

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.664 of 2017

Arising Out of PS. Case No.-105 Year-2008 Thana- BIKRAMGANJ District- Rohtas

Ashok Kumar son of Balram Singh Resident of Village Jogeyan, P.S. -
Bikramganj, District - Rohtas.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Ajay Kumar Thakur, Advocate Ms. Vaishnavi Singh, Advocate Ms. Kiran Kumari, Advocate Mr. Ritwik Thakur, Advocate
For the State	:	Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 12-02-2024

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment of conviction dated 24.03.2017 and order of sentence dated 06.04.2017, passed by learned Sessions Judge, Rohtas at Sasaram in connection with Sessions Trial No.620/2008, arising out of Bikramganj P.S. Case No.105/2008, whereby the concerned Trial Court has convicted the appellant for the offences punishable under Sections 302/34 of the Indian Penal Code and sentenced him to undergo imprisonment for life and a fine



of Rs.50,000/- and in default of payment of fine, the appellant has to further undergo R.I. for six months.

2. Heard Ms. Vaishnavi Singh, learned counsel for the appellant and Mr. Binod Bihari Singh, learned APP for the State.

3. The factual matrix of the present case is as under:

3.1. *Fardbeyan* of Balram Singh who is father of the deceased came to be recorded on 22.07.2008 at about 08:00 hours before P.S.I. Ranjeet Kumar Singh, SHO Bikramganj. In the said *fardbeyan*, the informant has stated that on 20.07.2008 at about 10:00 p.m., there was hue and cry in the house and he was sleeping in the *Dalan* at that time. He went to his house and saw that his sons, namely, Pradeep Kumar and Ashok Kumar were quarreling. When the informant asked the reason for quarrel, Pradeep Kumar told that Ashok was saying him dishonest. The matter was pacified by the informant. It is further alleged that on the next day in the morning, his son, Pradeep Kumar was going to his shop situated at Bikramganj then his third son, namely, Ashok Kumar chased him armed with knife but Pradeep Kumar fled away. The informant further alleged that again his son Ashok Kumar came to the village armed with knife and they had tried to catch him but he fled away and did not return in the house. In the meantime, wife of Ashok, namely, Kanchan called her father and brother and they came to the village in the evening. On the last night, due to fear of Ashok, the informant and his second son,



Pradeep Kumar slept inside the house and his other sons, namely, Saroj and Pramod Kumar slept in the *Dalan*. At about 01:00 a.m. in the night, Pradeep Kumar went outside the house for nature of call. After sometime, the informant heard cry of his son, Pradeep Kumar and came outside the house and saw that his third son, Ashok Kumar, his father-in-law, namely, Siyaram Kahar and brother-in-law, Kishore Kumar had cut the neck of Pradeep Kumar and the knife was in the hand of his son Ashok Kumar. On seeing the informant, the aforesaid three persons alongwith two unknown persons fled away from there abusing the him. When the informant went near Pradeep, he saw that his neck was cut and he is dead.

4. Thereafter, formal FIR came to be recorded and the Investigating Officer started investigation. During course of investigation, the Investigating Officer had recorded the statement of the witnesses and also collected the documentary evidence. Postmortem on the dead body of the deceased was also conducted. After the investigation was over, the Investigating Officer filed charge-sheet before the concerned Magistrate Court. As the case was exclusively triable by Court of Sessions, the Magistrate Court committed the case to the Sessions Court where the same was registered as Sessions Trial No.620/2008.

5. During the course of trial, the prosecution had examined nine witnesses and also produced the documentary evidence.



Thereafter statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court passed the impugned judgment whereby the appellant has been convicted for the offences punishable under Sections 302/34 of the Indian Penal Code and sentenced him to undergo imprisonment for life against which, the appellant has preferred the present appeal.

6. Learned counsel for the appellant has mainly submitted that the prosecution had examined nine witnesses out of whom PW-1 to PW-7 have not supported the case of the prosecution and they were declared hostile. Even the prosecution did not examine the Investigating Officer who has carried out the investigation and, therefore, the case of the prosecution rests on the deposition of PW-9, who is the informant and father of the deceased. It is also submitted that the informant is also father of the present appellant. Learned counsel would further submit that another so called eye witness, i.e., PW-7 Pramod Kumar Singh, who is also the brother of the deceased and son of the informant has not supported the case of the prosecution. Learned counsel further submits that even the weapon, i.e., knife was not discovered or recovered and the witnesses of the seizure list have also not supported the case of the prosecution. Learned counsel, therefore, urged that though the prosecution has failed to prove the case against the appellant beyond reasonable doubt, the Trial Court passed the impugned judgment and, therefore,



the impugned judgment be quashed and set aside and thereby the appellant be acquitted.

7. On the other hand, learned APP has opposed the present appeal by submitting that the informant, who is father of the deceased as well as father of the appellant herein, has supported the case of the prosecution. In fact, he is an eye witness to the occurrence in question and there was no reason for PW-9, who is father of the appellant, to falsely implicate his own son. Learned APP thereafter submits that even the medical evidence supports the case of PW-9/informant and, therefore, when the prosecution has proved the case against the appellant-accused beyond reasonable doubt, the Trial Court has not committed any error while passing the judgment of conviction. Learned APP, therefore, urged that the present appeal be dismissed.

8. We have considered the submissions canvassed by learned counsels appearing for the parties. We have also perused the materials on record as also the paper book. It would emerge from the record that the prosecution had examined nine witnesses. However, it is not in dispute that PW-1 to PW-7 have not supported the case of the prosecution and they were declared hostile. It is also relevant to note that PW-7, Pramod Kumar Singh is projected as eye witness and who is brother of the deceased and son of the informant has also not



supported the case of the prosecution, therefore, the case of the prosecution rests upon the deposition given by PW-9, the informant.

9. PW-9, the informant has deposed in his examination-in-chief that he had four sons and Pradeep Kumar was killed. Saroj Kumar, Ashok Kumar and Pramod Kumar are alive. It is further deposed that Ashok Kumar chased Pradeep armed with knife. Pradeep Kumar fled away and came to the house. Ashok also came to the house brandishing knife. He was on foot whereas Pradeep was on bicycle. It is further deposed that he alongwith villagers snatched the knife from him. PW-9 further deposed in his examination-in-chief that he saw that Ashok was giving blow by means of knife on the neck of Pradeep. The father-in-law and brother-in-law of Ashok caught hold Pradeep. They fled away from there after seeing him. PW-9 further deposed that when he went near Pradeep, he saw that his neck was cut and he died. The informant further deposed that he did not go to the police station due to fear and in the morning he reported the matter to the police. The Officer-in-Charge came and recorded the statement.

9.1. During cross-examination, PW-9 stated that when Pradeep was going to Bikramganj, Ashok chased him with knife. He heard this fact but did not see. This witness further stated in his cross-examination that he did not see Ashok in the village armed with knife. The night was dark on the date of occurrence. Upon *hulla*,



he went there. It is further stated that he saw some persons fleeing but did not identify them. In paragraph-5, PW-9 has specifically stated that he is not sure whether Ashok has killed Pradeep or not.

10. PW-8, Dr. Vishnu Kumar Singh has conducted postmortem on the dead body of the deceased. He had found incised wound 5'x1' upto bonedeeep oblgedly over the left side of neck in middle portion. He has further stated that time elapsed since death- within 6 to 24 hrs. He has shown the cause of death as due to hemorrhage and shock as a result of above mentioned injuries and caused by sharp cutting weapons may be by knife.

11. It is pertinent to note that the knife, which is alleged to have been used by the accused, was not recovered or discovered. It is also not in dispute that the prosecution has not examined the Investigating Officer who had carried out the investigation.

12. Thus, in the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the appellant-convict beyond reasonable doubt despite which the Trial Court has recorded the judgment of conviction against the appellant and, therefore, the impugned judgment is required to be quashed and set aside.

13. Accordingly, the present appeal is allowed. The impugned judgment of conviction dated 24.03.2017 and order of sentence dated 06.04.2017 passed by learned Sessions Judge, Rohtas



at Sasaram in connection with Sessions Trial No.620/2008, arising out of Bikramganj P.S. Case No.105 of 2008 is quashed and set aside. The appellant, namely, Ashok Kumar is acquitted of the charges levelled against him by the learned trial court. Since appellant, above-named is in jail, he is directed to be released forthwith, if his presence is not required in any other case.

(Vipul M. Pancholi, J.)

(Sunil Kumar Panwar, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.02.2024
Transmission Date	15.02.2024

