

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.1430 of 2018**

Arising Out of PS. Case No.-180 Year-2014 Thana- LAUKAHA District- Madhubani

Md. Naseem @ Chhedi Son of Md. Gafoor Mansuri @ Gafoor, Resident of  
Village- Lalmaniya, P.S.- Laukaha Lalmaniya, District- Madhubani.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

**Appearance :**

For the Appellant/s	:	Mr. N.A. Shamsi, Advocate Mr. Soban Asghar, Advocate Mr. Sarfaraj Ahmad, Advocate
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN  
SINGH**

**and**

**HONOURABLE MR. JUSTICE KHATIM REZA**

**CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN  
SINGH)**

**Date : 23-09-2022**

Heard Mr. N.A. Shamsi, learned counsel for the  
appellant and Mr. Dilip Kumar Sinha, learned Additional Public  
Prosecutor for the State.

2. This is an appeal preferred by the sole appellant  
under Section 374(2) of the Code of Criminal Procedure, 1973  
(Cr.P.C. in short).

3. By the judgment and order under appeal dated  
13.08.2018/18.08.2018 passed by Learned Sessions Judge,  
Madhubani in Sessions Trial No. 19 of 2015, the appellant has  
been convicted and sentenced as under:



Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
302 of the Indian Penal Code	Imprisonment for life	20,000/-	S.I. for six months

4. The informant (P.W.-7) and father of this appellant are full brothers. The wife of the informant is the deceased. The deceased was thus, the appellant's aunt.

5. The prosecution's case based on the *fardbeyan* of the informant (P.W.-7), is that at 12:30 p.m. on 12.01.2014 when he was performing *Wazu* to offer prayers (*Namaz*) in front of his doorway, his nephew (the appellant) came there and started abusing the deceased (Majuliya Khatoon) and thereafter he (the appellant) went back to his home. Majuliya Khatoon (the deceased) thereafter lied in a bed in the veranda of the house. In the meanwhile this appellant, armed with a *khanti*(crowbar) came and gave a *khanti* blow hitting the head of the deceased (Majuliya Khatoon), when she was sleeping. The deceased sustained head injuries. The informant thereafter raised alarm and rushed towards the deceased. The appellant fled away leaving the *khanti* used by him behind, after committing the offence. The co-villagers Md. Salim (not examined) and Md. Alauddin (P.W.-4) chased the appellant. The deceased (Majulia Khatoon) was thereafter taken to a nearby Khutauna Hospital in



a Tata Magic vehicle. She was referred to Darbhanga Hospital but she was died on her way to the hospital. The dead body of the deceased was thereafter brought back to her house. The informant alleged in his *fardbeyan* that his brother Md. Gafoor Mansoori and wife of his brother (Nooria Khatoon) had conspired in killing of the deceased. The FIR (Exhibit-1) bears signatures of Md. Oli Hassan (P.W.-3), Md. Alauddin (P.W.-4) and Md. Tahir (P.W.-2).

6. The police, upon completion of investigation submitted charge-sheet against this appellant only, though his father Md. Gafoor Mansoori and his mother Nooria Khatoon were named in the FIR, for commission of offence punishable under Section 302 read with Section 120B of the Indian Penal Code, keeping the investigation pending against father and mother of the appellant. The case was subsequently committed to the Court of Sessions. The charges were framed for commission of offence punishable under Section 302 read with Section 120B of the IPC. After closure of the evidence of prosecution witnesses, the statement of the appellant was recorded under Section 313 of the Cr.P.C., in which he denied the accusation of commission of any offence by him.

7. At the trial the prosecution examined nine



witnesses in support of its case. Md. Tahir (P.W.-2), who is one of the signatories of the *fardebayan*, came to be declared hostile at the instance of the prosecution. He did not at all support the prosecution's case. The informant has been examined as P.W.-7, the Investigating Officer as P.W.-8 and the Doctor who had conducted the *postmortem* examination of the deceased as P.W.-9. The father of the appellant has been examined as a defence witness.

8. The trial court has noted in its impugned judgment that it is an admitted fact even by the defence that Majulia Khatoon, wife of the of the informant died of head injuries on 12.09.2014. The defence took a plea before the trial court that the deceased had sustained injuries in her head as she had accidentally fallen against a hand-pump's rod. The said case of the defence has, however, been not found reliable by the trial court.

9. Upon analysis and appreciation of evidence adduced at the trial, the trial court reached a conclusion in its impugned judgment that the prosecution has been able to prove beyond all reasonable doubts that the appellant, with an intention to cause murder of the deceased, caused the injuries which she sustained in her head and accordingly held him guilty



of the offence punishable under Section 302 of the Indian Penal Code. The trial court, however, did not find the charge of commission of offence punishable under Section 120B of the Indian Penal Code proved against the appellant in the absence of any evidence that the appellant had entered into any conspiracy with Gafoor Mansoori or Nooria Khatoon or both to kill the deceased Majuliya Khatoon.

10. Mr. N.A. Shamsi, learned counsel appearing on behalf of the sole appellant has submitted that it is evident from the deposition of the prosecution witnesses that there is no eye-witness to support the prosecution's case that it was the appellant who had caused injuries in the head of the deceased with the use of *khanti*. He has submitted that on careful scrutiny of the evidence of the informant (P.W.-7) it can be easily discerned that even he is not an eye-witness to the occurrence. Referring to the evidence of P.W.-7, he has submitted that he is not a reliable witness, also for the reason that he has attempted to improve the prosecution's case as was originally disclosed in the FIR in his evidence at the trial implicating the appellant's mother Nooria Khatoon. Whereas, in the *fardebayan* there is no reference to any quarrel between the deceased (Majuliya Khatoon) and Nooria Khatoon in the *fardebayan* in his deposition



before the Court he has stated that the deceased and Nooria Khatoon were quarreling, before the occurrence which was pacified with intervention of people. The deposition of P.W.-7 at the trial does not mention any act on the part of this appellant of abusing the deceased (Majuliya Khatoon), as was originally alleged in the *fardbeyan*. He contends that the presence of appellant in the first occurrence said to have taken place at 12:30 p.m. has not been mentioned in the evidence of P.W.-7. Subsequently, during the cross-examination, he deposed that the appellant was also there when the deceased and Nooria Khatoon were quarreling. He has drawn the Court's attention to paragraph-37 of the deposition of P.W.-7 to submit that he cannot be treated to be an eye-witness as he himself has stated that when he reached on hearing noise, he had found blood oozing out from the head of the deceased. He has submitted that it is evident from the deposition of P.W.-7 himself that there is a property dispute between the families of the informant and the appellant.

11. Our attention has thereafter been drawn to deposition of P.W.-3 (Md. Oli Hassan) to contend that he is not an eye-witness to the occurrence and he is a wholly unreliable witness as he has disclosed altogether a new story in his



deposition to the effect that Nooria Khatoon had handed over an iron rod to the appellant, whereafter, the appellant, with the use of the said rod had hit the deceased in her head, when she was lying near the doorway of her house. This was neither the case of the informant in his *fardebayan* nor in his deposition as P.W.-7 at the trial. In paragraph-50 of his (P.W.-3) deposition during cross-examination he has stated that he had told the Investigating Officer in his statement taken during the course of investigation that after hearing the noise, he had rushed to the house of the informant whereafter he had seen that the deceased drenched in blood, being taken to hospital in a Tata Magic vehicle. He accordingly contends that P.W.-3 in his deposition has developed a new story of active participation of Nooria Khatoon in commission of the offence and claimed to be an eye-witness. However, it is manifest from his own deposition in Paragraph-50 that he had come to the place of occurrence when the occurrence had already taken place. He has submitted with reference to the evidence of Md. Oli Hassan (P.W.-3) that he deposed before the trial court that facts of the case were mentioned in the *fardebayan* on which he had put his signature which facts he was reiterating at the trial. But his evidence at the trial he contends, is substantially different from what had been



mentioned in the *fardebayan*. He has accordingly submitted that evidence of P.W.-3 is not at all reliable. At the same breath, he has referred to the deposition of P.W.-6, paragraph-6 of which reads as under:-

“इसके बाद छेदी उर्फ नूरिया घर गयी। पांच मिनट के अंदर ही वह घर से एक खंती लेकर आई तथा मजुलिया के सिर पर ताबड़-तोड़ वार करने लगी खंती से। जब तक हम लोग पकड़ने का कोशिश किये तब तक उत्तर की सड़क से भाग गया।”

12. He has submitted that P.W.-6 has disclosed an altogether new story of Nooria Khatoon herself coming with a *khanti* and hitting the deceased in her head with the said *khanti*. Our attention has also been drawn to the paragraphs 32, 33 and 35 of the deposition of P.W.-6 to submit that P.W.-6 is not an eye-witness though he falsely claimed to be so in his examination-in-chief. Our attention has also been drawn to paragraph-37 of the deposition of P.W.-6 which discloses a completely inconsistent case by mentioning that Chhedi @ Md. Naseem (the appellant) came with a *khanti* and made repeated assault with *khanti* in the head of the deceased. He submits that it is evident from deposition of P.W.-4 in paragraph-12 that he is not an eye-witness, inasmuch as, when he reached the place of



occurrence, he for the first time found blood lying on the floor of the doorway of the informant's house. He submits that his (P.W.-4) deposition to the effect that the appellant had hit the deceased with *khanti*, is not reliable. He has further drawn our attention to the deposition of P.W.-5 and has submitted that his deposition in paragraph-3 is different from the prosecution's case as disclosed in the *fardebayan* by the informant and the evidence of the informant before the Court at the trial. P.W.-5 has also deposed that Nooria Khatoon had passed on *khanti* to the appellant for killing the deceased whereafter the appellant gave two *khanti* blows in the head of the deceased. Referring to paragraph-10 of his deposition, Mr. N.A. Shamsi contends that P.W.-5 cannot be an eye-witness as according to his deposition he had seen the deceased drenched with blood after the occurrence had already taken place. He has accordingly submitted that there is no eye-witness to the alleged occurrence of the appellant having assaulted the deceased with *khanti*. The witnesses, who claimed to be the eye-witnesses, are not in fact eye-witnesses as is evident from their depositions before the trial court. The witnesses are not truthful, inasmuch as, they have narrated a different story altogether in their depositions. Further, material contradictions in the evidence of the



prosecution witnesses creates a reasonable doubt over the prosecution's case. He accordingly submits that the case of the prosecution cannot be said to have been proved beyond all reasonable doubt against the appellant and the finding recorded by the trial court of the appellant's guilt is erroneous and unsustainable.

13. Learned Additional Public Prosecutor appearing on behalf of the State, on the other hand, has submitted that the witnesses have consistently proved the first occurrence of quarrel between the deceased and Nooria Khatoon (Mother of the appellant), when the appellant was also present there. He has further submitted that the informant (P.W.-7), who is the husband of the deceased has deposed in his evidence that it was the appellant who had hit the deceased in her head with *khanti* when she was sleeping. The *postmortem* report corroborates the prosecution's case as disclosed in the *fardbeyan*. He has further submitted that the minor contradictions or exaggerated description of the occurrence by the prosecution's witnesses may not be a reason for this Court to disbelieve their evidences altogether. He has accordingly submitted that the learned trial court has rightly recorded the appellant's conviction by the impugned judgment and has been sentenced accordingly, which



does not require any interference by this Court.

14. We have perused the impugned judgment and order of the trial court as well as the lower court records. We have scrutinized the evidence on record. We have given our anxious consideration to the rival submissions made on behalf of the appellant and the State. The *fardebayan* of the informant (P.W.-7), bears the signatures of Md. Oli Hassan (P.W.-3), Md. Alauddin (P.W.-4) and Md. Tahid (P.W.-2). It is easily discernible that the prosecution's witnesses have in their evidence deposed that the deceased and Nooria Khatoon were quarreling, in the first occurrence, whereas, the informant in his *fardebayan* asserted that the appellant had come to the informant's house and after having abused his wife returned to his house. The role of Nooria Khatoon is not mentioned in the FIR except as a conspirator.

15. Mr. N.A. Shamsi, in opinion, is correct in his submission that in their depositions before the trial court the witnesses deposed that Majulia Khatoon and Nooria Khatoon were quarreling, which is not the case as disclosed in the FIR. Further we find substance in submission made on behalf of the appellant that none of the prosecution witnesses can be held to be an eye-witness of the alleged occurrence of assault made by



this appellant with *khanti* in the head of the deceased. This is evident from the deposition of the informant himself who was there in the house when the occurrence is said to have taken place in the house. In paragraph-37 of his evidence he has deposed that when he reached after hearing noise, he found blood oozing out from the head of the deceased.

16. P.W.-3 in his deposition in paragraph-50 has evidenced that after hearing the noise when he reached at the doorway of the informant, he found the body of the deceased drenched with blood and was being taken to hospital. In view of the said deposition he cannot be treated to be an eye-witness. Alauddin (P.W.-4) also came to the place of occurrence after the occurrence had taken place as is evident from paragraph-12 of his deposition. Similarly, paragraph-10 of deposition of P.W.-5 indicates that he too came to the place of occurrence after the occurrence had already taken place. Further, Paragraph-35 of the deposition of P.W.-6 indicates that he had not witnessed the occurrence as according to the said deposition, when he reached at the place of occurrence, 5-7 persons were already present there. From the evidence in paragraph-37 of P.W.-6 it appears that at one point of time he has described the assailant as Chhedi @ Md. Naseem as the assailant. The claim of the informant



(P.W.-7) of being an eye-witness to the occurrence is not credible in view of his own deposition in paragraph-37 wherein he has mentioned that he reached at the place of occurrence after hearing *halla* and noticed blood oozing out from the head of the deceased.

17. The investigating officer came to be examined as P.W.-8. From his deposition it appears that a *khanti* and blood stained clothes of the deceased were seized and sent for forensic examination. Neither any forensic report has been proved at the trial nor the seized *khanti* and blood stained clothes were exhibited at the trial. P.W.-8 had not drawn *Nazari Naksha* of the place where the inquest report of the deceased was prepared. He further deposed that there is a hand-pump in the courtyard of the house and the place of occurrence was a veranda adjacent to the said hand-pump.

18. In our considered opinion, thus, in the wake of admitted property dispute between the family of the appellant and that of the informant, the apparent contradictions in the evidence of prosecution's witnesses cannot be ignored for reaching a conclusion as to whether the prosecution could establish its case beyond all reasonable doubts. It has been rightly argued on behalf of the appellant that the witnesses are



not truthful and none of them can be considered to be an eye-witness to the occurrence. These aspects considered with the fact that though the weapon (*khanti*) said to have been used by the appellant was seized by the police, non-availability of any further scientific evidence to establish that the said *khanti* was used by the appellant, creates a reasonable doubt over the appellant's role in commission of the offence.

19. Considering the material contradictions in the evidence of the witnesses and other attending circumstances as noted above, we are of the considered opinion that the prosecution in this case has failed to establish the charge of commission of offence punishable under Section 302 of the Indian Penal Code against the appellant beyond all reasonable doubts. The finding recorded by the trial court in the impugned judgment deserves interference by this Court.

20. The impugned judgment and order dated 13.08.2018/18.08.2018 passed by learned Sessions Judge, Madhubani in Sessions Trial Case No. 19 of 2015 is accordingly set aside.

21. The appellant stands acquitted of the charge of the offence punishable under Section 302 of the Indian Penal Code.

22. The appellant is in jail. Let him be released



forthwith if he is not required in any other case.

23. The appeal is accordingly allowed.

**(Chakradhari Sharan Singh, J)**

**Khatim Reza, J:**

**( Khatim Reza, J)**

Rajesh/Anand/-

<b>AFR/NAFR</b>	NAFR
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