

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.186 of 2016

Arising Out of PS. Case No.-91 Year-2013 Thana- DHANAHA District- West Champaran

Hakim Mia @ Hakim Mian S/o Late Guljan Mian, resident of Village-Bankatwa, P.S.- Bagaha, District- West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Prince Kumar Mishra, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 18-08-2023

We have heard Mr. Prince Kumar Mishra, learned *Amicus* on behalf of the appellant, and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State.

2. The appellant stands convicted under Section 302 of the I.P.C. vide judgment dated 08.01.2016 passed by the 3rd Additional Sessions Judge, Bagaha, West Champaran in Sessions Trial No. 270 of 2014 / CIS No. IPC-5034 of 2014 and vide order dated



13.01.2016, he has been sentenced to undergo R.I. for life, to pay fine of Rs.10,000/- and in default of payment of fine, to further suffer rigorous imprisonment for a period of one year.

3. Two brothers have been killed by the appellant, who is the own brother of the two deceased. As the prosecution story goes, the Informant (PW-3), who is the wife of one of the deceased/Sagir Mian, lodged a *Fardbeyan* on 14.06.2013 at the place of occurrence, which is in village Ranglalhi, in the district of West Champaran that while her husband (late Sagir Mian) was carrying out construction of a house under the Indira Awas Scheme on the family land allocated in his share, the appellant, who is the own brother of the two deceased came and took away the spade from Sagir and hit him by that spade. As a result of such assault, Sagir was seriously injured in his right shoulder and he started bleeding profusely.

4. According to PW-3, her husband became



unconscious immediately. In the meantime, the elder brother of the husband viz. Suleman Mian (another deceased) came from a nearby Mosque and questioned the appellant about his conduct. Infuriated by this, the appellant is alleged to have taken out a knife from his pocket and thrust it in the stomach of aforementioned Suleman Mian, resulting in the innards of the stomach coming out and Suleman dying instantaneously. The appellant left the knife at the P.O. and ran away. The husband of PW-3 died immediately whereas Suleman was taken to a hospital by co-villagers for treatment and he also later succumbed to the injuries.

5. On the basis of aforementioned *fardbeyan* statement, Dhanaha P.S. Case No.91/2013 dated 14.06.2013 was registered for investigation for offences under Sections 302, 307, 324 and 326 of the I.P.C.

6. The police after investigation, submitted charge-sheet against the appellant whereupon



cognizance was taken and the appellant was put on trial.

7. The Trial court, after having examined fourteen witnesses on behalf of the prosecution and two on behalf of the defence, convicted and sentenced the appellant, as aforesaid.

8. Mr. Mishra, the learned *Amicus*, while assailing the judgment has submitted that apart from PW-3 who is wife of one of the deceased, there is no other eye-witness to the occurrence.

9. There was no dispute between Sagir Mian or Suleman Mian with the appellant. The family property had already been partitioned and a house under the Indira Awas Scheme was being constructed over the land which had fallen in the share of Sagir Mian. Apart from this, he has urged that there is a definite motive of PW-3 in falsely framing the appellant as such accusation against him would have resulted in further division in the property with advantage to PW-3.



10. The *Amicus* also drew the attention of this Court to the suggestion given to PW-3 that Suleman owed money to Sagir and when the same was demanded by Sagir, an altercation took place between Sagir and Suleman, leading to death of both of them. Suleman was said to have threatened Sagir with a knife and Sagir, in order to save himself, took away the knife from Suleman and hit him in stomach. Sagir was also injured in process.

11. He has further submitted that if this plea of the defence is not accepted, then at least it can surely be said that there was no intention of the appellant of killing either of the deceased as he had no dispute with both of them. In that event, it was only an act which though caused death but did not amount to homicidal murder. It was only an accident that both the brothers of the appellant died.

12. The prosecution, Mr. Mishra suggests, has completely failed in its duty to prove the case. A



shortcut approach was adopted by the police in believing every part of the statement of PW-3 to be true and proceeding on those lines only. Had it not been the case, the weapon of assault would have been examined properly and if any blood was found on it, the same would have been sent for serological examination. Instead, the so-called blood stained shirt of the appellant was seized from the place of occurrence at the instance of Hamid Mian/PW-1.

13. It is not a case of the prosecution, Mr. Mishra contends, that the appellant opened his shirt and left it at the P.O. or that the shirt was seized from the house of the appellant. This very fact clearly suggests that efforts were made by the investigator to anyhow close the investigation by zeroing on the appellant, who has been named for some reason or the other by PW-3.

14. He has further submitted that in this context, the deposition of the two defence witnesses, who are none else but the brothers of the deceased as



also of the appellant, assumes importance. Both of them have denied that the appellant had killed the two brothers.

15. Seen in totality, either it was a case of an accident where the spade which was being used by Sagir, accidentally flew off or that the appellant attacked both of them without intending to cause their death. In either case, the death cannot be said to be homicidal murder.

16. Lastly, it has been submitted that the nature of ante-mortem injuries on the body of the deceased would indicate that the suggestion given to PW-3 viz. both the deceased killing each other, could have been possible and that if the allegation attributed to the appellant by PW-3 is accepted, the shoulder of Sagir would have come off because of the spade attack. He has submitted that spade is a heavy agricultural implement with a sharp edge but, if used through the sharp edge side, it would not cause the kind of injury



which was found on the body of the deceased/Sagir Mian.

17. He thus has attempted to persuade the Court that what has been narrated by PW-3 and what meets the eye in the shape of evidence is different from what may have happened. He thus suggests that in this situation, benefit of doubt has to be given to the appellant who harboured no intention to kill either of the deceased.

18. As opposed to the aforementioned contentions, Mr. Sujit Kumar Singh, learned APP, has submitted that the argument of the learned *Amicus* borders on imagination of imponderables. What may have happened or what could have happened is not what the Trial court was required to see.

19. The PW-3 was all along present at the place of occurrence when the appellant killed both the brothers. Deceased/Sagir was mixing the construction



materials by means of a spade at the spot where the construction was going on. It was at that time that the appellant is said to have come and snatched the spade off Sagir. He did not stop there but he gave a spade blow, injuring and killing the deceased/Sagir. Sagir was not in a position to withstand such massive attack and he fell down on the ground. Quite fortuitously, Suleman who had been praying in a nearby Masque, came and on his intervention, he too was assaulted by means of a knife which the appellant was carrying with him.

20. These sequence of events clearly spell out the intention of the appellant that he intended to inflict such harm on Sagir which in ordinary course of nature would have caused his death and he also intended to kill Suleman. That he was carrying a weapon viz. a knife in his pocket is also a factor to be taking into account with respect to his preparedness for using such weapon in case the dispute came to such a pass.

21. The State therefore questions the



correctness of the arguments advanced on behalf of the appellant and contends that the judgment and order of conviction is not worth interfering.

22. Even though it has been admitted by the State that no different standard could be attached to defence witnesses as compared to the prosecution witnesses but, in this fact scenario, the deposition of the two other surviving brothers of the deceased and the appellant is required to be seen with some circumspection. Perhaps, the two defence witnesses had reconciled that for some reason or the other, two out of six brothers had died and the third one was about to go to gallows for killing the two brothers and therefore, it was in the best family interest to save the third brother by deposing in his favour. This again is based on some imagination but, considering the fact that those two brothers who were called to the witness stand by the appellant were not present at the place of occurrence or else one of them might have been the Informant of the



case.

23. After having heard the learned counsel for the parties and having examined the records of the case, we find that PW-3 has narrated about the incident without any exaggeration. We tried to find out the source of information to the police which does not appear to be on record; nonetheless, on that account, the statement of PW-3 cannot be doubted, specially when she was present all along when the act was committed.

24. The two other brothers who got themselves examined as defence witnesses never made any statement to the police. The I.O. has also categorically admitted that he did not enquire from anyone of the brothers. It was necessary for the I.O. to have found out whether there was any dispute existing between the brothers with respect to allocation of land.

25. According to the deposition of PW-3, it



appears that the family property was partitioned amongst six brothers and Sagir, her husband, had got a share of half a Kathha of land in the P.O. village owner which an allotment was made under the Indira Awas Scheme.

26. We have no idea whether the brothers were unhappy with the allocation of the family property or that Indira Awas Scheme money was to be shared by all the brothers. Had it been the case, the objection would have been raised from before.

27. On carefully examining the deposition of PW-3, we find that though she did not know the details about the partition in the family and the respective shares of the brothers but, she has been consistent about the assertion that the benefit under the Indira Awas Scheme was granted against the land which fell in the share of Sagir. Merely because PW-3 could not answer specific details about the family property, that would not render her deposition doubtful. The entire



occurrence, according to PW-3, took place within five minutes. Sagir died immediately whereas Suleman died after some time.

28. We have also examined the deposition of the Doctor and have seen the postmortem report of both the deceased. In both the cases, the ante-mortem injuries clearly conform to the ocular testimony and, in both the cases, the cause of death has been opined to be hemorrhagic shock due to sharp cutting injury. During the postmortem examination of Suleman, the doctor had found the intestine to have come out as was told by the Informant / PW-3 in the first instance. With these facts, the manner of occurrence and the place of occurrence stand fully proved.

29. What is to be noted and examined and analyzed is whether the appellant had the intention of killing both the brothers. Had it only been a case of accidentally hurting the appellant would have been entitled to make this argument. There could have been



some dispute between Sagir and the appellant with respect to allotment under the Indira Awas Scheme. It would have been quite natural for the appellant to have made some attempts at stopping Sagir from carrying out the construction. In the process, he may have taken away the spade and would have also hit Sagir. Even till this time, the intention to kill Sagir could not have been determined. That he thrust a knife through and through the body of Suleman, another brother who had come to question the conduct of the appellant, completely confirms that the appellant had come with the intention of causing harm to anybody who would have participated in the construction of the house.

30. The appellant is said to have used a knife against Suleman kept in his pocket. The knife was thrown before the appellant made his exit. From the records, it appears that the appellant was arrested immediately. This sequence of events therefore leaves no room for doubt that the appellant knew the nature



and quality of his act; had the knowledge that the injury inflicted by him would have the potency of killing the victims and therefore, his plea of lack of intention cannot be entertained.

31. We have also given our anxious consideration to the fact that it is only PW-3 whose deposition has been relied upon for convicting the appellant and that all other witnesses, who were either witnesses to the inquest or of the seizure, have not supported the prosecution version. But we found in the ultimate analysis that the death of both the brothers is a homicidal death, caused by the appellant and nobody else.

32. The suggestion of both the deceased killing each other is only an imaginative thought which is based on no material on the record.

33. For the aforementioned reasons, we find no difficulty in affirming and ratifying the judgment of



conviction and sentence delivered by the Trial court against the appellant.

34. The appeal has no merits and is dismissed.

35. However, we appreciate the efforts of Mr. Mishra, the *Amicus*. We direct the Patna High Court Legal Services Authority to pay to Sri Mishra an amount of Rs. 5,000/- towards his professional fee for the assistance rendered to us.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

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