

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.779 of 2018**

Arising Out of PS. Case No.-164 Year-2015 Thana- ISUAPUR District- Saran

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Rambabu Rai S/o Dharamdeo Rai, R/o Village- Agauther Nanda, P.S.-
Isuapur, District- Saran Chapra, Bihar.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant : Mr. Mithilesh Kumar Rai, Advocate
Mr. Virendra Kumar Roy, Advocate
Kumari Ruchi, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**

**ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 05-03-2024

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Cr.P.C.’) challenging the judgment of conviction and the order of sentence dated 05.05.2018 passed by learned Additional Sessions Judge-VI, Saran at Chapra, in S.T. No. 291 of 2016 arising out of Isuapur P.S. Case No. 164 of 2015, whereby and whereunder the appellant has been convicted for the offence punishable under



Section 302 of the Indian Penal Code ('IPC' for short) and has been sentenced to undergo imprisonment for life with fine of Rs.5,000/-. In default of payment of fine, the appellant has been directed to undergo further imprisonment for two months. Both the sentences have been directed to run concurrently.

2. The facts of the present case in nutshell are as under: -

2.1. On 07.12.2015, at about 12.15 pm, the grandson of the informant, namely Rajesh Rai, was present at his poultry farm and behind this poultry farm, there is land of both the parties and there is dispute regarding the said land between Lal Deo Rai and Dharmdeo Rai. On the date and time of occurrence, sons of Dharmdeo Rai, namely Ram Babu Rai and Amit Rai, were digging the field with spade, on which Rajesh Rai forbade them with the plea that this land belongs to his share, on which altercation took place between the parties and on the instigation of one Abhishek Kumar, Amit Rai caught hold of Rajesh Rai and Ram Babu Rai inflicted repeated blows on the head and neck of Rajesh Rai with spade, by which he sustained cut injury on his face, jaw and neck. After sustaining injury, he fell down. Thereafter the people of the locality gathered there and the accused persons fled away and the injured was carried to



Isuapur in private clinic of Dr. B.K. Singh for his treatment, from where he was referred to Sadar Hospital, Chapra due to his critical condition and in the way Rajesh Rai died and this occurrence took place due to land-dispute between the parties.

2.2. After recording of the *fard-beyan* of the informant, formal FIR came to be registered before Isuapur Police Station, bearing Isuapur P.S. Case No. 164 of 2015 for the offences punishable under Section 302/34 of the IPC.

2.3. After registration of the FIR, the Investigating Officer commenced the investigation and during the course of the investigation, he had recorded the statement of the witnesses and collected documentary evidence and thereafter filed the charge-sheet against the appellant-accused before the concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court under Section 209 of the Code, where the same was registered as Sessions Trial No. 291 of 2016.

3. Before the trial court, the prosecution examined seven witnesses and also produced the documentary evidence. Thereafter, the statement of the accused under Section 313 of the Code came to be recorded.



3.1. After conclusion of the trial, the trial court passed the impugned judgment of conviction and the order of sentence against which the appellant/convict has preferred the present appeal.

4. Heard learned counsel Mr. Mithilesh Kumar Rai, assisted by Mr. Virendra Kumar Roy and Kumari Ruchi for the appellant and Mr. Sujit Kumar Singh, learned APP for the respondent-State.

5. Learned Advocate for the appellant would submit that there are, in fact, no eye-witnesses, despite which the trial court has projected four witnesses as eye-witnesses to the occurrence in question. It is further submitted that there are major contradictions in the depositions of the prosecution witnesses. It is also contended that the medical evidence does not support the version given by the projected eye-witnesses and, therefore, when the projected eye-witnesses were near relations of the deceased, their deposition is required to be scrutinized carefully. It is also submitted that the Investigating Officer did not find any blood stained soil at the place of occurrence nor blood stained clothes of the deceased were seized. It is also submitted that the weapon, i.e., the spade, allegedly used by the appellant in commission of the alleged



crime was also not recovered/discovered by the Investigating Officer. It is also submitted by learned counsel for the appellant that because of the land dispute between the family members, the appellant herein has falsely been implicated. Learned counsel, therefore, urged that the present appeal be allowed and the impugned judgment of conviction and the order of sentence be quashed and set aside.

6. Learned Additional Public Prosecutor has vehemently opposed the present appeal. He would submit that there are eye-witnesses to the occurrence in question and four injuries were found on the body of the deceased. The death of the deceased was a homicidal death, which was duly proved by the prosecution by leading cogent evidence. It is also submitted that the prosecution has also proved the motive on the part of the appellant to commit the alleged offence and, therefore, when the prosecution has proved the case against the appellant/accused beyond reasonable doubt, no error is committed by the trial court while passing the impugned judgment of conviction and the order of sentence. Learned Additional Public Prosecutor, therefore, urged that the present appeal may not be entertained.

7. Having heard learned Advocates appearing for the parties and having gone through the material placed on record



including the evidence led by the prosecution before the trial court, it would emerge that the prosecution had examined seven witnesses. PW 1 is the mother of the deceased, PW 2 is the wife of the deceased, PW 3 is uncle of the deceased, whereas PW 4 is the grand-father of the deceased. Thus, the aforesaid witnesses are near relations of the deceased and are interested witnesses. It is well settled that merely because the witnesses are interested/related witnesses, their depositions cannot be discarded solely on the said ground. However, their deposition is required to be scrutinized carefully.

8. PW 1, Sonamati Devi, is the mother of the deceased. She has stated in her examination-in-chief that apart from her, Mangal Rai, Ramswaroop Rai, Vikash Rai and Sanjay Rai had also seen the occurrence.

8.1. In her cross examination, she deposed that the poultry farm is 3-4 *laggi* (about 36-48 ft.) from her house. No other house is in between the poultry farm and her house nor any other house is there in the vicinity. In the village, where the occurrence took place, only ten houses of other persons are there apart from her house. Apart from her son, some labourers were also there at the poultry farm including Ramswaroop, Sanjay, Vikash and Mangal. When she reached the place of occurrence,



10-12 persons of the village had gathered there. Her son was lying injured. He was unconscious because of the injury sustained. She did not have any interaction with the above mentioned persons. Her son had sustained injuries on his head, eye, neck and other parts due to blows inflicted with spade. Blood was spilled in the field where her son was lying. He was lying in the field of Amit.

9. PW 2, Sabita Devi, is the wife of the deceased, who had deposed in her examination-in-chief that deceased Rajesh Rai was her husband. On the date of occurrence, Amit was digging her land and, when her husband objected, verbal duel of her husband ensued with Amit and Rambabu, on which Prabhawati Devi, mother of Rambabu, exhorted to kill him (husband of PW 2). After that, Rambabu inflicted 4-5 spade blows to her husband. On being inflicted spade blows by Rambabu on the eye, neck and head of her husband, he sustained injuries and fell down. Amit was holding her husband by his waist and Rambabu inflicted spade blows on the husband of PW 2. Her husband also sustained injuries in his teeth.

9.1. In her cross-examination, PW 2 deposed that accused persons were also having share in the land of poultry



farm which was already partitioned. She possesses the documentary evidence of partition, which she can produce. Having heard the commotion created by the altercation, they reached from their house. Along with them, 5-7 villagers also reached at the place of occurrence. When the villagers reached there, her husband had fallen down. He was unconscious because of the injuries sustained. The accused persons had fled away from there. Her husband was not in a condition to speak. Neither they nor the villagers could speak to her husband.

10. PW 3, Mangal Rai @ Mangal Yadav, has deposed in his examination-in-chief that he knew Rajesh Rai. On hearing the uproar, when he reached near poultry farm, he saw that Rambabu Rai and his brother Amit Kumar were digging earth from the field of Rajesh Rai with spade, on which Rajesh Rai objected. Thereafter, Amit caught hold of him and Rambabu started hitting Rajesh with spade several times. He saw the occurrence along with the family members of Rajesh, mother of Rajesh and Dhawal Rai. Many villagers also gathered there.

10.1. In his cross-examination, PW 3 deposed that deceased Rajesh Rai was his nephew. He and Rajesh shared the house. No one else was present in the poultry farm. When they reached poultry farm, scuffle was going on between Rajesh,



Amit and Rambabu. No one else was present there except them. They did not catch hold of Rajesh, Rambabu or Amit. They were watching the happening. He has admitted that he had once went to jail on being implicated in case of selling liquor. Mother and wife of Rajesh had not encircled Rajesh while he was being beaten. 4-5 injuries were there on the body of Rajesh. Blood spillage was there where Rajesh was lying. Blood was there on the *darer* (ridge) of the fields of both the parties. Police did not visit the place of occurrence on the date of occurrence. Police visited the village at about 9-10 AM on the next day. Police also visited the place of occurrence. Police took the blood stained soil from the place of occurrence, but did not take the spade.

11. PW 4, Dhruvlal Rai, the informant, has in his examination-in-chief deposed that the incident took place about 11 months ago at about 12 noon. He was present at the place of occurrence at that time. Amit was digging and Rambabu was also there with a spade. When Rajesh objected, Amit and Rambabu started scuffle with him and Amit caught hold of Rajesh. Rambabu inflicted 4-5 blows with spade on Rajesh, who sustained injuries on his neck, temple, right eye and other parts of the body and fell down.



11.1. In his cross-examination, PW 4 deposed that Rajesh was his grandson. Rambabu is also his grandson. They have paper of the partition of land, wherein southern part is in his share and northern part is in the share of Rambabu. On hearing the uproar, the family members reached first and thereafter villagers also reached there. Rajesh was unconscious. Too much blood was there at the place of occurrence. Blood was also on the clothes of Rajesh. Rajesh was taken to the private hospital of one Dr. B.K. Singh at Isuapur by Bolero Vehicle, registration number whereof he does not recall. Blood was also oozing out on the seat of the said vehicle. Rajesh never regained consciousness. When they reached there, co-villagers, namely Mangal Rai, Gautam Rai, Nirmal Singh and Chhotelal Rai, also reached there. They had talk with them. It was decided that Rajesh has fallen unconscious, he should be taken to hospital.

12. PW 5, Gautam Rai, who is an independent witness, has not supported the case of the prosecution and, therefore, he was declared hostile.

13. PW 6, Dr. Devki Nandan Prasad, the Medical Officer, who conducted the *post mortem* examination on 08.12.2015 at 10:00 a.m. of the dead body of Rajesh Rai



(deceased), had found following *ante mortem* and *post mortem* injuries:-

A. External Injury:-

I. A lacerated wound of size 1"x1/4"x1/2" on right side of mandible, with mandible fracture.

II. A lacerated wound of size 1"x1/2"x1/3" over face below right eye.

III. A swelling of size 4" diameter over right side of neck, over supra-clavicular region.

IV. Swelling with crepitus over upper part of back of neck.

B. On dissection:-

I. All viscerae are congested.

II. Heart – right side full of blood, left side empty.

III. Urinary bladder empty.

IV. Liquid is present in the stomach.

V. First and second cervical vertebra are fractured.

13.1. On the basis of these injuries, the PW 6 has opined that the cause of death is because of fracture of C-1, C-2 leading to spinal shock. Time since death- 16 to 22 hours, which is also corroborated by Ext. 2, *post mortem* report of the deceased.

13.2. In his cross-examination, PW 6 has deposed that there are two portions of spade, one sharp cutting portion and the other blunt portion. There will be cut injury if assault is made through sharp cutting portion, and lacerated injuries if assault is made through blunt portion. He has also stated that he had not found any cut mark on the dead body while conducting



post mortem examination. PW 6 has opined that the death of the deceased has been caused because of several injuries sustained by him.

14. PW 7, Rana Prasad, is the Investigating Officer of the case. He has deposed in his examination-in-chief that while he was posted at Isuapur Police Station, he recorded the *fard-beyan* of Dhruv Kumar Rai on 07.12.2015. He himself took over the charge of investigation of the case. The inquest report of deceased Rajesh Rai was prepared by A.S.I. Dadan Rai and he has put his signature on it, which he identifies, which has been marked as Ext-5. He had recorded the statement of Nirmal Rai, Gautam Rai and Ramkeshwar Singh. Fard-beyan was recorded at 21.50 hours at Sadar Hospital, Chapra. Occurrence is said to have taken place at 12.15 P.M. Formal FIR came to be lodged at 23.30 hours.

14.1. In his cross-examination, PW 7 has deposed that no other employee was found at the poultry farm. No blood stain was found at the place of occurrence. He has not recovered any blood stained spade. He cannot say that the incident of altercation took place in which part of the field of the accused. He did not seize any blood stained clothe. Scuffle took place behind the poultry farm. He has not taken the statement of



Ramswaroop, Sanjay and Vikash. He took the statement of Mangal Rai. He has not seen any document with regard to partition between the accused side and the informant side. He has not taken blood stained soil from the place of occurrence. He has not taken signature of Mangal Rai on his statement at the place of occurrence. He has not recorded the statement of Dr. B.K.Singh. It is not the case that father and mother of the accused were chased away by the informant and his family members from the village. On being sent by the D.I.G., the mother of the accused came to him with an application that she apprehends assault at the hands of informant's family, then he enquired from local *Mukhiya*, *Sarpanch* and others and gathered that the mother of accused had fled away from her house after the occurrence and had not visited her house since then.

15. We have re-appreciated the entire evidence led by the prosecution before the trial court. It would emerge from the record that PW 5, who is an independent witness, has not supported the case of the prosecution and he has turned hostile at the instance of the prosecution and, therefore, the case of the prosecution rests upon the deposition given by PW 1 to PW 4. It is not in dispute that the aforesaid witnesses are the near relations of the deceased and are interest witnesses. As



observed hereinabove, deposition of the interested/related witnesses cannot be discarded only on this ground. However, their deposition is required to be scrutinized carefully. Now, it is the case of PW 1 that she is the eye-witness to the occurrence in question. It is pertinent to note that in paragraph 6 of her examination-in-chief, she stated that, apart from her, one Mangal Rai, Ramswaroop Rai, Vikash Rai and Sanjay Rai have seen the occurrence in question. Thus, from the deposition of the mother of the deceased it can be said that PW 4, Dhruvlal Rai, who is the informant, has not seen the occurrence in question and is not an eye-witness. It is also required to be noted that the Investigating Officer (PW 7) has admitted that he did not record the statement of Ramswaroop Rai, Sanjay Rai and Vikash Rai. Thus, the aforesaid witnesses, who are independent witnesses, are not examined by the prosecution before the trial court. It further transpires from the record that PW 1 has not stated in her deposition that Sabita Devi, PW 2, who is wife of the deceased, was also present and she has seen the occurrence in question.

16. From the cross-examination of PW 1, it is further revealed that she specifically admitted in paragraph 12 that when she reached at the place of occurrence, 10-12 villagers were present at the place of occurrence and, at that time, her son



was lying on the ground and he was unconscious because of the injuries sustained by him. Thus, from the aforesaid, it is further clear that PW 1 is also not an eye-witness to the incident in question and she reached at the place of incident after the occurrence took place. PW 1 has further stated that blood was spread in the field.

17. It is further revealed from the record that PW 2, Sabita Devi, who is the wife of the deceased, has also stated in paragraph 14 of her deposition that, after hearing the uproar, they came from their house. Along with them, 5-7 villagers also reached at the place of occurrence. When the villagers reached, her husband was lying on the ground. He was unconscious because of the injuries sustained. Accused persons had already fled away from there. Her husband was not in a condition to speak. Thus, from the deposition of this witness also, it can be said that she is not an eye-witness to the occurrence in question.

18. Similarly, PW 3 is the uncle of the deceased. He has deposed in paragraph 9 of this evidence that when they reached poultry farm, scuffle was going on between Rajesh and Amit and Rambabu. No one else was present there except them. They did not catch hold of Rajesh, Rambabu or Amit. They were watching the happening. Thus, from his deposition it is clear that



except Rajesh, Amit and Rambabu, nobody else was present at the place of occurrence and the other family members reached after the occurrence took place. It is also apparent from the deposition of PW 3 in paragraph 14 that the ridge was there in the field demarcating their respective share since last one year soon after partition between them. Rajesh and accused persons are brothers. Land dispute existed between them from before. He has further deposed in his evidence in paragraph 15 that Rajesh and Rambabu were nearly equal in height and strength whereas Amit was a bit short in height. Amit had caught hold of Rajesh from behind. When Rambabu gave spade blow on Rajesh, Amit was holding Rajesh.

19. From the deposition given by PW 6, the Doctor, who had conducted the *post mortem* examination of the dead body of the deceased, it can be said that there were four external injuries sustained by the deceased, out of which, two were lacerated wound, whereas two injuries were of swelling and there were no cut mark found on the body of the deceased. The Doctor has specifically stated that there are two parts of a spade, one is sharp cutting portion and the other one is blunt and if blow is given by sharp cutting portion, cut injury can be found on the body, whereas lacerated injury can be found if the blunt



portion of the said weapon is used and there was no cut mark on the body of the deceased. Thus, from the aforesaid deposition it is also revealed that the medical evidence does not support the case of the so-called eye-witnesses.

20. It is also relevant to note, at this stage, that from the evidence of Investigating Officer it is revealed that no other employee was found at the poultry farm. No blood stain was found at the place of occurrence. He has not recovered any blood stained spade. He cannot say in which part of the filed of the accused the incident of altercation took place. He did not seize any blood stained clothe.

21. From the aforesaid evidence led by the prosecution, it can be said that the prosecution has failed to prove the guilt of the accused/appellant beyond reasonable doubt, despite which, the trial court has recorded the order of conviction. Hence the impugned judgment of conviction and the order of sentence is required to be quashed and set aside.

22. The impugned judgment of conviction and the order of sentence dated 05.05.2018 passed by learned Additional Sessions Judge-VI, Saran at Chapra, in S.T. No. 291 of 2016 arising out of Isuapur P.S. Case No. 164 of 2015 is quashed and set aside. The appellant namely, Rambabu Rai, is



acquitted of the charges levelled against him by the learned trial court. He is directed to be released forthwith, if not required in any other case.

23. The appeal stands allowed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Pawan/-

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