

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.734 of 2023

Arising Out of PS. Case No.-128 Year-2018 Thana- BAIKUNTHPUR District- Gopalganj

Sanjay Kumar @ Sanjay Kumar Yadav, S/O Sachidanand Rai, Resident of
Vill.- Roop Chapra (Nawada), P.S.- Sahebganj, Distt.- Muzaffarpur

... .. Appellant/s

Versus

1. The State of Bihar
2. Santosh Kumar, Son of Lalan Rai Resident of Vill.- Roop Chapra (Nawada),
P.S.- Sahebganj, Distt.- Muzaffarpur

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Prashant Kashyap, Advocate
		Mr. Pawan Kumar Singh, Advocate
For the State	:	Mr. Satya Narayan Prasad, APP
For the Respondent No.2:		Mr. Sanjay Kumar Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 19-04-2024

We have heard Mr. Prashant Kashyap, the learned Advocate for the appellant/informant, who is the brother of the deceased and Mr. Sanjay Kumar Pandey, the learned Advocate for the respondent No. 2, who has been acquitted by the impugned judgment. The State



has been represented by Mr. Satya Narayan Prasad, the learned APP.

2. The present appeal is against the impugned judgment and order of acquittal of the respondent no.2 dated 17.05.2023 passed by the learned Additional District & Sessions Judge-IX, Gopalganj in Sessions Trial No. 161 of 2021 arising out of Baikunthpur P.S. Case No. 128 of 2018.

3. The respondent No. 2 was put on Trial for murdering his cousin, viz., Suman Kumar.

4. According to the *fardbeyan* of the own brother of the deceased, viz., Sanjay Kumar @ Sanjay Kumar Yadav (P.W. 5), he was sleeping with the deceased on the same cot when, in the night, respondent No. 2 along with four unknown persons came and respondent No. 2 ordered to kill the deceased. P.W. 5 got up from the sleep and tried to wake up his brother as well. When his brother did not wake up, P.W. 5 ran away to save himself. When he came back to the place



of occurrence, he found his brother dead with many injuries on his body. It appeared to him that, perhaps, the deceased was assaulted by sword and iron rods and one iron rod was also thrust into his ears.

5. The reason for the murder, as disclosed by P.W. 5, is that at his instance, a stolen motorcycle, which was parked near the brick-kiln of the appellant by the respondent No. 2, was taken away by the local police. This had angered respondent No. 2 who wanted to avenge this enmity.

6. From the records, it appears that the respondent No. 2 is also related to the deceased and the informant.

7. The Trial Court has found that none of the witnesses were speaking the truth. On a detailed examination of the deposition of all the witnesses, the Trial court came to a finding that an absolutely wrong case had been put up against the respondent No. 2.

8. The occurrence is said to have taken



place on 08.05.2018, but the FIR was registered on 11.05.2018. The formal FIR appears to have been drawn up on 03.06.2018. In the FIR, there is no reference of the presence of the father of the deceased at the time of occurrence but the father of the deceased has signed the *fardbeyan*. For this reason, the Trial Court disbelieved the evidence of the father of the deceased and the appellant.

9. The other reason for the father of the deceased to be disbelieved was that he had made a wrong statement that he had never given any statement to the police, which fact was found to be incorrect from the deposition of the investigator of this case.

10. The investigator had not found any blood at the suggested P.O.

11. Vijay Ray (P.W. 1) does not claim to have seen the actual assault but has supported the prosecution case only to the extent of the motive for the murder suggested by the informant (P.W. 5).



12. As noted above, the father of the deceased (P.W. 2) was disbelieved for the reason of discrepancy in his statement.

13. Rambha Devi (P.W. 3), who is the wife of P.W. 5, does not claim to have seen the occurrence.

14. An independent person, viz., Raj Kumar Prasad (P.W. 4) did not support the prosecution case and was declared hostile.

15. With special reference to the deposition of P.W. 5 (the informant), the Trial Court was of the view and rightly so that every statement of his was unbelievable.

16. It appears to be rather improbable that the appellant would be spared and his brother, who had been sleeping along with him, would be murdered when the enmity was against the entire family and not only particularly against the deceased.

17. The *post-mortem* report further confounded the issue. The Doctor, who conducted the



post-mortem examination on 12.05.2018 found only two injuries, one of which was a lacerated wound of 2 inch x 1 inch above the right ear and the other was a bruise on the right side of the forehead. That the deceased died is unfortunate, but it appears that because of the haematoma found in frontal lobe of the deceased, it was opined that the deceased died of haemorrhage and shock due to the above-noted injuries.

18. The Doctor (P.W. 6) was very specific in recording that there was no injury of any sharp cutting weapon on the body of the deceased.

19. The timing suggested by the prosecution was found to be completely asynchronous.

20. The two investigators, who have been examined at the Trial, do not offer anything except for a vague conclusion that the respondent No. 2 had killed the deceased, which information was gathered by the second I.O. from the local people. Even the CDR and the tower location of respondent No. 2 did not match exactly



with the presence of respondent No. 2 at the P.O. on the suggested date and time.

21. The Trial court has rightly disbelieved the prosecution version.

22. There is no merit in this appeal.

23. The appeal is dismissed.

(Ashutosh Kumar, J)

(Khatim Reza, J)

manoj/rajesh-

AFR/NAFR	NAFR
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