

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.783 of 2015

Arising Out of PS. Case No.-14 Year-2013 Thana- KATIHAR MUFFASIL District- Katihar

1. Putul Devi, W/o Ravindra @ Birendra Ravidas
 2. Birendra @ Ravindra Ravidas @ Ravindra @ Birendra Ravidas S/o Ganeshi Ravidas
- Both are R/o Village Hafla Makdampur, P.S. Katihar Muffasil,
District Katihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Prince Kumar Mishra, Amicus Curiae
For the Respondent/s : Ms. Km. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE RUDRA PRAKASH

MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 29-11-2023

The present appeal has been filed by the appellants under Section 374(2) of the Code of Criminal Procedure, 1973 against the judgment dated 13.05.2015 passed by the Additional District & Sessions Judge, II, Katihar in Sessions Trial No. 302 of 2013 arising out of Katihar Muffasil P.S. Case No. 14 of 2013 whereby the appellants have been convicted under Section 302/34 of the Indian Penal Code and vide order of sentence dated 16.05.2015, they have been sentenced to undergo imprisonment for life, to pay a fine of Rs. 2,000/- each and in default of payment of fine, to further suffer simple imprisonment for two months for the offence under Sections



302/34 of the I.P.C.

2. The crux of prosecution case as it springs from the *Fardbeyan* of the wife of the deceased namely Devki Devi is that the Informant was living at the house of her mother situated in village Makdumpur, P.S. Makdumpur, Katihar for the last one month. On 25.01.2013, the husband of the Informant namely Budhu Ravidas (deceased) came at her parent house for taking her. At about 3 PM, the Informant was ready to go her matrimonial home situated in village Bastol. At the same time, the husband of the Informant Budhu Ravidas was persuading her brother Ravindra Singh and his wife Putul Devi for not quarreling and misbehaving to her parent. Meanwhile, the accused Ravindra @ Birendra Ravidas became infuriated and caught the 'Collar' of the husband of the Informant and started abusing. In the meantime, the accused Putul Devi took out dagger and handed over the same to her husband and she gave order to kill him. Then, Ravindra @ Birendra Ravidas took dagger from the hand of his wife and stabbed in the chest of Budhu Ravidas as a result of which, he fainted. Thereafter, he was taken to hospital with the help of neighbour and villagers where he was declared dead by the doctor.

3. On the basis of the aforesaid *Fardbeyan* given by



the wife of the deceased, who is also sister of the appellant no.2, the Investigating Officer lodged the formal F.I.R. and thereafter investigation was carried out by the investigating agency.

4. During the course of the investigation, the Investigating Officer recorded the statement of the witnesses and the dead body of the deceased was sent for conducting postmortem. The Investigating Officer also seized knife in presence of two witnesses. Thus, there is a discovery of the weapon. After the investigation was over, the Investigating Officer filed the charge-sheet against both the appellants/accused before the concerned Magistrate court.

5. The case was exclusively triable by the Court of Sessions and, therefore, the learned Magistrate committed the case to the concerned Sessions Court under Section 209 of the Cr.P.C. where the case was registered as S.T. No. 302 of 2013.

6. Before the trial court, the prosecution had examined nine witnesses and also produced the documentary evidences. Thereafter, the further statement of the accused came to be recorded under Section 313 of the Cr.P.C. After the conclusion of the trial, the trial court passed the impugned order against which, as observed herein above, the appellants have preferred the present appeal.



7. Heard Mr. Prince Kumar Mishra, learned *Amicus Curiae*, appearing on behalf of the appellants and Ms. Km. Shashi Bala Verma, learned APP, representing the State.

8. Learned counsel for the appellants was not remaining present and, therefore, order dated 09.11.2023 was passed wherein this Court observed as under:-

“When the matter is called out, learned counsel for the appellants has not remained present. It is required to be noted that appeal is of the year 2015 and the appellant is in custody since approximately last more than ten years. However, the learned counsel is not present, therefore, in the interest of justice, as a last chance, matter is adjourned.

2. Learned APP for the State is present.

3. Re-notify on 29.11.2023.

4. It is clarified that if Mr. Sanjeev Kumar Singh, learned counsel for the appellants, will not remain present in Court also on the next date of hearing, the Court may appoint an Amicus Curiae, in the interest of justice, with a view to assist the Court.”

9. Learned *Amicus Curiae* has referred the deposition of the prosecution witnesses and also referred the documentary evidences produced by the prosecution and, thereafter, it has been mainly argued that the Informant, who is the wife of the deceased i.e. P.W.2 and P.W.3/Jasia Devi, who is the mother-in-law of the deceased, have not supported the case of the



prosecution and they have turned hostile despite which the trial court has recorded the conviction.

10. Learned counsel has further submitted that there are major contradictions in the deposition of the prosecution witnesses and, therefore, the present appellants be acquitted by quashing and setting aside the impugned order passed by the concerned trial court. It is also submitted that though there is alleged discovery of the weapon, the said weapon was not sent for analysis to the Forensic Science Laboratory. Thus, in absence of the report of the Forensic Science Laboratory, the appellants be acquitted.

11. On the other hand learned Additional Public Prosecutor has opposed this appeal and mainly contended that though the Informant and the mother-in-law of the deceased have not supported the case of the prosecution, there are two other independent witnesses who have supported the case of the prosecution. It is further submitted that the medical evidence also supports the case of the prosecution and, therefore, when the prosecution has proved the case against the appellants beyond all reasonable doubt, no error has been committed by the trial court while recording the conviction of the appellants.

12. Having heard the learned counsel appearing for the



parties and having gone through the material placed on record and after re-appreciating the entire evidence of the prosecution, it would emerge that P.W.2/Devki Devi is the Informant and wife of the deceased/Budhu Ravidas. Her *Fardbeyan* was recorded by the concerned police officer. In the *Fardbeyan*, she has stated that she is the eye-witness to the occurrence, in question, and narrated about the role played by both the accused persons. However, when the said witness gave the deposition before the court, she had not supported the case of the prosecution and, therefore, P.W.2/Informant was declared hostile.

13. Similarly, P.W.3/Jasia Devi is the mother-in-law of the deceased and mother of the Informant. She has also not supported the case of the prosecution and, therefore, she was also declared hostile.

14. Thus, the case of the prosecution rests on the deposition given by P.W.1 and P.W.4.

15. P.W.1/Most. Kari stated in her examination-in-chief that the occurrence took place at about 3 PM and at that time, near the shop, hot discussion was taking place between Ravindra and his brother-in-law. At that time, Putul Devi went inside the house and took the knife and gave the same to the



accused no.2/Ravindra. Thereafter, the accused no.2/Ravindra gave a knife blow on the chest of the deceased/Budhu as a result of which he died.

16. During cross-examination, the said witness stated that when the occurrence took place, she was in her house. She has also stated that she was sitting at the shop. At that time, she heard *Hulla*. She sat at the shop. She has further stated that she was not aware about the cause for the hot discussion between Ravindra and Budhu. She has further stated that she is not the owner of the shop where she was sitting. She has admitted that her statement was not recorded by the police.

17. P.W.4/Chhanguri Ravidas has stated in her examination-in-chief that at the time of occurrence, he was at his house and hot discussion was going on between Budhu and Ravindra. Thereafter, Putul Devi gave knife to Ravindra and Ravindra gave a knife blow on the chest of Budhu as a result of which he died. It is further stated by the said witness that the hot discussion was going on at the courtyard of Ravindra.

18. During cross-examination, the said witness has admitted that one case was filed by the father of Ravindra against him. He has further admitted that there was a boundary made of bamboo stick which was of 5 feet high. The said



witness has seen the incident from his house through the said partition of bamboo. The said witness has also stated that he has not intervened in the quarrel as he was having enmity with Ravindra. He has further stated that there were number of persons gathered at the place of occurrence.

19. P.W.5/Daya Nand Rai is the Medical Officer who had conducted the postmortem on the dead body of the deceased. The said witness stated about the external injuries sustained by the deceased, which reads as follows:-

“One punctured-incised wound, elliptical in shape and horizontally oriented. 1”X1/4” cavity deep, located on the left upper thorax at the first intercostal space about 1 ½” to the left of midline (Entry wound). The track is 2” deep, evenly cut, and directed from front to back and slightly from left to right. The track perforates the chest wall through the first intercostal space, perforates the upper lobe of the left lung and the great blood vessels of the heart. The entire wound track is infiltrated with blood and about one litre of liquid and clotted blood is found in the left thoracic cavity. There is no exit wound.

Dissection of head and neck - meninges and brain – Pale and intact. Neck. - N.A.D.

Dissection of thorax – right lung intact and pale upper lobe of the left lung perforated. Heart – intact and empty, large blood vessel perforated. Dissection of abdomen – Stomach



contains about 1.50 M.L. of fluid with a small quantity of semi-digested food particles with non-specific smell. Other abdominal viscera – pale and intact. Urinary Bladder – empty. External genitalia – within normal limits.

In my opinion the cause of death is Hemorrhagic shock as a result of above mentioned injuries caused by a dagger like weapon. Time since death within twenty four (24) hours.]”

20. P.W.6/Ganesh Ravidas is the *Panch* witness who has signed the *Panchnama*. However, the said witness during cross-examination has stated that he only signed the paper. However, what is stated in the said document was not read over to him.

21. P.W.7/King Kundan is the Investigating Officer who has carried out the investigation during which he has recorded the statement of the witnesses and the said witness has also stated that he had gone to the place of occurrence. As per his deposition, the occurrence took place at the brick soled path. The Investigating Officer has further stated that the knife was discovered at the instance of the accused no.2 in presence of two independent witnesses.

22. However, during cross-examination, the said witness has specifically stated that the said knife was not sent for analysis to the Forensic Science Laboratory.



23. P.W.8 & 9 are the *Panch* Witnesses who have signed the discovery *Panchnama*.

24. Both the witnesses have specifically admitted during cross-examination that as per the say of Darogaji, they have signed the document. However, they have not read the said document.

25. From the aforesaid deposition given by the prosecution witnesses, it would reveal that the Informant, who is the wife of the deceased and P.W.4, who is the mother-in-law of the deceased, have not supported the case of the prosecution and they have turned hostile. Thus, the case of the prosecution rests on the deposition given by P.W.1 and P.W.4.

26. From the deposition given by P.W.1, it is revealed that as per her version, the occurrence took place near the shop. However, she is not the owner of the said shop.

27. In Paragraph no.8 of her deposition, she has stated that on the date of the occurrence, she was in her house and immediately thereafter, she has stated that she was sitting in the shop.

28. It is pertinent to note herein that in Paragraph no.18 of the cross-examination, the said witness specifically admitted that her statement was not recorded by the Darogaji.



29. Thus, it appears that the said witness is a chance witness and she has given the deposition before the court for the first time. Even otherwise, her conduct is unnatural and her presence at the place of occurrence also not natural.

30. Similarly, P.W.4 has specifically admitted that he was having enmity with Ravindra and, therefore, he had not intervened at the time when the hot discussion had taken place between the deceased and the accused.

31. It also reveals from the deposition of the said witness that he had seen the occurrence from his courtyard and between the house of the accused and his house, there were partitions of bamboo which was having 5 feet height.

32. At this stage, it also relevant to note that as per the deposition given by this witness, the occurrence took place in the courtyard of the house of Ravindra whereas as per the deposition given by Investigating Officer, the occurrence took place on the brick soled path. As per P.W.1, the place of occurrence is near the shop.

33. Thus, we are of the view that there are major contradictions in the deposition of the prosecution witnesses. It is also pertinent to note herein that both the relatives of the deceased have not supported the case of the prosecution. The



presence of the near relatives at the place of occurrence can be said to be natural. However, the said witnesses have turned hostile.

34. It is further pertinent to note here that though it is the case of the prosecution that knife was discovered at the instance of the accused no.2 in presence of two independent witnesses. However, there is nothing on record to suggest that the blood stains were found on the knife. Further, the Investigating Officer has also admitted that the knife was not sent for necessary analysis to the Forensic Science Laboratory.

35. In view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the accused beyond all reasonable doubt and, therefore, the trial court has committed a grave error while passing the impugned order of conviction against the appellants herein.

36. In view of the aforesaid discussion, the appeal stands allowed.

37. The impugned judgment and order of sentence dated 13.05.2015/16.05.2015 passed by the Additional District & Sessions Judge, II, Katihar in Sessions Trial No. 302 of 2013 arising out of Katihar Muffasil P.S. Case No. 14 of 2013 is



quashed and set aside.

38. The appellants are acquitted of all the charges levelled against them.

39. Since the appellant no.1/Putul Devi is on bail, she is discharged from the liabilities of the bail bonds.

40. The appellant no.2/Birendra @ Ravindra Ravidas @ Ravindra @ Birendra Ravidas is in custody, he is directed to be set at liberty forthwith unless his detention is required in any other case.

41. Let the records of this appeal, if any, be sent back to concerned court below forthwith.

42. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs. 5000/- to Mr. Prince Kumar Mishra, the learned *amicus curiae*, as a consolidated fee for the services rendered by him.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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