

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.125 of 2019**

Arising Out of PS. Case No.-412 Year-2013 Thana- LAKHISARAI District- Lakhisarai

Ajay Manjhi Son of Bhaso Manjhi, Resident of- Sharma Tola Musahari, P.O.-
Lakhisarai, District- Lakhisarai

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Surya Nilambari (Amicus Curiae)

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 17-10-2023

We have heard Ms. Surya Nilambari, learned Amicus Curiae, who has very ably assisted us in this jail appeal and Mr. Dilip Kumar Sinha, learned APP for the State.

2. The appellant has been convicted *vide* judgment dated 18.12.2018 and vide order 20.12.2018 has been sentenced to life imprisonment, to pay a fine of Rs. 50,000/- and in default of payment of fine, to further suffer imprisonment for one year under Section 302 of the IPC by the learned Additional Sessions



Judge-II, Lakhisarai in connection with Sessions Trial No. 89 of 2014, arising out of Lakhisarai P.S. Case No. 412 of 2013.

3. The deceased is the husband of the informant (P.W. 5). She has alleged in the *fardbeyan*, which was recorded by the Investigating Officer (P.W. 6) at her house at 07:00 A.M. on 12.10.2013, that she had seen the appellant assaulting the deceased by means of a spade (*kudal*) while the deceased was sitting in the field of one Raj Kumar Manjhi (not examined). She had come to the place of occurrence on hearing some noise coming from the field. Many persons, according to her, had arrived at the place of occurrence but the appellant could manage to run away from there. She was assisted by the villagers in taking her husband in an injured condition to Sadar Hospital from where he was referred to a bigger hospital for higher treatment, but on way, the deceased died. She has then claimed to have brought the dead body of her husband to her home. She



had, therefore, lodged the case only against Ajay Manjhi (appellant) but without ascribing any reason whatsoever for such occurrence to have taken place.

4. Based on the aforementioned *fardbeyan*, Lakhisarai P.S. Case No. 412 of 2013 dated 12.10.2013 was registered for investigation for the offence under Section 302 IPC.

5. The Trial Court after examining seven witnesses on behalf of the prosecution including the Doctor (P.W. 7) and the Investigating Officer (P.W. 6) convicted the appellant as aforesaid.

6. Ms. Surya Nilambari has taken us to the deposition of all the witnesses and has successfully attempted to demonstrate that none of the witnesses, including the informant (P.W. 5) had seen the occurrence but had only reached the place after the deceased was seriously injured and perhaps had died.

7. Jato Manjhi, Laxman Manjhi and Raso Manjhi who have been examined as P.Ws. 1, 2 and 3



respectively have not been named by the informant (P.W. 5) in her *fardbeyan* as having come to the place of occurrence or having helped her in taking the deceased to the hospital and bringing the dead body back when the deceased died on the way. All that she had said in her *fardbeyan* was that with the help of villagers, the injured was taken to hospital and when he died on way, the dead body was brought back.

8. All the aforementioned three witnesses are directly related to the deceased and the informant (P.W. 5).

9. Jato Manjhi (P.W. 1) had a somewhat different story to narrate, which makes his deposition very shaky. In his examination-in-chief, he has stated that when the deceased died on way, the dead body was brought back to the village and a *chowkidar* had been deputed to guard the dead body.

10. Later, in the morning, when there was a telephone call from the Government Department, then



only the dead body was taken to the police station at 08:00 A.M. on the next day, whereafter it was sent for post-mortem examination. This is an absolutely different sequence of events suggested by P.W. 1 as also from what can be very plainly gleaned from the documents on record. The *fardbeyan* was recorded by I.O. (P.W. 6) at the house of informant (P.W. 5) only.

11. Had the dead body been taken to police station before the lodging of the *fardbeyan*, the same would have been registered at the police station only.

12. Apart from this, our attention has been drawn to the other parts of the deposition of P.W. 1, who, while admitting that the deceased was his cousin and that there was no enmity between the deceased and the appellant, has stated that about 10 to 15 persons had already reached the place of occurrence before he had gone there. He has named, apart from the appellant, Kongres, Puran and Mangal but later has clarified that these were the persons who had assaulted



the deceased.

13. At the time when P.W. 1 had reached the P.O., the deceased lay injured and his condition was very serious. He has explained in his local dialect that he had seen the deceased gasping for life and it appeared to him that he was about to die.

14. This, therefore, makes it very obvious that by the time P.W. 1 had reached the place of occurrence, the assault was already over and the deceased was lying in an injured condition, struggling to remain alive. After about five minutes of his having arrived at the place of occurrence, P.W. 1 asserts, the informant (P.W. 5) came to the place of occurrence. If he is to be believed, then P.W. 5 also could not have seen the occurrence.

15. Similarly, Laxman Manjhi (P.W. 2) has claimed to have seen the occurrence but instead of attributing the act of assault to only the appellant, he has raised allegations against Mangal, Kongres and Puran who along with the appellant had caught hold of



the deceased and the appellant gave spade blow to the deceased. The blow by spade was repeated by the appellant. Thereafter, many persons had arrived at the place of occurrence.

16. None of the persons named by P.W. 2 as having taken part in the assault were either questioned, investigated or put on trial.

17. There does not appear to be any reason on record for avoiding their prosecution.

18. There is yet another story-line developed by him which is not at all consistent with the prosecution case. When the dead body was brought back home at about 10 P.M. in the night, P.W. 2 has stated that the Officer-in-Charge was informed about the occurrence and he was also made known that the deceased had died. Thereafter, a *chowkidar* was deputed. The Officer-in-Charge came to the house only on the next morning at 07:00 A.M.

19. This part of the deposition of P.W. 2 is



absolutely different from the main prosecution story-line. During the cross-examination, he has also admitted that the appellant enjoyed good reputation in the village and that he was also related as a nephew of P.W. 2 and other persons of the village.

20. With respect to the arrival of the informant (P.W. 5) at the place of occurrence, P.W. 2 has made a categorical statement that she came to the P.O. only ten minutes after he himself had arrived. By the time P.W. 5 had arrived at the P.O., approximately 25 to 30 persons of the village had also arrived. The accused person(s) also had run away from the P.O. by that time. They were never chased or attempted to be apprehended.

21. In the later part of his statement, Ms. Surya Nilambari asserts, P.W. 2 came out with the truth that he himself had reached the P.O. when the deceased had already fallen on the ground. He could not make any arrangement for a cot, but with the help of villagers, he carried the dead body. The injured was not in a position



to speak anything.

22. What strikes us after going through the deposition of P.W. 2 is that there is no evidence on record of the deceased having first been taken to a hospital at Lakhisarai, from where he was referred for higher treatment to P.M.C.H., but on way he died and his dead body had to be brought back.

23. The evidence of P.W. 2 is absolutely laconic, so far as this aspect is concerned. His claim to have carried the dead body along with the villagers, but to which place remains unknown. Did he only bring the dead body from the field to the house of the deceased. The deceased otherwise would not have been carried on the shoulders of the villagers to the hospital. There is, therefore, something amiss in the story-line propounded by P.W. 2.

24. Similarly, Raso Manjho (P.W. 3), during his cross-examination, has stated that when he reached the P.O., the deceased was so severely injured that he was



not in a position to speak. He had seen the deceased lying down in the field injured. The assailant had already run away. When he had reached the P.O., he learnt that two to three persons were involved in assaulting and injuring the deceased.

25. Bodhu Manjhi (P.W. 4) could not be cross-examined as he never appeared before the Trial Court for his cross-examination.

26. This takes us to the deposition of the informant (P.W. 5), who is the wife of the deceased. Very curiously and for the first time, she has stated before the Trial Court that she had heard a rumour that the appellant had, at one point of time declared that the deceased will be killed as a sacrifice to please Goddess Durga.

27. The occurrence had taken place during Durga Pujas. After having heard the *halla*, she had gone to the place of occurrence and when she had arrived there, already a crowd of about 100 persons had



assembled there. From the P.O., the dead body was brought home. She has accepted that she had told the Investigator that Kongres, Puran Manjhi, Mangal Manjhi and the appellant had assaulted the deceased.

28. What is of utmost importance to note is that she has confirmed that she had only put her thumb impression on a blank sheet of paper, which ultimately was converted into her *fardbeyan*. She knew the appellant from before. In fact, she knew him since his childhood. Likewise, the persons who had deposed in favour of the prosecution were all related to her. She has denied the suggestion that the deceased was caught stealing and the villagers assaulted him which had led to his death.

29. Satyendra Sharma (P.W. 6), who is the Investigator of this case has deposed that he had gone to the place of occurrence only on 12.10.2013 and not in the evening of 11.10.2013, as claimed by one of the witnesses. He also denied that he had taken the thumb



impression of P.W. 5 on a plain sheet of paper. He had not seen any record of the deceased having been taken to Lakhisarai Hospital or his referral to the other hospital for better treatment.

30. On 12.10.2013, he had received a telephonic information at about 06:15 A.M., which he had entered in the station diary.

31. That station diary entry has not been brought on record.

32. Thus, when information had reached about the occurrence to P.W. 6, he did not know the name of the assailant(s).

33. That the death was homicidal has been confirmed by the post-mortem report and the deposition of the Doctor (P.W. 7), who found three incised wounds on the body of the deceased; two of which were on the scalp and one was on the neck. The left temporal and parietal bone was found to be fractured. The cranium was full of blood and blood clots. The brain matter was



completely lacerated. The neck muscles and vessels as also the trachea were found to be punctured through and through. The death was because of the injuries and neurogenic shock resulting from such injuries.

34. We have also found that the inquest (Ext.- 3) was held at the house of the deceased.

35. From a perusal of the deposition of all the witnesses, what comes to the fore is that the deceased had died of stab injuries. The occurrence had taken place some times in the night of 11.10.2013.

36. According to the *fardbeyan* and the deposition of the witnesses, the deceased was attacked in the field of Raj Kumar Manjhi, who though was present at the place of occurrence according to one of the witnesses, but has not been examined at the Trial. The deceased was sitting in the field of Raj Kumar Manjhi when, according to P.W. 5, he was attacked by the appellant and two-three others. What was the occasion of the deceased to have been sitting in the field



of a neighbour, in the evening hours, in the month of October remains unknown.

37. It can also be gathered from the tenor of the evidence of the witnesses that they had arrived at the P.O. at different times. However, all of them had arrived only when the assault had already taken place and the miscreant(s) had run away. P.Ws. 1, 2 and 3 claimed to have reached the P.O. when the deceased had already been mortally wounded and had fallen on the ground with profuse bleeding. All of them have also stated that P.W. 5/informant reached about five to ten minutes later than they had arrived at the P.O. If P.Ws. 1, 2 and 3 had not seen the actual part of the assault, then P.W. 5 also had not seen the assault.

38. What further makes us worry is that the dead body was guarded by a *chowkidar*. Even though the *chowkidar* has not been examined at the Trial, but it can be supposed that he must not have done it on his own, but only on the direction of a superior authority, may be



perhaps the Officer-in-Charge of the concerned police station.

39. One of the witnesses has also stated that the *chowkidar* was deputed to guard the dead body in the night. This, therefore, makes us think that the information had already reached the police station. It is quite understandable that a police officer, not very prompt in his work, may not reach the P.O. in the night and arrived only in the morning, the next day to register the FIR. But in the present case, since the informant is an illiterate person, and when, her thumb impression was taken on a blank sheet of paper, the contents of the *fardbeyan*, therefore, could have been something which may not have been seen by the witnesses especially, P.W. 5 or narrated by her. We say so for very many reasons. It was only during the trial that P.W. 5 introduced the story of a declaration by the appellant that he would sacrifice the deceased for pleasing Goddess Durga. The occurrence had taken place during



Durga Pujas.

40. Apart from the appellant, three other persons, who were named by the witnesses were seen assaulting the deceased. There does not appear to be any reason for P.W. 5 to have left out the names of the others in her *fardbeyan*, if the *fardbeyan* contained the same very statements which she had made. It is for this that we doubt whether the contents of *fardbeyan* was what P.W. 5 had stated orally or that it was contrived by the witnesses or the police.

41. Imputing the assault on one would surely have made the investigation easy.

42. We do reckon that motive in a criminal case assumes a back-seat in view of eyewitness account. But in a case of this kind, with divergent statements of the witnesses regarding their arrival at the P.O. and having seen the assault and the informant having given her thumb impression on a blank sheet of paper to the police on the next day of the occurrence, we find that the



moorings of the prosecution are quite weak.

43. It is difficult for us to explain to ourselves as to why three other persons, *viz.*, Kongres, Mangal and Puran were spared when they had also assaulted or at least participated in the assault along with the appellant.

44. Except for P.W. 5 having heard a rumour about the appellant declaring that he shall offer a sacrifice to Goddess Durga and such sacrifice would be of the deceased, no other prosecution witness has stated about any motive for killing.

45. Was the deceased killed on the spur of the moment by somebody?

46. Was he really an object of sacrifice during Puja?

47. Did he offend the appellant to such an extent that he was attacked by a spade which proved fatal?

48. Was he caught stealing and assaulted by



the villagers, leading to his death?

49. The prosecution has left the door ajar, so wide open, as to speculate all this in the absence of any consistent story of the witnesses having seen the appellant killing the deceased.

50. If the prosecution witnesses were related to the deceased, the appellant was also related to them. This puts us again in a quandary. What could have been the reason for falsely implicating the appellant?

51. We have found no answer except the supposition of this being the handy work of the police for the ease of business *i.e.*, making a case open and shut and thereby closing it in less time.

52. Perhaps the I.O. thought that somebody must have killed the deceased and, therefore, somebody has to be made an accused in this case. All this may be in the realm of speculation but one thing is certain that the deceased was killed in the night of 11.10.2013 and what has been stated by P.W. 5 and other witnesses is



not a completely correct version of what actually had happened.

53. We are thus, left with no alternative but to give benefit of doubt to the appellant who has already remained in jail for about ten years.

54. For the reasons aforementioned, the judgment is set aside and the appellant is acquitted of the charge levelled against him.

55. Appellant/Ajay Manjhi is in custody. He is directed to be set at liberty forthwith unless his detention is required in any other case.

56. The appeal stands allowed.

57. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

58. The records of this case be returned to the Trial Court forthwith.

59. Interlocutory application/s, if any, also stand disposed off accordingly.



60. We must express our appreciation and put it on record the efforts of the Amicus, who we find had been defending the appellant in this jail appeal right since its admission stage.

61. We direct the High Court Legal Services Authority to pay to Ms. Surya Nilambari an amount of Rs.7,500/- towards her professional fee for the assistance rendered to us all this while.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

Sauravkrsinha/
krishna-

AFR/NAFR	AFR
CAV DATE	NA
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