

Criminal Appeal (DB) No. 265 of 1995 (P)

Against the judgment and order of conviction and sentence dated 24.07.1995 (sentence passed on 26.07.1995) passed by Shri Swaroop Lal, 1st Additional Sessions Judge, Godda in Sessions Case No. 153 of 1993/25 of 1995 .

1. Mangan Durbey (since deceased)
2. Hari Prasad Durbey (since deceased)
3. Gunkari Durbey
4. Prafull Durbey
5. Dhaturi Mandal (since deceased)
6. Shankar Fariyat

All residents of Vill- Ratanpur, P.S- Godda (M), Dist.- Godda.
... Appellants

Versus

The State of Bihar (now Jharkhand) ... Respondent

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Appellants : Mr. Peeyush Krishna Choudhary, Adv.
For the Respondent : Mr. Vineet Kumar Vashistha, Spl. P.P.

Dated 12th August, 2024

Rongon Mukhopadhyay, J. : 1. Heard Mr. Peeyush Krishna Choudhary, learned counsel for the appellants and Mr. Vineet Kumar Vashistha, learned Spl. P.P.

2. This appeal is directed against the judgment and order of conviction and sentence dated 24.07.1995 (sentence passed on 26.07.1995) passed by Shri Swaroop Lal, learned 1st Additional Sessions Judge, Godda in Sessions Case No. 153 of 1993/25 of 1995, whereby and whereunder, the appellants have been convicted for the offence punishable u/s 302/34 of the Indian Penal Code and have been sentenced to undergo imprisonment for life.

3. The prosecution case arises out of the fardbeyan of Naresh Prasad Mandal recorded on 07.12.1992 in which it has been stated that on the same day in early morning, the informant and his uncle Gauri Shankar Mandal had gone from Ratanpur to Dangra Bahiyar to inspect the wheat in their field. As soon as they reached the said place, the accused persons variously armed,

had come and by abusing them Mangan Durbey committed assault upon his uncle with a Gadasa. He and his uncle started fleeing away but they were chased by the accused persons. It has been alleged that after the chase, the uncle of the informant was surrounded by the accused persons and the informant could see the incident from a distance. The accused Haru Fariyat committed an assault with a lathi on the leg of the uncle of the informant, as a result of which he fell down. Thereafter, Dhaturi Mandal, Prafull Mandal, Hari Prasad Durbey and Shankar Fariyat caught hold of his uncle while Gunkari Durbey, with a sword, had cut the neck of his uncle. He has stated that the incident was witnessed by several persons.

Based on the aforesaid allegations, Godda Town (M) P.S. Case No. 423/92 was instituted under Section 302/34 IPC against the accused persons. On completion of investigation, charge sheet was submitted and after cognizance was taken, the case was committed to the Court of Sessions where it was registered as Sessions Case No. 153 of 1993/25 of 1995. Charge was framed against the accused persons under Section 302/34 IPC which was read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as six (06) witnesses in support of its case.

P.W.1 Naresh Prasad Mandal is the informant who has stated that about one year two and half months back, he and his uncle had left for Mouza Ghatkaria at 05:00 AM. After inspecting the paddy, both had gone to see the wheat crops when near the ridge Mangan Durbey, Hari Prasad Durbey, Gunkari Durbey, Prafull Durbey, Dhaturi Mandal, Haru Fariyat and Shankar Fariyat came out and started assaulting them. Mangan Durbey had assaulted his uncle on the head with a Gadasa and blood started coming out from the wound. He and his uncle tried to escape, but they were surrounded by the accused persons. When his uncle started to flee, Haru Fariyat had thrown a lathi at him, as a result of which, he fell down on his face and thereafter Dhaturi Mandal and Hari Prasad Durbey caught hold of his legs, Shankar Fariyat had caught the head while Prafull Durbey had caught his hands and

thereafter Gunkari Durbey had cut the neck of his uncle with a sword which resulted in his death. He has stated that in 1987, the accused persons were convicted and sentenced to ten months imprisonment for cutting paddy and recently a proceeding under Section 145 Cr.P.C was also instituted. This was the reason for the accused persons to have committed the assault. He has proved his fardbeyan which has been marked as Exbt.-1.

In cross-examination he has deposed that he and his uncle had managed to flee 25-30 yards and by that time the accused persons had surrounded them. When his uncle was assaulted for the first time with a Gadasa, he had raised an alarm. He had seen the incident and was crying as the accused persons had threatened him of being killed if he raised any alarm. He had disclosed to the Police that Mangan Durbey was armed with a Gadasa, Gunkari Durbey had a sword, Hari Prasad had a Khanti while the others were armed with lathis. He had also disclosed to the Police, the reason for the occurrence. He has deposed that after 2-3 days his statement was once again recorded by the Police.

P.W. 2 Hira Devi is the wife of the deceased Gauri Shankar Mandal, who has stated she was going to answer the call of nature when she had heard the cry of alarm of her husband, at which she rushed to the place of occurrence where she saw Mangan Durbey assaulting her husband with a Gadasa and when her husband tried to flee away, he was surrounded by the accused persons who started committing assault upon him.

In cross-examination she has deposed that she had reached the place of occurrence after the incident. It took her thirty minutes to reach the place of occurrence from her house. She had not met the accused on the way, but they were standing at the place of occurrence itself. She had met Naresh Mandal after one hour of the occurrence. Her sister-in-law Kasiya Devi had reached the place of occurrence prior to her.

P.W.3 Mosmat Kesia has stated that she had gone to throw garbage in Dangra Bahiyar when she heard a cry of alarm from Gauri Shankar Mandal and Naresh Mandal. At this, she went to the source of alarm where she saw the accused persons after chasing Gauri Shankar and by catching hold of him

committing his murder. It was Gunkari Durbey who had cut Gauri Shankar Mandal.

In cross-examination she has deposed that the deceased was her brother-in-law. She had seen the incident with her own eyes.

P.W.4 Dhodai Durbey was watching the paddy crops in Dangra Bahiyar when he saw Gauri Shankar and Naresh Mandal coming running followed by the accused persons. Mangan Durbey had a Gadasa, Gunkari Durbey was armed with a sword while Hari Prasad had a Khanti. The other accused persons had caught hold of Gauri Shankar Mandal while Gunkari Durbey had cut his neck.

In cross-examination he has deposed that on hearing the commotion, he had come out from his hutment and had seen the assault. He had stated before the Police that seven persons were chasing the deceased.

P.W.5 Dr. Satyendra Mishra had conducted autopsy on the dead body of Gauri Shankar Mandal on 08.12.1992 and had found the following:

(a) Anti Mortem wounds were-

- (i) Incised wound $6 \frac{1}{2}'' \times 2'' \times 3''$ on the left side of neck extending from the front to the posterior border of stern mastoid muscles.
- (ii) Incised wound $5'' \times 2 \frac{1}{2}'' \times 3''$ on the right side of back of neck.
- (iii) One incised wound $2'' \times \frac{1}{2}'' \times \frac{3}{4}''$ on the left occipital region.

(b) Head and back (cranium and spinal canal)- NAD.

- (i) Thorax- Normal, Lungs-NAD, Heart- both sides empty, Large vessels of left side of neck completely cut.
- (ii) Abdomen- wall, pastorium, mouth and escophegine normal. Stomach contains only mucinous material. Intestine full of gas and fecal matter. Liver, spleen and kidneys pale, urinary bladder-empty. Genetile- normal.
- (iii) Muscles and bones- Ante mortem injury- The left paratracheal and muscles of both anterior and posterior trangles of neck of left side completely cut.

The cause of death was opined to be due to severe hemorrhage and shock on account of the injuries caused by heavy sharp cutting weapon like Sword, Gadasa, Pharsa. He has proved the post-mortem report which has been marked as Exbt.-2.

P.W.6 Siddhi Prasad Singh was posted as an Assistant Sub Inspector of Police in Godda (M) Police Station and on 07.12.1992, Naresh Mandal had given his fardbeyan which has already been marked as Exbt.-1. He has proved the formal FIR which has been marked as Exbt.-3. After taking over the investigation, he had recorded the restatement of Naresh Mandal. The place of occurrence is situated at village Ghatkari, Dangra Bahiyar in the farm land of Uday Durbey. The paddy was found cut at the place of occurrence. There were specks of blood on the earth and in the bundles of paddy. A 0.303 bullet was also found near the dead body. He had seized the blood-stained earth and the cartridge and prepared a seizure list which has been marked as Exbt. 4 and Exbt. 4/1. He had prepared the inquest report and had also recorded the statements of Hira Devi, Mosmat Kesia and Dhodai Durbey. The body was sent for autopsy to Sadar Hospital, Godda. On completion of investigation charge sheet was submitted by him.

In cross-examination he has deposed that Naresh Prasad Mandal had not stated before him that Mangan Durbey had a Gadasa, Gunkari had a sword, Hari Prasad had a Khanti and the other accused persons had lathis. He had also not stated before him the reason for the occurrence. The witness Mosmat Kesia had not stated before him that she had gone to the place of occurrence on hearing the cry of alarm. She had not stated about the alarm raised by Gauri Shankar and Naresh Mandal. The witness Dhodai Durbey had not stated about Mangan being armed with Gadasa and Gunkari with sword and that Hari Prasad, Dhaturi and Prafull had pressed him while Shankar had caught his head. He had stated about the accused persons coming running.

5. The statements of the accused persons were recorded under Section 313 Cr.P.C. in which they have denied their complicity in the incident.

6. Mr. Peeyush Krishna Choudhary, learned counsel for the appellants has submitted that there are no eye witnesses to the occurrence and the evidence of P.W.-1, P.W.-2, P.W.-3 and P.W.-4 have to be discarded seemingly for the reason that in their statement before the Investigating Officer, none have stated to have seen the occurrence. It has been submitted that no incriminating articles were recovered from the appellants. The learned trial court has committed an error in overtly relying upon the evidence of P.W.-1, P.W.-2, P.W.-3 and P.W.-4.

7. Mr. Vineet Kumar Vashistha, learned Spl. P.P. has submitted that the fardbeyan of the informant is specific with respect to the part played by each of the appellants and the injuries sustained by the deceased corroborate the manner of assault. It has been submitted that the informant in his evidence as P.W.-1 has been consistent with respect to the assertion in the fardbeyan and therefore, the prosecution has been able to prove its case beyond reasonable doubt.

8. We have heard the learned counsel for the respective sides and have also perused the trial court records.

9. The informant in his fardbeyan had specifically stated about the manner of assault committed by the accused persons upon the uncle of the informant. This fact has also been supported by him in his evidence as P.W.-1. Though P.W.-6 (I.O.) had stated about the informant in his restatement not disclosing about certain facts regarding the weapons, the appellants had and the reason for the occurrence but at the same time, one cannot lose sight of the fact that absence of such narration in the restatement of P.W.-1 would not be an effective mechanism for the defence to decimate the case of the prosecution.

10. So far as P.W.-2 is concerned though she claims herself to be an eye witness but her cross-examination reveals otherwise to the effect that she had reached the place of occurrence after the incident. The evidence of P.W.-3 and P.W.-4 seems to have incorporated certain aspects which were not stated by them before P.W.-6 which would be apparent on a careful perusal of his evidence. It would therefore, transpire that not much reliance can be placed

upon the evidence of P.W.-2, P.W.-3 and P.W.-4 regarding they being the eye witness to the incident. Therefore, the entire case of the prosecution hinges upon the evidence of P.W.-1, who had accompanied the deceased to the field and his narration of the events cannot be discarded. In fact, the autopsy report further demonstrates the reliability of the evidence of P.W.-1. The sole testimony of a witness can be a guiding force in convicting the accused persons, provided the same is reliable and trustworthy and is not tainted with falsity. On an overall conspectus of the case, the complicity of the appellants in committing the murder of Gauri Shankar Mandal is beyond redemption and the evidence of P.W.-1 in that respect is apart from being consistent with his fardbeyan, is also consistent with the manner of assault and the part played by each of the appellants.

11. We therefore, on the basis of the discussions made hereinabove, do not feel inclined to interfere in the impugned judgment and order of conviction and sentence dated 24.07.1995 (sentence passed on 26.07.1995) passed by Shri Swaroop Lal, learned 1st Additional Sessions Judge, Godda in Sessions Case No. 153 of 1993/25 of 1995 and consequently, we dismiss this appeal.

(RONGON MUKHOPADHYAY, J.)

(DEEPAK ROSHAN, J.)

Jharkhand High Court, Ranchi
Dated the 12th August, 2024
Preet/N.A.F.R.