

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.464 of 1994**

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MANGER MALLAH S/o Mazahhar Mallah, resident of village Khathitabh,
P.S. Amas, Distt. Gaya

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Surya Nilambari, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR)

Date : 09-12-2021

Heard Miss. Surya Nilambari, learned counsel appearing for the appellant as well as Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State.

2.This appeal is preferred by the appellant challenging the judgment of conviction and order of sentence dated 29th day of April 1994 passed by the learned Additional Sessions Judge-V, Gaya in Sessions Trial no. 19 of 1991 / 436 of 1991 arising out of Amas P.S. Case No. 5 of 1988.

3. By the aforesaid judgment dated 29th day of April, 1994 appellant- Manger Mallah has been convicted for the offence punishable under Section 302 of the Indian Penal Code. After hearing the convict on the point of sentence, vide



consequential order dated 29th day of April, 1994, the trial court sentenced the appellant Mangar Mallah to undergo rigorous imprisonment for life for the offence punishable under Section 302 of the Indian penal Code.

4. The FIR giving rise to the sessions trial was registered on the basis of the statement of the informant, namely, Razia Devi, P.W.-3. Recapitulating the prosecution case, in short, is that on Friday, dated 15th day of January, 1988, the informant, Razia Devi (P.W.-3) had gone to village- Harbaria along with the deceased Saraswatia Devi, wife of Nanhak Mallah for purchasing cow-dung cake. After purchasing the cow-dung cake, both were returning to their village and when they reached near village Tarbana Khandha, near the field of Ram Kumar Singh, at about 4 P.M., the accused, namely, Manger Mallah came with *Farsa* in his hand, who was hiding behind the palm tree and gave a *Farsa* blow at the leg of the Saraswatia Devi, due to which, she fell down. She cried and asked as to why he was assaulting her but he did not stop and keep assaulting her brutally on her head with *Farsa*, resulting she succumbed to injuries. The informant started running back due to fear, the accused told her that he would not assault her. The accused fled away towards north, leaving the *Farsa* there.



The informant, who was with the deceased at the time of occurrence, came to her house and narrated the whole story to her husband and others. The A.S.I. Akloo Kunwar reached there and recorded the fardbeyan (Ext. 2) of the informant on the same day at about 7.30 P.M..

5. On the basis of Fardbeyan of the informant, a formal FIR no. 05/88 (Ext.1) was registered against the accused. The dead body of the deceased was sent for postmortem examination. On receipt of postmortem report and after completing the investigating, the police submitted chargesheet. Cognizance has been taken by the jurisdictional Magistrate. The case was committed to the Court of Sessions for trial and disposal.

6. The trial court explained the charges to the accused under Section 302 of the Indian penal Code, to which he pleaded not guilty and claimed to be tried.

7. To substantiate the charge levelled against the accused, altogether nine witnesses have been examined by the prosecution. P.W.-1 Rameshwar Singh has proved formal F.I.R. (Ext.-1). P.W.-6 Jugal Paswan is also a formal witness, who has proved the fardbeyan marked as (Ext.-2). P.W.-9 Nageshwar Singh is also a formal witness, who has produced blood stained



earth and *Farsa* before the court during trial. These articles were marked as Material Ext.-1. P.W.-5 Sudama Prasad Yadav, who is a formal witness, has submitted chargesheet in this case.

8. P.W.-2 Vinay Kumar Singh had come to say that when Raziya Devi was examined by the police, he came to know that accused had committed the murder of the deceased.

9. P.W.-4 Shyam Sundar Singh claimed to be a hearsay witness of the incident. He was declared hostile by the court.

10. P.W.-3 Razia Devi is the informant of this case and claimed to be an eye witness of the occurrence. She has clearly stated that on the date of occurrence, she had gone with Saraswatia Devi, (the deceased) to village Kharbaria for purchasing cow-dung cake. It was Friday, the occasion was of Til Sankranti, at about 4 p.m., she was returning along with the deceased with cow-dung cake in the baskets. The deceased-Sarsawatia Devi was proceeding ahead and Razia Devi, (P.W.-3) was following her. When they reached in Tarbanna Khand, near the field of Ramkumar Singh, the accused Manger Mallah was hiding himself behind the palm tree, armed with *Farsa*, suddenly came out and gave *Farsa* blow on the leg of Saraswatia Devi. She fell down shouting as to why he is



assaulting her. Still the accused Manger Mallah keep assaulting and ultimately, she succumbed to the injuries. Then the accused fled away from the place of occurrence after throwing the *Farsa* on the ground. Informant has further deposed that when the deceased was being assaulted by the accused, she became frightened and tried to elope from there. Thereafter, the accused told her that he will not harm her with a threatening of not disclosing the matter to the villagers.

11. In para-5 of the cross-examination, she disclosed that she had seen towards front to the accused assaulting the deceased with her own eyes. Vide para 7, it appears that occurrence took place at a lonely place. She denied the defense that the accused Manger Mallah was not present in the village at the time of occurrence rather he was at Kolkata. She also asserted that the accused was the brother of the deceased's husband.

12. It is argued by the learned counsel for the appellant that Razia Devi (P.W.-3) is the informant herself, who is the sole eye witness of this case. She submitted that the learned judge without any corroboration, convicted the appellant relying only on the evidence of P.W.-3.

13. We have gone through the entire evidence given



by the witness P.W.-3. The evidence of the informant P.W.-3 inspires confidence. Her evidence is cogent, reliable and trustworthy and proved the charge beyond all reasonable doubts. The accused can be convicted only on the solitary evidence of eyewitness P.W.-3 because the Court does not think it necessary to seek corroboration of the testimony of the single witness. Non-examination of other witnesses for corroborating the evidence of P.W.-3 does not affect the prosecution case. There is no other witness for corroboration. Court will not be pondering over each kind of doubt created by the defence. The doubt must be reasonable upon which a normal person will act.

14. According to Section 134 of the Evidence Act, no many number of witnesses is required to prove the fact. Crime is not always committed in presence of many eyewitnesses. Sometimes, there is only one witness (as in the instant case) or no witness of the crime. If the Court expects the plurality of witnesses in each case then many criminals will go unpunished. The testimony of a single eyewitness is worthy of reliance. No doubt, P.W.-3 is a rustic woman, but she has withstood the test of cross-examination. We do not find any material contradiction worth the name to disbelieve her testimony. No doubt, some discrepancies may have occurred in her evidence, which are



possible in narrating the events after four years.

15. The fardbeyan version of the occurrence has been corroborated by the evidence of P.W.-3. Nothing was brought by the defence that this witness (P.W.-3) has falsely implicated the accused in this event.

16. P.W.-7 Doctor Arjun Singh conducted the postmortem examination on the body of the deceased Sarasatiya Devi on 16.1.1988 at 1.30 P.M. and he found the following injuries on her person:-

- (i) Incised wound on dorsum of left hand 3"x3" size cutting metacarpal bone of little, ring and middle fingers slanting towards wrist.
- (ii) Incised wound 2"x1" bone deep over right dorsum of hand metacarpal bone of index finger was also cut.
- (iii) Incised wound 4"x1" bone deep over parotid and auxiliary area of the right side of face
- (iv) Incised wound 6" x 1 ½" bone deep on right side of neck- cutting all the soft tissues and blood vessels on right side, Esophagus, trachea and cervical vertebra (3rd).
- (v) Incised wound 3" x 1 ½" bone deep over lateral side



of left knee joint.

17. The location of the injuries as found by the doctor tallies with the version of occurrence as given in Ext. 2. Injuries (i), (ii) and (iv) were grievous in nature and other injuries were simple. All the injuries were caused by sharp cutting heavy weapon such as *Farsa*. The postmortem report has been marked as Ext. 3. In para 3 of the cross-examination, the doctor has stated that except injury no. (iv), no other injury was sufficient to cause death. But so far as injury no. (iv) is concerned, the doctor has very clearly stated that the injured would die within an hour after the inflicting of injury no. (iv). He has further stated that after infliction of injury no. (iv) one cannot be able to speak or walk.

18. P.W. -8 Akloo Kunwar, who is Investigation Officer of this case, has stated that he had done investigation of this case. On 15.1.1988 at about 7.30. p.m., he came to know that a woman had been murdered, then he rushed to the place of occurrence and found that the dead body of the deceased Sarasatiya Devi was lying on the ground. He recorded the fardbeyan (Ext. 2) of the informant and started investigation. Due to darkness, he stayed there and on the next day in the morning he prepared inquest report (Ext.-5). He also seized



Farsa (Material Ext. 1) and the blood stained cloth and prepared the seizure list (Ext.-7) in presence of the two witnesses, namely, Sahab Singh and Naresh Singh, who have not been examined. He has also stated about the place of occurrence and its boundaries. He also found two or three palm trees to the west of the place of occurrence. The village Tarbanna Khand is at the distance of about one kilometer from the place of occurrence and village Chitab Khurd is at distance of ½ k.m.. He found blood at the place of occurrence and blood stained *Farsa* to the south of the dead body. He has also stated that he could not know the motive behind the occurrence.

19. Learned counsel appearing for the appellant has strongly contended that I.O. has not seized the cow-dung cake from the place of occurrence, while the prosecution story is that the cow-dung cake from the baskets of the Sarastiaya Devi was scattered at the place of occurrence, when the appellant assaulted her by *Farsa*.

20. In para-5, P.W.-8 the I.O. of this case had stated that neither the cow-dung cake nor the baskets were found at the place of occurrence. It is a well settled law that reliable and credible evidence of prosecution cannot be discarded for the reason that the investigation is perfunctory. Non-collecting any



material from the place of occurrence will not constitute a ground for acquittal of an accused person.

21. After considering the evidences in this case, we are of the opinion that in this case the informant (P.W.-3), who is the sole eye-witness has supported the prosecution case and her evidence established the fact of murder and involvement of the accused-appellant. The medical report and evidence of the doctor (P.W.-7) also supported the prosecution case. It is candid from her evidence that she had personal knowledge of the occurrence. She was physically present there and was witnessing the entire occurrence. She had been subjected to lengthy cross-examination but there is nothing in her cross-examination to disbelieve her testimony on the point of assault.

22. In view of the evidence on record as discussed above and the fundamental principles of law in case of acquittal, we see no merit in this appeal.

23. The appeal is dismissed, accordingly.

24. Ms. Surya Nilambari, learned Advocate was appointed to represent the appellant/accused. We put on record the words of appreciation for able assistance rendered by her in arriving this Court at the proper conclusion in deciding the instant appeal. The Patna High Court, Legal Services



Committee is, hereby, directed to pay Rs. 5000/- (rupees five thousand only) to Ms. Surya Nilambari, Advocate.

(Sunil Kumar Panwar, J)

A.M. Badar, J:

(A. M. Badar, J)

sushma/-

AFR/NAFR	NAFR
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