

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.413 of 2018

Arising Out of PS. Case No.-132 Year-2011 Thana- DIGHWARA District- Saran

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Rustam Mian, Son of Late Sure Hussain, resident of Village- Sitalpur Bazar,
P.S.- Digwara, District- Saran, 841221

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Srivastava, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 04-08-2023

This appeal has been preferred by the appellant under Section 374(2) of the Code of Criminal Procedure, against the impugned judgment of conviction dated 03.02.2018 and the order of sentence dated 07.02.2018 passed by learned 2nd Additional Sessions Judge, Saran, Chapra, in Sessions Trial No. 610/2013/CIS No. 1147/2014, arising out of Dighwara P.S. Case No. 132/2018, whereby the appellant has been convicted and sentenced as under:

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
under Section 302 of the Indian Penal code	Imprisonment for life	Rs. 12,000/-	SI for one year

2. The appellant, according to the prosecution’s case is a *butcher* by profession and was running a mutton shop as on the date of occurrence. The informant is the brother of the deceased whose *fardbeyan* recorded by Sub-Inspector of Dighwara Police Station on 12.08.2011 at 5:30 pm at Primary Health Centre, Dighwara is the basis for registration of Dighwara P.S. Case no. 132/2011 dated 12.08.2011, which finally gave rise to the Sessions Trial No. 610/13. The informant(PW-2) disclosed in his *fardbeyan* to the police officer that his brother Kundan (the deceased) had gone to the appellant’s shop for purchasing mutton. The deceased and the appellant thereafter entered into some altercation on the point of purchasing rate of mutton per kilogram. Because of less payment of money by the deceased than what the appellant was asking for, the appellant got agitated and started quarreling with the deceased. Thereafter, a co-shopkeeper Md. Ali Mian gave the appellant a knife which was being used for cutting the mutton into pieces and asked him to kill the deceased. The appellant and Md. Ali Mian thereafter, with the use of force took the victim to a place near

the house of one Vishwanath Sah about 300 ft. away from the shop. The deceased thereafter was pushed to the ground and this appellant brutally inserted the knife in the neck of the deceased and twisted the knife. In the meanwhile, locals gathered and they overpowered this appellant. The police were informed about the occurrence. The appellant was taken into custody and the deceased was immediately rushed to Primary Health Center, Dighwara (PHC in short) for treatment where he was declared dead. The informant's *fardbeyan* was recorded by the police as has been noted hereinabove, at the PHC itself. The dead body of the deceased was subjected to post-mortem examination. The Doctor found following *antemortem* injuries which according to his opinion was the cause of death:-

'Incised wound 1'X 1/2' inch deep to cavity over left side of neck.'

3. The police, upon completion of investigation submitted charge-sheet only against this appellant and, considering the evidence collected during the course of investigation came to a conclusion that co-accused Md. Ali Mian was not required to be sent up for trial. The Trial Court took cognizance of the offence punishable under Section 302/34 of the Indian Penal Code based on the charge-sheet and decided to proceed against this appellant and co-accused Md. Ali Mian. As co-accused Md. Ali Mian absented himself from the court, his case was

separated by an order dated 15.07.2013 and charge was framed against this appellant on 09.06.2014 for commission of the offence punishable under Section 302 of the Indian Penal Code. The appellant denied the charge and claimed to be tried. Accordingly, he was put on trial. At the trial the prosecution examined altogether seven witnesses including the IO (PW-7), the Doctor who had conducted the postmortem examination (PW-1), the informant (PW-2), Chandeshwar Sah (PW-3), Nageshwar Sah (PW-4), Dipesh Kumar (PW-5) and Uday Sah (PW-6) who claimed to be eyewitnesses to the occurrence. The prosecution adduced documentary evidence at the trial including the inquest report, postmortem report and the *fardbeyan*. The trial court, after having appreciated the evidence of the prosecution's witnesses and the documentary evidence adduced at the trial concluded by the impugned judgment that the prosecution was able to establish the charge of commission of offence punishable under Section 302 of the Indian Penal Code against the appellant beyond all reasonable doubts and accordingly, sentenced him to undergo imprisonment and fine as noted above.

4. Mr. Ranjan Kumar Srivastava, learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution's witnesses, who claimed to be the eye-witnesses are in fact not the eye-witnesses as can be seen from their respective depositions. He has

further argued that whereas it is the specific case of the prosecution that the deceased was dragged for about 300 ft. by the appellant and the co-accused before he was killed, the postmortem report does not disclose any injury other than the injury caused in his neck by a knife. He has submitted that this fact creates doubt as regards the manner of occurrence. He has further submitted that the prosecution has not been able to prove the place of occurrence for the reason that according to the prosecution's case, the deceased was taken to a place near the house of one Vishwanath Sah, where he was brutally assaulted, leading to his death but Vishwanath Sah has not been examined and there is no explanation for his non-examination, available on record. He has further submitted that though, it is the case of the prosecution that the appellant was apprehended by the local people immediately after the occurrence and was handed over to the police but the knife said to have been used for making the assault was not recovered and not produced at the trial. He lastly, submits that it is evident from the evidence of the prosecution's witnesses that there were several shops near the shop of the appellant but no other shopkeeper was examined by the I.O. to verify the veracity of the accusation made by the appellant in his *fardbeyan*.

5. Mr. Sujit Kumar Singh, learned Additional Public Prosecutor appearing on behalf of the State on the other hand has submitted that in the present case, the prosecution has been able to

establish the manner of occurrence by oral evidence of the eye-witnesses. He contends that the oral evidence of the witnesses to the effect that the deceased was brutally assaulted in his neck by knife stands corroborated by the *postmortem* report and the evidence of the Doctor (PW-1). He has submitted that the prosecution's witnesses, in the present case are consistent in their depositions that the deceased was killed by this appellant and minor variations in their depositions may not be a ground for disbelieving their evidence since, every person has his own perception of what he sees and the description of the occurrence seen by him may vary from witness to witness and it cannot be expected by the Court that their depositions should be in verbatim the same to believe them. He has argued that there is no contradiction in the evidence of the prosecution's witnesses which can be considered to be substantial for this Court to doubt their correctness and the finding recorded by the trial court in its conviction is wholly justified based on the correct appreciation of the evidence adduced at the trial.

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

7. Upon overall appreciation of the evidence of the prosecution's witnesses, it appears that it is the case of the prosecution

that the deceased had gone to purchase mutton from the mutton shop of the appellant whereas, the appellant was demanding a sum of Rs. 300/- for 1 kg of mutton given to the deceased, the deceased insisted on payment of Rs. 250/- only. The dispute between the deceased and the appellant was only in relation to payment of a sum of Rs. 50/- by the deceased over and above what he was ready to pay for 1 kg of mutton. The witnesses have deposed that altercation had thereafter ensued between the two and the accused persons were agitated and had taken the deceased towards a place away from the mutton shop and this appellant killed the deceased by piercing knife in his neck.

8. PW-2 (informant) deposed at the trial that at the time of occurrence he was sitting near the house of one Krishna Choudhary when the deceased had gone to the appellant's mutton shop. He had seen the appellant and the co-accused dragging the deceased from the shop and the appellant piercing the knife in the neck of the deceased. As the informant screamed, local persons came and immediately apprehended the appellant. The police were informed whereafter they came and the deceased was taken to the PHC where he was declared dead and his (informant) *fardbeyan* was recorded by the police.

9. It is pertinent to mention here that soon after the occurrence the *fardbeyan* was recorded at 7:30 pm on the same day. We do not find any such material or evidence on record based on which it

can be inferred that the appellant was made an accused by the informant after any deliberation or because of any grudge which he was harbouring against the appellant. PW-3 is an independent witness who was also sitting near the house of Krishna Choudhary. While supporting the prosecution's case, he deposed that he had seen this appellant taking the deceased forcibly towards the house of Vishwanath Sah. When the deceased was quivering with pain, he had reached there whereafter he had taken the deceased to the hospital. In his cross-examination, in response to a question as to whether he had attempted to rescue the deceased, he deposed that initially he was under the impression that the appellant and the co-accused were frolicking with the deceased. Similarly, PW-4 fully supported the prosecution's case and deposed that he and Ranjeet Choudhary were there near the house of one Krishna Choudhary where the meat shop was located. He is a witness to the occurrence of fist-fight having taken place between the deceased and the appellant. There was panicked flight after the deceased had fallen down on the ground. Similarly, Dipesh Kumar (PW-5) deposed that at 4:30 pm, he was in his house and after hearing the noise when he came out near the house of Ranjeet Choudhary and Krishna Choudhary he saw an altercation taking place between this appellant and the deceased on the point of payment of money. He also deposed that he had seen the appellant forcibly taking the victim towards the house of Vishwanath

Sah. Chandeshwar Sah (PW-6), who too is an independent witness deposed at the trial that he had seen the appellant assaulting the deceased with knife in the neck of the deceased. The I.O., who deposed at the trial as PW-7, in his evidence testified that blood stains were there at the place of occurrence. According to him, soon after learning about the occurrence, he had proceeded to the place of occurrence and had noticed that the appellant was being assaulted by the villagers for assaulting the deceased.

10. The Doctor (PW-1), who had conducted the postmortem examination proved the *antemortem* injury found on the body of the deceased, which was the cause of his death which we have already noticed hereinabove.

11. On careful scrutiny of the evidence of the prosecution's witnesses, we notice that they are inconsistent in their deposition that it was the appellant who had assaulted the deceased leading to his death. Except the informant, all the eye-witnesses to the occurrence are independent witnesses. There is nothing on record to demonstrate that other than the dispute which had occurred between the appellant and the deceased on the date of occurrence, there was any dispute between them which could have been a reason to falsely implicate the appellant. It is consistent case of the prosecution that the appellant was overpowered by the co-villagers soon after the deceased was assaulted. Since, the eye-

witnesses have fully supported the prosecution’s case, non examination of the person near whose house the occurrence had taken place, cannot be a reason for this Court to doubt the entire prosecution’s case. It is not the case of the defense that Viswanath Sah was present in his house when the occurrence had taken place near his house.

12. We, thus, do not find any reason to disbelieve the depositions of the eye-witnesses in the conspectus of the circumstances, as noted above.

13. In our view, the find of conviction recorded by the trial court does not suffer from any legal infirmity requiring this Court’s interference.

14. We do not find any merit in this appeal and the same is accordingly, dismissed.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

suraj/ranjan-

AFR/NAFR	NAFR
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