

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.989 of 2015

Arising Out of PS. Case No.-93 Year-2009 Thana- MAHUA District- Vaishali

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Md. Murtuza son of Md. Israil @ Md. Israil Ansari, resident of village-
Chakkazi Nizam, P.s.- Mahua, District- Vaishali

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant : Mr. Rajesh Kumar, Advocate

For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA

ORAL JUDGMENT

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

Date : 16-01-2024

Heard Mr. Rajesh Kumar, learned counsel appearing for the appellant and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor (for brevity 'APP') for the respondent-State.

2. This appeal has been filed on behalf of the appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity 'the Cr.P.C.') against the judgment of conviction dated 12-06-2014, and order of sentence dated 17-06-2014, rendered by the learned *Ad-hoc* Additional District and Sessions Judge 1st, Vaishali at Hajipur in connection with



Sessions Trial No. 200 of 2010, arising out of Mahua P.S. Case No. 93 of 2009, whereby and whereunder, the appellant has been convicted for the offences punishable under Sections 302 & 307 of the Indian Penal Code (for brevity 'the IPC') and sentenced to undergo imprisonment for life and a fine of Rs. 20,000/- (Twenty Thousand) under Section 302 of the IPC and in default of payment of fine to undergo imprisonment for six months. The appellant has further been sentenced to undergo rigorous imprisonment for ten years and a fine of Rs. 5,000/- (Five Thousand) and in default of payment of fine to further undergo imprisonment for three months. However, all the sentences were directed to run concurrently.

3. The Prosecution Story in brief is as under :-

3.1. The Informant Hasmul Nisha has recorded her *fardbeyan* on 24-03-2009 at about 05:45 P.M. at Primary Health Center, Mahua, stating therein that her husband and her elder son work at Nagpur and she lives with her three sons and one daughter at her father's house situated in village *Chakkaji Nizam*. Two days ago, her brother, namely, Md. Murtuza demanded some cash to open a shop, whereafter she had given Rs. 9000/- but, her brother was demanding more money and, on her denial, he threatened to kill her as also her children. On 24-



03-2009, at about 2.30 P.M., her brother called her sons, namely, Md. Irshad, Mr. Akhlaq and Md. Faiyaz and took them inside the room. After some time, grunting sound of her children came from that room and her elder son/Md. Irshad ran out of the room screaming. Upon this, when she and her daughter, namely, Nusrat Jahan ran into the said room, they saw Md. Akhlaq and Md. Faiyaz writhing on the ground and soaked in blood, in injured condition, and her brother was standing with *Bhujali* in his hand, which was blood stained. When she and her daughter started to lift both the sons, Md. Murtuza (appellant) started assaulting the Informant as well as her daughter by means of *Bhujali* with an intention to kill them due to which the Informant got injured and her daughter's left hand wrist got cut and fell down. Meanwhile, when Informant's father, namely, Md. Israel Ansari came to rescue, the appellant ran away from there by waving his *Bhujali* and terrorizing the villagers.

4. After the registration of the FIR, the Investigating Agency commenced investigation, and during the course of investigation, the Investigating Agency recorded the statement of the witnesses and thereafter, collected other documentary evidences. Thereafter, the Investigating Agency filed the



charge-sheet against the appellant before the concerned Magistrate Court. The concerned Magistrate committed the case under Section 209 of the Cr.P.C. to the concerned Sessions Court as the same was exclusively triable by the Court of Sessions.

5. During the course of trial, the prosecution has examined 11 witnesses and also produced the documentary evidences. Thereafter, the statement of the appellant/accused under Section 313 of the Cr.P.C. came to be recorded. After conclusion of the trial, the Trial Court passed the impugned order against which the appellant has preferred the present appeal.

6. Learned advocate for the appellant has submitted that the prosecution has examined altogether two independent witnesses i.e. PW-3 and PW-4. However, they have not supported the case of the prosecution, and they have been declared hostile. It is also submitted that PW-6 and PW-7, who are seizure list witnesses, have also not supported the case of the prosecution. Learned counsel for the appellant, therefore, submitted that the case of the prosecution rests on three witnesses i.e. PW1, who is sister of the deceased, PW2, who is brother of the deceased, and PW-9 (Informant) who is mother of



the deceased respectively. At this stage, it is submitted that PW-2 (brother), is also not an eye-witness. However, he was projected as an eye-witness to the occurrence. It is, thereafter, contended that even PW-1 and PW-9 have sustained injuries but, have not seen the actual occurrence. Learned counsel, therefore, urged that the impugned order passed by the Trial Court be quashed and set aside. At this stage, it is further submitted that appellant is in custody since March 2009 and, in fact, he has completed more than 14 years and nine months as on date.

7. On the other hand, learned APP for the respondent-State has opposed this appeal and contended that the present one is the case of double murder and two sons of the Informant have been killed by the appellant, who is the maternal uncle (*mama*) of the deceased. It is further submitted that the weapon viz. *Bhujali* was recovered from the appellant. It is further submitted that the PW-1 and PW-9 are the injured eye-witnesses and they have also sustained injuries at the time of occurrence. It is further submitted that PW-10/Dr. Anirudha Singh, who has treated the injured witnesses have supported the case of the prosecution. Similarly, PW-11/Dr. Amrendra Prasad Singh, who has conducted the postmortem on the dead body of the



deceased, has also supported the case of the prosecution. Thus, the medical evidence supports the case of eye-witnesses. No error is committed by the Trial Court while passing the impugned judgment. Learned APP for the respondent-State therefore urges that the present appeal is liable to be dismissed.

8. We have considered the submissions canvassed by learned counsels appearing for the parties. We have also perused the materials placed on record, including the paper-book and the Lower Court Records.

9. From the evidence led by the prosecution, it would emerge that the prosecution has examined altogether eleven witnesses. It is true that PW-3, PW-4, PW-6 and PW-7 have not supported the case of the prosecution. PW-1/Nusrat Pravin @ Nusrat Jahan, who is sister of the two deceased, is also a child witness and has stated during her examination-in-chief that her uncle Md. Murtaza (appellant) called her brother/Md. Alklaq and Md. Faiyaz and took them to the room whereafter, he cut the necks of both of them one after another with *Bhujali*. It is further stated that Md. Irshad was also there. However, Md. Irshad managed to ran away from the room screaming. When she entered the room along with her mother, she found her brothers lying on the ground and were soaked in blood. It is



stated that her uncle (appellant) was standing there in the room with blood stained *Bhujali*. When her mother tried to lift Md. Faiyaz, her maternal uncle (appellant) cut her mother's hand with *Bhujali*. It is further stated that her hand below the elbow was also cut and one finger was also cut near the palm. Upon shouting, her maternal grandfather came to rescue but the appellant kicked him due to which he fell down and ran away. Both of her brothers died after some time. Villagers brought them to government hospital for treatment. She has identified the accused.

9.1. However, during the course of cross-examination, she has stated that she is not an eye-witness to the occurrence but, she immediately reached at the place of occurrence and she has seen her Mama i.e. the present appellant having *Bhujali* in his hand. In the said occurrence, she has also sustained injury.

10. PW-2/Md. Irshad, who is also a child witness and brother of the deceased has stated in his deposition that his maternal uncle (appellant) called all the three brothers viz. Md. Akhlaq, Md. Faiyaz and Md. Irshad and took them into the room and then cut the neck from the back side of Md. Faiyaz with *Bhujali*. When he saw Md. Akhlaq being cut, then he ran out from the room screaming. When both his mother and sister



went to save them, both of them were also being cut by appellant. His maternal uncle (appellant) chopped his sister's hand by means of *Bhujali* and also sliced on the head and mother's hand were chopped upto both shoulders. He has identified the accused.

11. PW-3/Md. Kalam and PW-4/Rasida Khatoon are the independent witnesses. However, they have been declared hostile as they have not supported the case of the prosecution.

12. PW-5/Arun Kumar Choudhary is a formal witness, who has identified the signature of Officer In-charge of the police station who has recorded the *fardbeyan* of the Informant. However, during his cross-examination, the said witness has stated that when the *fardbeyan* was recorded, he was not present and he is not aware about the contents of the said *fardbeyan*.

13. PW-6/Md. Izhar and PW-7/Dharmendra Kumar, who are the seizure list witnesses, have also not supported the case of the prosecution. They have turned hostile.

14. PW-8/Rajendra Kumar Singh is the Investigating Officer who has conducted the investigation of the FIR, in question, and has stated in his deposition that he was In-charge of the police station and he has taken over the investigation on 24-03-2009. In his examination-in-chief, he has stated regarding



recovery of blood stained Bhujali (a sharp edged weapon) and clothes of the accused which were sent to Forensic Science Laboratory for examination.

14.1 During course of investigation, he has recorded the confessional statement of appellant/accused and also recorded the statement of witnesses who had visited the place of occurrence. The dead bodies of the deceased were sent for postmortem.

15. PW-9/Hasmul Nisha @ Hasmul Khatoon is the Informant, who is mother of the deceased. She has stated in the examination-in-chief that the incident occurred on 24.03.2009 at about 2:30 P.M. Her brother called her sons on the pretext of giving chocolate. Thereafter, he cut down the neck of Md. Faiyaz by giving three blow with *Bhujali* and Md. Akhlaq was also given blow with *Bhujali* and there was a lot of blood inside the room. It is further stated by her that upon screaming of Md. Irsad, she went into the room with her daughter where she found the entire room was spilled over with blood. Both her sons were struggling there for life and, on rescue, he gave *Bhujali* blow on both of her hands as also he chopped her daughter's right wrist. she and her daughter were brought to the Primary Health Center, Mahua and later were referred to



P.M.C.H., Patna for better treatment and her statement was recorded by the Inspector. She has identified the accused.

16. PW-10/Dr. Anirudh Singh, is the Doctor, who had treated PW-1 and PW-9, the two injured persons. The said witness has stated in his deposition as under:-

"On 24/03/09 I was posted at P.H.C. Mahua as a M.O. On that very date at about 4.35 P.M. I examined Nushrat Praween D/o Wahid R/o Vill-Chakkaji Nijam P.S. Mahua, Distt- Vaishali and find following injury on her person.

(1) Amputated incised wound on left lower IIIrd forearm cut through and through

(2) Incised wound on Rt. hand between middle of ring finger 2" x 1/2" bone deep

(3) Incised wound upper IIIrd of Rt. fore arm 2"x 1/2" x bone deep

(4) Incised wound on left side of fore head 4" x 1 1/2" x bone deep

Injury no. (1) is grievous in nature caused by sharp cut weapon it may caused death and other injuries are simple in nature cause by sharp cutting weapon. There injury may be caused by Bhujalee (a sharp cutting weapon)

2. On the same day at 4:45 P.M., I examined Hasmul Nisha, W/o Md. Wahid R/o Vill Chakkajee Nijam P.S. Mahua Distt- Vaishali and found following injury in her person.

(1) Incised wound 4" x 2" x bone deep. On



upper at middle IIIrd up left fore arm with compound fracture.

(2) Incised wound 4" x 2" x bone deep on middle IIIrd up Right fore arm

(3) Incised would 2" x 1 1/2" x bone deep on Rt. shoulder joint.

(4) Incised would 1" x 1/2" bone deep on left shoulder joint.

All the injury are simple in nature caused by sharp cutting weapon such on Bhujalee. Both injuries are in my pen and signature marked its Ext. 11, Ext.- 11/1."

17. PW-11, Dr. Amrendra Prasad Singh, is the doctor who had conducted postmortem on the dead bodies of the two deceased. The said witness has stated as under:-

"A-1. On 25 march, 09 I was posted as a M.O. Sadar Hospital, Hajipur. On that date I have conducted the P.M. examination of Md. Faiyaz aged about 4 years S/o Md. Wahid Ansari R/o vill-chakkjee Nijam P/S Mahua Distt- Vaishali at 7:10 a.m. Body was identified by Chaukidar 3/10 Ram Lakhan Paswan P/S Mahua M.I. is scar on left leg. Clothing to the handed over to the police.

On P.M. examination rigor mortis were present on the fall for leg.. eyes were siken and open mouth was semi open. Following antemortem injury were found on the body of deceased.

(1) Incised wound 5" x 4" cutting through the skull in temporal region including Rt. Pinna.



(2) Incised wound 3" x 1" cutting through occipital bone in right side.

On dissection -

(1) Head and neck - Skull bone was cut in Rt. occipital and temporal region cutting all the meninges and brain beneath it with blood clot on intracranial cavity larynx trachea and neck vessels were intact.

(2) Chest - Chest cage was normal lungs, pericardium and heart were intact and pale. Both chambers of heart contain blood clots.

(3) Abdomen - All viscera were intact stomach contains about 100 ml of semi digested food, small and large intestine contain gases and fecal material. Urinary bladder contains 50 ml of Urine.

Time elapsed since death - within 24 hrs

Substance used - Heavy sharp cutting object such as Bhujale

Cause of death - In my opinion cause of death was shock due to the injury inflicted on the brain which is sufficient to cause death in normal situation. This P.M. examination report is in my pen and signature marked its ext.- 12.

B- 1. On the same day at about 7:30 a.m. I conducted P.M. examination of Md. Akhalake aged about 7 years S/o Md. Wahid Ansari on the same village and identified by the same Chaukidar one seen on left leg, clothes handed over to the chaukidar.

18. We have re-appreciated the entire evidence led by



the prosecution before the Trial Court. From the aforesaid evidence, it would emerge that PW-3 and PW-4, who are the independent witnesses, have not supported the case of the prosecution. Similarly, PW-6/Md. Izhar and PW-7/Dharmendra Kumar, who are seizure list witnesses, have not supported the case of the prosecution. However, it is pertinent to note herein that PW-1/Nusrat Pravin @ Nusrat Jahan, who is sister of deceased, and PW-9/Informant, who is the mother of the deceased, have sustained injuries in the occurrence, in-question. Even PW-2/Md. Irshad also reached at the place of occurrence immediately. The appellant was present at the place of occurrence with deadly weapon *Bhujali*, which was recovered from the appellant herein. The aforesaid two injured witnesses were sent for necessary treatment to the hospital and PW-10/Dr. Anirudha Singh, who had given treatment to the two injured witnesses, has also supported the case of the prosecution. PW-1 sustained grievous injury whereas PW-9 also sustained simple injury. The medical evidence supports the case of two injured witnesses and, therefore, there is no reason for this Court to disbelieve the two injured eye-witnesses merely because they are near-relatives of the two deceased persons. Both the aforesaid witnesses were present at the place of occurrence.



From the deposition given by PW-1 and PW-9, it is clear that the appellant has killed two sons of PW-9/the informant. PW-11/Dr. Amrendra Prasad Singh, who has conducted the postmortem on dead body of the deceased, has also supported the case of the prosecution. It is revealed from the deposition of the said witness that injury sustained by the two deceased is possible by weapon like *Bhujali*. The P.W.8/the Investigating Officer has also recovered the blood stained Bhujali and the clothes of the accused which were sent to Forensic Science Laboratory for examination.

19. We have also gone through the reasonings recorded by the Trial Court while passing the impugned order and we are of the view that as the prosecution has proved the case against the appellant accused beyond all reasonable doubt, no error is committed by the Trial Court while passing the impugned judgment and order of conviction and, hence, no interference is required in the present appeal.

20. As the appellant is in custody since last more than 14 years and 9 months, it is open for the appellant to file an appropriate application before the concerned Remission Board of the State.

21. As and when such application is filed by the



appellant, the concerned Remission Board of the State shall
examine the same on its own merits.

22. In the result, the present appeal stands dismissed.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

Raj Kishore/-

AFR/NAFR	
CAV DATE	N/A
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