

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1021 of 2015**

Arising Out of PS. Case No.-67 Year-2012 Thana- KHIJARSARAI District- Gaya

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Pramod Kumar Sharma son of Late Umesh Singh resident of Village Tajpur,
P.S. Khijarsarai, District Gaya.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1019 of 2015

Arising Out of PS. Case No.-67 Year-2012 Thana- KHIJARSARAI District- Gaya

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Mamta Devi Wife of Late Murari Sharma, resident of village Tajpur, P.S.
Khijarsarai, District Gaya.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 1021 of 2015)

For the Appellant/s : Mr.Gouranga Chatterjee, Adv.

For the Respondent/s : Mr.Shivesh Chandra Mishra App

(In CRIMINAL APPEAL (DB) No. 1019 of 2015)

For the Appellant/s : Mr.Gouranga Chatterjee, Adv.

For the Respondent/s : Ms. S.B.Verma App

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 12-07-2023

1. Both the appeals have been heard together and are

being disposed of by this common judgment.
2. We have heard Mr. Gouranga Chatterjee, the



learned Advocate for the appellants and Ms. Shashi Bala Verma, the learned APP for the State.

3. The appellants have been convicted under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act and have been sentenced to undergo R.I. for three years, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer R.I. for One year under Section 302/34 of the IPC and R.I for five years, to pay a fine of Rs. 5,000/- and in default of payment of fine, to further suffer R.I. for six months under Section 27 of the Arms vide judgment of conviction and order of sentence dated 09.09.2015/ 10.09.2015 respectively, passed by the learned 6th Additional Sessions Judge, Gaya in Sessions Trial No. 48/2014 /505/2012 arising out of Khijarsarai P.S. Case No. 67 of 2012. All the sentences have been directed to run concurrently.
4. Both the appellants are alleged to have killed Murari Sharma, the brother of informant (PW8)
5. Appellant/Mamta Devi in Cri. Appeal (DB) No.



1019 of 2015 is the wife of the deceased/Murari Sharma whereas Pramod Kumar Sharma (appellant in Cri. Appeal (DB) No.1021 of 2015) is touted to be the paramour of Mamta Devi.

6. As the allegation stands, Mamta fired at the deceased; whereafter Pramod gave a knife blow below the right eye of the deceased and escaped from the roof-top where the murder was committed. Shortly thereafter, the elder brother of the deceased arrived and saw the deceased lying unconscious in a pool of blood. The daughter of the deceased/Khusbhu (PW-5) sat there, crying and mortified.

7. The FIR was got registered by the aforementioned elder brother/Raj Kumar Sharma (PW-8) against unknown. He has alleged in the FIR that in the night intervening between 30th and 31st of May 2012, at about 12:30 A.M., he heard a sound of firing. After awaking from his sleep, he shouted and raised alarm. In the meantime, he heard Mamta speak out from window of her room that



somebody had fallen down. PW-8 was surprised to hear Mamta as he had clearly heard the sound of firing. He immediately went to the roof-top of the house of the deceased, where he found the deceased having received gun shot injury on his chest and an injury by knife below his right eye. Neither he nor Mamta, according to the fardbeyan, had seen the assailant.

8. However, PW-8 in his FIR has stated that no sooner would he get any information about the assailant, he would inform the investigating agency. This fardbeyan was recorded at about 4:30 A.M. on 31.05.2012 at the house of the deceased by the S.I. Pappu Kumar of Khijarsarai Police Station in the District of Gaya. Be it noted that aforesaid Pappu Kumar has not been examined at the Trial. The FIR but has been proved by the I.O. namely, Subhash Chandra Prasad (PW-9).

9. The sheet-anchor of the prosecution case is the deposition of Khusbu Kumari, the daughter of the deceased, who has been examined as PW-5. At the time



of deposing before the court, she was 14 years of age. She has supported the prosecution case that on 30.05.2012, she was sleeping on the roof-top along with her parents. At the time when she got up after hearing the sound of firing, she remembered that Mamta was taking a walk on the roof-top. When she was awakened by the sound of firing, she found Mamta pointing a weapon at the chest of her father and Pramod was continuously assaulting him by a knife. Thereafter, it has been alleged by PW-5 that Pramod took away the pistol from the hand of her mother and escaped from the roof-top. It was only then that Mamta had shouted that somebody had fallen down.

10. Her uncle, Raj Kumar Sharma (PW-8), who resided in the neighborhood, was surprised at her mother shouting that somebody had fallen down. PW-8 immediately came to the roof and shortly thereafter other persons of the village also arrived. In the meantime, Mamta had left the house for arranging for a



vehicle to take her father to the hospital for first aid. She has also stated before the Trial Court that her father was taken to Islampur for treatment on a vehicle along with Mamta, Pramod, Raju Sharma (PW-8) and other villagers. The father of PW-5 had died and therefore his dead body was brought back home.

11. Though, Khushbu had witnessed the occurrence but because of fear of her mother (Mamta Devi), she did not state anything to anyone what she had seen before. She was also threatened by her mother that in case she made any such statement implicating either her or Pramod, she would be killed. Khushbu was very specific in her accusation that her mother had illicit relationship with Pramod about which she had learnt while living at Bombay along with her parents. She had also communicated this fact to her father, when her father had assaulted her mother. Thereafter, the mother of PW-5 had beaten her up for having told her father about the illicit relationship with Pramod. On the day of the



occurrence, in the afternoon, Pramod had his lunch in her house but did not stay back for dinner. After the occurrence, she had seen that her mother's hand had been injured, perhaps because of firing. The deceased and Pramod both worked in Bombay. She and her mother also stayed with the deceased at Bombay. Pramod stayed in the same house at Bombay in which PW-5 resided with her parents. On one of the occasions, Mamta had asked PW-5 to apply oil on the body of Pramod, which she had declined and therefore she was beaten up by her mother. She has denied the suggestion that the police wanted to record her statement on 02.06.2012 but she had refused to make any and had given her statement only on 03.06.2012. Before 03.06.2012, she had not stated about what she had seen, to anyone. She has also denied the suggestion that her accusation is at the behest of PW-8, her uncle. When her statement was recorded by the police, Mamta had already been taken into custody.



12. In her absence, she was being looked after by her uncle, aunt and maternal uncle who had taken over the agricultural operations in the land falling in the share of the deceased.
13. There was no light on the roof where the murder had been committed. Both, she and the deceased slept on a mattress on the roof.
14. No empty cartridge was found at the place of occurrence.
15. It is difficult for us to completely accept the deposition of PW-5, for the reason that it does not inspire confidence that her statement is devoid of any mendacity. We say so for the reason that the story spun by her does not appear to be in consonance with the prosecution version. That she gave her statement after three days of the occurrence is a very important factor to doubt the correctness of her version. There is no gainsaying that if a girl of 14 years sees her mother killing her father, she would be mortified and would be



dumbfounded and perhaps transfixed to make any statement on the occasion but it cannot be accepted that she will keep to herself what she had seen in the night of the murder for three days. This conduct, especially when she knew about the unchaste relationship of her mother (Mamta) with Pramod, which information she could not have held back for three days, gives an inkling that perhaps she was tutored by others, especially PW-8 (her uncle) to make such a statement. She may have been propelled to make such statement because of ill treatment given to her by her mother, but to accept her version that she saw the occurrence, is rather difficult. She claims to have been awakened with the sound of firing. She, then, was in a woke condition but by then the deceased had already been shot at.

16. In this background, her assertion that she saw Mamta pointing a pistol to her father does not appear to be correct. Was Mamta readying herself to fire another shot ? What was the occasion for Pramod to attack the



deceased by a knife and then escape after snatching the weapon of assault from Mamta. Did he use the stairs or jumped from the roof-top? Had he taken the stairs to come down the roof, he would have surely crossed PW-9/informant, who claims to have reached the roof of the house of the deceased immediately. That apart if Pramod and Mamta were the assailants, both of them would have run away and would not have come back for them to be arrested by the police.

17. The statement of PW-5 suggests that the deceased, in an injured condition, was taken to Islampur for treatment by Mamta, Pramod, Raju Shrama and other villagers.

18. We do reckon that conduct of human beings differ but if the conduct is so different that it would not appear to be normal or natural to an outsider, such conduct would engender doubt about such allegation. Mamta may have stayed back thinking of some excuse for defending herself but there would have been no occasion for



Pramod to have come back after making good his escape for accompanying the injured/deceased to the hospital located at a distance of about 6 to 7 Kms. Was this some kind of a metanoia or the muliebrity of Mamta or the story is unbelievable ?

19. The Investigating Officer of this case namely, Subhash Chandra Prasad (PW-9) claims to have learnt about the murder of a man in his house in village Tajpur. The information was provided to him telephonically. On such information, he visited the village and came to the house of the deceased early in the morning of 31st May 2012 and recorded the fardbeyan of PW-8. The FIR but was scribed by Pappu Kumar (not examined), who only prepared the inquest report. However, the FIR and the inquest report have been proved by PW-9. He did not find any incriminating article on the roof of the house of the deceased where the murder had taken place except a plastic container meant for keeping tobacco which was seized. What is surprising is that if Mamta was alleged to



have murdered the deceased along with her paramour, namely, Pramod, both of them would have been arrested immediately after the lodging of the FIR. That Mamta was present in the house is evident from the fact that PW-9 saw that she had been injured in her hand. Mamta was taken to the hospital for treatment and only thereafter both Mamta and Pramod were arrested. Pramod appears to have been arrested from his house. Both the appellants are said to have made confession before PW-9 about their participation in the occurrence.

20. Notwithstanding the aforesaid, the weapon of assault could not be recovered.

21. The Doctor namely, Rajesh Kumar (PW-7) who examined Mamta could not say with certainty that the injury suffered by her in her hand was because of gunpowder as she had handled the pistol. Gunpowder alone could not have caused such injury which was of a very superficial nature. He did not find any particle of gunpowder and also found that such injury could have



been caused by scalding if the skin if it came in contact with any hot liquid like oil or water.

22. Seen in this background, it is difficult for us to say with certainty that the statement of PW-5 was truthful but what concerns is the possible reason for a daughter to falsely implicate her mother. Her father was dead and with this accusation, the mother would go to jail. This leaves a lingering doubt in our minds regarding the reason for the "so-called" false implication at the hands of the daughter.

23. Mr. Chatterjee, the learned counsel for the appellants has submitted that human mind is too complex and multivalent to explain and interpret every conduct logically. The suspicion of PW-5 about the unchaste relationship of her mother with Pramod may have been true. She had seen her mother and Pramod in a compromising position at Bombay. This accusation may have been correct and being aggrieved by the conduct of her mother, she may have chosen to falsely implicate



her and Pramod in one go.

24. We have also tried to analyze, for assuring ourselves that we are not proceeding on the wrong direction, by finding the possible reason for the elder brother of the deceased to falsely implicate his sister-in-law and Pramod. We could find no reason as after Mamta was taken into custody and Murari was dead, agricultural operation of the village on the land in the share of the deceased was undertaken by the maternal uncle of PW-5 (own brother of Mamta). Were the brother of the deceased and brother of Mamta in collusion ? We don't have any evidence to hazard such a guess. Nonetheless, having tested the deposition of PW-5 from all angles, we have found that her deposition is not free of blemishes for it to be accepted in its entirety. We have already noted that for no good reason, except her being mortified by the sight of murder, of withholding such information for three clear days. A suggestion was also given to the I.O. that he deliberately



did not record the statement of PW-5 while she was there at the scene of occurrence only to give some opportunity to PW-8 (the informant) to prepare her to make a statement in consonance with the prosecution version. All other witnesses who are either the neighbours of the deceased or his cousins, is on similar lines. All of them knew that Mamta was carrying on an illicit relationship with Pramod. This again leaves a doubt in our mind that if this fact was known to the entire village, the deceased also would have known it. Was he a cuckold and had passively accepted the situation? In any case, he was not a barrier for Mamta and Pramod to carry on their affair. Why should he be killed ? What was the trigger point when both Mamta and Pramod thought of eliminating him?. These are issues which have remained unanswered during the investigation as also during the Trial.

25. Pramod took his lunch of rice and fish-curry in the house of the deceased in the afternoon. There is no



evidence of his staying back in the night. Had he stayed back in the night, PW-5 would have said that in her belated statement before the police. All that she had to say before the Trial Court was that after the lunch, Pramod left the house and did not have dinner with the family. The presumption then is that Pramod was not there in the night in the house of the deceased. At what point of time did he come to the roof-top of the house and decided to kill the deceased and when was the conspiracy hatched between Mamta and Pramod to eliminate the deceased is not known. These are important issues which needed to be reconciled before it could be said with certainty that both of them had killed the deceased.

26. As we have already noted, if it is difficult to accept the version of PW-5 to be correct, equally difficult would it be to answer as to who killed the deceased in the wee hours of 31st of May 2012. There is no evidence of burglary or any outsider having scaled the wall and come



inside the house of the deceased. One can only make a guess but that would not be based on any clinching evidence in that regard.

27. These set of facts, in conjunction with the post-mortem report and the deposition of the Dr. P. N. Sinha (PW-6) make the accusation against the appellants very doubtful.

28. Seen from the lens of what PW-5 had to state before the Trial Court, the deceased was shot by Mamta from a very close range. The medical testimony does not support such accusation. The post-mortem report reveals that the deceased had suffered an incised wound on his right cheek and a gun shot wound on the right upper chest which proved to be fatal but PW-6 did not find any charring, blackening or tattooing or inverted margin in and round the gun shot wound of entry. He, therefore, opined that it could be possible that the deceased was shot at from a distance. Coupled with this, PW-9 not having seized the blood stained clothes from the body of



the deceased, further makes us doubt the prosecution case.

29. As we have already discussed, in such cases of parricide, specially in villages, when most of the inmates are aware of the unholy alliance between the wife of the deceased and another villager, the entire area would have been agog with the rumour that a wife had killed her husband. All this happened but the I.O. who arrived at the place of occurrence within few hours did not arrest either of the appellants.

30. The appellants have not made any efforts to run away from the scene of crime. We are surprised as to whether they were afflicted by metanoia or had thought of presenting before the society a conduct which would lessen the doubt against them that they are the authors of the injuries on the deceased which led to his death. Both of them accompanied the deceased to hospital and came back with the dead body when the deceased was declared dead by the Doctors at Islampur hospital.



31. PW-9 could have informed the Islampur police which falls in Nalanda district but the villagers and PW-9 and the appellants chose to come back to Tazpur village which falls under the jurisdiction of Khijirsarai police station in the district of Gaya. On top of it, PW-5 made a statement against the appellants only after three days of the registration of the FIR. All these facts coalesced together has sent us doubting about PW-5 being the eye-witness to the occurrence.

32. But for her, nobody has claimed to have seen the act of assault.

33. For the aforementioned reasons, we have not been persuaded by the State to affirm and ratify the judgment and order of conviction.

34. Perforce, we set aside the judgment of conviction and order of sentence dated 09.09.2015/ 10.09.2015 respectively, passed by the learned 6th Additional Sessions Judge, Gaya in Sessions Trial No. 48/2014 / 505/2012 arising out of Khijarsarai P.S. Case No. 67 of



2012.

35. The appeals are allowed.
36. As both the appellants are in jail, they are directed
to be released forthwith, unless their detention is
required in any other case.
37. Let a copy of this judgment be dispatched to the
Superintendent of the concerned Jail for compliance and
record.
38. The records of this case be also sent back to the
concerned Trial Court forthwith.

(Ashutosh Kumar, J)

(Shailendra Singh, J)

sunilkumar/-
Rajiv

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	14.07.2023
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