

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.524 of 2014**

Arising Out of PS. Case No.-88 Year-2012 Thana- KUDHNI District- Muzaffarpur

Md. Shahnawaz Son of Md. Usman Resident of Village Luki Nandlalpur, P.S-
Kurhani Turki O.P, District- Muzaffarpur.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 499 of 2014

Arising Out of PS. Case No.-88 Year-2012 Thana- KUDHNI District- Muzaffarpur

Md. Sahin @ Md. Shahid Son of Md. Usman Resident of Village-Luki
Nandlalpur, P.S.-Kurhani Turki O.P., District-Muzaffarpur.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

(In both Appeals)

For the Appellant/s : Mr. Surendra Kishore Thakur, Advocate

Mr. Subodh Kumar, Advocate

For the Respondent : Mr. Binay Krishna, Special P.P. (SC/ST)

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE KHATIM REZA

C.A.V. JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date : 12-04-2023

Both these appeals have been preferred against the same
judgment of conviction dated 11.03.2014 and order of sentence
dated 13.03.2014 passed by learned 1st Additional Sessions Judge-
cum-Special Judge, SC/ST, Muzaffarpur, in S.T. No. 379 of



2012/Tr. No. 30 of 2012 and accordingly they have been heard together and are being disposed of by the present common judgment and order.

2. By the impugned judgment and order, the appellants have been convicted and sentenced as under: -

Cr. Appeal (D.B.) No. 524 of 2014				
	Convicted under Sections	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Sole appellant (Md. Shahnawaz)	302/34 of the Indian Penal Code	Life	10,000/-	Six months simple imprisonment
	3(ii)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989	Life	10,000/-	Six months simple imprisonment
Cr. Appeal (D.B.) No. 499 of 2014				
Sole appellant (Md. Sahin @ Md. Shahid)	302/34 of the Indian Penal Code	Life	10,000/-	Six months simple imprisonment
	3(ii)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989	Life	10,000/-	Six months simple imprisonment

3. The sentences have been ordered to run concurrently.
4. Heard Mr. Surendra Kishore Thakur, learned Counsel appearing on behalf of the appellants and Mr. Binay Krishna, learned Special Public Prosecutor (SC/ST) representing the State.
5. *Fardbeyan* of the informant, Sarbjit Ram (PW 9), who is the son of the deceased, recorded by the Station House Officer (SHO) of Turki Out Post, is the basis for registration of the



concerned Kudhni P.S. Case No. 88 of 2012 on 06.05.2012. It is the prosecution's case that the deceased was engaged in the business of selling toddy in his village. For the renovation of a Hindu temple (*Brahmasthan*), situated in village Lukki Nandlalpur, the Hindus were collecting contributions from amongst themselves. The deceased had also contributed. Adjacent to the said *Brahmasthan* and over some part of it, there was about seven *kathas* of government land, which was being used by members of Muslim community as graveyard for burial. On the date of occurrence, i.e., 05.05.2012, at 7 PM, the appellants, who are full brothers, had gone to the toddy shop of the deceased and taking abusively his caste name, they accosted him for making contribution for renovation of *Brahmasthan*. They attempted to assault the deceased also, but he, somehow or the other was rescued by others. The deceased came back home. At about 9 PM, the appellants came to the house of the deceased and again started hurling abuses by taking caste name of the deceased saying that he was saved in the market, but now no one would come in rescue. Thereafter, the appellant Md. Sahin @ Md. Shahid pulled down the deceased on a *chowki* (wooden bed) and the appellant Md. Shahnawaz pressed the neck of the deceased, consequent upon which he died.



6. The police, upon completion of investigation, submitted charge-sheet against the appellants for the offence punishable under Sections 302/34 of the IPC and Section 3(ii)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC/ST (PoA) Act' for short). Cognizance was, however, taken of the offence punishable under Sections 302/34 of the IPC and Section 3(ii)(v) of SC/ST (PoA) Act. The case was committed to the Court of Sessions on 29.06.2012. The charges for commission of the offence punishable under Sections 302/34 of the IPC and Section 3(ii)(v) of SC/ST (PoA) Act were framed on 08.08.2012 against both the appellants, to which they did not plead guilty and claimed to be tried.

7. At the trial, the prosecution examined altogether 10 witnesses including the Investigating Officer (IO) (PW 10), the informant (PW 9) and the Doctor, who had conducted the postmortem examination on the dead body of the deceased, Dr. Bipin Kumar (PW 2). The prosecution brought on record at the trial, the postmortem report (Ext.-1), signature of the informant on the *fardbeyan* (Ext. -2), *fardbeyan* of PW 9 (Ext.-3) and the Inquest report (Ext.-4). Video CD was filed along with the case diary as material exhibit P-1.



8. Upon closure of the evidence of the prosecution's witnesses, the circumstances emerging against these appellants were explained to them by the trial court for giving them an opportunity to explain the circumstances, keeping with the requirement under Section 313 of the Cr.P.C. The defence got examined four witnesses and exhibited certified copy of the FIR of Kudhni P.S. Case No. 64 of 2012 (Ext.-B/1), certified copy of the order-sheet of the said case of the Court of S.D.J.M. (West), Muzaffarpur, and certified copy of Kudhni P.S. Case No. 42 of 2013 as Exhibit-C. The defence also got exhibited CD copied from the original CD prepared by the administration during investigation of the case as Exhibit-D/1.

9. PW 9, the informant, being the most crucial witness, his deposition is being taken note of first. He supported the prosecution's version as was disclosed in his *fardbeyan* earlier after the occurrence had taken place at 9 PM, the police, according to him, arrived in the night and taken the dead body away for postmortem examination. He did not dispute in his evidence about the conflict between two communities over graveyard and *Brahmasthan*. The IO (PW 10), in his evidence at the trial, deposed in his cross-examination that he had received a telephonic information on the basis of which he had made station diary entry



and had proceeded for the place of occurrence. He also deposed that both the appellants were arrested from their house on the same night.

10. PW 1(Ram Pukar Ram), who, in his deposition, claimed to be an eyewitness to the occurrence, which had taken place in the toddy shop of the deceased, which was, according to the prosecution, the immediate genesis of the occurrence. PW 1 deposed that these appellants had come to the toddy shop of the deceased, but the toddy could not be provided because of non-availability to the appellants by the deceased. He also supported the prosecution's case to the extent the same related to the appellants using abusive language and taking caste name of the deceased at the toddy shop. This witness was cross-examined on the point of existence of dispute between two communities in relation to which Kudhni P.S. Case No. 64 of 2012 was lodged. PW 1 admitted in his deposition that it was he who had vaunted that the Hindus did not allow the administration to fence the graveyard and in view of the protest lodged by 500 Hindus, the administration had to retreat without completion of the fencing work.

11. PW 3 (Raj Kumar Ram) also claimed to be an eyewitness, who, at the time of occurrence, was sitting at the door



and had seen the appellants catching hold of the deceased. Whereas Md. Sahin @ Md. Shahid had caught hold of the deceased, appellant Shahnawaz was pressing his neck. Thereafter, the deceased had a hiccup and died instantaneously.

12. Indu Dei (PW 6) and Chandan Devi (PW 7), wife of PW 9, claimed their presence at the place of occurrence when they had seen these appellants pulling down the deceased and fleeing from the place of occurrence. Sakali Devi, the wife of the deceased, examined as PW 8, also deposed that at the time of occurrence she was at her house when these appellants had come and pulled her husband down. As she shouted, they twisted the neck of the deceased causing his instantaneous death. The grandson of PW 8, Bikram Kumar, aged nearly 10 years was examined as PW 4 at the trial. Though he supported the prosecution's case of the deceased having killed by these appellants, in his cross-examination, he admitted that he was making his deposition at the instance and allurement of one Ram Bilas Rai. It was the case of the defence at the trial that PW 4, a minor, was tutored by the prosecution to depose against these appellants.



13. The Doctor, who had conducted the postmortem examination, found the following ante mortem injuries on the dead body of the deceased: -

“The postmortem examination done on the dead body and following antemortem injuries were found.

1. Abrasion 2-1/2” x 1/2” over right upper part of neck.

2. Abrasion 1-1/2” x 1/2” over middle of neck just right lateral of thyroid cartilage.

3. Abrasion 1/2”x1/4” over left side of neck just below left angle of mandible.

On dissection of neck subcutaneous tissues and muscles of neck were lacerated with pressure of blood. Trachea was congested with fracture of trachea rings with blood clots.

All the internal abdominal viscera were congested. Both lungs were also congested.

Opinion – In our opinion the deceased died due to asphyxia as a result of antemortem throttling. Injuries were caused by impact of hard and blunt object. Time since death :- within 12-24 hours from the time of examination.”

14. It would be apt, at this stage, to notice the evidence of the defence witnesses. According to DW-1, the appellant Md.



Sahin @ Md. Shahid was working in Mumbai and appellant Md. Shahnawaz was driver of a school bus. The deceased did not have any connection with the earth filling for *Brahmasthan*. The prosecution's witnesses were leaders of the Hindus. The son of the deceased (PW 9) was running a toddy shop, which place is used for gambling too. The members of the Hindu community were using abusive language against the Muslims relating to the fencing of the graveyard. A case was lodged by the Muslims in connection with which Ram Bilas Rai had gone to jail and because of the grudge, which he was nurturing, these appellants were falsely implicated. DW-3 also deposed on the same lines as of DW-1 relating to registration of criminal case in connection with the fencing of the graveyard. DW 3, in his deposition, stated that at about 1 AM on 06.05.2012, Ram Bilas Rai and Ram Pukar Rai were quarreling over a piece of land belonging to the deceased and in that course Ram Bilas Rai had assaulted the deceased, leading to his death. Evidence of DW 4 is only to the extent that there was some dispute between Ram Bilas Rai and Ram Pukar Rai over the land belonging to the deceased.

15. Learned counsel for the appellants has argued that all the prosecution's witnesses, who have claimed to be eyewitnesses, are highly interested witnesses and, therefore, it would not be safe



for this Court to uphold the finding recorded by the trial court of conviction of these appellants. He has further argued that even if the case of the prosecution of dispute between these appellants and the deceased is taken to be correct, no offence punishable under Section 302 of the IPC can be said to be made out as the prosecution has miserably failed to prove the motive and intention of these appellants to kill the deceased. It is highly improbable, he contends, that for not providing toddy by the deceased, the appellants would have come to the house of the deceased to kill him. It is his submission that these appellants have been implicated apparently in the wake of dispute between two communities and the prosecution's side has falsely implicated these appellants in connection with the death of the deceased, which appears to have happened in a circumstance other than what has been set out by the prosecution. He has further submitted that so far as the appellant Md. Sahin @ Md. Shahid is concerned, the accusation of pressing the neck of the deceased is not attributable to him. His conviction by the trial court is completely unjustified. As regards the appellant Md. Shahnawaz, he has made an alternative submission to contend that even if the evidence of the prosecution's witnesses is taken to be correct, at the maximum, an offence of culpable



homicide not amounting to murder, punishable under Section 304 Part-II of the IPC, can be said to be made out.

16. Mr. Vinay Krishna, learned Special Public Prosecutor (SC/ST) appearing on behalf of the State, on the other hand, has submitted that the eyewitnesses examined by the prosecution have consistently supported the prosecution's case of assault made by these appellants on the person of the deceased, which caused his death. Evidence of the prosecution's witnesses stand corroborated by the medical evidence and in such view of the matter, the finding of conviction recorded by the trial court is justified and does not require any interference.

17. We have perused the impugned judgment and order of the trial court as well as the lower court's records. We have given our thoughtful consideration to the rival submissions made on behalf of the parties.

18. It is an admitted case of the prosecution as well as the defence that there was communal tension in the village in relation to *Brahmasthan* of Hindus and an adjacent graveyard for burial of the dead bodies of Muslims. There are two places of occurrence. First, that had taken place at the toddy shop of the deceased and the informant (PW 9) and, second, the house of the deceased, according to the prosecution's narrative. At the first



place of occurrence, according to the prosecution, an altercation had taken place between these appellants and the deceased. The appellants had abused the deceased taking his caste name and on protest had assaulted him. It was alleged in the FIR that the deceased was saved at the toddy shop somehow. The said occurrence had taken place at 7 PM. Two hours thereafter, at 9 PM, the appellants went to the house of the deceased. Appellant Md. Sahin @ Md. Shahid is said to have pulled down the deceased, who was sitting on the chowki, whereafter appellant Md. Shahnawaz pressed his neck leading to his death. It is evidence of PW 1 that the altercation at the first place of occurrence had taken place as the deceased had expressed his inability to provide toddy to these appellants. In paragraph 2 of his examination-in-chief, PW 1 deposed that the appellant Md. Sahin @ Md. Shahid had twisted the neck of the deceased because of which he died. PW 3, who also claim to be an eyewitness, deposed that it was Md. Shahnawaz, who had pressed the neck of the deceased. Evidence of PW 4, the child witness, is not all creditworthy in view of his deposition to the effect that it was Ram Bilas Rai, who had tutored him to depose, as he had deposed, at the trial, PW 5 is an aunt of PW 4. She deposed in her evidence that all the prosecution's witnesses belonged to the same family. PW 6, who also claim to be



an eyewitness, deposed that appellant Md. Shahnawaz had twisted the neck of the deceased whereafter he died. PW 7 is said to have seen the appellants pulling down the deceased and thereafter fleeing away from the place of occurrence. When she reached there, she found the deceased, her father-in-law dead. PW 7 is the wife of the informant (PW 9). PW 7 further deposed that by the time she had reached the place of occurrence, the appellants had fled away. Upon listening the uproar regarding death of the deceased, the informant (PW 9) and Sakali Devi (PW 8), wife of the deceased, came. It is clear from the evidence of PW 7 that at the time of occurrence, the informant (PW 9) and the wife of the deceased (PW 8), who claimed to be the eyewitnesses, were not present at the place of occurrence. From her deposition in paragraph 3, it further appears that after the occurrence had taken place, Raj Kumar Ram (PW 3) and Ram Pukar Rai (PW 1) had come. The case of the prosecution that the informant (PW 9), PW 1, PW 3 were the eyewitnesses to the occurrence, in such circumstance becomes doubtful. Deposition of PW 1 that it was the appellant Md. Sahin @ Md. Shahid, who was pressing and twisting the neck of the deceased is manifestly contradictory to the evidence of other prosecution's witnesses according to whom the appellant Md. Shahnawaz was pressing the neck.



19. Considering the evidence of the prosecution's witnesses in entirety, we are of the considered view that there are manifest contradictions in the evidence of the prosecution's witnesses, which cannot be reconciled. The conflicting evidence of the witnesses about their presence at the place of occurrence casts doubt on the prosecution's case. It cannot be said that the prosecution was able to establish its case beyond all reasonable doubt at the trial. The finding of conviction recorded by the trial court in the facts and circumstances of the case deserves interference which cannot be upheld. Accordingly, these appellants stand acquitted of the charge of commission of the offences punishable under Sections 302/34 of the IPC and Section 3(ii)(v) of SC/ST (PoA) Act by giving them benefit of doubt. The judgment of conviction dated 11.03.2014 and order of sentence dated 13.03.2014 passed by learned 1st Additional Sessions Judge-cum-Special Judge, SC/ST, Muzaffarpur, in S.T. No. 379 of 2012/Tr. No. 30 of 2012 stand set aside.

20. These appeals are allowed.

21. Let appellant of Cr. Appeal (DB) No. 524 of 2014, namely, Md. Shahnawaz, be released forthwith, if not required in any other case. The appellant of Cr. Appeal (DB) No. 499 of 2014,



namely, Md. Sahin @ Md. Shahid, who is on bail, is discharged
from the liability of bail bonds and the sureties.

(Chakradhari Sharan Singh, J)

Khatim Reza, J: - I agree.

(Khatim Reza, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	18.10.2022
Uploading Date	12.04.2023
Transmission Date	12.04.2023

