

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.245 of 2012**

Arising Out of PS. Case No.-104 Year-2009 Thana- HAYAGHAT District- Darbhanga

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Kuseshwar Sahani @ Kushaiya Sahani @ Kushaiya, son of Late Luchai Sahni, resident of Village- Akaraha, P.S.- Hayaghat, District- Darbhanga.

... .. Appellant.

Versus

The State of Bihar.

... .. Respondent.

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**Appearance :**

For the Appellant/s : Mr. Nawal Kishor Prasad, Advocate.

For the Respondent/s : Mr. S.N. Prasad, APP

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**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**

**AND**

**HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)**

**Date : 16-01-2019**

Heard Sri Nawal Kishor Prasad, learned counsel for the appellant and Sri S. N. Prasad learned Additional Public Prosecutor for the State on this criminal appeal.

2. This criminal appeal has been preferred against the judgment and order of conviction dated 24.01.2012 and order of sentence dated 25.01.2012 passed by the Additional Sessions Judge, F.T.C.-IV, Darbhanga in Sessions Trial No.186 of 2010, arising out of Hayaghat P.S. Case No.104 of 2009, whereby the learned Trial Court convicted the accused



Kuseshwar Sahni @ Kushaiya under Section 302 of the Indian Penal Code (hereinafter in short referred to as the 'I.P.C.') and sentenced him to undergo life imprisonment and also slapped him with a fine of Rs.10,000/- and in case of default of payment of fine to further undergo R.I. for six months under the aforesaid section.

**3.** Factual matrix of the case is that Hayaghat P.S. Case No.104 of 2009 was instituted under Section 302 I.P.C. against the accused Kuseshwar Sahni @ Kushaiya on the basis of fardbeyan of Muni Devi, wife of Triweni Sahni recorded by S.I. M.P. Singh, S.H.O. Hayaghat on 11.12.2009 at 10 hours at village Akaraha with the allegation in succinct that on 11.12.2009 at around 6:30 AM while she was pressing the waist of her mother, namely, Jiwacchi Devi in the room, in the meantime, his cousin brother, namely, Kuseshwar Sahni @ Kushaiya armed with dagger intruded into the room and uttering rubbish uttered to eliminate all of them, whereupon she hid herself under the chowki scaringly. He noticing her presence under chauky made her to escape therefrom. He shoved her mother by assaulting her by means of leg and climbing on her chest assaulted her by means of dagger and slit her chest up to abdomen and also extricated her both eyes by means of dagger.



After the occurrence, he stepped out in the courtyard and started uttering rubbish. Then the informant made alarm and the locals congregated there and witnessed the occurrence and caught hold the accused and tied him by tree.

4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against the accused Kuseshwar Sahni @ Kushaiya under Section 302 I.P.C.

5. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the aforesaid accused and committed the case to the Court of Sessions and after commitment and on transfer finally the case came in the seisin of Additional Sessions Judge, F.T.C.-IV, Darbhanga for trial.

6. Charge against the accused Kuseshwar Sahni @ Kushaiya was framed under Sections 302 I.P.C. Charge was read over and explained to him by the Court to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether 17 prosecution witnesses, namely, Shanichar Sahni as P.W.1, Damodar Yadav as P.W.2, seizure list witness Gangu Yadav as P.W.3, Ram Bahadur Sah as



P.W.4, Ram Swaroop Sahni as P.W.5, Jitendra Prasad Sah as P.W.6, seizure list witness Dashrath Sahni as P.W.7, Khushi Lal Sahni as P.W.8, Harihar Sahni as P.W.9, Tetari Devi as P.W.10, Indu Devi as P.W.11, Savitri Devi as P.W.12, I.O. Mritunjay Prasad Singh as P.W.13, Dr. D.K. Dheeraj, who conducted the autopsy of the cadaver of the deceased, as P.W.14, Chaukidar Khageshwar Rai who had brought material exhibits in the Court, as P.W.15, informant Munni Devi as P.W.16 and seizure list witness Veeneet Yadav as P.W.17. The prosecution has also filed and proved some documents by way of documentary evidence in the case.

**8.** Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure. The case of the defence is complete denial of the occurrence claiming himself to be innocent. In buttress of his case, in ocular evidence, the accused has also examined one witness, namely, Baleshwar Thakur as D.W.1.

**9.** After hearing the parties and perusing the record, the learned Trial Court passed the aforesaid judgment and order of conviction and sentence as detailed in the earlier paragraph.

**10.** Being aggrieved and dissatisfied with the



aforesaid judgment and order of conviction and sentence, the convict has preferred this criminal appeal.

**11.** The point for consideration in this case is as to whether the prosecution has been able to bring home the charge levelled against the appellant beyond all reasonable doubt or not.

**12.** It is submitted by learned counsel for the appellant that the son and daughter-in-law of the informant who were sleeping in the adjacent room at the time of occurrence have not supported the occurrence and have turned hostile. It is further submitted that barring the informant all the material witnesses examined by the prosecution has also turned hostile and have not supported the occurrence while the informant was not present at the place of occurrence at the time of occurrence rather in her marital house and she does not happen to be eye witness of the occurrence. It is also submitted that as per the fardbeyan itself the appellant was uttering rubbish at the time of occurrence as if he was under influence of some super power and nature of the occurrence committed also indicates that the appellant was insane and unsound mind at the time of occurrence. It is further submitted that there is no motive for committing the occurrence and the prosecution has utterly and



miserably failed to substantiate the prosecution case beyond all reasonable doubt against the appellant by adducing consistent, trustworthy and worth credence evidence, hence the aforesaid judgment and order of conviction and sentence passed by the learned Trial Court against the appellant is liable to be set aside and the appellant is entitled to be acquitted of the charge levelled against him. Learned counsel for the appellant has placed reliance upon the verdict of Hon'ble Supreme Court rendered in **Siddhapal Kamala Yadav Vs. State of Maharashtra** reported in **AIR 2009 Supreme Court 97** in buttress of his submission.

**13.** Per contra, learned A.P.P. for the State, advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that the informant, who happens to be eye witness of the occurrence, has supported the prosecution case in toto. The testimony of the informant is wholly reliable and unblemished. The ocular evidence of the prosecution also stands corroborated by the medical evidence and the I.O. has recovered and seized the bloodstained soil from the place of occurrence and bloodstained knife used in the occurrence from the vicinity of the place of occurrence on the disclosure of the appellant which was sent to



the F.S.L. for chemical examination and on chemical examination human blood was found on the dagger and on the soil seized by the I.O. and the learned Trial Court correctly appreciating the facts and evidence available on record has rightly passed the aforesaid judgment and order of conviction and sentence which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

**14.** From perusal of the record, it appears that the prosecution has examined altogether 13 material witnesses in the case. But all the material witnesses, barring the informant Munni Devi (P.W.16), have turned hostile. From perusal of the testimony of the informant, it appears that she has stated in her examination-in-chief in consonance to the prosecution case as adumbrated in her fardbeyan by stating that at the time of occurrence she was pressing the waist of her mother in the room. In the meantime, Kuseshwar Sahni @ Kushaiya intruded into the room and slapped her mother. Her mother fell down on the ground then Kuseshwar Sahni @ Kushaiya (appellant) took out dagger, whereupon she hid herself beneath the chowki scaringly and witnessed that Kuseshwar Sahni @ Kushaiya climbing on the chest of her mother assaulted her by means of dagger and slit her chest. Thereafter, he stepped out in the



courtyard. He again intruded into the room and extricated both eyes of her mother by means of dagger. Then he again stepped out in the courtyard and gave a chase to a woman to assault. The informant was subjected to gruelling cross-examination but, from perusal of the cross-examination of the informant, we do not find anything convincing and cogent elicited in her cross-examination by the defence having potential to rule out the presence of the informant at the place of occurrence, at the time of occurrence and witnessing of the occurrence by her. She stood the test of cross-examination tenaciously. Thus, from perusal of the testimony of the informant it appears that the informant happens to be eye witness of the occurrence and her aforesaid testimony is unblemished and wholly reliable. Informant happens to be solitary witness and has fully supported the occurrence as an eye witness of occurrence. It is the settled principle of law that conviction can be made only on the basis of testimony of the solitary eye witness if it is found to be wholly reliable.

**15.** From perusal of postmortem report, marked as Ext.6 and the evidence of Dr. D.K. Dheeraj (P.W.14), who conducted the autopsy of the cadaver of the deceased, it appears that the doctor has found the following antemortem injury on



the person of the deceased:

(i) Both eyes were found removed from the socket and missing. Wound margins were cleared and showed blood infiltration. Some clots were seen inside the socket.

(ii) Incised wound running from 4<sup>th</sup> rib level in the mid line of chest to right lower and outer portion of the chest in the posterior axillary line 2" above the level of navel, cutting the sternum, the costal cartilages and 8<sup>th</sup> and 9<sup>th</sup> ribs underneath to enter into the chest cavity. Another incised wound from 7<sup>th</sup> rib level in the mid line of chest ran straight to the right axillary line. 6<sup>th</sup> 7<sup>th</sup> ribs were found broken in the mid midclavicular line. The wound was chest cavity deep. All wound margins were stained. The heart was found removed by cutting open the pericardium and vascular connections with sharp weapon, with a portion of right lungs. From perusal of the aforesaid testimony of the doctor and the postmortem report, it appears that the aforesaid ocular evidence of the prosecution also stands corroborated by the medical evidence.

**16.** From perusal of the testimony of the I.O. Mritunjay Prasad Singh (P.W.13), it appears that the I.O. has substantiated finding of objective evidence at and in the vicinity of place of occurrence at the disclosure of appellant as he



recovered the bloodstained soil from the place of occurrence and bloodstained knife used in the occurrence at 300 yards west of the place of occurrence on the disclosure of the appellant before the seizure list witnesses, namely, Gangu Yadav (P.W.3), Dashrath Sahni (P.W.7) and Veneet Yadav (P.W.17). Though Gangu Yadav (P.W.3), Dashrath Sahni (P.W.7) and Veneet Yadav (P.W.17) have turned hostile but they have identified their signatures on the aforesaid seizure list marked as Ext.1 & Ext.1/1, Ext.1/2 & Ext.1/3, Ext.1/4 and Ext.1/5 respectively. The aforesaid bloodstained soil and knife were also produced before the Court by Chaukidar Khageshwar Rai (P.W.15) and has been marked as material Exts.1 & 2 respectively. I.O. had sent the bloodstained soil and bloodstained knife to the F.S.L. for its chemical examination, which was examined by the F.S.L. From perusal of the F.S.L. report, marked as Exts.7 & 7/1, it appears that on examination of the aforesaid bloodstained soil and bloodstained knife the human blood was found on both of them. I.O. has also proved the place of occurrence.

**17.** The submission of learned counsel for the appellant that the appellant was of unsound mind at the time of occurrence as evident from the fardbeyan itself as the appellant was uttering rubbish and moreover the nature of occurrence



allegedly committed by the appellant is such that a sane person could not have committed the same. He seeks protection for the appellant under Section 84 I.P.C. He has also relied upon the verdict of the Hon'ble Supreme Court rendered in **Siddhapal Kamala Yadav (supra)**. But the aforesaid judgment relied upon by the learned counsel for the appellant, in our considered opinion, is not applicable in the case under hand as in the said case the appellant was admitted for treatment with the complain that he was murmuring to himself, like a lunatic but in the case under hand no such plea has been taken by the appellant before the learned Trial Court and moreover the appellant was not admitted for treatment of his alleged ailment. More so the appellant has not taken the aforesaid case of unsound mind at the time of recording his statement under Section 313 Cr.P.C. He has also not adduced any evidence regarding his treatment about his aforesaid ailment. Moreover, he has also not filed any petition before the learned Trial Court for his examination by the Medical Board for the said ailment. More so, the witness examined by the appellant in buttress of his case, namely, Baleshwar Thakur (D.W.1) has taken the case that there was brawl between the informant and her mother preceding to the occurrence over performing marriage by the informant with



some other person deserting her previous husband which resulted into aforesaid murder. The aforesaid witness has also not whispered about the unsound mind of the appellant.

**18.** Having regard to the facts and circumstances of the case, we find and hold that the prosecution has succeeded to substantiate its case and bring home the charge levelled against the appellant beyond all reasonable doubt by adducing consistent, reliable and worth credence ocular and medical evidence. Hence, the aforesaid judgment and order of conviction and sentence passed against the appellant, does not warrant any intervention by this Court and the same is hereby upheld and this criminal appeal is dismissed.

**(Rakesh Kumar, J.)**

Trivedi/-

**(Prakash Chandra Jaiswal, J.)**

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