

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.784 of 2013**

Arising Out of PS. Case No.-91 Year-2012 Thana- ALAMNAGAR District- Madhepura

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Baleshwar Sharma Son Of Late Dheru Sharma Resident Of Village- Sharma
Tola Khurhan Mal, P.S.- Alam Nagar, District- Madhepura

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Umesh Kumar Gupta, Adv
For the Respondent/s : Mrs. Anita Kumari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

Date : 13-11-2024

Heard Mr. Umesh Kumar Gupta learned counsel for the
appellant, and Mrs. Anita Kumari Singh learned APP for the
State

2. The appellant has been convicted against the judgment
and order dated 29.10.2013/ 30.10.2013 passed by learned Sri
Prabhu Dayal Gupta Additional District and sessions Judge Ad-
hoc Court no.1, Madhepura in Sessions Case No. 168/2012
(arising out of Alamnagar P.S. Case No. 91/2012) whereby and
whereunder the appellant has been sentenced to undergo
rigorous imprisonment for five years for offences 304(2) I.P.C.



Besides the convict, he has also been directed to pay a fine of Rs.2000/- (two thousand) for the offences of 304(2) I.P.C. and on default of payment of fine, convict shall further undergo rigorous imprisonment for six months.

3. Learned Counsel for the appellant submits that prosecution case, in brief, is that informant (P.W. 3) alleged that on 14.07.2012, the informant (P.W. 3) recorded his *fardbeyan* in his *angan* before the police officer of Alamnagar Police Station in which he stated that he had gone to bring milk from Sripur Village, when he was returning after taking milk then near Ashik Basa about 7:30 A.M., he saw that his father was fleeing away and villagers were also going behind his father, and thereafter, he asked to some villagers about this then villagers said that his father killed his mother by assaulting with Dabiya and due to this reason informant's father was fleeing away. The informant has also alleged that he came to know about this occurrence by his wife and neighbors.

4. He further submits that prosecution examined altogether six (6) witnesses including the informant in support of its case, who are namely P.W.1- Sitaram Sharma, P.W.2 Nutan Devi is daughter in law of the appellant, P.W. 3 Banti Sharma is informant and son of the appellant, P.W. 4-Dhanuki



Sharma, P.W. 5-Dr. Sachin Kumar is doctor and P.W. 6- Siyaram Singh, A.S.I. is I.O. of this Case.

5. Learned counsel further submits that P.W. 1- Sitaram Sharma is the villager of the appellant and deceased who examined before the trial Court. He stated that he is not an eye witness and he is identifier of the fardbeyan. He has also stated that deceased was a patient of T.B. i.e. this witness has not supported the prosecution case. Moreover, this witness is a hearsay witness and not an eye witness.

6. P.W. 2 Nutan Devi, wife of the Informant has also denied her statement who had given statement before police.

7. The informant (P.W. 3) Banti Sharma, has fully stated that he is not an eye witness and came to know about the occurrence by the villagers and his wife and he has specifically stated that his mother was suffering from T.B. for a long time. Moreover, this witness also is a hearsay witness and not an eye witness.

8. P.W. 4 Dhanuki Sharma is the villager of the deceased and appellant who has been examined before the trial Court and he stated that he is not an eye witness and he is only hearsay witness. Moreover, he has also stated that deceased was assaulted by Axe, and thereafter, the deceased died i.e. this



witness has not supported the prosecution case. Moreover, this witness is also a hearsay witness and not an eye witness.

9. P.W. 5 Dr. Sachin Kumar is doctor of this case who had conducted the post-mortem of the deceased. The Doctor has specifically stated in his post mortem Report that death has been caused due to strangulation.

10. P.W. 6 Siyaram Singh who is the I.O. of this case, who was examined before the Trial Court and he stated that he had recorded the fardbeyan of the Informant and also investigated the case and supported the prosecution.

11. The learned counsel for the appellant submits that trial Court has not properly examined their evidence and statement of witnesses of this case. The learned Trial Court has not given real, true and specific Judgment. This occurrence had occurred accidentally not intentionally so the trial Court has not found this case under section 302 of the I.P.C. and has found this case under section 304(2) I.P.C. He has further stated that there is serious inconsistency between the statement of P.Ws. and the statement which had been recorded in the case diary. The involvement of appellant in this case is absolutely false, concocted, and baseless. Learned Counsel further submitted that from seeing the inquest report in which it appears that the mouth



and eyes of the deceased was closed and the blood injury was found below the right neck but the prosecution has clearly said that the deceased was assaulted by blunt part of *Dabiya* and not from the rope or hand and several other things are there which shows the falsity of this case.

12. On the other hand, learned APP has strongly controverted the contention of defense counsel and has submitted that the death is not natural death and it is well supported by the medical evidence, therefore, the accused person deserves conviction.

13. On perusal of the entire evidence, it is evident that death was not caused by *dabiya* but by strangulation of neck. There is no eye witness of this case. Moreover P.W. 2, who is the daughter-in-law was considered eye-witness had denied the prosecution story so there is no cogent evidence to support the prosecution story. Further it is evident from the examination of the accused persons under Section 313 of the Cr.P.C. that when the accused was asked whether he has committed the murder of the deceased victim by *Dabiya* to which the appellant has denied any such accusation, further the appellant has also stated that he is innocent and has not committed the murder of the deceased.



14. In the facts and circumstances of the case, I find and hold that the prosecution has failed to substantiate the prosecution case. Hence, the impugned judgment and order dated 29.10.2013/ 30.10.2013 passed by learned Sri Prabhu Dayal Gupta Additional Disrict and sessions Judge Adhoc Court No.1, Madhepura in Sessions Case No. 168/2012 (arising out of Alamnagar P.S. Case No. 91/2012) is hereby set aside and the appellant is acquitted from the charge levelled against him. As the appellant is on bail, he is discharged from the liability of bail bond.

15. Accordingly, this appeal is allowed.

(Ramesh Chand Malviya, J)

Sunnykr/-

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CAV DATE	
Uploading Date	
Transmission Date	

