

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.316 of 2020**

Arising Out of PS. Case No.-25 Year-2014 Thana- SIMRI BAKHTIYARPUR District-
Saharsa

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DILIP TANTI Son of Jagadish Tanti Resident of Village - Kantho, P.S. -
Bakhtiarpur, District - Saharsa.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Meena Singh, Adv.

For the Respondent/s : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 27-03-2024

1. Heard Ms. Meena Singh, the learned Advocate for the appellant and Mr. Abhimanyu Sharma, the learned APP for the State.



2. The appellant has been convicted for the offence under Sections 302 and 324 of the Indian Penal Code by judgment dated 08.11.2019 passed by the learned Presiding Officer, Fast Track Court, Saharsa in Sessions Trial No. 2320 of 2014 arising out of Bakhtiyarpur P.S. Case No. 25/14. By order dated 16.11.2019, he has been sentenced to undergo R.I. for life along with a fine of Rs. 5,000/- for the offence under Section 302 IPC and imprisonment for a term of one year for the offence under Section 324 IPC. Both the sentences have been ordered to run concurrently.
3. The appellant is alleged to have killed Shambhu Tanti and Rasman Devi, the brother and the mother of the informant (PW6) respectively and also injured Wakil Tanti (PW9) and Neelam Tanti (PW8).
4. According to the First Information Report lodged by PW6, the mother of the appellant had died 15 days ago. On the date of the occurrence i.e. 26.01.2014, the grandmother of one Manoj Tanti, a co-villager had also died. PW6 along with others had gone to the



burning ghat to cremate the dead body. When the persons participating in the cortege were coming back, the appellant is said to have committed the offence. The cause of occurrence as stated in the F.I.R. is that there was some monetary dispute with respect to expenses incurred in the *shradh* ceremony of the mother of the appellant. The appellant was thereafter made to drink toddy in the house of one Suresh Tanti. He was exhorted by his other associates. Suresh Tanti is said to have handed him over one sickle used for tapping toddy to him and instigated him to kill the entire family of Ashok Tanti (PW6). On such exhortation, mindlessly, the appellant is said to have killed Shambhu Tanti, the younger brother of PW6 and his mother/Rasman. The anger had not abated by then. Wakil Tanti, another brother of PW6 tried to stop the appellant but was unsuccessful. He was also hurt in the occurrence. Later, when Neelam Devi PW8)/wife of Wakil Tanti came to the rescue of her husband, she too was assaulted but she has received only simple



injuries on her person.

5. On the basis of the afore-noted fardbeyan statement of PW6, a case vide Bakhtiarpur P.S. Case No. 25/14 was instituted on 26.01.2014 for investigation of the offence under Sections 147, 148, 149, 341, 323, 324, 307, 302, 504 and 120(B) of the Indian Penal Code.
6. The police after investigation submitted chargesheet only against the appellant, who was put on trial.
7. The Trial Court, after having examined ten witnesses on behalf of the prosecution and none on behalf of the defense, convicted and sentenced the appellant as aforesaid.
8. We have examined the records of this carefully for the reason that I.O. has not been examined.
9. Umesh Prasad (PW10) is the person who had submitted the charge-sheet only.
10. Dr. Nand Kumar Sada (PW1) had conducted the postmortem on the bodies of Shambhu



Tanti and Rasman Devi. He has opined that the death was because of shock and hemorrhage caused by the injuries suffered by them, which apparently was inflicted by sharp cutting weapon.

11. Harishankar Bharti (PW7) had examined Neelam Devi (PW8) and had found that she had suffered superficial injuries on her person.

12. The postmortem report and the evidence of PW1 confirms that the two deaths were homicidal in nature.

13. At the trial, Prem Kumar @ Babbu Kumar Tanti, who is the nephew of one of the deceased, namely, Shambhu Tanti and son of PW6 has claimed to have seen the occurrence where the appellant first killed his uncle, then his grandmother and injured his uncle and aunt. However, while stating all this, he has specifically deposed that there was no prior enmity with the appellant. In fact, the appellant and the witnesses examined at the trial came from the same stock of family.



14. PW3 has not supported the prosecution case and has been declared hostile.
15. Shyam Poddar and Udo Poddar (PWs. 4 and 5) are the witnesses to the seizure list who have also thrown no light on the prosecution except for their denial that any blood stained clothes were seized in their presence or of their having signed any document after knowing the contents of those documents.
16. Thus the primary evidence now against the appellant is the deposition of PW2, which has been discussed above and of PW 6, 7, 8 and 9.
17. PW6 has supported the prosecution case, namely, of the appellant having killed two persons and injured two others. However, he too has stated that there was no enmity between his family and that of the appellant prior to the occurrence. There had been some dispute over expenses incurred in the *shradh* of the mother of the appellant. However, the *shradh* was performed by the appellant himself, who always stayed separately from the family of PW6.



18. If this were so, it has been argued on behalf of the appellant, that the motive for murder does not become clear from the deposition of PW6.
19. Was the *shardh* performed with the joint efforts of extended family ? If the *shradh* was performed by the appellant only, then did he take loan from the family of PW6 ?
20. All these aspects have remained under the wraps because of PW6 not coming out with any clear version regarding the actual dispute which goaded the appellant to kill his family members.
21. That apart, we have also found from the evidence of PW6 that while he was returning from burning ghat after cremating the dead body of the grandmother of one Manoj Tanti, a co-villager, he heard a sound of *hulla*. When he went forward, he saw the occurrence. The occurrence had taken place on the village road, somewhere near the transformer. From the topography given by PW6, it further appears that PW6 was not in the line of vision of the appellant. In



fact, in the line of vision of the appellant was Shambhu Tanti, who was first assaulted and thereafter, the mother of aforesaid Shambhu Tanti was attacked. Both of them succumbed to the injuries.

22. It remains doubtful whether PW6 had seen the occurrence himself.

23. This does not take away the shine of the prosecution version as many persons had witnessed the occurrence.

24. The occurrence had taken place in the middle of the village and many persons had assembled there. Sometimes prior to the occurrence, it appears from the deposition of the witnesses, because of the dispute, the appellant was upset. The appellant was made to drink toddy by some of the villagers and was also provided with a sickle to eliminate the family members of PW6.

25. When did this happen is not known. Whether it ever happened is also not known as except for PW6, nobody has spoken about the appellant



having been instigated by his co-villagers for killing the family members of PW6. Whatever may have happened the rage was not against the family members of PW6 but against PW6 in particular.

26. The story of the dispute regarding expenses incurred in the *shradh* of the mother of the appellant has not been confirmed by any one of the witnesses; be it PW2 or PWs 7, 8 and 9. Thus, there would have been some triggerpoint which would have led to the occurrence. This flash point could have been known if the Investigator would have been examined. As noted above, the Investigator of this case has not been examined and PW10 has only proved that charge-sheet was submitted by him, sending up the appellant for facing trial.

27. Neelam Devi (PW8) does not appear to be a witness to the murder of Shambhu Tanti and Rasman Devi.

28. The reason for us to say so is that during her deposition before the Court, she had stated that



her husband /Wakil Tanti (PW9) tried to snatch away the sickle from the hand of the appellant and in the process, he was hurt. PW8 thereafter rushed to the rescue of her husband, when she was also assaulted. The sequence of events as narrated by the witnesses do not make it very clear that all these attacks were absolutely contemporaneous and executed one after the other. There would certainly have been some time lag, especially when many persons had assembled at the place of occurrence.

29. So, for all practical purposes, it is the story of PW6 supported by PWs 2, 8 and 9, which has been taken as sacrosanct evidence against the appellant of his having killed the deceased and injured Neelam Devi and her husband/ Wakil Tanti. If Wakil Tanti (PW9) would have been injured while snatching the sickle from the appellant, he too would have been treated by the doctor, at least for the first aid. There is no record of any injury on PW9 or he ever being treated by any doctor in the village.



30. We have also noted that the absence of the Investigator at the Trial appears to have caused great prejudice to the case of the appellant. If the appellant had acted under the influence of liquor and on exhortation of his associates, those persons were also responsible for the occurrence. It appears that none of them have been made accused in this case and only the appellant has been put on trial.

31. All this justify a few inferences: namely, (1) the appellant did not harbour any enmity against the family of PW6 or the deceased and the injured persons; (2) the anger was only for a dispute with respect to expenses of money and its accounting ; (3) it remains unknown whether the family of PW6 had lent money or the appellant had expected PW6 to participate and help him financially in performing the *shradh* ceremony; (4) the target, if PW6 is to be believed, was PW6 himself and not his other brothers; (5) there was no premeditation or conspiracy for the reason that no evidence could be collected except for



the bald statement of PW6 that a conspiracy was hatched where the appellant was provided with weapon of assault and was also deliberately befuddled by administering intoxicant to him.

32. Even if this story is correct, the appellant cannot take the advantage of exception of section 85 of the Indian Penal Code for the reason that he knew that he was administered toddy / intoxicant and it was not against his will because he had volunteered to accept it for a drink.

33. But the core issue for us to decipher is whether the appellant had the intention of causing the deaths of two persons and injuries to the injured. There were no repetition of blows. There was no enmity existing from before. Appellant came from the same stock of family. PW6 and his other family members had also participated in the funeral and *shradh* of the mother of the appellant.

34. It was only on the asking of the associates of the appellant that he proceeded with a sickle to attack



the family members of PW6. He, for sure, attacked Shambhu Tanti and Rasman Devi, who unfortunately died. From these circumstances, it does not appear clearly that the appellant harboured the intention of causing the death of the two persons. But there could be no gainsaying that he had the intention to cause injuries to the deceased, which injuries were likely to cause death, thus making him liable for the offences under Section 304 Part -A of the IPC.

35. That he attacked Neelam Devi and Wakil Tanti, PWs 8 and 9 respectively also reflects his intention to cause such bodily injuries to them which might have resulted in death.

36. For the afore-noted reasons, we convert the conviction of the appellant to one under Section 304 Part -A and 324 of the IPC.

37. The appellant is stated to be in jail for more than ten years. The sentence of the appellant under Section 304 Part -A is reduced to the period of custody which he has already undergone. For his



conviction under Section 324 IPC, we are of the considered view that the ends of justice would be met if that is also reduced to the period of custody which the appellant has already undergone.

38. While saying so, we have also taken note of the fact that the appellant was a person of young age at the time of occurrence and at the time of recording of his statement under Section 313 Cr.P.C., he was only 25 years of age and there is also no report about his bad conduct in jail all this while.

39. The appeal is thus partially allowed with the modification in the conviction and sentence of the appellant as afore-noted.

40. Since the appellant has already served for more than ten years in jail, he is directed to be released forthwith unless his detention is required in any other case.

41. Let a copy of this judgment be communicated to the Superintendent of concerned jail for record and compliance.



42. Let the records of this appeal be returned to the concerned Trial Court forthwith.

43. Interlocutory application/s, if any, also stands disposed of.

(Ashutosh Kumar, J)

(Khatim Reza, J)

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AFR/NAFR	NAFR
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