3 Ramchandar Manjhi resident of village Darshan Chapra falling under Police Station Udwant Nagar of District Bhojpur, Ara. Dinesh Manjhi (since deceased) was uncle of P.W. 3 Ramchandar Manjhi. They both, on 27.10.2011 had gone to the house of First Informant, Rameshwar Manjhi (P.W. 2) at village Mudera. At about 7 P.M. of that day i.e. 27.10.2011, Dinesh Manjhi (since deceased) accompanied by his nephew P.W. 3 Ramchandar Manjhi and P.W.2 Rameshwar Manjhi were going for easing themselves to the open area at the western side of village Mudera. On their way to the open ground, accused/appellant Sanjay Paswan came from the opposite direction, he started questioning Dinesh Manjhi (since deceased) about his whereabouts and details as to whose house is visited by him. Accused Sanjay Paswan then started assaulting him by means of stick. His nephew P.W. 3 Ramchandar Manjhi tried to intervene. However, accused Sanjay Paswan whipped out a knife and gave blows thereof on chest, neck and shoulder joint



of Dinesh Manjhi, who resultantly sustained bleeding injuries. Ultimately he was declared dead at the hospital at Fatuha.

(b) The First Information Report of the incident was then lodged by P.W. 2 Rameshwar Manjhi at Police Station Fatuha on 27.10.2011 itself which has resulted in registration of Crime No. 371 of 2011 under Section 302 of the Indian Penal Code against the accused. The Investigating Officer visited the spot of the incident. Statement of the witnesses came to be recorded after preparing inquest notes upon inspection of the dead body. The dead body was sent for autopsy. On completion of investigation, ultimately the accused came to be charge sheeted for the offence punishable under Section 302 of the Indian Penal Code.

(c) The learned trial court had framed the charge for the offence punishable under Section 302 of the Indian Penal Code against the accused. He pleaded not guilty and claimed trial.

3. In order to bring home the guilt to the accused, the prosecution has examined in all seven witnesses. Autopsy Surgeon, Dr. Pradeep Nandan was examined as P.W. 1. Ext. 1 is the report of postmortem examination. First Informant, Rameshwar Manjhi was examined as P.W. 2. The FIR lodged by



him is at Ext. 2. Ramchandar Manjhji was examined as P.W. 3. Relatives of deceased Dinesh Manjhi, namely, Vishnu Kumar, Meena Devi and Sohagea Devi are examined as P.W. 4, P.W. 5 and P.W. 7 respectively. Investigating Officer, Yogendra Prasad was examined as P.W. 6. Inquest notes are at Ext. 4.

4. Defence of the accused was that of total denial. However he did not enter in the defence.

5. After hearing the parties, the learned trial court was pleased to convict the appellant/accused and to sentencing him as indicated in the opening para of this Judgment.

6. We heard the learned counsel appearing for the appellant at sufficient length of time. By taking us through the impugned Judgment and order as well as record and proceedings, he argued that there was no source of light at the place of the incident in order to enable the prosecution witnesses to identify the accused. It is also argued that evidence of P.W. 3 Ramchandra Manjhi is doubtful and is not supported by evidence of Autopsy Surgeon. The Autopsy Surgeon has not found any wound on joint of hands of the deceased. No cutting injury was found on back of the head. It is further argued that there was no enmity between the accused and the deceased and



therefore, the offence cannot travel to the one punishable under Section 302 of the Indian Penal Code. According to the learned counsel for the appellant, P.W. 2 Rameshwar Manjhi and P.W. 3 Ramchandar Manjhi are relative and as such interested witnesses. P.W. 2 Rameshwar Manjhi was not present on the spot of the incident. Therefore, evidence of both these witnesses needs to be discarded. To buttress these submissions, reliance is placed on the following Judgments:

1. **Ram Ashrit and others v. State of Bihar** reported in **AIR 1981 SUPREME COURT 942.**
2. **State of Haryana v. Prabhu and others** reported in **AIR 1979 SUPREME COURT 1019.**
3. **Gurdip Singh and another v. State of Punjab** reported in **AIR 1987 SUPREME COURT 1151.**

7. The learned Additional Public Prosecutor opposed the appeal by contending that place of occurrence is unchallenged and the witnesses examined by the prosecution are truthful. Evidence of the Autopsy Surgeon is corroborated by the evidence of the eye witnesses.

8. We have considered the submissions so advanced. We have carefully gone through the entire record and proceedings including oral as well as the documentary



evidence.

9. Death of Dinesh Manjhi occurring on 27.10.2011 is not at all disputed by the defence. Ocular evidence of P.W. 2 Rameshwar Manjhi and that of P.W. 3 Ramchandar Manjhi who happens to be nephew of deceased Dinesh Manjhi, to the effect that Dinesh Manjhi died because of bleeding wounds suffered by him on 27.10.2011 is not challenged by the defence during the course of trial. On this backdrop, it is in evidence of Autopsy Surgeon P.W. 1, Dr. Pradeep Nandan that on 28.10.2011, he had performed postmortem examination on dead body of Dinesh Manjhi, son of late Lalo Manjhi. This Autopsy Surgeon has vouched that he noticed following ante-mortem injuries on the dead body of Dinesh Manjhi:

- 1. Stab wound size 3 cm x 1cm x 12 cm situated over front of chest, rib infraclanicular region, 6 cm medial tip of acromion 11 cm above right nipple wound was elliptical in shape having sharp margin.*
- 2. Stab wound size 3cm x 1 cm x chest cavity deep was situated over right side of neck (root of neck), 9 cm medial from tip acromion and 6 cm from mid crevicular line wound was elliptical in shape having sharp margin.*
- 3. Two small abrasions were found over front*



of right side of chest having size $\frac{1}{2}$ cm x $\frac{1}{2}$ cm.

4. Lacerated wound over back of head size 1 cm x $\frac{1}{2}$ cm x muscle deep.

10. P.W. 1, Dr. Pradeep Nandan has deposed that upon internal examination of the dead body, he noticed that because of injury no.1, blood vessels were cut and muscles in the chest were also cut. It is further deposed by the Autopsy Surgeon that injury to neck has resulted in cutting throat, jugular vein as well as right side of lung of deceased Dinesh Manjhi. The Autopsy Surgeon has opined that the death was due to haemorrhage and shock caused because of ante-mortem wound. There is absolutely nothing in cross-examination of this Autopsy Surgeon to doubt his version regarding the seat of injuries as well as cause of death of Dinesh Manjhi. With this evidence on record it needs to be held that the prosecution has proved the fact that Dinesh Manjhi died homicidal death on 27.10.2011.

11. Now let us examine whether the prosecution has proved that the accused is author of fatal wounds on deceased Dinesh Manjhi and that he had caused those wounds with an intention to cause death of Dinesh Manjhi. Apart from autopsy surgeon PW 1 Dr. Pradeep Nandan and investigating officer PW 6 Yogendra Prasad, rest of the



prosecution witnesses are near relatives of deceased. Therefore, let us deal with argument of the learned counsel for the appellant that evidence of related and interested witnesses needs to be discarded. In the matter of **Ram Ashrit** (supra), the Hon'ble Supreme Court has held that when the witnesses are inter-related or otherwise interested in the prosecution then their testimony should pass the test of close and severe scrutiny. In **Balraje alias Trimbak Vs. State of Maharashtra**, reported in **(2010) 6 SCC 673**, the Supreme Court has explained that when the eye witnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The court would be required to analyze the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same. Thus, close scrutiny of evidence of such type of witnesses is required to be done and if their evidence is found to be trustworthy, the same can be accepted. In **Dalip Singh v. State of Punjab, AIR 1953**



SC 364, the Supreme Court in paragraph-26 observed thus:

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

Similarly, in **Masalti Versus State of U.P., A.I.R. 1965 SC 202**, following are the observations of the Supreme Court in paragraph-14:



“14. There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

In Harbans Kaur Versus State of Haryana,



(2005) 9 SCC 195, the Supreme Court has held thus in paragraph-6:

“6. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused.”

Similarly, in **Namdeo Versus State of Maharashtra, (2007) 14 SCC 150**, the following are the observations of the Supreme Court in paragraph-38:

“38. ... it is clear that a close relative cannot be characterised as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the “sole” testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.”

12. Keeping in mind this position of law



regarding appreciation of evidence of hostile as well as related witnesses, let us examine the version of alleged eye witnesses in order to ascertain whether they had actually witnessed the incident and their evidence is intrinsically reliable, inherently probable and wholly trustworthy.

13. According to the prosecution case P.W. 2 Rameshwar Manjhi and P.W. 3 Ramchandar Manjhi are eye witnesses to the incident of murder of Dinesh Manjhi, they being accompanying him to the open ground where they all were going for easing themselves. The learned counsel for the appellant is disputing the fact that PW 2 Rameshwar Manjhi is an eye witness to the incident. According to him, Rameshwar Manjhi was not present on the spot of the incident. Let us therefore put on record what is appearing in evidence of P.W. 2 Rameshwar Manjhi. This witness has testified that at about 7:00 P.M. of 27.10.2011, he along with his brother-in-law P.W. 3 Ramchandar and Dinesh Manjhi were going to the western side of the village for easing themselves. P.W. 2 Rameshwar stated that initially Dinesh Manjhi was behind him but subsequently Dinesh Manjhi went ahead. He further stated that then he saw accused Sanjay Paswan coming from the opposite direction. Accused Sanjay Paswan started asking Dinesh Manjhi as to



where Dinesh resides and in whose house he has come as a guest. Thereupon, as stated by this witness, the accused hit Dinesh by means of lathi and Dinesh started shouting for help. Then firstly P.W. 3 Ramchandar Manjhi rushed to help Dinesh but the accused took out the knife and gave blow thereof on right chest, back side of head as well as hand of Dinesh Manjhi. The accused then ran away and Dinesh Manjhi sustained bleeding wounds. In cross-examination, P.W. 2 Rameshwar Manjhi has stated that he was not on the spot but has denied that he is deposing on the basis of information gathered from others. His cross-examination clarifies what he meant to say. This witness has stated that he was behind Dinesh Manjhi and was at a distance of about 200 feet from Dinesh Manjhi.

14. When evidence of P.W. 2 Rameshwar Manjhi is read as a whole then we are unable to accept submission of the learned counsel for the appellant that P.W. 2 Rameshwar Manjhi is not an eye witness to the incident. He was behind Dinesh Manjhi and they were proceeding from the open area in the same direction for easing themselves. There is nothing in cross-examination of P.W. 2 Rameshwar Manjhi to show that he was unable to see and witness the incident because he was at a distance of 200 feet from the place of incident.



Evidence of P.W. 2 Rameshwar Manjhi that he was accompanying Dinesh Manjhi for going to answer the nature's call is also not challenged in the cross-examination. As such this witness was a natural witness to the incident and his evidence is free from doubt.

15. P.W. 3 Ramchandar Manjhi, nephew of deceased Dinesh Manjhi, in a similar way deposed that he along with Dinesh Manjhi and P.W. 2 Rameshwar Manjhi were proceeding towards western side of the village for easing themselves and on the way accused Sanjay Paswan started questioning Dinesh Manjhi as to where he resides and why he came to the village. P.W. 3 Ramchandar Manjhi further stated that then accused Sanjay Paswan started hitting Dinesh by means of a stick and when he tried to intervene, the accused gave a fist blow to him. Thereupon as stated by P.W. 3 Ramchandar Manjhi, the accused took out a knife and gave blows thereof on chest, shoulder joint and back side of forehead of Dinesh Manjhi. He stated that Dinesh Manjhi died because of wounds.

16. In cross-examination P.W. 3 Ramchandar Manjhi has stated that the incident lasted for four to five minutes and he was very much present at that place. He denied



the suggestion that he has deposed as per say of P.W. 2 Rameshwar Manjhi.

17. This is the ocular version of the incident coming on record through evident of these two eye witnesses who were accompanying the deceased at the relevant time. Version of P.W. 2 Rameshwar Manjhi is fully corroborated by the FIR lodged by him immediately after the incident. We could not notice anything in cross-examination of these two eye witnesses which may create doubt in their version about the incident. Both these eye witnesses were not having any enmity with the accused giving them a motive to falsely implicate him in the crime in question. The case is that of a single victim and a single accused and as such the theory of false implication does not require a moment's consideration. Therefore we see no reason to discard version of both these eye witnesses. We have already noted the wounds found on person of the deceased while dealing with evidence of P.W. 1 Dr. Pradeep Nandan. Deceased Dinesh had suffered a stab wounds on his chest as well as right side of neck. He had also sustained lacerated wound on the back side of the head. We are unable to concede with submission of the learned counsel for the appellant that the injuries found during the course of post-mortem examination are not tallying



with the eye witness account given by P.W. 2 Rameshwar Manjhi and P.W. 3 Ramchandar Manjhi. Both of them has stated about the blows of knife as well as lathi inflicted on the deceased by the accused. Two stab wounds are certainly attributed to the blows given by knife whereas the lacerated wound on the back of head can be attributed to the blow of lathi. Stab wound on right side of neck might have been described as a blow on the shoulder joint by the witnesses but that by itself can not create doubt in the eye witness account given by them. Ultimately in a criminal trial, proof of mathematical precision is not required. Yardstick is that of a prudent person. Hence we have no alternative but to reject such hyper technical submissions advanced by the learned counsel for the appellant.

18. Though it is argued that there was no source of light at the place of the incident, there is no effective cross-examination on this aspect. The place of the incident was an open ground. P.W. 6 Yogendra Prasad has stated that the incident took place at the western side of village Mudera where two palm trees are situated. He has not spoken that there were bushes at the place of incident nor such material is elicited from cross-examination of prosecution witnesses. The accused is resident of village Mudera and as such was well known to P.W.



2 Rameshwar Manjhi. There is no such cross-examination of P.W. 2 and P.W. 3 on this aspect. The accused was duly identified by these witnesses while in the dock. Therefore it is not possible to conclude that there are chances of mistaken identity.

19. We have already noted the seat of injuries suffered by the deceased. Those wounds have caused extensive internal damage, as seen from version of the autopsy surgeon. The accused had inflicted blows of knife on chest and neck of the deceased with full force depicting his intention. Thus intention to commit murder is established from the version of autopsy surgeon as well as ocular evidence of eye witnesses discussed by us. Rest of the relatives of the deceased examined by the prosecution are undoubtedly not an eye witness to the incident, their version is hearsay and as such is of no assistance to the prosecution.

20. In the matter of **Gurdip Singh** (supra) relied by the appellant, the Hon'ble Supreme Court was not satisfied fully on the aspect of intention of the accused. Such is not the case in hand. In the matter of **State of Haryana** (supra) relied by the appellant on facts it was held that nature of injuries shows that there was no common object to kill. That case



proceeded on its own facts whereas in the case in hand the surrounding circumstances emerging on record clearly establishes intention of the accused to kill Dinesh Manjhi.

21. In this view of the matter, we find no infirmity with the impugned judgment and order of the learned trial court. Evidence on record clearly establishes that it was the accused who had committed murder of deceased Dinesh Manjhi by giving blows of knife on vital parts of his body with requisite intention. In the result, the appeal is devoid of merit and the same is, accordingly, dismissed.

(A. M. Badar, J)

(Rajesh Kumar Verma, J)

Bhardwaj/Aditi

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