

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.529 of 2014

Arising Out of PS. Case No.-30 Year-2010 Thana- VIJAYEPUR District- Gopalganj

Kakku Mishra Son of Sri Jai Ram Mishra resident of Puraina, P.S.- Vijaipur,
District- Gopalganj

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Nazir Alam, Adv.

For the Respondent/s : Mr. Abhimanyu Sharma APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 14-09-2023

We have heard Mr. Nazir Alam, learned advocate for the sole appellant, Kakku Mishra, and Mr. Abhimanyu Sharma, learned APP, for the State.

2. The appellant has been convicted under Section 302 of the I.P.C. vide judgment dated 02.05.2014 passed by the learned 1st Additional Sessions Judge, Gopalganj in Sessions Trial No. 373 of 2010 and by order dated 06.05.2014, he has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 50,000/- and in default of payment of fine, to



further suffer simple imprisonment for two years. The Trial court has also directed that 80% of the fine amount be paid to either the Informant or the heir of the deceased.

3. The deceased is the grand-son of one Jhunki Devi (P.W.1) who is the Informant the case.

4. The allegation against the appellant is of having gone to the house of the deceased who had been residing with P.W.1 along with his brother/Rattu Mishra (since deceased) and of having stabbed the deceased by means of a knife. He is also alleged to have assaulted Sheo Narayan Ram (P.W.2) with a Lathi on his head, though the injury suffered by P.W.2 was found to be simple in nature.

5. The occurrence according to the F.I.R. took place because of the deceased having protested against the appellant and his brother for misbehaving with the women folk of the village who had gone to offer prayers in the village temple. This had happened at about 10



O'clock in the day on 26.04.2010. The occurrence took place in the night of 26.04.2010. The F.I.R. has been lodged on 27.04.2010 at about 2 PM in the night intervening between 26th/27th of April, 2010.

6. Jhunki Devi (P.W.1) has made a brief but categorical statement in the F.I.R. which was recorded by Yogendra Paswan (P.W.11), the I.O., alleging that the appellant and his brother had misbehaved with the women folk of the village at the temple. This was objected by her grand-son (deceased) but the dispute which erupted at that time had been settled because of the intervention of the villagers. Later in the night, on the same day, the appellant and his brother came to her house and she saw the appellant repeatedly giving knife blows to her grand-son who was sleeping. After receiving injuries, the grand-son ran out of the house but fell down near the *Darwaja* of one Vijay Pratap Mishra (P.W.8) who during the Trial has turned hostile. On the call of P.W.1, P.W.2 came but he too was assaulted by



the appellant by means of a Lathi after taking the Lathi from the hand of his bother/Rattu Mishra.

7. On the basis of the aforementioned *Fardebeyan* of P.W.1, a case vide Vijaypur P.S. Case No. 30 of 2010 dated 27.04.2010 was registered for investigation under Section 302/34 of the I.P.C.

8. The police after investigation submitted charge-sheet against the appellant and he was put on Trial.

9. The Trial Court after having examined 11 witnesses on behalf of the prosecution has convicted the appellant and sentenced him as aforesaid.

10. The case has been supported only by two witnesses viz. the Informant (P.W.1) and the other injured viz. Sheo Narayan Ram (P.W.2).

11. Jhunki and Sheo Narayan Ram (P.Ws. 1 & 2 respectively) have supported the prosecution case in totality. P.W.1 knew about the reason for the assault. The deceased had fought with the appellant and his



brother in the morning at Kali Temple of the village. Irked by this act of the deceased, the appellant and his brother had committed the crime.

12. There appears to be some casteist overtones in the allegation but so far as the act of assault is concerned, P.W.1 was a witness to it. There is no reason to disbelieve the P.W.1 about her having witnessed the occurrence as admittedly the deceased was sleeping in the house in which the P.W.1 also resided. She, on seeing the assault, raised alarm whereupon Sheo Narayan Ram (P.W.2) arrived from the neighborhood. He too was assaulted.

13. Similar statement has been made by P.W.2 who though claims to have seen the occurrence but his presence at the P.O. at the time of assault on the deceased appears to be slightly doubtful. In his examination-in-chief, he has admitted that he came on the call of P.W.1. By that time, if P.W.1 is to be believed, the deceased had already been hit by the knife



and he had run away from the P.O. in order to save his life but died near the house of P.W.8. The P.W.2 has clearly stated in his cross-examination that he was assaulted on his head by the appellant who grabbed the Lathi from the hand of his brother/Rattu Mishra and this act took place after the assault on the deceased by means of knife by the appellant.

14. Though P.W.2 may not have seen the actual assault but there is nothing on the record to disbelieve his statement that it was the appellant who was inside the house of P.W.1 and P.W.1 had raised an alarm on seeing the appellant hitting the deceased by means of a knife. That the appellant assaulted P.W.2 on his head clearly demonstrates that the appellant had gone inside the house of the P.W.1, perhaps on her call. It was only after P.W.2 was assaulted on his head that the appellant and his brother ran away.

15. Hiranman Ram, Uday Bhan Ram, Ram Bhawan Kushwaha and Vijay Pratap Mishra (P.Ws. 3, 5,



6 & 8) respectively have not supported the prosecution case and have been declared hostile.

16. Vijay Pratap Mishra (P.W.8) is the person before whose house the deceased had fallen down on the ground after being injured.

17. No questions were asked from the I.O. (P.W.11) as to whether any statement was made by P.W.8 during the course of investigation.

18. Dr. Nurul Basar (P.W.9) has examined P.W.2 and has opined that the injury on his head was caused by hard and blunt substance and the nature of injury was simple.

19. Dr. Shashi Kumar Gupta (P.W.10) conducted the postmortem examination on the deceased. He found rigor mortis in all the limbs. There was one incised wound found in front of the upper abdomen located 3" above the umbilicus. The injury was cavity deep and of the dimension of 1"X1". The time elapsed since death was opined to be 24 hours. The postmortem



examination was held at 11 AM on 27.04.2010. In the opinion of P.W.10, the death was caused because of hemorrhage and shock as a result of the injury received by the deceased by a sharp cutting weapon. The P.M. report clearly confirms that the deceased died of the knife injury.

20. The deposition of P.Ws. 1 & 2 thus establish beyond doubt that it was the appellant who had caused the fatal knife injury on the deceased.

21. The P.O. which is the house of the deceased also stands proved.

22. Though there is some discrepancy in the medical testimony as compared to the ocular version of P.W.1 that the deceased was attacked several times by the knife but the Doctor found only one incised wound which proved to be fatal, but according to Mr. Abhimanyu Sharma, the learned APP, P.W.1 is an old lady who saw the attack from a distance and might have misunderstood the scuffle between the appellant and the



deceased as repeated strikes by knife on the deceased.

23. Such minor discrepancy does not lead to any other inference except the fact that either P.W.1 did not see clearly that there was only one knife attack or that there has been some embellishment in the accusation. In either case, it would not render the prosecution case doubtful on any score.

24. This takes us to the deposition of I.O. (P.W.11) who confirms that he had registered the F.I.R. on the *fardebyan* statement of P.W.1. According to P.W.2, the deceased was taken by the I.O. (P.W.11) to the Hospital for his treatment which fact also has been proved by the deposition of the Doctor (P.W.9) who examined him.

25. P.W.11 has though admitted that he did not seize the cot on which the deceased was sleeping at the time of occurrence but, such lapse would not render his deposition unbelievable.

26. The prosecution therefore has been able to



prove the case against the appellant in its entirety.

27. There is no reason for us to interfere with
the judgment and order of conviction and sentence.

28. The appeal thus is dismissed.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

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AFR/NAFR	NAFR
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