

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.682 of 2015**

Arising Out of PS. Case No.-113 Year-2011 Thana- MAHUA District- Vaishali

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Md. Muslim Ansari, Son of late Md. Latief, resident of village
-Chakfatah, P.S Mahua, District Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Shashi Priya Pathak, Advocate.

For the Respondent/s : Ms. Km. Shashi Bala Verma, APP.

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 22-02-2024

When the case was called out, Mr. Anurag Saurav, the learned Advocate informed that he has given "No Objection" and according to his information, till date, no *Vakalatnama* has been filed on behalf of the appellant, who is in jail since 2011.

2. We requested Ms. Shashi Priya Pathak, the learned Advocate to be the amicus to defend the



case of the appellant, which request was accepted by her and she has argued the case on behalf of the appellant. The State is represented by Ms. Km. Shashi Bala Verma, the learned APP.

3. The appellant has been convicted under Section 302 of the Indian Penal Code, *vide* judgment dated 16.07.2015 passed by the learned Additional Sessions Judge-VII, Vaishali at Hajipur in Sessions Trial No. 332 of 2011 arising out of Mahua P.S. Case No. 113 of 2011. By order dated 20.07.2015, he has been sentenced to undergo R.I. for life to pay a fine of Rs.25,000/- for the offence under Section 302 of IPC. The amount of fine was directed to be paid to the wife of the deceased/P.W. 5 (Raqibul Khatoon).

4. Raqibul Khatoon (P.W. 5) had lodged the FIR on 21.03.2011 at 4.30 PM alleging that her own brother/appellant had assaulted the deceased by means of *lathi* and when he had fallen down, slashed his



head with a butcher's knife. The occurrence was witnessed by Nazma Khatoon (P.W. 2). She had also alleged in the FIR that in the past also, the appellant (her brother) and her husband always fought amongst themselves. Both were running a meat shop in the locality.

5. On the basis of the aforementioned *fardbeyan*/statement of P.W. 5, Mahua P.S. Case No. 113 of 2011, dated 21.03.2011 was registered for investigation against the appellant for the offences under Section 302 of the IPC.

6. The appellant was arrested on the same day and according to the records, the weapon of assault, namely, the butcher's knife wrapped in a white towel with blood stains on it was recovered by the police.

7. The police, after investigation submitted charge-sheet against the appellant, whereupon cognizance was taken and the case was



committed to the Courts of Sessions for Trial.

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

9. Ms. Shashi Priya Pathak, the learned advocate has argued that but for P.W. 5/informant, who is the wife of the deceased, no other witness has supported the prosecution case. In fact, all of them have turned hostile. They have stated before the Trial Court that they have no idea about the occurrence. Some of them have only stated that they learnt that the deceased has been murdered. It has further been argued that from a bare reading of the FIR based on the *fardbeyan* of P.W. 5, it would become very clear that P.W. 5 had not been accompanying the deceased when the occurrence had taken place or else she would have said so. She has further submitted that the only person, who according to P.W. 5 had seen the occurrence, has



turned hostile. Thus, there remains no evidence on record to justify the conviction of the appellant.

10. We have gone through the records of the case and have perused the deposition of all the witnesses. P.Ws. 1 to 4 Viz. Md. Salam; Nazma Khatoon; Kameshwar Prasad Sah and Surendra Sah have all turned hostile.

11. Md. Gaffar and Md Abdullah, who have been examined as P.Ws. 6 and 7 have stated before the Trial Court that their signature was obtained on a blank piece of paper and that nothing had happened before them nor any witness had made any statement before the Investigator when their signature were obtained.

12. The dead body was subjected to post-mortem examination by Dr. Shailendra Kumar Verma (P.W. 8.) on 22.03.2011 i.e. a day after, at 08:00 AM. He had found one incised wound covering almost whole of the mid-scalp, which injury was of the size of 8' x1/6 Inch and because of such injury, the entire brain matter



was exposed. On dissection, it was found that the scalp in the mid area was fractured. The impact of the injury had damaged the adjoining brain matter and meninges. What is important to note is that no other injury was found on any part of the body of the deceased and the time fixed by the Doctor was 6 to 36 hours. The death was caused because of the shock and hemorrhage as a result of the injury suffered by the deceased.

13. That the deceased died a homicidal death is given.

14. The Investigator (P.W. 10) had recorded the *fardbeyan* of P.W. 5 (informant) at the place where the dead body was found by him. The Inquest proceedings were also performed at the same place. Even before the Investigator, while giving her further statement, P.W. 5 never stated that she was in the company of the deceased when the occurrence had taken place.

15. However, at the Trial, P.W. 5 appears



to have improved upon her story and stated that she had gone along with the deceased to take tea when her brother/appellant started abusing the deceased. When the deceased forbade him to do so, he assaulted him with *lathi* as a result of which, the deceased fell down before one of the shops in the neighbourhood and thereafter he was attacked by a butcher's knife. Further improving upon this story, P.W. 5 has stated that when she went to the rescue of her husband, she too also threatened and was kept at bay. Many persons, who had witnessed the occurrence, according to P.W. 5 were all afraid to intervene because the appellant was armed with a butcher's knife and appeared to be very much enraged.

16. We do recon that not all facts are required to be stated in the FIR but missing out on such an important fact of the informant being an eyewitness to the occurrence, assumes lot of significance, especially in view of no other witness having supported the crime.



17. Apart from all this, we have also found from the deposition of the Investigator and some of the other witnesses, even though they have turned hostile, that the deceased had settled in his matrimonial village. There had been a dispute for property between the appellant and his sister and this bad blood extended to the deceased as well.

18. One of the witnesses, though hostile, has also gone on record saying that sometimes prior to the occurrence, both the appellant and the deceased had drank together and had fought with each other.

19. From a careful analysis of the evidence of the record, two things further appear *viz.* both the appellant and the deceased were running their respective meat shops in the area and that there was some dispute about allocation of the family property of P.W. 5, in which the deceased, being the husband of P.W. 5, also had an interest. Precisely for this reason, the relationship between the appellant and the deceased



was not cordial.

20. Nothing has come on record to suggest that this strained relationship was because of any professional rivalry. Thus, it could be presumed that the discord was only for distribution of the family property of the appellant and P.W. 5.

21. The evidence of P.W. 5, if seen in this background, would reflect that when nobody had supported the factum of the occurrence at the Trial, she volunteered to state before the Trial Court that she had also witnessed the occurrence.

22. We have clearly noted that such was not her statement in the FIR nor in her further statement. The occurrence had taken place in a broad daylight in a market place. Many persons would be expected to be there; none of them coming to the witness stand and those who came never supported prosecution case. This renders the prosecution version to be doubtful.



23. Our attention was also drawn to the seizure list (Ext.7). The weapon of assault was recovered by the police of the Investigator's own efforts. There is no confession leading to recovery. The arrest of the appellant and the recovery appears to be almost simultaneous. In such an event, we doubt the correctness of the assertion of the prosecution that the weapon of assault was seized which was found wrapped in a white towel with blood stains.

24. We say so also for the reason that the blood on the blade of the knife was never preserved for any forensic examination and two of the seizure list witnesses *Viz.* Niranjan Kumar and Rameshwar Giri were conveniently left behind and not brought to the witness-stand.

25. These facts lead us to the inference that perhaps a shortcut approach was adopted by the Investigator, who took it as an open and shut case when the wife of the deceased alleged the act of assault on



her own brother, who is the appellant.

26. The deceased died on an attack by a sharp cutting weapon.

27. The question is whether the appellant could be blamed for the Act?

28. The crevasses in the prosecution version especially with respect to P.W. 5 claiming herself to be an eyewitness at a later stage during Trial; the so called recovery of weapon of assault, which recovery has been rendered completely futile because of non-preservation/examination of the blood stains forensically and the seizure list witnesses not being examined. All these facts, seen in the background of a dispute in the family of P.W. 5 regarding allocation of family share, makes it rather difficult for the prosecution to darn it over.

29. Thus, finding that P.W. 5 has not come with the correct version of her being the eyewitness and there being special reason for her to allege against the



appellant, we find the evidence of the prosecution to be shaky.

30. For the afore-noted reasons, we set aside the judgment and order of conviction giving benefit of doubt to the appellant.

31. The appeal is allowed.

32. The appellant is acquitted of the charge of murder.

33. The appellant is in custody since 2011. He is directed to be released forthwith from jail, if not required or detained in any other case.

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

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

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

37. We greatly appreciate the efforts of



Ms. Shashi Priya Pathak, the learned Advocate, who got ready in the matter in a very short time and has rendered very valuable assistance to us.

38. The Bihar State Legal Services Authority shall make a payment of Rs. 15,000/- to Ms. Shashi Priya Pathak towards her professional fee.

(Ashutosh Kumar, J)

(A. Abhishek Reddy, J)

Sunilkumar
manoj/-

AFR/NAFR	NAFR
CAV DATE	NA
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