

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.31 of 2017

Arising Out of PS. Case No.-99 Year-2010 Thana- BACHHWARA District- Begusarai

Udan Thakur Son of Shri Shaligram Thakur Resident of Village-Chamatha,
Barkhut, P.S. Bachchwara, District Begusarai

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sabal Kumar Jha, Advocate
		Mr. Deep Anshuman, Advocate
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 08-04-2024

1. Heard Mr. Sabal Kumar Jha, the learned counsel for the appellant and Mr. Dilip Kumar Sinha, the learned APP for the State.

2. The appellant has been convicted under Section 302 of the Indian Penal Code vide judgment dated 20.12.2016 passed by the learned Additional Sessions Judge-VI, Begusarai in Sessions Trial No. 910/2010 arising out of Bachwara P.S. Case No. 99/2010. By order dated 20.12.2016, the appellant has been sentenced to undergo R.I. for life, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further



suffer S.I. for six months under Section 302 of the I.P.C.

3. The appellant is said to have stabbed the deceased, who is the son of the informant (PW-5).

4. Ashok Kumar Singh (PW-5) lodged the *fardbeyan* on 20.06.2010 at about 11:15 hrs at his house which was recorded by S.I. Pradeep Kumar of Bachwara police station (not examined) alleging that he received information at his house at 8:30 pm on the same day that his son has been stabbed near the gas- godown. Hearing this, he went to the P.O. near Sudha Bhawan and found that a crowd had gathered at that place. He saw his son fallen down on the ground. It appeared to him that he was assaulted and stabbed. By the time he had reached the place of occurrence, the deceased, an 18 year old boy had already died. With the help of the villagers, he brought the dead body to his home. Persons who were present at the place of occurrence told him that the appellant along with his associates had killed the deceased.



5. On the basis of the afore-noted fardbeyan statement, a case vide Bachwara P.S. Case No. 99 of 2010 dated 21.06.2010 was registered for investigation for the offence under Section 302/34 of the Indian Penal Code against the appellant and other unknown persons. However, the police after investigation submitted charge-sheet against the appellant only who was put on trial.
6. The Trial Court, after having examined nine witness on behalf of the prosecution convicted and sentenced the appellants as aforesaid.
7. The four witness to the F.I.R., namely, Vimal Kumar Singh, Amrendra Kumar Singh, Upendra Kumar Singh and Awdhesh Kumar Singh have been examined as PWs 1, 2, 3, and 4 respectively.
8. It has been argued on behalf of the appellant that the afore-noted four persons have though supported the prosecution case but have deposed differently from each other especially with respect to their having reached the P.O. on *hulla* raised by the



deceased.

- 9.** Vimal Kumar Singh (PW-1) claimed to have seen the occurrence while he was sitting at the medicine shop of one Vinod Kumar Singh. He had seen the appellant entering into fisticuffs with the deceased. Thereafter, he is said to have stabbed in the chest of the deceased. The deceased ran towards the gas-godown but fell down near Sudha Bhawan. He died immediately. After some time, the deceased was brought back home on a hand-cart.
- 10.** In his cross-examination, he has stated that after he reached the P.O., many persons including PWs 2, 3 and 4 arrived. Somebody from the crowd had informed the father of the deceased (PW-5). The father of the deceased also came to the place where the dead body was lying. When the police arrived, the nearby shopkeepers ran away from the P.O.
- 11.** If PW-1 is to be believed then perhaps PWs 2, 3 and 4 came to the P.O. only after the stabbing incident was over.



12. As opposed to what PW-1 had to say before the Trial Court, PW-2 though claimed to have seen the actual part of the assault but his deposition appears to be highly doubtful. The reason for our saying so is that according to him, the deceased was taken on a *thela* to a Doctor named Binod, who refused to treat him. The deceased was not even referred by him to any higher hospital. Later, the father of the deceased and one Pramod Kumar came and took the dead body to home. He did not state anything before the police and for the first time stood in the witness-box before the Trial Court to narrate about the incident.

13. According to the F.I.R. as also the deposition of PW-1, by the time PW-5 had reached the P.O. the deceased had already died and the name of the appellant was disclosed to PW-5 by persons who were present there and who had seen the occurrence. According to the prosecution case, the deceased was not taken to any doctor rather he was brought back home straightaway on a *thela*.



- 14.** That PW-2 made statement before the Trial Court for the first time makes his deposition very suspicious especially when he has given a different version to the entire prosecution case.
- 15.** Upendra Singh (PW-3) had again a different story to narrate before the Trial Court. However, he has supported the prosecution case to the extent that the dead body was brought back straightaway to home from the P.O.
- 16.** Both, PW-2 and PW-3 have not spoken of any participation of other associates of the appellant. Both of them have only stated about the appellant and the deceased fighting with each other and in the middle of such fight, the appellant stabbed the deceased and ran away. According to PW-3, one Sunil Singh had informed PW-5 about the occurrence. He is very specific in his statement that the deceased was not taken to any Doctor or hospital as by the time people had arrived at the P.O., he was already dead.
- 17.** Awadhesh Kumar Singh (PW-4), appears to be



making a correct statement that he reached the place of occurrence only after the occurrence. He had heard people say that one person has been killed in the *bazar*. In his presence, PWs 1, 2, 3 and 5 came. If he is to be believed, then perhaps that no one had seen the occurrence as claimed by PWs. 1, 2 and 3.

- 18.** Completely different from the deposition of Pws 1, 2, 3 and 4, the father of the deceased (PW-5) has stated that he was at his house on 26.06.2010 when Upendra Singh (PW-3) came to him and only informed that his son has been stabbed. If this were true, then perhaps Upendra Singh (PW-3) had no idea that the deceased was stabbed by the appellant or else he would have said so to PW-5. On this information by PW-2 that his son has been stabbed to death, he went to the gas -godown where a huge crowd had collected. It was learnt there by PW-5 that the appellant had stabbed the deceased. The dead body was taken back home. He has categorically told the Trial Court that he had only heard from the people about the occurrence.



- 19.** All this reflect prima facie reflect that there was a rumour that the appellant had stabbed the deceased.
- 20.** There is a reason for suspecting the hands of the appellant especially when all the witness who have come to Trial Court having deposed that they had not seen the occurrence. According to PW-5, on the date of occurrence, at about 3 O'clock, the appellant and the deceased had fought amongst themselves. This perhaps could be the reason for suspecting the hand of the appellant in the killing of the deceased.
- 21.** The dead body was subjected to post-mortem examination by PW-6/Diwakar Singh on 21.06.2010 at about 9:25 pm. There were cut and stab injuries on the person of the deceased. The time fixed of death was 12-18 hrs from the time of the post-mortem examination. In the opinion of PW-6, the death was occasioned due to massive hemorrhage and shock with cardiac arrest. The weapon of assault was a sharp cutting weapon.
- 22.** PW-7 and PW-8, namely, Shushil Kumar Singh



and Krishna Dev Singh have been declared hostile as they have not supported the prosecution case.

23. Rameshwar Das is only formal witness.

24. Mr. Sabal Kumar Jha, learned Advocate for the appellant has argued that from conspectus of the evidence collected during the trial, it would become very clear that none had seen the appellant killing the deceased. He says so on the strength of the statement made by the father of the deceased (PW-5) who does not claim to have seen the occurrence. He was first informed by PW-2 that someone had stabbed his son. PW-2, therefore, cannot be believed to have seen the occurrence or else he would have known the name of the assailant. Similarly, the discrepancy in the statements of PWs 1 and 3 render their deposition suspect. All of them appear to have heard from the crowd that the deceased had been stabbed.

25. We have also found from the records as also from the deposition of the witnesses that no attempt was made to chase the appellant, who was carrying a



dagger with him.

26. There is yet another aspect of the matter which has caught our attention. According to one of the prosecution witnesses, the police had arrived at the place of occurrence when the shopkeepers of the market ran away. This is not the prosecution case. Had it been true, the inquest would have been prepared at the place where dead body was lying. On the contrary, the dead body was brought back home where the *fardbeyan* was recorded and inquest was prepared.

27. We have also found that the appellant had fought with the deceased sometimes in the afternoon. Was that the reason to suspect that he had stabbed the deceased ?

28. It appears to be so. The appellant may have stabbed the deceased but then it is only an inference.

29. The Investigating Officer has not been examined for no apparent explicable reason or else the prosecution would have said so. This has caused great prejudice to the case of the appellant especially when



it is not known as to what were the statements of the witnesses who claimed to have seen the occurrence.

30. The discrepancy in the statement of PWs 1 to 4, who are none-else but the witnesses to the F.I.R. make the prosecution case highly doubtful.

31. Seen in this background, we find that prosecution has not been able to prove the case beyond all reasonable doubts

32. Giving benefit of doubt to the appellant, we reject the opinion of the Trial Court convicting the appellant for the offence of murder and acquit the appellant of all charges.

33. Since, the appellant is in jail, he is directed to be released from jail forthwith, if not required or wanted in any other case.

34. The appeal is allowed.

35. The interlocutory application/s, if any, also stands disposed of.

36. Let a copy of this judgment be dispatched to the Superintendent of concerned jail for record and



compliance.

37. Let the records of this appeal be also returned to
the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

sunilkumar
prabhat/-

(Khatim Reza, J)

AFR/NAFR	NAFR
CAV DATE	N/A
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