

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1025 of 2019

Arising Out of PS. Case No.-10 Year-2015 Thana- PAWANA District- Bhojpur

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Dharmendra Ram Son of Late Mokhtar Ram Resident of Village -
Kapoordihara, P.S.- Pawana, District- Bhojpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Ms. Shashi Priya, (Amicus Curiae)
For the State	:	Mr. Dilip Kumar Sinha, APP
For the Informant	:	Mr. Shiva Shankar Prasad Singh, Adv. Ms. Pushpendra Priyedarshi, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 23-08-2023

Since nobody had been appearing in this case on behalf of the appellant, we have requested Ms. Shashi Priya, learned advocate to be the *Amicus* to defend the case of the appellant. She has consented for the same and has assisted us.

2. The Informant has been represented by Mr. Shiva Shankar Prasad Singh. On behalf of the State, Mr. Dilip Kumar Sinha, learned APP, advanced his arguments.

3. The appellant has been convicted under Section 302 and 120(B) of the IPC and for both the charges, he



has been sentenced separately for life imprisonment and fine of Rs. 50,000/- and in default of fine, to further suffer RI for six months vide judgment and order of conviction and sentence dated 19.07.2019 / 25.07.2019 passed in SC/ST Case No. 626 of 2017 arising out of Pawana P.S. Case No. 10 of 2015. The sentences however have been ordered to run concurrently.

4. The allegation against the appellant is of having given a hammer blow on the head of the deceased, whereafter also stabbing him a number of times. The deceased was stabbed by two other persons leading to his death.

5. The FIR has been lodged by Rajendra Ram (P.W.6) on 29.03.2015 at about 7.30 PM alleging that on the same day at about 5.45 PM, while he was going to Pawana Bazar for distributing milk, he saw his nephew/ Gulab Chand Ram (deceased) sitting in front of the shop of one Ramnath Mahto (not examined) reading a newspaper. While returning, P.W.6 saw the appellant hitting the



deceased with a hammer on his head as a result of which he fell down. In the meantime, the brother of the appellant namely Manoj Ram gave a knife blow to the deceased. One Satish Yadav is said to have further exhorted the accused persons to kill the deceased as despite belonging to the cobbler community, he behaved like a wisenheimer. One Manoj Manjil is also said to have given knife blow to the deceased. In the meantime, many persons of the neighborhood arrived and seeing them, the appellant and other accused persons fled away. With the help of the villagers, the nephew of the Informant was brought to the clinic of one Dr. C.S. Lal where he was declared dead. Thereafter, the dead body was brought to the house of P.W.6. The Informant/P.W.6 asserted therefore that the deceased had been killed because of political reasons.

6. On the basis of the aforementioned *fardebeyan* statement of P.W.6, Pawna P.S. Case No. 10 of 2015 dated 29.03.2015 was registered for investigation for offences under Sections 302, 120(B)/34 of the IPC and



Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989.

7. The police after investigation submitted charge-sheet against the appellant and others but, only the appellant was put on trial.

8. The Trial court, after examining eight witnesses on behalf of the prosecution, convicted and sentenced the appellant as aforesaid.

9. Ms. Shashi Priya, learned *Amicus*, while assailing the judgment of the Trial court, has submitted that it got mislead because of the parrot like repetition of the allegation against the appellant by all the witnesses who are closely related to the deceased. She has further submitted that if their deposition is analyzed deeply, it would appear that none of them had seen the occurrence but for reasons unknown, the appellant was framed and the allegation of assaulting the deceased by hammer and thereafter by knife was attributed to him.



10. In support of the aforementioned contentions, the learned *Amicus* has pointed out that in the cross-examination, all the witnesses have conceded that they had reached the place of occurrence when the deceased had already fallen on the ground. Even in the inquest report, the cause of death is stated to be strangulation and there is no reference of any hammer blow by the appellant.

11. During the trial, all the witnesses including P.W.6 have tried to embellish the prosecution case by narrating that after giving the hammer blow, the deceased was also assaulted by knife by the appellant. Perhaps for the reason of only the injuries on the person of the deceased being fatal in nature and the injury on head being simple in nature, which might having been caused by fall of a human being on a hard surface, such an assertion was made by the prosecution.

12. Lastly, it has been submitted that it appears to be rather surprising that if the appellant had executed the crime, which act of his was witnessed by common relatives,



he would surely have been apprehended. On the contrary, the records disclose that he was arrested from a public transport after about two months of the occurrence. The question, therefore, which remains unanswered is where did he go and how was he allowed to escape from the village.

13. Additionally, it has also been submitted that the Investigating Officer has completely botched up the investigation but has very candidly admitted that he did not seize any blood-stained earth or the cot on which the body was found to be lying and that he did not enquire from any one of the independent witness about the occurrence.

14. All these facts, Ms. Priya contends, taken together would only lead to a conclusion that somehow or the other, the appellant has wrongly been framed in this case; the reasons for such false implication however remaining unknown.

15. As opposed to the aforementioned contentions, Mr. Dilip Kumar Singh for the State and Mr. Shiva Shankar Prasad Singh for the Informant have submitted that in a



case where all the witnesses have, in unison, narrated about the specific overt act made by the appellant, which ultimately led to his death, there is no question of any doubt about the appellant having killed the deceased. Mr. Singh has further submitted that it may be good to doubt but it should not be extended to doubting everything and such doubts would then be rendered meaningless.

16. The theory that it would be advisable to leave many guilty persons free but not a preferable idea to convict an innocent, is wearing thin in the country of its origin viz. England.

17. During the cross-examination, when the witnesses talked about their having reached the P.O. when the deceased had already fallen down, they only meant that they had seen the occurrence from a distance but only after the accused persons left the scene, they came to the exact spot where the deceased was done to death. Under such circumstances, merely because the Informant had missed to state about the knife blow by the appellant in the FIR, the



entire prosecution case cannot be rendered unworthy of reliance.

18. In the absence of any real motive for falsely framing the appellant, there is no use of any whataboutery as to why the appellant would kill the deceased even when both are directly related to each other and have no bad blood between them.

19. On these grounds, Mr. Singh has urged that the judgment and order of conviction and sentence be not interfered with.

20. We have given our anxious consideration to the arguments advanced on behalf of the parties and have also gone through the deposition of each of the witnesses to test the correctness of the prosecution version. Laxman Ram (P.W.1) in his cross-examination has clearly stated that after hearing the noise at the P.O., he reached there but only to find the deceased having fallen on the ground. He had seen that the deceased was hit in his head and the deceased had already died.



21. The reason for the P.W.1 to be present at the place of occurrence was his job as a labourer, who had to unload gunny bags. He has admitted of being a member of the banned MALE Party. The deceased according to him was also a member of MALE but, sometimes earlier to the occurrence, he was expelled from the Party. The appellant also, P.W.1 states, is a member of MALE Party. According to him, at the place of occurrence, the earth was smeared with blood, which had turned black because of passage of time.

22. A suggestion was given to him that perhaps the deceased had misappropriated party funds and therefore the axe-man of the Party may have killed him but, he expressed his ignorance about the same. From his deposition, it appears that he has not seen the occurrence or else he would not have found the blood on the earth to have blackened with the passage of time. He, the appellant and the deceased were members of MALE Party. The deceased had been expelled from the party. This may lead



to a supposition that perhaps the cause of murder was the misappropriation of party funds by the deceased. What is to be examined is whether the task to eliminate the deceased was given to the appellant and his associates or the MALE Party had chosen their own axe-man to kill the deceased and the appellant has only wrongly been framed.

23. We have examined the deposition of witnesses keeping into account the aforementioned inference also which can very well be gathered from the deposition of P.W.1, which has been noted above.

24. Bhushan Ram (P.W.2), a distant relative of the deceased, has categorically stated in the cross-examination that he went to the place of occurrence only after he heard *Hulla* and found the deceased having died because of the injury received by him. He only found three stab injuries on the person of the deceased. By the time he had reached near the deceased, he was already dead. The clothes of the deceased were blood drenched. In his presence, the police had come; the blood stained clothes



were taken by the Investigating Officer; and a seizure list was also prepared in his presence.

25. From his deposition, two things come to the fore: firstly, that he reached at the place of occurrence only after the murder had been executed and that he was not making a correct statement for the reason that the I.O. in his deposition has clearly conceded that he did not seize any blood stained clothes or earth from the place of occurrence. Similarly, Santosh Kumar (P.W.3) also claims to have gone to the place of occurrence after he heard the noise coming from the place of occurrence. Only after he reached near the place of occurrence, did Laxman Ram (P.W.1), Jairam Das (P.W.4), Agnu Ram (not examined), Ajit Ram (P.W.5), Gajendra Prasad (not examined) and many other villagers arrived.

26. From a deeper analysis of P.W.3, it would appear that none of these aforementioned three persons also had seen the occurrence as they had arrived at the P.O. later than P.W.3, who himself had not seen the occurrence.



27. All the aforementioned witnesses have testified to the fact that there was no specific enmity between the parties. P.W.3 also was given the suggestion that the deceased had misappropriated the party fund which he denied.

28. Similarly, Jairam Das (P.W.4) had also reached the place of occurrence only after the deceased had already fallen down on the ground because of the injuries received by him. Ajit Kumar, who is the son of the deceased, claims to have seen the occurrence from Pawna Chowk and reached the P.O. only thereafter. When he reached the P.O., he had found his father lying on the ground with three to four stab injuries. It appears from the record that Pawna Chowk is about 50 meters from the P.O., from where it would have been really difficult for any person to have seen every part of the attack in detail, specially when the timing of occurrence is in the evening of the month of March.



29. We have further found from the deposition of the Informant/P.W.6 that he along with his associates had brought the injured/deceased to the clinic of Dr. C.S. Lal who declared him dead. Dr. C.S. Lal has not been examined. Did he offer any medical aid in the meanwhile? Was the patient brought to his clinic dead or alive? These were necessary questions which would have been answered, had Dr. C.S. Lal been examined or even interrogated by the police during course of investigation. P.W.6 perhaps is the only witness who has alleged that the appellant had enmity with his son. If this is correct, then the deceased was not the target.

30. P.W.6 is also not sure whether the deceased had filed a case earlier. However, by stressing on his memory, he deposed that perhaps the case ended in compromise. Would the enmity continue after the composition of the case is the question that troubles us, specially in the context of the reason or the motive, either for killing the deceased or for falsely accusing the appellant.



Quite interestingly, P.W.6 has come out with another reason which may perhaps have goaded the appellant to have committed the offence.

31. The mother of the appellant is the sister of P.W.6 with whom P.W.6 does not enjoy any good relationship. Precisely for this reason, he was suggested that the sister of P.W.6 had sought her respective share in the family property. Though P.W.6 never answered straight to the suggestion but, admitted that he could not have brought his sister to the witness-stand for deposing against the appellant.

32. Now to the metier part of the defence of the appellants viz. the ante-mortem injuries leading to the death of the deceased Dr. Kripa Shankar Choubey (P.W.7) had conducted the postmortem on the deceased on 30.03.2013. He found a lacerated injury of $\frac{1}{2}$ " X $\frac{1}{2}$ " which is only superficially skin deep on the left parietal region. There were, however, four fatal knife injuries on the torso of the deceased. The cause of death was opined to be



profuse hemorrhage, leading to shock and death. The time of death was fixed at 6 to 24 hours from the time of postmortem examination, which fits in the prosecution module. The stab injuries were all found to be on the vital organs viz. lungs, heart, stomach and left kidney.

33. In the cross-examination, the Doctor has categorically stated that the simple injury on the parietal region of the deceased could have been resulted because of fall on the ground as well. He has specifically stated that the injury on the head is not the contributing factor to the death of the deceased. The death was because of the stab injuries.

34. The I.O. of this case has rightly been alleged to have mishandled the investigation.

35. In his cross-examination, without batting an eyelid, he states that he did not record the statement of any independent person nor did he recover the weapons of assault. Even persons, whose houses or shops fell in the area around the P.O., were never examined by him. But



why? This is not the way in which investigation is made. He has even gone to the extent of saying that he did not recover any incriminating substance from the place of occurrence nor did he take in his possession the blood stained clothes. The I.O. has also not seized the cot on which the deceased was found to be lying upon.

36. From a conspectus of the deposition of all the witnesses, it therefore appears to us that none of them have seen the occurrence.

37. We have wondered for quite sometime as to what could have been the reason for killing the deceased. There appears to be some force in the suggestion of the *Amicus* that because of the deceased having purloined the party funds, he may have been killed. However, the killing appears to have been done by somebody which was not seen by any one of the witnesses. All the important witnesses have been or are existing members of MALE Party. Except for P.W.6/Informant, nobody has spoken about any bad-blood between the parties. Why would then



the appellant, for no cause, kill the deceased. Similarly, it could be questioned as to why at all, the relatives would falsely accuse the appellant.

38. These are difficult questions to answer.

39. Mere consistency, which is so lurid in detail of the witnesses, would not contribute to the quality of the evidence; rather it demonstrates the lack of it. In the effort of the prosecution to come out with a consistent case, the witnesses have only shown that they have been tutored or that they have only repeated what P.W.6 had to say to them.

40. There is yet another aspect of the matter. The inquest report suggest that the witnesses present there including Ajit Kumar (P.W.5), who is the son of the deceased, only spoke of stab injuries.

41. Thus, it would not be too far off the line to infer that only when it was found that there was an injury on the head of the deceased also, that the story of hammer attack by the appellant was introduced.



42. But these inferences are only in the realm of speculation. Nonetheless, it does create doubt about the witnesses having seen the appellant committing the crime and the appellant having actually committed the crime. The appellant therefore deserves the benefit of doubt.

43. We have also found that the Trial court has convicted the appellant under Section 120B of the IPC.

44. In the absence of trial of any other associates of the appellant and lack of any evidence under Section 10 of the Evidence Act, we find such conviction also to be based on no material whatsoever.

45. For the aforementioned reasons, we set aside the judgment and order of conviction and acquit the appellant of all the charges levelled against him.

46. The appellant/Dharmendra Ram is in custody. He is directed to be set at liberty forthwith unless his detention is required in any other case.

47. The appeal stands allowed.



48. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

49. The records of this case be also returned to the Trial Court forthwith.

50. Interlocutory application/s, if any, also stand disposed off accordingly.

51. Before parting with, we record our appreciation for the hard and intelligent work done by the *Amicus*. She be paid Rs. 2,500/- towards her professional fee by the Patna High Court Legal Services Authority.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

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