

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.645 of 2012**

Arising Out of PS. Case No.-80 Year-2009 Thana- AURAI District- Muzaffarpur

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Kislay Kumar Singh S/O Uma Shankar Prasad Singh Resident Of Village
Chahuta, Police Station Aurai, District Muzaffarpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 655 of 2012

Arising Out of PS. Case No.-80 Year-2009 Thana- AURAI District- Muzaffarpur

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Chandan Singh @ Chandan Kumar S/O Shiv Kumar Singh Resident Of
Village- Chauhata, P.S.- Aurai, District- Muzaffarpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 645 of 2012)

For the Appellant/s : Mr. Pratik Mishra, Adv.

For the Respondent/s : Mr.A.Sharma App

(In CRIMINAL APPEAL (DB) No. 655 of 2012)

For the Appellant/s : Mr.Udit Narayan Singh, Adv.

Mr. Gajendra Kumar Singh, Adv.

For the State : Mr.Shashi Bala Verma, APP

For the Informant : Mr. Gopal Pd. Roy, Adv.

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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 : 20-05-2022

Heard Mr. Pratik Mishra, Mr. Udit Narayan Singh and
Mr. Gajendra Kumar Singh, learned counsel appearing for the
appellants as well as Mr. Gopal Prasad Roy, learned counsel



appearing for the informant and Ms. Shashi Bala Verma and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State.

2. This appeal is preferred by the appellant challenging the judgment of conviction dated 27th of April, 2012 and order of sentence dated 19th of May, 2012 passed by the learned Sessions Judge, Muzaffarpur in Sessions Trial no. 45 of 2010 arising out of Aurai P.S. Case No. 80 of 2009.

3. By the aforesaid judgment dated 27th April, 2012 appellant- Chandan Singh has been convicted for the offence punishable under Section 302 of the Indian Penal Code and appellant Kislay Kumar Singh has been convicted for the offence punishable under Section 302/34 of the Indian Penal Code. By the impugned order, both the appellants have been sentenced to undergo imprisonment for life and a fine of Rs. 25,000/- and in default of payment of fine to undergo an additional imprisonment for one year.

4. The FIR giving rise to the sessions trial was registered on the basis of the statement of the informant, namely, Prakash Kumar Sinha @ Nattu Singh, P.W.-6. Recapitulating the prosecution case, in short, is that on 28.09.2009 at about 6 or 6.30 p.m. two idols of Goddess Durga,



installed at Semri Bazar, were being taken to Lakhan Dei river for immersion. When the procession for taking the idols to the river reached near the bridge, some altercation took place between the son of the informant, namely, Samant Kumar Singh and accused persons Chandan Singh and Kislay Kumar. Both the accused persons threatened to kill the son of the informant saying that they would eliminate him from the world. After immersion of the idols, Samant Kumar returned to the flour mill of his uncle Krishna Chandra Sharma. At that time, informant was sitting there. At about 7 or 7.30 p.m. both the accused persons reached at the flour mill with knives in their hands. They threatened the persons present there not to raise alarm otherwise they would be killed. The informant and his brother, who were present there, became afraid. After that the accused persons caught hold of Samant Kumar with his collar and dragged him to the brick soling road situated in front of the flour mill. Accused Kislay Kumar Singh caught hold of the arms of Samant Kumar and accused Chandan inflicted knife blow under his left armpit. On hearing the alarm, the informant and his brother Krishna Chandra Sharma and the villagers rushed to the spot, but the assailants managed to flee away. With the help of villagers, informant took his son to the local doctor, who after



giving first aid, advised the informant to take his son to Aurai Hospital or to Muzaffarpur Hospital. Then the informant took his son to Aurai Hospital, where the doctor declared him dead. The informant brought the dead body of his son to Aurai police station and got recorded his Fardbeyan.

5. On the basis of Fardbeyan of the informant, Aurai P.S. Case No. 80 of 2009 was registered under Section 302/34 of the Indian Penal Code against both the accused persons. The police investigated the case and after completing the investigation submitted charge-sheet against Chandan Kumar and Kislay Kumar Singh. Cognizance of the offence was taken by learned Magistrate on 21.11.2009. The case was committed to the court of Sessions on 18.01.2010 for trial and disposal.

6. Charge has been framed against Chandan Kumar u/s 302 IPC and against Kislay Kumar Singh u/s 302/34 IPC. The trial court explained the charge to them to which they pleaded not guilty and claimed to be tried. Hence, the trial commenced.

7. To substantiate the charge levelled against the accused persons, altogether nine witnesses have been examined by the prosecution, out of which, six witnesses are witnesses of fact and rest three are official witnesses. PW-1 Subhash Chandra



Sharma is uncle of deceased. He proved the statement recorded under Section 164 Cr.P.C, marked as (Ext.-1) and seizure list marked as (Ext.-2). PW-2 Vimal Chandra Sharma is uncle of deceased. His statement was recorded under Section 164 Cr.P.C. marked as Ext-3. PW-3 Gopal Jha who is neighbour, has signed the inquest report marked as (Ext.4). PW-4, Krishna Chandra Sharma is uncle of deceased. He has signed the seizure list marked as Ext.-2/1 and fardbeyan of the informant marked as Ext.-5. PW-5 Shambhu Kumar Singh villager has signed the inquest report marked as (Ext.-4/1). PW-6 informant/father of deceased, signed on the fardbeyan marked as Ext. 6. PW-7 Dr. Satyendra Kumar Sharma, who has provided first aid to the deceased. PW-8 Dr. Vipin Kumar, who has conducted postmortem on the dead-body of the deceased and had prepared postmortem report marked as (Ext.-7) and PW-9 Amanullah Khan, SHO of P.S. Aurai who has registered a case and prepared the formal FIR marked as (Ext.-9) and was also the I.O. of the case.

8. Statement of the accused persons was recorded under Section 313 Cr.P.C.. Both the accused persons denied the allegations and submitted that they are innocent. Accused Chandan Singh has stated that he can not walk properly as he is



disabled by his leg. On the alleged day of occurrence, he was not in a position to move as he was on fast on the eve of Dushehrra.

9. The defense examined one witness namely Naval Prasad Singh (DW-1). He had come to the court along with Handicap Register pertaining to the year 2008 and has proved the disablement certificate of accused Chandan Singh. He has filed photocopies of Handicap Register marked as Ext.-A and disablement Certificate marked as Ext.-B.

10. PW-1 Subhash Chandra Sharma, uncle of deceased has stated that at 7 or 7.30 p.m. on 28.09.2009 when he was returning home with Vimal Chandra Sharma (PW-2) from Semari Chowk and reached near the flour mill, he heard some noise. He rushed to the spot and saw that Kislay Kumar was catching hold of the arm of Samant Kumar and Chandan Kumar holding the collar of the deceased with one hand and inflicted knife blow by another hand. In the light of electric bulb of the flour-mill, he saw and recognized the assailants. He along with others chased the accused persons for about twenty steps but they fled away, waiving the knife in the air. Samant kumar was lying in pool of blood. He was taken to Dr. Satyendra Sharma (PW-7) who after providing first aid, advised to take



him to Aurai or to Muzaffarpur for better treatment. They took the injured to Aurai Hospital, where the doctor declared him dead. Then, they brought the dead body to the police station and the father of the deceased Prakash Kumar Sinha got his statement recorded there. His statement u/s 164 Cr.P.C. was recorded by Magistrate and he identified his signature on statement available on record, marked as Ext.-1. The police collected blood stained earth from the spot. He has also identified his signature on the recovery memo of blood stained earth, marked as Ext. 2/1. P.W. 1 has further stated that due to some dispute at the time of immersion of idols of Goddess Durga, accused Chandan and Kislay had threatened to kill the deceased.

11. PW-2 Vimal Chandra Sharma is second uncle of deceased and has stated that he was also returning to home from Semari Chowk and when he heard the noise, he rushed there and saw the entire occurrence in the light of bulb of flour mill.

12. PW-3 Gopal Jha is a hearsay witness of the incident. On 28.9.2009 at 7-730 p.m. it was the day of Dussehra and he was at home. After hearing alarm, he came out of his house and reached at the place of occurrence and saw that Samant Kumar was lying in the pool of blood. Blood was



profusely oozing out from his left armpit. He saw there that father of the deceased (PW6) and his three uncles, namely, Krishna Chandra Sharma (PW-4), Subhash Chandra Sharma (PW-1) and Bimal Chandra Sharma (PW-2) were speaking that Kislay caught hold of the arm of deceased and Chandan gave a knife blow at left armpit of the deceased and fled away from the spot. He has further stated that there was a cut in the shirt of the deceased. He has proved his signature on inquest report, which is marked as Ext. 4.

13. PW-4 Krishna Chandra Sharma is third uncle of the deceased. He is also an eye witness of the incident. At the time of alleged occurrence he was operating his flour mill. Deceased was sitting there on a chair and father of the deceased was sitting on cash counter. Kislay and Chandan entered into his flour mill. Kislay was having knife in his hand. Both of them started quarreling with Samant Kumar. When the informant and his brother tried to pacify the matter, accused persons challenged them with the words that if anybody would raise alarm, they would kill him. Chandan with his left hand caught hold of the collar of Samant, dragged him out to brick soling road and stabbed knife under the left side of his armpit. Kislay Kumar was catching hold the arms of Samant Kumar from back.



He has proved his signature on the Fardbeyan as a witness, which is marked as Ext.-5. PW-4 has further stated about the motive or reason behind the occurrence that deceased wanted to immerse idols of Goddess Durga from the bridge but Chandan and Kislay wanted that before immersion, the idols be taken round to the village.

14. PW-5 Shambhu Kumar Singh is a hearsay witness. He has stated that on 28.9.2009 at 7-730 pm., he was at Semari Bazar. When he heard about the incident, he reached at the flour mill and saw that Samant Kumar was lying in the pool of blood before the brick soling road of flour mill. His father Prakash Kumar Sinha (PW-6) told him that Chandan Kumar has stabbed the knife under the left arm pit of Samant while Kislay was catching hold of his arms from back. This witness has identified his signature on the inquest report, which was marked as Ext. 4/1.

15. PW-6 Prakash Kumar Sinha is father of the deceased. He is informant of the case and also an eye witness of the occurrence. He has stated that on the day of Dussehera on 28.9.2009 at 7-7.30 p.m., he was sitting on the flour mill of his younger brother and on same time his son also came there and sat on a chair. Kislay and Chandan came to his mill and started



quarrel with his son Samant. Chandan holding his collar, dragged him out to the brick soling road and stabbed him under left armpit. Kislay was catching hold of his arm from back and after the alleged incident, they fled away from the spot waiving the knife in the air. His son fell down. Vimal Chandra (PW-1) and Subhash Chandra (PW-2) chased them upto some distance. He and Krishna Chardra raised alarm, then several villagers gathered there. He took his son to Dr. Satyendra Kumar Sharma (PW-7), who provided him first aid and referred him to Aurai Hospital or Muzaffarpur Hospital for better treatment. At Aurai Hospital, doctor declared him dead. Then he brought the dead body of his son to the police station and got his fardbeyan recorded. He identified his signature on the Fardbeyan, which is marked as Ext.6. He has also proved his signature on the statement recorded u/s 164 Cr.P.C., marked as Ext-5.

16. PW-7 Dr. Satyendra Kumar Sharma, had provided first aid to the deceased Samant Kumar He had examined him and found a wound on the left side of his chest, which was bleeding profusely. After giving first aid, he referred him to Aurai Hospital or Muzaffarpur Hospital as the injury was grievous.

17. PW-8 Dr. Vipin Kumar, who has performed



autopsy on the dead body of deceased. He has stated that on 29.9.2009 at 11.30 a.m., he performed the postmortem examination on the dead body of Samant Kumar, which was identified by Chaukidar Swarath Paswan. He found rigour mortis on all the limbs and following ante mortem injuries were found on the dead body of the deceased:

(i) One punctured wound over lower part of left arm pit 7"lateral and above left nipple 1,1/4" X 3/4", cavity deep spindle in shape with clear cut margins and acute angle passing downwards and middle cutting the skin muscles and axillary artery.

(ii) On opening chest cavity, upper part of left lung was found pierced and punctured. Chest cavity was full with fluid blood.

18. PW.-9 Amanullah Khan was the SHO of P.S. Aurai at the time of occurrence, has registered a criminal case of the occurrence and has also investigated the same.

19. It is submitted by learned counsel for the appellants that the judgment of conviction and order of sentence passed by the trial court is bad in law as well as on facts. Trial court has not appreciated the evidence adduced during trial in right perspective and has erred in passing the judgment of



conviction.

20. On the other hand learned counsel for the State submitted that the judgment of conviction passed by the trial court is correct and based on consistent and reliable evidence. He further submitted that though the eye witnesses are related to the deceased but their evidence is trustworthy and reliable and has rightly been appreciated by the trial court.

21. Heard learned counsel for the parties and perused the evidences available on record.

22. After careful appreciation of the testimony of the witnesses, it transpires that the evidences are trustworthy and fully corroborated by the medical evidence.

23. In respect of manner of occurrence, it has rightly been ascertained by the trial court that corroboration with the statements of all the eye witnesses and also with the medical evidence. All the material witnesses have stated that accused Kislay Kumar caught hold the arm of deceased and accused Chandan Kumar gave a knife blow on his left armpit, causing fatal injury to the deceased. The description of ante-mortem injuries in the postmortem report shows the seat of injury in lower part of left armpit. According to the statement of witnesses only one knife blow was given by accused Chandan



and the Doctor has also found only one punctured wound caused by sharp pointed weapon. Thus, the description of manner of occurrence fully coincides with the medical evidence and there appears no discrepancy, contradiction or exaggeration in the statements of witnesses regarding the manner of occurrence.

24. Learned counsel for the appellants submitted that all the eye witnesses including the informant are close relatives of the deceased, so they are highly interested witnesses and their evidence cannot be relied on. We scrutinized the evidence and the impugned judgment. We have no hesitation to go with the observation made by the learned trial court in respect of conviction.

25. There appears no force in the above arguments. Hon'ble Supreme Court in the case of **Seeman alias Veeranan vs. State represented by Inspector of Police (2005) 11 SCC Cri. Page 142** has observed that "*the evidence of close relative can not be discarded merely because of his relationship with the deceased. If the testimony of related eye witness is corroborated by medical evidence and there is no discernible discrepancy in his evidence, the accused may be convicted.*"

26. Admittedly there was no previous enmity between the parties. The defence has not even suggested any



enmity between the parties. Therefore, the close relatives of deceased had no reason to falsely implicate the accused persons, while sparing the real culprits. Under these circumstances, it appears that the quarrel between the deceased and accused on the point of immersion of idols of Goddess Durga one hour prior to the occurrence was the reason for the accused to commit the offence.

27. All the prosecution witnesses have been cross-examined at length by the defense, but except some minor contradictions, they appear natural in their testimony. There appears no embellishment, omission, exaggeration or contradiction in the evidence of any of the witnesses so as to cast a doubt on their credence or trustworthiness. Thus, the evidence adduced by the prosecution as a whole appears reliable and inspire confidence.

28. Further plea taken on behalf of the accused Chandan Kumar is that he is handicapped person, therefore he is unable to commit the offence. Prosecution has proved its case by the consistent and trustworthy evidence of PWs 1, 2, 4 and 6 who are eye witnesses of this occurrence. It is not proved by the defence that appellant Chandan Singh was unable to inflict knife blow on the deceased. He participated in the procession of



immersion of Goddess Durga. He can move smoothly from one place to other. During examination of witnesses, on his behalf this suggestion has not been made that he is unable to walk.

29. He has further argued that this is a case of single blow in the left armpit. There is no attempt even to repeat the blow. There is no intention to cause death. So this case comes within the purview of Section 304 Part II of the IPC. It is proved by the prosecution evidence that at the time of immersion of Durga idols, some quarrel had taken place between the deceased and the accused persons. Both the accused persons reached at the deceased uncle's flour mill. They caught hold of him, dragged him to the brick soling road. Kislay Kumar caught hold of his arm and Chandan Kumar inflicted a fatal knife blow on the left side of his armpit. PW.-8 Dr. Vipin Kumar Stated that the injury caused to deceased was sufficient in ordinary course of nature to cause death. The postmortem report shows that the cause of death was found to be hemorrhage and shock as a result of punctured wound caused by the sharp pointed knife. Thus, this case is fully covered under the provision of Section 300 of the IPC and punishable u/s 302 of the IPC.

30. So far as, appellant Kislay Kumar is concerned allegation against him is that he was catching hold of the



deceased to facilitate the accused Chandan Kumar to commit the offence of stabbing. Thus he is equally responsible for the murder of the deceased and, as such, benefits of doubt cannot be given to him. The trial court rightly convicted both the appellants for the offence committed by them. There is no illegality in the impugned judgment of conviction and order of sentence.

31. Having bestowed our deepest and anxious consideration to all the evidence placed on record and also attending circumstances of the case, I have not found any compelling reasons for witnesses to implicate innocent persons like the accused/appellants as they claim themselves to be innocent. The many fold contentions raised by the counsel for the appellants are devoid of merit. Hence, these two appeals are fit to be dismissed.

32. In the result, the judgment of conviction dated 27th of April, 2012 and the order of sentence dated 19th of May, 2012 passed by learned Sessions Judge, Muzaffarpur in Sessions Trial no 45 of 2010 arising out of Aurai P.S. Case No. 80 of 2009 is hereby confirmed. Appellant Kislay Kumar Singh is on bail. His bail bond is cancelled and he is directed to surrender in the court below to serve out the remaining period of sentence awarded by the trial court.



33. Both the appeals stand dismissed.

(Sunil Kumar Panwar, J)

A.M. Badar, J:

(A. M. Badar, J)

sushma/-

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