

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.729 of 2017

Arising Out of PS. Case No.-565 Year-2013 Thana- KRITYANAND NAGAR District-
Purnia

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Daya Nand Rishi, son of Late Gulabi Rishi, Resident of Village- Bhokharaha
Baniapatti, P.S.- K. Nagar, District- Purnea.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Vivekanand Singh, Adv.

For the State : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 10-05-2024

Heard the learned counsel for the parties.

2. The appellant has been convicted for the
offence under Section 302 of the Indian Penal Code
vide judgment dated 27.05.2017 passed in Sessions
Trial No. 569 of 2015/12 of 2017 (CIS No. 536 of



2015), arising out of K. Nagar P.S. Case No. 565 of 2013. By order dated 31.05.2017, he has been sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/-. No default clause has been added in the sentence.

3. One Sitabi Rishi, an eighty years old man, is said to have been killed at the hands of the appellant and many others, who have not been put on Trial.

4. The F.I.R. has been lodged by the son of the deceased/Sitabi Rishi, namely, Phul Chand Rishi, who has been examined as P.W. 1. He has alleged that on 08.12.2013, at about 8 O'clock, the appellant and many others, out of whom seven were named, came to the plot belonging to his father and started ploughing the same. When his father protested, all the accused persons including the appellant assaulted him. He was caught by the other accused persons and the appellant gave a *Dabia* blow on the head of the deceased, as a result of which he fell down. One Nago



Rishi pierced the testicles of the deceased. The deceased died at the place of assault. When he came to the rescue of his father, he too was badly assaulted and threatened that he shall be killed.

5. On the basis of the aforesaid written report lodged by P.W. 1, a case vide K. Nagar P.S. Case No. 565 of 2013, dated 09.12.2013, was registered for investigation for the offences under Sections 147, 148, 149, 341, 323 and 302 of the I.P.C.

6. The police, after investigation, submitted *charge-sheet* against the appellant, whereas the investigation with respect to others was kept pending.

7. Only the appellant was put on Trial.

8. The Trial Court, after having examined eight witnesses on behalf of the prosecution and three on behalf of the defence, convicted and sentenced the appellant as aforesaid.

9. The written report, according to P.W. 1,



was scribed by one Narayan Mandal, who has been examined as P.W. 4 at the Trial and who has been declared hostile.

10. From the perusal of the written report lodged by P.W. 1 and his deposition before the Trial Court, the case appears to be false. We say so for the reason that in the F.I.R., the allegation against the appellant and others is of having arrived at the disputed plot at about 8 O'clock in the night on 08.12.2013. This story has been given a complete go by by P.W. 1 and before the Trial Court, it has been stated that he along with his family members had been uprooting potatoes in the field of a co-villager. Thereafter, the family members had come to the house and were sitting by the side of fire. In the meanwhile, the appellant and others arrived and assaulted the deceased. At the Trial, the weapon of assault attributed to the appellant has been stated to be a sword and not a *Dabia*. The place of occurrence also



could not be proved.

11. In this context, we have seen the inquest report, which appears to have been prepared near the house of the deceased on 09.12.2013 at 07:00 A.M. If the police had arrived at the place of occurrence on 09.12.2013 at about 07:00 A.M. where P.W. 1 also was present, there was no reason why his *fardbeyan* was not recorded. The inquest report further reveals that on 09.12.2013, information was received in the police station that a person has been killed. For verification of the aforesaid information, one Umesh Kumar Singh (not examined) proceeded to the P.O. and on finding the dead-body, prepared the inquest report in presence of Rinku Rishi and Narayan Mandal (P.W. 4).

12. We have already noted above that Narayan Mandal (P.W. 4) has turned hostile.

13. The evidence further suggests that with respect to the disputed plot, earlier a case was lodged



in which the brother of the appellant, namely, Kundan Rishi was killed. In the afore-noted case, the informant/P.W. 1 was also made an accused. Along with P.W. 1, P.W. 2 was also made an accused in that case.

14. In this background, we find force in the submission of Mr. Vivekanand Singh, the learned Advocate for the appellant that taking advantage of the death of an old person, the instant case has been lodged with consultation of the family members for finding an escape route from the criminal case lodged against P.W. 1 and others for the murder of the brother of the appellant.

15. According to P.W. 1, the police was informed. The police arrived at the P.O. and investigated the matter. This does not appear to be correct for the reason that the occurrence had taken place at about 8 O'clock in the night on 08.12.2013. The information appears to have reached the police



station some times on 09.12.2013, whereafter one Umesh Kumar Singh had prepared the inquest report.

16. The entire story of the informant (P.W. 1) about the appellant and others having come to the field belonging to the deceased for ploughing the same to take control of it, thus is rendered a complete lie.

17. The *post-mortem* examination was conducted on the dead-body of the deceased on 09.12.2013 by Dr. Yogendra Prasad (P.W. 5), who had found one lacerated wound over the frontal region of head which was subcutaneous in depth. Another inverted wound with a sharp margin on the occipital region of the head of the deceased was also found. There were blood clots in the cranial cavity. Rest other injuries, approximately four in number, were abrasions, simple in nature over the other non-vital parts of the body.

18. The regular defence of the appellant is that the deceased had gone to cut grass where he fell



down and was injured by the scythe which he was carrying. The story of the assault on the deceased also does not appear to be correct for the reason that if at all the accused persons had a target, it was P.W. 1 and not the deceased who was about eighty years old.

19. Thus, it appears that the prosecution has not come with clean hands at all. Out of the eight witnesses examined at the Trial, P.Ws. 3, 4 and 7 have been declared hostile.

20. Lakhan Rishi (P.W. 2) though has supported the prosecution case, but his evidence does not inspire confidence. He is not an eye-witness to the occurrence and claims to have heard about the death of the deceased from P.W. 1. He had gone to the house of the deceased only on the next day and was told by P.W. 1 about the name of the assailants including the appellant.

21. Two of the Investigation Officers have not contributed anything towards resolving the mystery



of the death of the deceased.

22. The Investigator, namely, Ganesh Poddar (P.W. 8) went to the P.O. but he has not made any specific statement whether the P.O. was the hut of the deceased or the disputed field towards the eastern direction. No blood was found at any one of the places which could have been the P.O. Even the weapon of assault was not seized nor any attempt was made to do so. P.W. 8 has admitted that he had accepted the written report brought by P.W. 1 without inquiring as to who had written the same.

23. It appears to be rather surprising that death had taken place in the night of 08.12.2013. There was no reason for filing a written report if the police had come to the house and had conducted the inquest proceedings. Thus, it appears that the death of the deceased, which might have been because of fall, was taken advantage of by the prosecution and the appellant and all his supporters were made accused.



24. No positive materials were forthcoming against the other accused persons and, therefore, keeping the investigation pending against them, supplementary *charge-sheet* was submitted against the appellant. The primary motive for naming the appellant thus appears to be the angst because of an earlier case in which P.W. 1 had gone to jail in the case of the murder of the brother of the appellant. This was the only way to avenge the enmity as also to find a defence in the criminal case lodged against P.W. 1 and his family members. The story put-forth by P.W. 1 does not at all inspire confidence that it is the true version of the occurrence.

25. We have great difficulty in accepting the case put up by the prosecution to be true. The prosecution has not been able to prove the *charge* against the appellant beyond all reasonable doubts.

26. For the afore-noted reason, we set aside the judgment and order of conviction, referred to



above, and acquit the appellant of the *charge* of murder, giving him the benefit of doubt.

27. The appeal stands allowed.

28. Appellant/Daya Nand Rishi is in jail. He is directed to be released forthwith from jail, if not wanted in any other case.

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

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

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

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Praveen-II/Shoaib

AFR/NAFR	NAFR
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