

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1204 of 2016

Arising Out of PS. Case No.-29 Year-2013 Thana- CHANDI District- Nalanda

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1. Chandrika Ravidas @ Dodha @ Dari, Son of Late Dukhit Ravidas;
 2. Munni Ravidas, Son of Chandrika Ravidas;
 3. Krishna Ravidas, Son of late Amlu Ravidas;

All are residents of Village- Kachahariya, Police Station- Chandi, District- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Mukherjee, Advocate
		Mr. Sudish Kumar, Advocate
		Mr. Sunil Prasad, Advocate
		Mr. Ganesh Sharma, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 30-07-2024

We have heard Mr. Ajay Mukherjee and Mr. Sudish Kumar, the learned Advocates for the appellants/applicants and Mr. Abhimanyu Sharma, the



learned APP for the State.

2. All the three appellants have been convicted under Section 302/34 of the Indian Penal Code *vide* judgment dated 28.09.2016 passed by the learned Additional Sessions Judge-II, Hilsa, Nalanda in Sessions Trial No. 520 of 2013, arising out of Chandi P.S. Case No. 29 of 2013. By order of the same date, *i.e.*, 28.09.2016, they have been sentenced to undergo R.I. for life, to pay a fine of Rs. 10,000/- each and in default of payment of fine, to further suffer R.I. for one year under Section 302/34 of the IPC.

3. One Tillu Ravidas of Village-Kachahariya, P.S.-Chandi, District-Nalanda is said to have been killed at the hands of the appellants.

4. The FIR with respect to the occurrence dated 19.03.2013 was lodged on 20.03.2013 by one of the sons of the deceased, *viz.*, Ram Lakhan Ravidas (P.W. 5). He lodged the *fardbeyan* at Sub-Divisional Hospital, Hilsa at about 04:40 P.M. on 20.03.2013, alleging that



while his parents were coming from the house of his younger brother for taking meal at his house, they were assaulted by the appellants in front of the house of one Sugriv Ravidas (P.W. 2). When *hulla* was raised by Sugriv Ravidas and the mother of P.W. 5, he came out of the house and saw his parents injured. Both the parents of P.W. 5 were brought back home. The deceased was treated in Hilsa Government Hospital, where, during the course of treatment, he died.

5. The cause of occurrence as narrated by P.W. 5 in his *fardbeyan* is that his son, earlier, had married the grand-daughter of appellant/Krishna Ravidas, which was not to the liking of the family members of the bride. This marriage had taken place about two years ago. Because of this, the appellants harboured rancour in their hearts and finding a suitable, the parents of P.W. 5 were assaulted, which ultimately led to the death of the father of P.W. 5.

6. Based on the afore-noted *fardbeyan*



statement of P.W. 5, a case *vide* Chandi P.S. Case No. 29 of 2013, dated 20.03.2013, was registered for investigation against the appellants under Section 302/34 of the Indian Penal Code.

7. The police, after investigation, submitted *charge-sheet* against the appellants, whereafter cognizance was taken against them and the case was committed to the Courts of Sessions for Trial.

8. The Trial Court, after having examined nine witnesses on behalf of the prosecution including the Doctor and the I.O., convicted and sentenced the appellants as aforesaid.

9. Mr. Ajay Mukherjee and Mr. Sudish Kumar, the learned Advocates for the appellants have contended that the Trial Court completely threw to the winds the accepted cannons of appreciating the evidence and has recorded the conviction without appreciating the evidence in correct perspective.



10. It has been submitted on behalf of the appellants that neither P.W. 5 nor anyone of the other witnesses had seen the occurrence. The only person who could, perhaps, have witnessed the occurrence was the wife of the deceased, *viz.*, Dhanwanti Devi (P.W. 4), but her statement is replete with inconsistencies, which has made her deposition doubtful. Apart from this, it has been urged that when the *post-mortem* examination was held on the body of the deceased, bandaged and stitched wounds were found by Dr. Manoj Kumar (P.W. 6).

11. But for one injury on the frontal part of the head, namely, fracture of frontal bone, no other injury on the body part of the deceased appears to have been caused by assault on him by the appellants. There is every possibility of the deceased having fallen down while walking to the house of P.W. 5 in the night and having sustained injuries.

12. Even with respect to motive, the learned



Advocates have urged that the contentious marriage had taken place two years ago and if that was the cause for having any evil intention, the appellants being the co-villagers of the deceased could have avenged their enmity any time before. There does not appear to be any rationale in waiting for two years when the granddaughter of appellant/Krishna Ravidas had already been leading a happy marital life with two children, to indulge in such assault.

13. Lastly, it has been submitted that the falsity of the allegation would further appear from the fact that there is specific accusation by all the witnesses that Dhanwanti Devi (P.W. 4) was injured in the occurrence as she too was assaulted by appellant/Krishna Ravidas, but there is no evidence on record of her treatment anywhere or of her having received any injury in the transaction.

14. The proposition of the learned Advocates is that the deceased got hurt by falling as he was an old



person and precisely for this reason, no treatment was afforded to him in the night, thinking that the injuries are not serious. It was only during the day that he was treated in a Sub-Divisional Hospital and the death of the deceased provided an opportunity for P.W. 5 to saddle such false allegation on the appellants.

15. The learned APP, however, has argued that the statement of the witnesses are absolutely consistent and some discrepancies in the statements of some of the witnesses ought not to be magnified beyond proportions to say that the prosecution case is false or exaggerated. He has further argued that the injuries suffered by the deceased were sufficient in the ordinary course of nature to cause death. There is a reasonable explanation for the deceased not being taken to hospital in the night of the occurrence, *i.e.*, 19.03.2013, namely, lack of transport facility. In the morning of 20.03.2013, the victim was taken on a horse-cart to hospital where he was treated, but during the course of treatment, he died



at about 04:30 in the evening.

16. It has further been submitted by the learned APP that though there is no record available in the case, but it is very apparent that the treatment was given to the deceased at the Sub-Divisional Hospital, Hilsa. The police had arrived at the hospital only after the deceased had died in the hospital.

17. Mr. Sharma has further elaborated that for the reason of the son of P.W. 5 having married the grand-daughter of appellant/Krishna Ravidas, which was much to the chagrin of the entire family of the appellants, the occurrence had taken place. Merely because the incident of marriage had taken place two years ago, it cannot be said with certainty that the cause of grievance had extinguished. A marriage against the wishes of family continues to pester in the hearts of people who are not agreeable to such a relationship. In such a circumstance, the motive suggested by the prosecution clearly fits in the circumstances of this case.



There was no other reason for the appellants to have accosted and assaulted the parents of P.W. 5 in the night. There was no immediate cause of any dispute.

18. In the afore-noted circumstances, it has been argued that the appellants ought to be held responsible for the death of the deceased. Three of them had assaulted the deceased by means of *lathi*, which was witnessed by the wife of the deceased. During and shortly after the occurrence, most of the witnesses had arrived at the P.O. There is every likelihood of their having witnessed the appellants running away from the scene. It is not necessary to seek for source of identification, especially when a co-villager is identified by witnesses in the night, from a close distance.

19. On all these grounds, it has been urged on behalf of the State that the conviction and sentence is absolutely justified and not required to be interfered with.



20. On a perusal of evidence on record and after hearing the learned counsel for the parties, we have found it to be very strange that Dhanwanti Devi (P.W. 4) was never treated for any injury on her hand.

21. This is just one aspect of the matter, which has prodded us to look at the evidence of the other witnesses with some circumspection.

22. P.W. 5, in his deposition before the Trial Court, though has supported the prosecution case in its entirety, but some parts of his statements do create a doubt whether he had reached the P.O. at the time when the appellants were assaulting his father (deceased). In his cross-examination, he has stated that when he heard the shouts of Sugriv Ravidas (P.W. 2), he came out of his house and heard him say that his father has been killed. He proceeded for the P.O. with a torch in his hand. He did not meet anybody on the way. However, when he reached near the house of P.W. 2, he found him standing in the lane. His father had fallen down and



was bleeding. He had also become unconscious.

23. This narration clearly establishes that P.W. 5 reached the P.O. after the assault was over. However, in an effort to rectify what he had said, he clarified that when he and the other witnesses collected at the scene of occurrence, he saw the appellants running towards the eastern direction with *lathis* in their hands. He had seen them from a distance of about six feet.

24. No treatment was administered to the deceased in the night; notwithstanding the fact that a Doctor was available in the village. No police personnel came to his house in the night. The police had arrived only at Hilsa Hospital at about 11 O'clock in the day and his statement was taken by the police at that time (11:00 A.M.).

25. In this context, we find that there is extreme divergence in the timing of the lodging of the FIR and the time given by P.W. 5 of getting his statement recorded in the hospital.



26. The FIR appears to have been lodged at 04:40 P.M., *i.e.*, after the death of the deceased. What was that statement at 11:00 A.M. by P.W. 5 remains completely unknown. Was the deceased conscious at that time? Was he being administered treatment in Hilsa Hospital? There is no reference to anyone of these posers.

27. It appears that after the death of the deceased, P.W. 5 thought it best to attribute the assault leading to death of the deceased, to the appellants.

28. Dhanwanti Devi (P.W. 4), who had been accompanying the deceased, has also made statements which belie the basic features of this prosecution. She has stated before the Trial Court that no sooner had her husband reached near the house of Sugriv (P.W. 2), the appellants arrived and started assaulting him. When she went to his rescue, appellant/Krishna gave a *lathi* blow on her arm and also pushed her. She fell down. It was only thereafter that her son and the villagers came and



brought them home. Both of them remained in the house in the night. It was only in the morning that her husband was taken to hospital on a horse-cart.

29. In her cross-examination, she has admitted that her family has enmity with the appellants from before and the reason is the marriage of the son of P.W. 5 with the grand-daughter of appellant/Krishna Ravidas. The couple were residing with P.W. 4 and the deceased. She has also stated that the deceased had empty stomach at the time of occurrence as both of them were going to have their dinner at the house of P.W. 5. The deceased had an upset stomach a day before, but no medication was given to him. Perhaps, such information was elicited from P.W. 4 to suggest that the deceased may have fallen down because of ill-health and debility, which may have caused the injuries suffered by him.

30. Out of necessity, for the reason of the occurrence having taken place in front of the house of Sugriv Ravidas (P.W. 2), we have gone through the



deposition of P.W. 2 carefully.

31. P.W. 2 has stated before the Trial Court that when he heard a *hulla*, he came out of his house and saw the appellants assaulting the deceased. He also claims to have seen the appellants assaulting P.W. 4. In the meantime, P.W. 5 arrived at the P.O. first. Thereafter, Preman Ravidas and Chandeshwar Ravidas (P.Ws. 1 and 3) and others also arrived. All of them had seen the occurrence. The appellants are then said to have run away.

32. However, in cross-examination, P.W. 2 has stated that when he came out of his house, he saw the deceased at a distance of about 2 ft. The deceased had already fallen on the ground and was seriously injured. Alongside him, P.W. 4 was also lying injured. Both of them were unconscious, but P.W. 4 regained her consciousness immediately. When he had opened his door to come out of his house, nobody of the village was present. It was then that he shouted for help and within



10 minutes, people of the village started pouring in. The first person to arrive was P.W. 5, whereafter P.Ws. 1 and 3 came. Then, the other villagers also arrived. By the time the afore-noted witnesses came to the P.O., the appellants had run away. This, therefore, makes the presence of P.Ws. 1, 3 and 5 at the P.O. at the time of occurrence very doubtful. Even Sugriv Ravidas (P.W. 2) would not have seen the occurrence. He saw the injured and his wife lying on the ground and there was nobody around.

33. This only signifies that P.W. 2 was towing the line of prosecution and of P.W. 5 for whatever reason.

34. After narrating about the incident, P.W. 2 was absolutely unaware of the later developments. He had no idea whether any Doctor was called for the treatment of the injured and the deceased. Police, according to him, had not come to the house of P.W. 5 in the night. He had not accompanied P.W. 5 to the



hospital. It was only late on 20.03.2019, that he learnt that Tillu (deceased) had died.

35. Does it not indicate that P.W. 2 was only repeating what P.W. 5 had to say in his *fardbeyan* and later at the Trial? He is a neighbour of P.W. 5 and if he had seen the occurrence, he would surely have gone to the house of P.W. 5 to facilitate him in providing first-aid to the deceased and the injured (P.W. 4).

36. Even P.Ws. 1 and 3, though claimed to have seen the appellants running away, but their deposition amply create an impression that they had reached the P.O. after P.W. 5. If P.W. 5 had not seen the actual part of the assault, it is quite unlikely that P.Ws. 1 and 3 would have witnessed the occurrence.

37. Dr. Manoj Kumar (P.W. 6) had conducted the *post-mortem* on 21.03.2013. He had found one bandage over the forehead; blackening below both the eyes; bandage below right eye and a lacerated wound over right frontal region of the size of $1\frac{1}{2}' \times \frac{1}{4}'$. Apart



from this, four other wounds in the nature of laceration were found. A lacerated wound over the lateral side of the left eye, right eye and bruises over the right knee were noted by P.W. 6. On dissection, all cranial bones were intact except the frontal bone which appeared to have been fractured. There was fracture of the mandible as well. The cause of death, according to P.W. 6, was hemorrhage and shock because of the afore-noted injuries by hard and blunt substance. All the injuries were sufficient to cause death. In his cross-examination, however, P.W. 6 again clarified that two of the injuries were already bandaged and that he had not stated anything about removing the bandage during the *post-mortem* examination. No details of the stitches on the wounds were mentioned by him.

38. Where then was the deceased treated?

39. The evidence suggests that no treatment was afforded to him in the night.

40. No Doctor has been examined to prove that



medication was given to the deceased before he died.

41. In this context, the evidence of the Investigator, viz., Kripal Jee (P.W. 7) assumes importance. He was posted as a probationar Sub-Inspector in Chandi Police Station on 20.03.2013. The Officer-in-Charge of Chandi Police Station, namely, Kamlesh Sharma (not examined) had received information that in *Kachahariya* village, an occurrence of assault had taken place. He was further informed that the injured was taken to Hilsa Sub-Divisional Hospital, where he had died. P.W. 7 was sent by aforesaid Kamlesh Sharma to seek further information about the occurrence.

42. P.W. 7 claims to have gone to Sub-Divisional Hospital, Hilsa where the In-charge Station House Officer of Chandi Police Station also arrived. It was there that the *fardbeyan* of P.W. 5 was recorded and inquest proceedings were conducted by the In-charge Station House Officer, viz., Rahul.



43. On further cross-examination, P.W. 7 has again stated that the first Police Officer to reach the hospital was Rahul, the In-charge SHO. Shortly thereafter, he also arrived. By that time, the deceased had died and his dead-body was lying on the hospital bed. Around the deceased, there were no Doctors or staff of the hospital. There was no record of the time of the admission of the deceased in the hospital. In fact, P.W. 7 had not cared to check-up any register of the hospital. *Prima facie*, on looking at the dead-body, P.W. 7 was of the view that the deceased had been given treatment.

44. This is what makes the prosecution story very doubtful.

45. There is no record of the deceased having received any treatment in the night at home. There is neither any report of any treatment to the deceased in the hospital.

46. When was he treated?



47. This leads to a possible inference that, perhaps, the deceased received injuries in some other transaction or perhaps he had fallen down and was afforded treatment, but when his condition grew serious, he was brought to hospital. There is a possibility of his death being used as an occasion and an opportunity for P.W. 5 to fix the appellants. who were not having good relations with the family of the deceased.

48. P.W. 7 has made a further disclosure before the Trial Court that there was no electric pole at the P.O.

49. We have cited this disclosure not for the reason of doubting the capability of the witnesses to identify their co-villager in the absence of any source of light, but to examine the suggestion that perhaps the deceased had fallen down while walking up to his son's house and in that process, he had received the injuries. Bruises on knees and the fracture of frontal bone and mandibles are very well possible in case of a fall of a



person of 70 years and that also when he had an upset stomach a day before.

50. The narration of P.W. 4, the companion of the deceased at the time of the occurrence, does not appear to be trustworthy for the reason that if she was assaulted and had become unconscious for a while, she would definitely have been treated for her injuries. There being nothing on record regarding her injuries or her treatment, makes her statement highly doubtful.

51. P.W. 7 has further stated in his cross-examination that P.W. 1, during the course of investigation, never spoke about having seen the occurrence himself. His knowledge was based on what P.W. 5 had told him. Similarly, Sugriv Ravidas (P.W. 2) had not told him that appellant/Krishna Ravidas had assaulted Dhanwanti Devi (P.W. 4) on her hand. Chandeshwar Ravidas (P.W. 3) had also not spoken of specific assault or the injuries.

52. This only signifies that none of the



witnesses, viz., P.Ws. 1, 2, 3, 4 and 5 had actually seen any part of the occurrence.

53. This gives a death blow to the basic fabric of the prosecution of many persons having witnessed the assault.

54. The accusation against the appellants, therefore, appears to be highly doubtful.

55. For the reasons discussed above, we give benefit of doubt to the appellants and acquit them of all the charges levelled against them.

56. The judgment and order of conviction and sentence, referred to above, are set aside.

57. The appeal stands allowed and disposed off accordingly.

58. Since appellant Nos. 1 and 3, viz., Chandrika Ravidas @ Dodha @ Dari and Krishna Ravidas are in jail, they are directed to be released forthwith, if they are not detained or wanted in any



other case.

59. So far as appellant No. 2/Munni Raivas is concerned, he is on bail. He is discharged of his liabilities under the bail bonds.

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

61. The records of the case be returned to the Trial Court forthwith.

62. Interlocutory application/s, if any, also stands disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Sauravkrsinha/
Praveen-II-

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