

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.11 of 2016

Arising Out of PS. Case No.-18 Year-2001 Thana- MORO District- Darbhanga

Antu Thakur @ Ashok Kumar S/o Shankar Thakur, resident of village-
Bishanpur, P.S.- Katra, District- Muzaffarpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mahendra Thakur, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP
For the Informant	:	Mr. Rabindra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 03-05-2023

We have heard Mr. Mahendra Thakur, learned Advocate for the sole appellant and Mr. Abhimanyu Sharma for the State. Mr. Rabindra Kumar, learned Advocate for the informant has also assisted this Court.

The appellant has been charged under Section 302/34 of the Indian Penal Code for having assaulted the deceased by means of a dagger leading to his death.

The FIR was registered on 14.06.2001 by the father of the deceased, who has been examined as P.W. 5 at the trial, for an occurrence which took place in the



evening of 13.06.2001. P.W. 5 has stated that while he along with his son (deceased) was sitting at his darwaja, a buffalo of one Dahu Chaudhary came in the field belonging to the informant and destroyed the crops. P.W. 5 asked his son (deceased) to tend away the buffalo which he did. This infuriated some of the persons of the neighbourhood including the appellant, who entered into verbal duel with the deceased. In the meantime, on the exhortation of one Sachidanand Chaudhary, Munshijee Chaudhary both of whom have not been put on trial as final report false was submitted in their favour and Shankar Thakur caught hold of the deceased and the appellant/Antu Thakur *coup de graced* the deceased by means of a dagger which he was carrying on his person. Shankar Thakur, who is the father of the appellant was put on trial along with his son but he has since been acquitted.

The trial court, after having examined eleven witnesses on behalf of the prosecution including the two Investigating Officers and the Doctor, convicted the



appellant under Section 302 of the Indian Penal Code and sentenced him to undergo R.I. for life, to pay a fine of Rs. 25000/- and in default of payment of fine, to further suffer R.I. for five years.

Shankar Thakur another co-accused as noted above has been acquitted of all charges.

One of the persons who has been named by P.W. 5 in the fardbeyan, of having come to his house immediately after the occurrence, has been cited as P.W. 1 (Shatrughan Chaudhary), who has not supported the prosecution version and has been declared hostile. He has said before the trial court that he came to learn that the deceased died but in what manner and where was not known to him. Similar statements have been made by P.Ws. 2, 3 and 4, all of whom also have been declared hostile by the prosecution.

The informant/P.W. 5 has but supported the prosecution case and has categorically stated that when the deceased herded away the buffalo which had trampled



the *Janera* crops in his field, the appellant, his father/Shankar Thakur, Sachidanand Chaudhary and Munshijee Chaudhary started abusing his son. However, his son came back to his house but was followed by the aforementioned four persons. Sachidanand Chaudhary exhorted the others to kill the deceased, on which the appellant gave a dagger blow leading to his death.

He has further stated that at the time of the occurrence Mangal Jha, Gauri Shankar Chaudhary, Gobardhan Chaudhary and Parwati Devi were present. Out of these, only Parwati Devi has been examined as P.W. 8, who is non-else but the mother of the deceased. The rest others have not been examined during the trial. With the help of the villagers, the injured son of the informant was taken to DMCH where the doctor declared him dead. In the morning of 14.06.2001, the Officer-in-Charge of Beta O.P., within whose jurisdiction DMCH is situated came and recorded his fardbeyan which was signed by Biltu Chaudhary (not examined), Shatrughan Chaudhary P.W. 1



who was declared hostile and Rambilash Chaudhary. The Officer-in-Charge had made the inquest report in his presence.

In his cross-examination, P.W. 5 has admitted that Dahu Chaudhary whose buffalo had entered in his field is his uncle and who is the maternal grand-father of the appellant. The land in question had been purchased by his father and in the entire portion of such plot, *Janera* crops had been sown which was standing in the field. He had not seen anyone of the accused persons overtly armed with any lethal weapon. He could identify that appellant was carrying a weapon (a dagger) only when he used it against his son. There was no other fight in his presence. He did not even run away when the accused persons came menacingly towards his son. The deceased also was seated on the same cot as that of P.W. 5. Even though P.W. 5 asserts that there is a local hospital, he chose to take his injured son to DMCH on a jeep and he was accompanied by Shatrughan Chaudhary (P.W. 1) and two others. No



sooner had the son been reached to the hospital, he was declared dead.

Another son of the P.W. 5 viz. Komalkant Chaudhary (P.W. 6) has supported the prosecution version but with a slight twist in the facts of the case. According to him, P.W. 5, his father, requested Dahu Chaudhary, the maternal grand-father of the appellant, to take away the buffalo from his field. Immediately thereafter, the deceased used a stick to ward-off the buffalo from the field. This led to an occurrence in which Sachidanand Chaudhary exhorted for killing the deceased. It was then that Munshijee Chaudhary and Shankar Thakur caught hold of the deceased and the appellant killed him by hitting him with a dagger in his chest. He admits of having seen the buffalo in his field even before the occurrence took place.

The skirmish before the attack by a dagger, which had taken place between the deceased and the accused persons ended and the deceased came back to his house.



P.W. 6 asserts that he was not chased by the accused persons. In the next breath, he says that the deceased was caught in the field only and was assaulted. By the time P.W. 6 and others could come to the rescue of the deceased, the assault had already been perpetrated.

He has further admitted the fact that there was no attempt on the part of the appellant to give another blow to the deceased. Like P.W. 5, P.W. 6 also had not seen anybody overtly armed with any weapon. Immediately after the occurrence, the deceased was taken to the DMCH, where he was declared dead. However, he could not tell the trial court as to when the deceased had died *i.e.* whether he died on way to hospital or on reaching the hospital was not known to him. His attention was drawn to the statement made by him before the police that the occurrence, in fact, had stopped after some verbal duel between the parties had taken place but he denied of having said so before the police.



The other ocular testimony comes through the mouth of the mother of the deceased, who has been examined as P.W. 8. After the FIR, P.W. 8 has asserted that the police came for further investigation only after two days. On the next day of the occurrence, the dead body was cremated. She remained partially unconscious for about 3 – 4 days as a result of shock because of the death of her son. Her attention was drawn to her previous statement before the police where she had not stated that the deceased had been caught by Shankar Thakur and Munshijee Chaudhary when he was given the dagger blow by the appellant but she denied such suggestions.

We have examined the post-mortem report as also the deposition of the Doctor (P.W. 7). He had conducted the autopsy on the deceased on 14.06.2001 and had found a stab wound which was very deep. The sternum was found to have been hit right till 3"-4" to the mid-line. The 7th right costal cartilage was found to have been cut and the pointed portion of the weapon also



appeared to have entered the right ventricle of the heart after cutting through the pericardium. The doctor had found blood clots on the under surface of the sternum and the upper surface of the pericardium. Sufficient measure of blood clots were also found present in the pericardial sac. Rest of the innards were found to be intact.

The death was opined to have been caused as a result of shock due to cardiac arrest which in turn was accelerated by the injuries suffered by the deceased.

We further find from the records that the ASI of Beta O.P. who had recorded the FIR has not been examined but Balram Singh who had taken over the investigation in his capacity as Officer-in-Charge of Moro Police Station has been examined as P.W. 9. The investigation was further concluded by Kameshwar Singh, who too has been examined as P.W. 10. He has stated before the trial court that Shatrughan Chaudhary (P.W. 1) had given his statement that when he came back to his home at 06:00 P.M. on 13.06.2001, he saw that the



deceased was fighting with Shankar Thakur, the appellant Dahu Chaudhary, Sachidanand Chaudhary and Munshijee Chaudhary. He also told the I.O. that on the asking of Sachidanand Chaudhary, the deceased was killed by the appellant.

P.W. 1, as we have noted above, has denied to have made any such statement before the police and has been declared hostile. Similar statements were made by some of the witnesses who have not been examined at the trial.

What is important to note is that he had seized the blood stained earth from near the occurrence but did not send the same for any forensic examination. He had recorded the fact in the case diary that the blood stained earth was seized by him. There was no other seizure by P.W. 9, not even the weapon of assault. He has denied that P.W. 8 had stated before her that Shankar Thakur and Munshijee Chaudhary had caught her son when the



appellant killed him. P.W. 10 had filed the charge-sheet against the accused persons including the appellant.

Mr. Thakur, learned Advocate for the appellant has argued that the prosecution has not been able to prove the case beyond all reasonable doubts.

He submits that but for the deposition of the father, mother and brother of the deceased, no independent person, not even the charge-sheeted witness and a witness to the FIR has supported the prosecution case. Even the statements made by the aforementioned three persons (P.Ws. 5, 6 and 8) are at great variance with each other.

In support of his contention, Mr. Thakur has urged that even if it is accepted for the time being that the fatal blow was given by the appellant, there was no premeditation or planning for surrounding the deceased and killing him. There was no repetition of the blow and therefore, at best, the appellant could have been convicted under Section 304(1) but not under Section 302 of the



Indian Penal Code. As a prop to the aforenoted argument, Mr. Thakur suggests that the injury became fatal only because the deceased had taken a pratfall which made the injury grievous as the weapon got pierced till the pericardium. There could have been no earthly reason, Mr. Thakur argues, for killing the deceased for such a trifle.

He has further submitted that from the surrounding circumstances, it appears that there is some dispute with respect to the land in the respective possession of the parties or else the P.W. 5 would not have talked about the ownership of the land as having been purchased by virtue of a sale-deed sometimes in the past. He says so, keeping the background of the appellant and his father being settlers of the same village.

Mr. Thakur has further pointed out that it appears to be rather strange that the P.W. 5 did not intercede when his son was being attacked by the appellant and that also when except for the appellant, nobody was armed and the occurrence had taken place in his presence in front of



his house. It is even more surprising that P.W. 5 was left unscathed. He was not even given a push.

From the evidence on record, he further infers that the mother of the deceased (P.W. 8) came out of her house only on hearing hulla and therefore she could not have, in all probability, witnessed the occurrence. She has thus, it has been argued, repeated only such fact which was made known to her by others.

What is even more striking, Mr. Thakur argues, that instead of making attempts at administering first-aid to the deceased for the purposes of stopping the bleeding and preventing any neurogenic shock, which could have been done by taking the injured to the nearest hospital, the deceased was taken on a jeep to the headquarters at Darbhanga to be treated at DMCH.

There is no MLC report on record indicating the declaration of death by the hospital authorities.

On these grounds, the appellant doubts the correctness of the prosecution version and prays that such



inconsistencies in the prosecution version must enure in his favour and he be acquitted of the charges of murder.

As opposed to the aforesaid contention, Mr. Abhimanyu Sharma, learned APP submits that the evidence is in the nature of an open and shut case as the father, mother and brother of the deceased have clearly stated before the trial court that it was the appellant who gave the fatal blow to the deceased, even though it was for a petty dispute.

He further submits that the nature of injury is such which would bring the case within the four corners of the provisions contained in Section 300 (thirdly) of the Indian Penal Code. The act of assault may not have been intended to cause death but the appellant had the knowledge that such attack would cause such bodily injury which is capable of causing death in ordinary course of nature.

He thus submits that minor variation in the deposition of the witnesses would not entitle the appellant



to argue for acquittal. Doubts attempted to be created by the appellant are only fanciful and vague for which the law does not guard against.

He reminds the Court that if the occurrence is in the least probable, then the prosecution passes the test of "*beyond reasonable doubts*".

We have examined the case from all angles and we find that even though for a very small cause, an occurrence took place but the nature of attack attributed to the appellant clearly reveals that he committed an act about which he would have known that it would cause death in all probability and therefore there is no way in which the appellant can claim to have committed homicide not amounting to murder.

True it is that P.W. 1 to 4 have not supported the prosecution version, leaving only the interested and related witnesses in the field to depose against him but that does not take away the shine from the prosecution case altogether.



If not P.W. 8, P.Ws. 5 and 6 are, for sure, eye witnesses to the occurrence. There is no evidence of any long-standing enmity between the parties and even if it is assumed that there could have been some dispute with respect to the ownership of the land where the standing crops were alleged to have been trampled by a buffalo which had entered the field, that would not be reason and motive strong enough to falsely implicate the appellant.

We do know the reason why Sachidanand Chaudhary and Munshijee Chaudhary were not sent up for trial or were not summoned under Section 319 of the Code of Criminal Procedure after the deposition of P.Ws. 5, 6 and 8 was recorded but that by itself would not lessen the guilt of the appellant, who is said to have *coup de graced* the deceased.

The post-mortem report and the evidence of the doctor clearly establishes that the death was homicidal which amounted to murder as it was the cause of the injury inflicted by the appellant.



We are not persuaded to convert the case into one under Section 304(1) of the Indian Penal Code only for the reason that there were few abrasions on the body of the deceased on such parts which can give an impression that the injuries were rendered more grievous only because of the struggle or the fall of the deceased prior to his death.

Thus, finding no fault with the findings of the trial court, we are constraint to dismiss this appeal.

The appeal stands dismissed.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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