

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1241 of 2019

Arising Out of PS. Case No.-56 Year-2017 Thana- BASANTPUR District- Siwan

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Diplal Rai Son Of Late Shankar Rai Resident Of Village - Razapur, P.S.-
Basantpur, District - Siwan.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 1152 of 2019

Arising Out of PS. Case No.-56 Year-2017 Thana- BASANTPUR District- Siwan

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Anil Rai @ Anil Ray S/O Late Badri Rai R/O Village- Razapur, P.S.-
Basantpur, District- Siwan

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 1171 of 2019

Arising Out of PS. Case No.-56 Year-2017 Thana- BASANTPUR District- Siwan

=====

Krishna Rai @ Kishan Rai S/O Late Swarup Rai R/O Village- Rajapur, P.S.-
Basantpur, District- Siwan



... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1241 of 2019)

For the Appellants : Mr. Ranjan Kumar Dubey, Advocate
Mr. Kumar Gourav, Advocate
Mr. Ajay Kumar Pandey, Advocate
Mr. Ramchandra Sahai, Advocate

For the State : Mr. Bipin Kumar, APP

(In CRIMINAL APPEAL (DB) No. 1152 of 2019)

For the Appellants : Mr. Ranjan Kumar Dubey, Advocate
Mr. Kumar Gourav, Advocate
Mr. Ajay Kumar Pandey, Advocate
Mr. Ramchandra Sahai, Advocate

For the State : Mr. Bipin Kumar, APP

(In CRIMINAL APPEAL (DB) No. 1171 of 2019)

For the Appellants : Mr. Ranjan Kujmar Dubey, Advocate
Mr. Kumar Gourav, Advocate
Mr. Ajay Kumar Pandey, Advocate
Mr. Ramchandra Sahai, Advocate

For the State : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 01-10-2024

All the appeals have been taken up together as they
have been preferred against the same impugned judgment of



conviction and order of sentence dated 22.07.2019 and 24.07.2019 respectively, passed by learned Additional Sessions Judge-III, Siwan, in Sessions Case No. 23 of 2018 arising out of Basantpur P.S. Case No. 56 of 2017, whereby all three appellants have been found guilty for the offence punishable under Sections 341/34 and 302/34 of the Indian Penal Code and all of them have been sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/- each under Section 302 of the Indian Penal Code and simple imprisonment for one month under Section 341 of the Indian Penal Code. Both the sentences have been directed to run concurrently. Learned Trial Court also recommended Siwan District Legal Services Authority to pay compensation to the victims of the crime, namely, Kunti Devi, Pratima Kumari and Sita Kumari as per Bihar Victim Compensation Scheme, 2014.

Prosecution case.

2. The prosecution case as emerging from the *Fardbeyan* as recorded by S.I. Abhijit Kumar, S.H.O. of Basantpur Police Station on 11.02.2017 at 7:30 hours at Primary Health Centre, Basantpur is that at 6 O'clock on 11.02.2017 (Saturday), her daughters Pratima Kumari and Sita Kumari came to the house crying and informing that the appellants and



Shiv Kumar have badly injured their father Dular Chandra Rai by knife. Thereafter, she went to the place of occurrence crying along with her daughters and saw that in the wheat field of Mangaldeo Rai, her husband was struggling (*Chhatpatana*) in injured condition and there was bleeding from the left side of his neck and eyebrow of right eye. She took her injured husband in vehicle with the help of the villagers to the Government Hospital, Basantpur, where he was declared dead. She came to know from her daughters and other persons that at 5:45 AM in the morning of 11.02.2017, her husband was returning after attending the call of nature when the accused persons surrounded him on account of dispute regarding attending call of nature and Shiv Kumar, Kisan Rai @ Krishna Rai and Anil Rai caught hold of her husband and Diplal Rai badly assaulted him by knife after taking it out from his pocket, with intent to kill him and consequently, he died on account of the injuries.

Factual background.

3. On the basis of the *Fardbeyan* of the informant, Basantpur P.S. Case No. 56 of 2017 was registered on 11.02.2017 against four named accused persons including the appellants herein for the offence punishable under Sections 302/34 of Indian Penal Code.



4. After investigation, charge-sheet was submitted against all the four named accused including the appellants and after cognizance, the case of all the three appellants were committed to the Court of Sessions by learned Judicial Magistrate, separating the case of accused Shiv Kumar for conducting inquiry regarding his juvenility. Subsequently charge was framed against the appellants under Sections 302 and 341 read with Section 34 of the Indian Penal Code. The charges were read over to the appellants which they pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined the following eleven witnesses:-

- (i) **P.W.-1** – Sudama Rai (belongs to kinship of the deceased)
- (ii) **P.W.-2** – Achhelal Rai
- (iii) **P.W.-3** – Pratima Kumari (daughter of the deceased)
- (iv) **P.W.-4** - Meghnath Rai
- (v) **P.W.-5** - Sita Kumari (daughter of the deceased)
- (vi) **P.W.-6** - Sanjay Rai (uncle of the appellant
Diplal Rai and brother of the deceased)
- (vii) **P.W.-7** – Yogendra Rai
- (viii) **P.W.-8** – Kanti Devi (informant)
- (ix) **P.W.-9** - Dr. Alok Kumar Sinha
- (x) **P.W.-10** – Abhijit Kumar.
- (xi) **P.W.-11** - Surendra Singh

6. The prosecution also brought on record the following documentary evidence:

- (i) **Ext.-1** – Signature of Sudama Rai on seizure list



- (ii) **Ext.-1/1**- Signature of Sanjay Rai on the seizure list.
- (iii) **Ext.-2** – Signature of Yogendra Rai on inquest report.
- (iv) **Ext.-2/1**- Signature of Achhelal Rai on inquest report.
- (v) **Ext.-3** - Postmortem report.
- (vi) **Ext.-4** – Inquest report.
- (vii) **Ext.-5** – Fardbeyan
- (viii) **Ext.-6** – Formal FIR.
- (ix) **Ext. -7** - Seizure list.

Statements under Section 313 Cr.PC.

7. After closure of the prosecution evidence, accused persons were examined under Section 313 Cr.PC confronting them with incriminating circumstances which came in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During examination, they admitted that they had heard the evidence of prosecution witnesses against them. But they did not explain any circumstance, though they claimed that the prosecution evidence is false and they are innocent. However, no evidence has been adduced in their defence.

Finding of the Trial Court.

8. Learned Trial Court after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment of conviction and order of sentence whereby all the appellants have been found guilty of the charge



and sentenced accordingly.

Submissions of the Parties.

9. We have heard learned counsel for the appellants and learned APP for the State.

10. Learned counsel for the appellants have submitted that the learned Trial Court has not properly appreciated the evidence on record and erroneously passed the impugned judgment of conviction and order of sentence.

11. Ld. counsel for the appellants further submitted that most of the non-official witnesses are family members of the deceased. Hence, their testimonies cannot be relied upon for conviction of the appellants. They have also submitted that there are material contradictions and discrepancies in the statements of the prosecution witnesses creating serious reasonable doubts in the prosecution case against the appellants.

12. They have further submitted that no prosecution witnesses are eye-witness to the occurrence and P.W.-3 and P.W.-5 are falsely projected as eye-witnesses.

13. Learned counsel for the appellants have also taken plea of alibi submitting that the appellants were not at their village on the date of occurrence.

14. Learned counsel for the appellants, Anil Rai and



Krishna Rai has also submitted that there is no allegation against these two appellants to have assaulted the deceased by knife. Specific allegation of assault by knife has been made only against the appellant, Deeplal Rai and even as per the medical evidence, there is only one knife injury on the left side of the neck of the deceased. Hence, the involvement of the appellants Anil Rai and Krishna Rai in the alleged offence is seriously doubtful.

15. However, learned APP for the State has defended the impugned judgment of conviction submitting that the prosecution has well proved its case against the appellants beyond all reasonable doubts and the appellants have been also appropriately sentenced.

16. He has further submitted that the evidence of family members of the deceased cannot be discarded solely on the ground of their relationship with the deceased, nor could the prosecution case be doubted only on the ground that independent witnesses have not been examined. He also submits that minor contradictions here and there in the testimonies of the witnesses are natural and unless they go to the root of prosecution case, they are not fatal to the case of the prosecution.



17. He has also submitted that the prosecution case is well proved against the appellants beyond all reasonable doubts and the appellants have failed to substantiate their plea of alibi by any evidence on the record.

Some Principles of Appreciation of Evidence

18. In view of the submissions of the parties it would be imperative to refer to some principles of appreciation of evidence before we proceed to discuss the evidence on record.

19. It is settled principle of law that the evidence of any relative or family members cannot be discarded only on account of his or her relationship with the deceased. The evidence of such witnesses has to be weighed on the touchstone of truth and at most the court is required to take care and caution while appreciating their evidence. In this regard, one may refer to the following judicial precedents:

- (i) **Abhishek Sharma Vs. State (NCT of Delhi)**,
2023 SCC OnLine SC 1358;
- (ii) **Yogesh Singh Vs Mahabeer Singh & Ors**;
(2017) 11 SCC 195;
- (iii) **Mano Dutt and another Vs. State of UP**;
(2012) 4 SCC 79;
- (iv) **Daulatram Vs. State of Chhattisgarh**,
2009 (1) JIJ 1;
- (v) **State Vs. Saravanan**, (AIR 2009 SC 152);
- (vi) **State of U.P. v. Kishanpal**, (2008) 16 SCC 73;
- (vii) **Namdeo Vs. State of Maharashtra**,
(2007) 14 SCC 150;
- (viii) **State of A.P. Vs. S. Rayappa**,. (2006) 4 SCC 512;
- (ix) **Pulicherla Nagaraju Vs. State of A.P.**,
(2006) 11 SCC 444;
- (x) **Harbans Kaur Vs. State of Haryana**;



- (2005) 9 SCC 195;
(xi) **Hari Obula Reddy and Ors. Vs. State of AP,**
(1981) 3 SCC 675
(xii) **Piara Singh and Ors. Vs. State of Punjab,**
(1977) 4 SCC 452

20. It is also settled principle of law that prosecution case cannot be thrown out or doubted on the sole ground that the independent witnesses have not been examined because as per experience, civilized people are generally insensitive when a crime is committed in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. The Court is therefore required to appreciate the evidence of even related witnesses on its own merit, instead of doubting the prosecution case for want of independent witnesses. (Refer to **Appabhai and another Vs. State of Gujarat, 1988 Supp SCC 241**).

21. This is also settled principle of law that minor discrepancies, contradictions, improvements, embellishments or omissions on trivial matters not going to the root of the prosecution case should not be given undue importance. But if they relate to material particulars of the prosecution case, the testimony of such witnesses is liable to be discarded. In this regard, one may refer to the following judicial precedents:

- (i) **C. Muniappan & others Vs. State of T.N.,**
(2010) 9 SCC 567;
(ii) **State of U.P. Vs. Krishan Master,**



- (AIR 2010 SC 3071);
(iii) **Appabhai & Anr. Vs. State of Gujrat**,
AIR 1988 SC 696;
(iv) **Shivaji S. Bobade & Anr Vs. State Of Maharashtra**, (1973 AIR 2622);
(v) **Sanjay Kumar Vs. State of Bihar**,
2019 SCC OnLine Pat 1077;
(vi) **State of Madhya Pradesh Vs. Dal Singh**,
(2013) 14 SCC 159;
(vii) **Smt. Shamim Vs. State (GNCT of Delhi)**,
2018 (4) PLJR 160;
(viii) **S. Govidaarju Vs. State of Karnataka**,
2013 (10) SCALE 454
(ix) **Narotam Singh vs. State Of Punjab And Anr.**
(AIR 1978 SC 1542)
(x) **Leela Ram Vs. State of Haryana**,
(1999) 9 SCC 525;
(xi) **Subal Ghorai and Ors. Vs. State of WB**,
(2013) 4 SCC 607;
(xii) **Yogesh Singh Vs. Mahabeer Singh & Ors.**,
(2017) 11 SCC 195.

Prosecution Evidence.

22. Coming to the prosecution evidence, we find that the **informant/Kanti Devi** has been examined as **P.W.-8**. She, in her **examination-in-chief**, has deposed that on eleventh day of month, *maagh* of the year 2017, she was at her home. Her husband Dularchand Rai had gone to attend the call of nature towards field. Appellants Diplal, Anil, Shiv Kumar Kisan Ray @ Kishan Rai surrounded her husband and Diplal Rai assaulted her husband with knife on left neck and right eyebrow. Other appellants also assaulted him. He fell on the ground. He was taken to Basantpur Government Hospital where he was declared dead. The reason behind the occurrence is dispute in regard to



attending call of nature. She has identified her fardebayan and hence, the same has been exhibited on record. She also identified the appellants Anil, Kisan and Diplal Rai standing in the dock. In her **cross-examination**, she has deposed that her house is situated at three laggi from the place where her husband was lying injured. After information, she went to the place of occurrence crying. The information was given to her by her two daughters. Sudama, Yogendra Rai, Acche Lal Rai and others went to the place of occurrence along with her. When she reached near her injured husband, he was lying unconscious in blood. Her husband was not able to speak. Seeing his condition, she started getting unconscious. Her villagers took her husband to hospital by Sudama Rai, Chandan Kumar, Chandeshwar Rai, Yogendra Rai, Raghunath Rai, Meghanath Rai and others. Blood soaked clothes of her husband and the knife were taken by the police. She could not know who came thereafter at the place of occurrence. Her husband had no previous enmity with Anil Rai. She had denied the suggestion that she has deposed falsely.

23. P.W.-3 is **Pratima Kumari**, daughter of deceased Dularchand Rai. In her **examination-in-chief**, she has supported the prosecution case. In her **cross-examination**, she has



deposed when she reached the place of occurrence, her father was lying on the ground and the appellants were assaulting him. At that time, besides the appellants only she and her sister were present at the place of occurrence. Three accused were holding her father and Diplal Rai was assaulting him. Anil Rai was holding his legs and he was also beating him by his hands at stomach. Kisan Rai was also holding his right hand and he was also assaulting on his stomach. Shiv Kumar Rai was holding his left hand and was also assaulting him and Diplal Rai was assaulting her father by knife. He had also assaulted her father twice by knife. First time, he assaulted at the left side of neck and second time, he assaulted near eye brow of right eye. Blood had come out from the injury and clothes of her father got stained in blood and his blood also fallen on ground in the area of 2-3 meters. When co-villagers started reaching there, Diplal Rai fled away by throwing the knife and the villagers had caught Shiv Kumar Rai and Anil Rai while fleeing away at the distance of 10-20 laggi and keeping them at door. When the Police came, they were handed over to the Police. When the appellants were beating her father, she along with her sister went to her mother to inform her. Thereafter, she along with her mother and co-villagers including Achhelal Rai, Sudama Rai,



Meghnath Rai reached the place of occurrence. When she reached the place of occurrence, second time her father was not in a position to speak. He was taken to hospital by Maxi vehicle in which her mother, sister and uncle Chandeshwar Rai, Achhelal Rai, Rajan Rai and others were also there and she went to hospital later on by vehicle. At the time of occurrence, it was month of February and son was yet to rise. She along with her sister had gone to attend the call of nature at 5:45 A.M. from her home to west direction at the distance of 2-4 laggis. They heard sound of abusing her father from south direction. Thereafter, she along with her sister rushed to the place of occurrence. They saw blood coming out from left side of neck and eye brow. Father was lying on the ground in semi conscious condition. Both sister started to weeping and went to their home crying to inform her mother. At the time of visit to the place of occurrence, second time about 40-50 per cent had got assembled including Yogendra Rai, Achhelal Rai, Sudama Rai, Chandan Kumar, Pankaj Kumar and others. She has denied the suggestion that she has deposed falsely.

24. P.W.-5 is Sita Kumari, another daughter of the deceased Dularchand Rai has also supported the prosecution case in her **examination-in-chief**. In her **cross-examination**,



she has deposed that her home is only 8-9 steps away from the place of occurrence. In between the place of occurrence and her home, lies house of Krishna Rai @ Kishan Rai and 5-6 parcels of land. When she had gone 4-5 laggis from her house, she heard the hulla and reached the place of occurrence along with her sister and took only two minutes to reach there. When she saw her father, she found that he was being assaulted by Krishna Rai, Diplal Rai, Anil Rai and Shiv Kumar Rai. When she reached the place of occurrence, she found that her father was being abused by the accused persons. Accused Krishna Rai, Anil Rai, Diplal Rai and Shiv Kumar Rai were holding him and Diplal Rai was assaulting by knife. After receiving knife injury, her father fell down and she and her sister went to home crying to call her mother. After information, mother immediately came to the place of occurrence along with her and Sudama Rai, Achhelal Rai, Meghnath Rai, Rajendra Rai, Yogendra Rai and others. When they reached the place of occurrence, her father was still breathing lying on the ground and he was bleeding. Blood had fallen on his clothes and on the ground also. There was no previous enmity between her father and accused Anil Rai.

25. P.W.-1 is Sudama Rai, who has supported the



prosecution case deposing in his **examination-in-chief** in consonance with the fardbeyan. When the two daughters of the deceased cried, he went to the place of occurrence and saw that all the three appellants had put Dularchand Rai on ground forcibly and Diplal Rai assaulted the victim on the left side of the neck and eyebrow of left eye. When the people assembled there, the appellants fled away and thereafter, he along with villagers took Dularchand Rai to Basantpur Hospital where he declared dead. He identified the appellants standing in the dock. In his **cross-examination**, he has deposed that the place of occurrence is at the distance of ten laggi from the place of occurrence. When he reached the place of occurrence, both daughters and wife of Dularchand Rai were also there. The villagers who were at the place of occurrence apprehended Anil Rai and Shiv Kumar Rai. On account of knife injury, Dularchand Rai was struggling for life. How many assaults of knife was made by Diplal Rai, he could not count. Due to knife injury, the clothes of Dularchand Rai had got soaked in blood. Blood had fallen even on the ground. Police had taken blood soaked clothes and soil. The blood had spread at two place in the field in the area of one hand each. The two daughters of Dularchand Rai were first to reach the place of occurrence and



on her cry, other people assembled there including himself, Yogendra Rai, Acche Lal Rai, Sanjay Rai and others. Dularchand Rai belongs to his kinship. He had denied the suggestion that he has deposed falsely because Dularchand Rai is his nephew.

26. P.W.-2 is Achhelal Rai. He has also supported the prosecution case in his **examination-in-chief**. In his **cross-examination**, he has deposed that other villagers came after he arrived at the place of occurrence and they took Dularchand Rai to hospital. When he first saw Dularchand Rai at the place of occurrence, he was fallen on the ground. He was injured. There was knife injury on his neck and above eye. There was no other injury. Dularchand Rai is his cousin. He has denied the suggestion that he has deposed falsely. He has also denied the suggestion that Anil Rai was not at the place of occurrence. He has been falsely implicated.

27. P.W.-4, Meghnath Rai, has also supported the prosecution case in his **examination-in-chief** deposing that he reached the place of occurrence on *hulla* and saw that the appellants were quarreling with Dularchand Rai. In that course, Diplal Rai attacked at shoulder and right eye of Dularchand Rai by knife and injured him. Co-villagers had also started to



assemble and they took Dularchand Rai to hospital. In his **cross-examination**, he has deposed that his house is situated at the distance of 100 gaz from the place of occurrence. When he reached the place of occurrence on *hulla*, two daughters and wife of Dularchand Rai and some villagers had arrived there and wife and daughter of Dularchand Rai were trying to save him. He had seen the knife. It was about 5” long. It was handed over to the police. The villagers who were assembled at the place of occurrence were trying to apprehend the appellants but they could not be apprehended at the place of occurrence but they were apprehended at some distance from it. He had reached the place of occurrence at 6:00-6:30 O’clock in the morning on *hulla*. Anil Rai works out of station. He is a man of good nature and he has no litigation with anybody else.

28. P.W.-6 is Sanjay Rai. He is also co-villager of Dularchand Rai. In his **examination-in-chief**, he has supported the prosecution case deposing that when he reached the place of occurrence on *hulla*, he saw Anil, Diplal, Shiv Kumar and Krishna Rai holding Dularchand Rai and Diplal Rai after taking out knife from his pocket, assaulted Dularchand Rai at his left side of neck and right eye. Dularchand Rai was taken to hospital where he was declared dead. Diplal Rai had fled away after



throwing the knife and villagers apprehended Shiv Kumar and Anil. Police came and had seized the knife, *lota* made of steel and blood soaked soil and he had signed on the seizure list. In his **cross-examination**, he has deposed that his house is situated at the distance of 100 gaz from the place of occurrence. When he saw Dularchand, he found blood coming out from his neck and forehead and he was struggling for life. Diplal is his nephew and Dularchand is his brother but there is already family partition in between him and Dularchand. He has denied the suggestion that he has deposed falsely.

29. P.W.-7 is Yogendra Rai, who has deposed in his **examination-in-chief** that the inquest report was prepared before him and he had put his signature on it. Acchelal Rai had also signed on it in his presence. In his **cross-examination**, he has deposed that he had put his signature on the inquest report at Police Station and Acchelal Rai had also signed on it at Police Station.

30. P.W.-9 is Dr. Alok Kumar Sinha who had conducted the postmortem examination on the dead-body of the deceased Dularchand Rai and had found incised wound 2" x 3/4" x viscera deep on left side of neck and as per his opinion, death of Dularchand Rai was caused due to the aforesaid injury



caused by sharp cutting object. There is nothing worth mentioning from the cross-examination of the witness.

31. P.W.-10 is **Abhijit Kumar** who was Officer-in-charge of Basantpur Police Station on 11.02.2017. He had prepared the inquest report of the deceased Dularchand Rai and had also taken charge of investigation of this case and visited the place of occurrence where he recorded the re-statement of the informant. Place of occurrence is plot of Mangaldev Rai with wheat crop standing on it. It is situated in the village of Rajapur. The crop of wheat was crushed and blood had fallen on it. One steel *lota* was also found at the place of occurrence and one iron knife bearing blood stain was also recovered from the place of occurrence. The knife and blood soaked soil were seized and seizure list was prepared at the place of occurrence. He raided the house of the accused and Anil Rai and Shiv Kumar Rai were arrested. One juvenile accused was also apprehended and the rest accused were absconding. The seized knife and soil were sent to FSL Muzaffarpur. In his **cross-examination**, he has deposed that he reached the place of occurrence at 10:30 O' Clock in the evening on 11.02.2017. Seizure list was prepared by S.I. Mohammad Khan. When he was confronted with some statements of the prosecution witness



for contradictions, he has denied any such contradiction in their statements made before him.

32. P.W.-11 is Surendra Singh, who is also Police Sub Inspector, posted at Basantpur Police Station on 03.05.2017. He had taken charge from officer-in-charge Dharmendra Kumar and had submitted charge-sheet in the case.

Appreciation of the evidence and findings of this Court.

33. From the perusal of the evidence on record, we find that eight out of eleven prosecution witnesses are non-official witnesses and out of whom, informant (P.W.-8) is wife whereas P.W.-3 and P.W.-5 are daughters of the deceased. P.W.-6 is brother of the deceased and uncle of appellant Diplal Rai. Rest non-official witnesses – P.W.-1, P.W.-2, P.W.-4 and P.W.-7 are co-villagers of the deceased. Rest three witnesses – P.W.-9, P.W.-10 and P.W.-11 are official witnesses. P.W.-9 had conducted postmortem examination on the dead body of the deceased, whereas P.W.-1 was first Investigating Officer of the case and P.W.-11 was second Investigating Officer of the case and had submitted charge-sheet against the appellants.

34. We further find that P.W.-3 and P.W.-5 are eye witnesses. However, P.W.-1, P.W.-2, P.W.-4, P.W.-6 and P.W.-7 have also been projected by the prosecution as eye witnesses.



But from perusal of the entire evidence on record, we have reasonable doubt that they have seen the occurrence which resulted into death of the victim Dularchand Rai. They appear to have reached the place of occurrence after occurrence had already taken place. Hence, they are witnesses to only post-occurrence facts and circumstances of the case. But, there is no doubt that P.W.-3 and P.W.-5 have seen the occurrence.

35. We find that there is no dispute that Dularchand Rai has met with an unnatural death on account of incised wound 2" x 3/4" x viscera deep on left side of neck caused by sharp cutting object as is evident from the evidence of P.W.-9 Dr. Alok Kumar Sinha who had conducted postmortem examination on the dead-body of the deceased Dularchand Rai. There is also no dispute regarding post occurrence facts and circumstances of the case. After occurrence, injured Dularchand Rai was taken to Basantpur hospital where he was declared dead and fardbeyan was recorded at 7:30 AM. Subsequently, the inquest report was prepared at 8:00 AM in the campus of the Basantpur Hospital itself and the postmortem examination was conducted by P.W.-9 at 12:30 P.M. on 11.02.2017. The knife and blood soaked soil were seized from the place of occurrence at 11:00 A.M. on 11.02.017 itself.



36. We further find that the only dispute is whether the appellants had caused the death of victim Dularchand Rai with mens rea. In this context, the case of the prosecution is based on two eye witnesses, P.W.-3 and P.W.-5 who have seen as eye witnesses.

37. Now, question is whether the prosecution has proved the case against the appellants beyond all reasonable doubts.

38. We find that occurrence had taken place in the plot of Mangaldeo Rai with wheat cop standing on it. It is situated in the village of Rajapur of the deceased.

39. We further find that the place of occurrence is at very short distance from the house of the deceased. As per testimony of P.W.-3 and P.W.-5 only one house of one Krishna Rai and 5-6 parcels of lands are situated between the house of the deceased and place of occurrence. It also transpires that the occurrence had taken place around 6:00 A.M. in the morning on 11.02.2017. The victim was returning his home after attending the call of nature. P.W.-3 and P.W.-5 who are daughters of the deceased had also gone towards agricultural field to attend the call of nature in the morning around 5:45 A.M. to the west of their house. They heard the hulla including sound of her father



from the place of occurrence. Thereafter, they rushed there and found that appellants were abusing their father and assaulting him. Appellant Diplal Rai was assaulting him by knife at left side of the neck and eye brow of the right eye. They started crying and immediately thereafter, rushed to their house to inform their mother and again went back to the place of occurrence along with their mother. Other co-villagers also reached there on their hulla. When they reached the place of occurrence second time, they found that their father was in semi unconscious condition and bleeding from his neck and also from eye brow of right eye.

40. We further find that P.W.-3 and P.W.-5 are very natural and consistent in their testimony and there is no reason to discard their account of the occurrence. They are trustworthy. They have consistently deposed that it was the appellant Diplal Rai who had injured their father by knife, resulting into his death. Such testimonies of P.W.-3 and P.W.-5 have been also corroborated by the evidence of P.W.-9 who had conducted the postmortem examination on the dead body of the deceased and had found one incised wound on the left side of his neck caused by sharp cutting object. In view of such finding of P.W.-9, we have reasonable doubt that appellants other than Diplal Rai have



role in causing death of the victim Dularchand Rai. Hence, the appellants Anil Rai @ Anil Ray and Krishna Rai @ Kishan Rai are entitled to get benefit of doubts whereas the prosecution case against the appellant Diplal Rai is proved beyond reasonable doubts and, hence, he is found guilty of the charge framed against him.

41. Hence, we uphold the impugned judgment of conviction and order of sentence to the extent appellant Diplal Rai has been held guilty of the charge and punished accordingly, but we set aside the rest part of the impugned judgment and order of sentence acquitting the rest appellants of all the charges.

42. Accordingly, Cr. Appeal (DB) No. 1241 of 2019 filed by the appellant Diplal Rai is dismissed and Cr. Appeal (DB) No. 1152 of 2019 and Cr. Appeal (DB) No. 1171 of 2019 filed by the appellants Anil Rai @ Anil Ray and Krishna Rai @ Kishan Rai respectively stand allowed.

43. Appellant Diplal Rai is already in custody.

44. Appellants Anil Rai @ Anil Ray and Krishna Rai @ Kishan Rai are on bail. They are discharged from their liabilities of their bail bonds.



Compensation

45. Learned Trial Court has rightly directed Siwan District Legal Services Authority to pay compensation to the victim of the crime, namely, Kanti Devi, Pratima Kumari and Sita Kumari as per Bihar Victim Compensation Scheme, 2014, because the commission of murder has been well proved by the evidence on record. The deceased, Dularchand Rai was done to death by injury caused by knife and he is survived by his widow Kanti Devi and his two daughters, Pratima Kumari and Sita Kumari. There is no dispute that the widow/informant Kanti Devi and two daughters Pratima Kumari and Sita Kumari are victims in terms of 2(wa) Cr. PC, as per which the victim includes legal heirs of the deceased. The widow has lost not only consortium of her husband but even her dependency on him. The two daughters have also lost their father losing not only love and affection of their father but even their dependency upon him. Hence, the widow and her two daughters deserve succour from the State, who has failed to protect the fundamental right of the deceased to live. Accordingly, all the victims are entitled to get compensation as per Bihar Victim Compensation Scheme, 2014 as made under Section 357A Cr.PC. If Siwan District Legal Services Authority has not paid



the compensation to the victims, it is directed to pay the compensation to the victims without losing further time within two months from the receipt of this order. Office is directed to send a copy of this order to Siwan District Legal Services Authority also.

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

47. Interlocutory application/s, if any, also stand disposed of.

(Jitendra Kumar, J.)

I agree.

(Ashutosh Kumar, J.)

S.Ali/ravishankar/
Shoaib/Chandan

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