

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.941 of 2017

Arising Out of PS. Case No.-65 Year-2016 Thana- CHANPATIA District- West Champaran

Nathuni Sah, Son of Lal Parikha Sah, R/o Village- Siswariya, P.S.-
Chanpatiya, District- West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 935 of 2017

Arising Out of PS. Case No.-65 Year-2016 Thana- CHANPATIA District- West Champaran

Bulet Sah @ Raj Kumar, S/o Lal Parikha Sah, Resident of Village- Siswaniya,
P.S.- Chanpatiya, District- West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 941 of 2017)

For the Appellant/s : Mr. Dilip Kumar Tandon, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 935 of 2017)

For the Appellant/s : Mr. Dilip Kumar Tandon, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 23-04-2024

Both the appeals have been heard together and
are being disposed off by this common judgment.

2. We have heard Mr. Dilip Kumar Tandon, the



learned Advocate for the two appellants [Nathuni Sah in Criminal Appeal (DB) No. 941 of 2017 and Bulet Sah @ Raj Kumar in Criminal Appeal (DB) No. 935 of 2017] and Mr. Dilip Kumar Sinha, the learned APP for the State.

3. The appellants have been convicted under Sections 342, 323, 324, 307, 302/34 and 120-B of the Indian Penal Code and Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act by the 1st Additional District and Sessions Judge-cum-Special Judge, Bettiah, West Champaran in Sessions Trial No. 06 of 2017, arising out of Chanpatiya P.S. Case No. 65 of 2016. By order dated 05.07.2017, they have been sentenced to undergo RI for six months, to pay a fine of Rs. 1,000/- and in default of payment of fine to further suffer imprisonment for 15 days under Section 342/34 IPC; RI for six months, to pay a fine of Rs. 1,000/- and in default of payment of fine to further suffer imprisonment for 15 days under Section 323/34 IPC; RI for three



years, to pay a fine of Rs. 1,000/- and in default of payment of fine to further suffer imprisonment for 15 days under Section 324/34 IPC; RI for life, to pay a fine of Rs. 25,000/- and in default of payment of fine to further suffer imprisonment for three months under Section 307/34 IPC; RI for life, to pay a fine of Rs. 50,000/- and in default of payment of fine to further suffer imprisonment for six months under Section 302/34 IPC; RI for life, to pay a fine of Rs. 25,000/- and in default of payment of fine to further suffer imprisonment for three months under Section 120-B IPC and RI for life, to pay a fine of Rs. 50,000/- and in default of payment of fine to further suffer imprisonment for six months under Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act.

4. All the sentences have been ordered to run concurrently.

5. The appellants have been acquitted of the charge under Section 3(1)(x) of the SC/ST (Prevention



of Atrocities) Act.

6. One Guddu Kumar is alleged to have been killed at the hands of the appellants. According to the prosecution case, appellant/ Bulet Sah @ Raj Kumar slit the throat of the deceased while he was pinned down on the ground by several accused persons including appellant/ Nathuni Das. Only two appellants were charge-sheeted whereas with respect to the other accused persons named in the FIR, investigation was kept pending.

7. The FIR was lodged by the brother of the deceased, viz., Manoj Kumar (PW-4), who has alleged that on 13.05.2016, on the asking of appellant/ Bulet Sah, his brother Guddu (deceased) wanted to meet him. However, the informant, Guddu and one Nandu Kumar Das (PW-1) went together on a motorcycle to meet appellant/ Bulet Sah. No sooner had they reached the designated place, many accused persons, who were hiding from before, came to the front and caught hold of



the deceased. Thereafter, the neck of the deceased was slit by appellant/ Bulet Sah. When Nand Kumar Das (PW-1) wanted to intervene and rescue the deceased, he too was assaulted by appellant/ Bulet Sah. He could anyhow save himself. The informant had further claimed that a little before the occurrence, he had gone to attend to the call of nature and when he heard the commotion at some distance, he used his torch light to see the occurrence. He could also manage to save himself. On his cries, many persons of the neighbourhood and the village arrived there. Sohan Das and Subhash Das also came forward and snatched the knife from the hand of appellant/ Bulet Sah. The informant (PW-4) then saw that his brother/ Guddu was crying as he was bleeding profusely. Shortly thereafter, Guddu died. He informed the Officer-in-Charge of Chanpatiya Police Station on telephone. On such information, the police arrived at the place of occurrence, took the dead body under their control and sent it to the Bettiah Hospital for



postmortem examination. Nandu Kumar Das (PW-1) who had become injured, was brought to Chanpatiya Primary Health Centre for treatment. The informant went along with the dead body to the Bettiah Hospital, where postmortem examination was held.

8. This written report was lodged by the informant (PW-4) on 14.05.2016 on the basis of which Chanpatiya P.S. Case No. 65 of 2016 dated 14.05.2016 was registered for investigation against the appellants and several others under Sections 342, 323, 324, 307, 302, 120-B IPC and Sections 3(1)(x) and 3(2)(v) of the SC/ST (Prevention of Atrocities) Act.

9. As noted above, the police after investigation submitted charge-sheet against the appellants whereas investigation with respect to the others was kept pending.

10. The Trial Court, after having examined six witnesses on behalf of the prosecution, including the doctor and the Investigator, convicted and sentenced the



appellants as aforesaid.

11. Mr. Tandon, learned Advocate for both the appellants has submitted that the prosecution has utterly failed to prove the prosecution case. He has further submitted that neither of the parents of the deceased had seen the occurrence; as the father of the deceased (PW-2) was in Nepal and came home only after he was told by the informant (PW-4) about the occurrence. The mother of the deceased, viz., Binda Devi (PW-3), though claims that she had come to the PO after she had heard *hulla*, but from the deposition of PW-1/ Nandu Kumar Das and PW-4/ Manoj Kumar, it would appear that at the place of occurrence there were only three persons, viz., the informant, PW-1 and the deceased. He has further submitted that if the deposition of PW-1 and PW-4 are analysed, it would appear that both of them had not seen the occurrence. The deceased was found dead in the agricultural field when the police was informed. The inquest was done at the place where



the dead body was found and the dead body was sent in the night only to Bettiah Hospital for postmortem examination. It was thereafter that a written report was filed by PW-4, giving the names of the appellants and other accused persons, whose complicity was not readily to be ascertained by the police and hence the investigation was kept pending.

12. In the circumstances, Mr. Tandon has inferred that perhaps the deceased was killed either because of his enemies as he had a criminal background or that his marriage with Madhuri, who is the daughter of co-accused/ Chhotelal Das had irked the family members of bride, who had conspired and had killed the deceased.

13. The countervailing arguments by the State is that both PW-1 and PW-4 had seen the occurrence and, therefore, such minor lapses in their statements ought not make the prosecution case a wrought over story against the appellants.



14. We have noticed that PW-4/ informant had filed the written report in the morning of 14.05.2016. The occurrence had taken place at about 8:30 in the night. According to his first statement in the written report, the deceased had received a telephonic call from appellant/ Bulet Sah, asking the deceased to meet him. The deceased first brought some house-hold articles and put it in his home and then went to meet appellant/ Bulet Sah along with PW-1 and PW-4 on a motorcycle. Some 200 metres before the designated place where Bulet was supposed to meet the deceased, the informant claims to have seen the appellants and several others waiting. In the meantime, the informant felt the need of relieving himself. Within few minutes, on hearing the palaver, he used his torch and saw that the deceased had been pushed to the ground, his limbs were caught hold of by the others and appellant/ Bulet Sah was hitting him on his neck by means of a knife.

15. Appellant/ Nathuni Sah had caught one



of the legs of the deceased. He shouted for help but, in the meantime, the deceased had already been killed. When Nandu (PW-1) had wanted to rescue the deceased, he too was assaulted by Bulet. By this time, Sohan and Subhash had arrived and took away the knife from Bulet. All the accused persons including the appellants then fled away.

16. Be it noted that neither Subhash nor Sohan has been examined at the trial.

17. The weapon of assault also could not be recovered by the Investigator. No blood was found at the PO, either in the night or in the next morning. With this narration of events for the first time before the police, it would be necessary to refer to the deposition of the Investigator (PW-6).

18. He had taken up the investigation on 14.05.2016 in the morning at about 7:10 AM. It was during the course of investigation that he had recorded the further statement of PW- 4 and had inspected the



PO. The PO is the field of one Lal Parekha Sah. At the PO, the inquest proceedings were conducted and thereafter the dead body was sent for postmortem examination to MJK Hospital at Bettiah. The appellant/ Nathuni Sah was arrested on the same day. It was recorded by him in the police papers that a case vide Chanpatiya P.S. Case No. 156 of 2015 had been registered against the deceased on account of his having molested the daughter of co-accused/ Chhotelal Sah. In that case, PW- 6 has averred, the deceased had gone to jail but had got bail after some time. After coming out of the prison, he again continued to harass and stalk the daughter of Chhotelal. In protest and retaliation, the deceased was killed.

19. In his cross-examination, he has stated that after he reached the place of occurrence, he found PW- 4 (informant) and other villagers from whom he enquired about the occurrence. If this were so, then the FIR ought to have been registered then and there. He



admits of having prepared the inquest report in the presence of the relatives of the deceased, but he did not record the statement of anyone of the witnesses.

20. This appears to be a bit surprising.

21. Two of the eye-witness to the occurrence were there when the IO had visited the PO. There was no reason for him to have started the inquest proceedings without recording the statement of anyone of the onlookers / eye-witnesses about the cause and manner of occurrence.

22. He had also recorded the statement of Nandu (PW- 1). He had gone to the Primary Health Centre for meeting him. If this is correct, then, perhaps, the injury report of Nandu ought to have been brought on record. There is nothing on record to indicate that Nandu was injured in the occurrence. This assumes importance, as according to the consistent prosecution case of PW- 1 and PW-4, Nandu was present all along when the deceased was being killed. He would not have



otherwise been spared, had he not run away. However, the claim of PW- 1 that he was also assaulted by appellant/ Bulet, could not be proved at the Trial for the absence of any injury report regarding the injuries received by him during the occurrence. The two of the witnesses to the inquest proceedings, viz., Baidnath Das and Suresh Sah have also not been examined. The investigator has admitted that he did not procure the injury report of PW- 1. What is even more stark is that the Investigator has specifically said that when questions were asked from the informant (PW- 4) about the reason for murder, PW- 4 is said to have told him that he did not know and only the murderers knew why they had killed the deceased.

23. This makes the version of PW- 4 (informant) absolutely doubtful, not only with respect to accusation against the appellants but also with respect to his being an eye-witness to the occurrence. The Investigator has adopted a slipshod approach in



investigating the case. The appellant/ Bulet had called the deceased and that was the reason for the deceased to come to the PO to meet Bulet.

24. No call detail reports were obtained by the Investigator to ascertain such assertions. The inquest report, which has already been noted, was also not brought on record.

25. Since we wanted to know as to where and when was the dead body first seen by the Investigator, we looked into the police papers and found that in the inquest report, the Investigator had found injuries on the stomach as also on the neck. It appeared that the deceased had been assaulted by some sharp cutting weapon.

26. Dr. Nikhil Kumar, who conducted the postmortem examination on 14th of May, 2016 at about 9:30 AM, found six incised injuries, on the body of the deceased. The time of death was fixed at 12 hours from the postmortem examination. The postmortem report, in



our estimation, was very perfunctory prepared, without giving any details about the time of injury or the particular areas of the limbs of the deceased which was injured and also about the cause of death.

27. With this background fact, we need to examine the evidence of PW- 1/ Nandu Kumar Das, who though claims to have been injured in the occurrence, but no injury report has been brought on record by the prosecution. PW- 1 had narrated the same story of the deceased visiting Bulet along with him and PW- 4. Appellant/ Bulet had first talked to the deceased. Shortly thereafter, the associates of the appellants caught various limbs of the deceased and Bulet took out a dagger from his possession and started slitting the throat of the deceased. PW- 1 had tried to intervene but he was chased by Bulet. He too was dashed to the ground by Bulet and was given two dagger blows. On his shouts, Sohan Das came and took away the knife from Bulet. Bulet thereafter fled away. He was treated in Chanpatiya



Hospital, where he was brought by Manoj Kumar (PW-4).

28. This statement of PW- 1 is absolutely contradictory, inasmuch as according to the regular version of PW- 4, he went to the MJK Hospital along with the dead body for overseeing the postmortem examination in the night.

29. Later, in cross-examination, PW- 1 has also asserted that there was no dispute between the appellants and the deceased.

30. A little before the occurrence, the deceased was in jail in connection with some case. He had no means of identification with him. None of the accused persons, including the appellants had covered their faces. He has specifically stated that no sooner the assault started, PW- 4 ran away.

31. This makes the version of PW- 4 again doubtful, who had told the Trial Court that he remained behind the deceased and PW- 1 for purging himself and



saw the occurrence from a distance in the torch light which he had flashed. This part of the story of the prosecution, therefore, does not appear to be correct.

32. The presence of PW- 4 at the time of occurrence also thus becomes doubtful.

33. According to PW- 1, around 50-60 persons had arrived at the PO, who were told about the occurrence. None of the villagers but saw anyone of the accused persons, including the appellants, fleeing away. He has further clarified before the Trial Court that the deceased was immediately dashed to the ground without any preliminary talk. The deceased, therefore, could not speak a word. Seeing this, PW- 1 tried to run away but he too was chased. When he came back to the PO again, he saw the deceased.

34. What is again striking is that his statement was recorded on the next day of the occurrence. He had expressed complete ignorance about any association with Madhuri or Madhuri's father/



Chhotelal, a co-accused having registered protest against the action of the deceased.

35. In this background, we find a totally different strand of story from the mouth of PW- 4 (informant). According to him, he called the police from the PO only. The police arrived and took control of the dead body. His information to the police was, therefore, first in point of time. There was no reason for the police not to register the statement and lodge the FIR.

36. We are thus of the view that the delay in lodging the FIR and PW- 4 giving a written report on the next day, makes the prosecution case highly doubtful so far as the accusation against the appellants is concerned. PW-4 had seen all the accused persons including the appellants at the time of the actual assault. There was no reason for him to prevaricate even for a second. In fact, this statement should have preceded any further action by the police including the preparation of the inquest report.



37. The written report was counter-signed by Raju Das, a resident of Balmikinagar, who has also not been examined. It appears to be rather inexplicable as to how Raju Das came in the night from Balmikinagar and accompanied PW- 4 to the police station to hand over the written report.

38. However, to the extent of the cause of the murder, we find that PW- 4 did not hide that the deceased had married Madhuri, but had not brought his bride back home. He had heard that because of such marriage, the deceased had been killed. If he had already heard about this motive for murder, he perhaps lied before the Investigator that he had no idea about the cause of death of the deceased.

39. This again makes his presence at the PO at the time of occurrence, highly doubtful.

40. Questions were asked for him as to how did he relieve himself. All three of them had come to the PO on a motorcycle. There was no arrangement for



water anywhere for him to wash himself. Perhaps this story was woven only to show his presence at the place of occurrence and be an eye-witness.

41. The presence of PW- 3, the mother of the deceased, has also been rendered doubtful by the deposition of PW- 4. In his cross-examination, he has specifically stated that there were only three persons at the time of occurrence, viz., him, Nandu (PW- 1) and the deceased.

42. It appears, therefore, that the deceased was found murdered. The murder was perhaps because of the controversial marital relationship of the deceased with the daughter of one of the co-accused in this case. All the persons would have been the sympathisers of Chhotelal Sah. It is for this that the investigation with respect to the others was kept pending.

43. The manner in which the prosecution has tried to put up its case, makes the assertions absolutely doubtful.



44. On a combined reading of the deposition of PW- 1 and 4, we are of the view that both had not seen the occurrence. We say so and doubt the prosecution case for the following reasons:-

(a) Nandu (PW- 1) was injured and was given preliminary treatment at Primary Health Centre, Chanpatia, but no injury report has been brought on record.

(b) The doctor who treated him first, also has not been brought to the witness stand.

(c) Sohan Das and another, who had come to the PO and had snatched the weapon of assault from the hand of appellant/ Bulet, has not been examined.

(d) The weapon of assault too could not be recovered.

(e) The discrepancies in the statements of P.Ws 1 and 4 make the presence of both of them at the PO doubtful.

(f) According to PW- 4, the police was informed from the PO on telephone and the police party had arrived at PO in the night. The police party was told by PW- 2 about the occurrence; still no FIR was lodged and the



police proceeded with the inquest.

(g) The written report was filed on the next day and; lastly,

(h) The tergiversation of both PW- 1 and PW- 4 regarding the plausible cause of the murder.

45. For the afore-noted reasons, we consider it appropriate to give benefit of doubt to the appellants.

46. The conviction of the appellants, therefore, is set aside, giving benefit of doubt to them.

47. The appellants are, thus, acquitted of the charge levelled against them.

48. Both the appellants are in jail. They are directed to be released from jail forthwith if not required or detained in any other case.

49. The appeals are allowed.

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

51. The records of this case shall also be



transmitted to the Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Khatim Reza, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.04.2024
Transmission Date	25.04.2024

