

Narayan Hazra Vs. the State of Bihar

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Court : Jharkhand

Decided On : Jan-07-2003

Reported in : [2003(1)JCR425(Jhr)]

Judge : Vishnudeo Narayan and; Lakshman Uraon, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 88 of 1999

Appellant : Narayan Hazra

Respondent : The State of Bihar

Advocate for Def. : Anita Sinha, APP

Advocate for Pet/Ap. : Tarur Kumar Singh, Adv.

Disposition : Appeal dismissed

Judgement :

Vishnudeo Narayan, J.

1. This appeal has been directed by the sole appellant named above against the impugned judgment and order dated 10th February, 1999 and 11th February, 1999 respectively passed by Shri D.N. Upadhyay, 1st Additional Sessions Judge, Giridih in S.T. No. 225 of 1996 whereby and whereunder the appellant was found

guilty for the offence punishable under Section 302 of the Indian Penal Code and he was convicted and sentenced to undergo R.I. for life.

2. The prosecution case has arisen on the basis of the fardbeyan (Ext. 2) of PW 4, the informant, Ganesh Hazra son of Lekho Hazra, the deceased of this case, recorded by S.I., Rajiv Singh of Jamua P.S. on 23.4.1996 at 9.30 hours at village Merho Chaprakho, P.S. Jamua, District Giridih regarding the occurrence which is said to have taken place on 22.4.1996 at 11.30 p.m. adjacent the house of the deceased in village Merho Chaprakho. The formal FIR was drawn on 23.4.1996 at 11.00 hours and the fardbeyan along with the formal FIR was received in the Court of C.J.M., Giridih on 24.4.1996.

3. The prosecution case, in brief, is that the informant along with his family members were sleeping in his house after taking meal and at about 11.30 in the night his neighbour, PW 1, Phalia Devi came to his house and awoke him and told him that the appellant is assaulting his father Lekho Hazra by farsa and on this information, PW 4, the informant, ran to the house of his father Lekho Hazra as he lives separately at some distance and saw that the appellant Narayan Hazra has cut the neck of his father Lekho Hazra by farsa and the said appellant was sitting there armed with farsa. It is also alleged that the appellant seeing the informant chased him and told him that he shall also be done to death. It is also alleged that the informant went to the house of Horil Dusad, the chowkidar of the village but he could not find him there and, thereafter, he went to Chunnu Mian, the Mukhiya of Leteki Panchayat who advised him to go to the Police Station. It is also alleged that he returned to his house and learnt that the appellant has fled away from his house. The prosecution case further is that the marriages of sister and brother of Ramu Hazra who is his neighbour were recently solemnized and the appellant had told Gunjari Devi, the mother of Ramu Hazra that she has saved the entire money in the marriage and she has not even provided him feast on the occasion and at this the deceased had reprimanded the appellant as to why he indulges in such a talk and it led to an altercation between the appellant and his father Lekho Hazra and in the course of the said altercation, the appellant went inside his house and brought a farsa and cut the neck of Lekho Hazra as a result of which his father Lekho Hazra died at the spot. It has also been alleged that PW 1, Phalia Devi, wife

of Bansi Hazra as well as his wife besides several other persons of the village have witnessed the occurrence.

4. The appellant has pleaded not guilty to the charge levelled against him and he claims himself to be innocent and to have committed no offence and that he has been falsely implicated in this case.

5. The prosecution has in all examined nine witnesses to substantiate the charge levelled against the appellant. PW 4, the informant Ganesh Hazra is the son of the deceased of this case. PW 2, Bilsa Devi is the widow of the deceased and the mother of the informant. PW 3, Titia Devi is the wife of PW 4, the informant and all these three witnesses are not the ocular witness of the actual commission of the murder of the deceased by the appellant but they claim to have seen the appellant armed with farsa at the place of occurrence where the deceased had fallen on the ground having his neck severed. PW 1, Phalia Devi is the wife of Bansi Hazra, the younger brother of the appellant and the deceased and she is the only ocular witness of the occurrence in question having a house in front of the place of occurrence. PWs 5 and 7 have turned hostile and they do not at all support the prosecution case. PW 9 is a formal witness who has proved the inquest report (Ext. 3) in this case. PW 6, Dr. Kaushlendra Kumar has conducted the post-mortem examination on the dead body of the deceased and the post-mortem report as per his pen is Ext. 1 in this case. PW 8, Rajiv Singh is the I.O. of this case and he has proved the fardbeyan Ext. 2 and the endorsement thereon Ext. 2/1, No oral and documentary evidence has been adduced on behalf of the defence.

6. In view of the oral and documentary evidence on the record the learned Court below has found the appellant guilty for the offence under Section 302 of the Indian Penal Code and has convicted and sentenced him as stated above.

7. Assailing the impugned judgment as unsustainable and against the weight of the evidence on the record it has been submitted by the learned counsel for the appellant that the evidence of PW 1, Phalia Devi, the only alleged ocular witness of the occurrence is not worthy of credit in view of the fact that there is no other evidence of any natural, independent and competent witness of the occurrence to

corroborate her testimony. It has also been submitted that the prosecution case is conspicuously silent regarding the means of identification at the place of occurrence which is said to have taken place at 11.30 p.m. and, therefore, PW 1, Phalia Devi has no opportunity to identify 'this appellant as the assailant of the deceased. It has further been submitted that as per the averment made in the fardbeyan of PW 4, the informant, read with the testimony of PW 1, Phalia Devi, the prosecution case is of single blow said to have been inflicted on the neck of the deceased but surprisingly enough PW 6, the medical witness has found two sharp cut injuries on the neck and left temporal region of the deceased which is inconsistent and not in conformity with the manner of the occurrence of the prosecution case which casts a cloud of suspicion to the very credibility of the prosecution case and the false implication as well as the false identification of the appellant in this case cannot be totally ruled out. Lastly it has been submitted that it is a case of single blow at the spur of moment as a result of altercation between the appellant and the deceased being full brothers without any enmity existing and alive from before between them and as such the charge, if proved, on the basis of legal evidence on the record, does not constitute an offence under Section 302 of the Indian Penal Code but it falls within the ambit of Section 304, Part I of the Indian Penal Code and the learned Court below did not consider this aspect of the matter and has gravely erred in coming to the finding of the guilt of the appellant under Section 302 of the Indian Penal Code. In support of his contention reliance has been placed upon the case of *Bihari Prasad v. State of Bihar*, 1999 (1) East Cri Cas 1261 (Pat). It has also been submitted that PWs 4, 1, 2 and 3 are inter se related with the deceased and as such their evidence has to be scrutinized with due care and caution and in support of his contention reference has been made of the case of *Kandu Manjhi and Anr. v State of Bihar*, 2002 (3) JLJR 324.

8. The learned APP has submitted that there is evidence of PW 1 who is the eye-witness of the occurrence and PWs 4, 2 and 3 have deposed to have seen the appellant sitting armed with farsa at the place of occurrence where Lekho Hazra had fallen having his neck severed and the appellant had chased the informant when he saw him coming to the place of occurrence and the learned Court below has rightly believed the evidence of PW 1 read with PWs 4, 2 and 3 for finding the appellant guilty and there is no illegality at all in the finding of the learned Court

below. It has also been submitted that PWs 1, 4, 2 and 3 have proved the motive and genesis of the occurrence. It has also been submitted that the house of PW 1, Phalia Devi is at a distance of only ten steps from the place of occurrence and she had come to the place of occurrence in course of altercation between the appellant and the deceased who are full brothers and as such, the non-disclosure of means of identification in the facts and circumstances of this case does not cast a cloud of suspicion to the factum of identification of the appellant as the assailant of the deceased. Lastly it has been submitted that PW 1 had left the place of occurrence immediately soon after the blow by farsa given on the neck of the deceased by the appellant who informed PW 4, the informant regarding the occurrence and as such she has no occasion to see the subsequent assault on the deceased by the appellant and in this view of the matter the existence of second injury on the person of the deceased as found by the medical witness does not in any manner conflict with the manner of the prosecution case or is inconsistent in respect thereof. The learned APP has further submitted that the assault on the deceased by the appellant is an intentional one with pre-meditation with a view to take revenge as he has reprimanded him for having unmeaningful talk with the mother of Ramu Hazra regarding the feast.

9. It is an unfortunate case of fratricide. Lekho Hazra, the deceased of this case is the full brother of the appellant, Narayan Hazra. Bansi Hazra husband of PW 1, Phalia Devi is also the younger brother of the deceased of this case. All the three brothers aforesaid have their separate houses. There is evidence on the record which shows that the house of the deceased and of the appellant are adjacent each other and the house of the appellant is adjacent south of the house of the deceased. House of PW 1, Phalia Devi, wife of Bansi Hazra is in front of the house of the deceased at the distance of ten steps. The informant also resides separately in a different house from the deceased and his house is situated at a distance of 25 'Haath' from the house of the deceased. The house of Gunjri Devi, the mother of Ramu Hazra is situated west of the house of the deceased. The I.O. has deposed that the place of occurrence of this case is adjacent east of the house of the deceased where his dead-body was found. Ext. 3, the inquest report shows that the dead-body of the deceased was found in between the house of the deceased and the appellant but adjacent the house of the deceased having

bleeding injury on the back of the neck extending to the right ear said to have been caused by sharp cutting weapon. PW 6, Dr. Kaushlendra Kumar has deposed to have conducted the post-mortem examination on the dead-body of Lekho Hazra, the deceased of this case, at 4.00 p.m. on 23.4.1996 and has found the following ante-mortem injuries :

(i) sharp cut extending from left ear to right ear on the back deep down on the back to the soft tissue cutting also cervical vertebra at the level through and through rest of the neck was attached to the body by anterior musculature and other soft tissue.

(ii) sharp cut over left temporal region 3' x 1' x bone deep with blood clot.

The medical witness has further deposed to have found subcutaneous blood clots under the temporal wound. He has also deposed that on dissection of the neck he found blood clots and the major blood vessels, spinal cord and major part of the soft tissues and nerves were cut posteriorly though hyoid bone was intact. His evidence is further to the effect that the injuries aforesaid have been caused by heavy sharp cutting weapon and in his opinion death is due to shock and haemorrhage as a result of injury to the neck and the time elapsed since death from the time of post-mortem examination is about 18 hours. The time elapsed since death as deposed by the medical witness is in strict conformity with the time of the occurrence. Ext. 1, the post-mortem report per pen of PW 6 supports the oral testimony of the medical witness. In this cross-examination the medical witness has categorically stated that the two injuries found on the person of the deceased are the result of the two blows given on the deceased.

10. PW 1, Phalia Devi had deposed that at about 11.30 o'clock in the night she was in front of her house and at that time the appellant was abusing Gunjari Devi as she has not provided with good feast on the occasion of the marriage of her son and daughter and the deceased reprimanded the appellant as to why he is abusing Gunjari Devi as considerable period has already lapsed of the said marriage. She has further deposed that, thereafter, an altercation ensued between appellant and the deceased and at this the appellant told that now he will assault him (deceased) and uttering this he went inside his house and came with a farsa

and gave a blow at the neck of the deceased causing bleeding injury thereon. She has further deposed that she ran to the house of the informant and gave information to the informant Ganesh Hazra and the informant along with PW 1 came to the place of occurrence. She has also deposed that she found Lekho Hazra, the deceased fallen on the ground. She has also deposed that seeing the informant, the appellant ran towards him also to commit his murder and the informant fled away from there. She has also deposed that several persons of the village also assembled at the place of occurrence and saw the deceased dead at the place of occurrence and the appellant, thereafter, fled away from there along with his wife. PW 4 has deposed that he was sleeping in his house with his family members and he woke up at the instance of PW 1, Phalia Devi, who told him that Narayan Hazra has severed the neck of his father and on this information he went to the place of occurrence where he found his father Lekho Hazra dead fallen on the ground having his neck severed. He has specifically deposed that at the place of occurrence the appellant was sitting armed with farsa and seeing the informant, the appellant chased him to commit his murder also and the informant fled away from there. Similar is the evidence of PW 3, Titia Devi, the wife of the informant and PW 2, Bilsa Devi, the widow of the deceased. PWs 4, 3 and 2 have categorically deposed that when they reached at the place of occurrence they saw the appellant sitting at the place of occurrence near the dead-body of the deceased armed with farsa and the appellant chased the informant also with a view to commit his murder. In view of the evidence aforesaid the non-disclosure of the means of identification pales into insignificance in the facts and circumstances of this case. PW 1 has seen the altercation between the appellant and Gunjri Devi over the issue of not providing good feast on the occasion of the marriage of her son and daughter and, thereafter, she has also witnessed the altercation between the appellant and the deceased over the said issue on being reprimanded by the deceased. Admittedly, the house of PW 1 is only ten steps away from the place of occurrence in front of the house of the deceased. Furthermore PW 1 is the wife of the brother of the deceased and the appellant. Therefore, she has no difficulty at all regarding the identification of the appellant in course of occurrence. The appellant, thereafter, chased the informant when he came to the place of occurrence and as such there is no doubt regarding the identification of the

appellant as a participant in the occurrence by PW 4, the informant besides PWs 2 and 3 who had also come to the place of occurrence on information. Therefore, evidence on the record conclusively establishes the fact that the appellant had altercation firstly with Gunjri Devi and on being reprimanded by the deceased he had altercation with the deceased and in that altercation he brought farsa from his house and gave the fatal blow on the neck of the deceased which severed his neck considerably causing his instantaneous death. The medical evidence on the record read with Ext. 1, the postmortem report, clearly establishes the fact that the injury caused on the neck of the deceased has caused his death. However, the medical witness has found also an injury on the temporal region on the dead-body of the deceased. The fardbeyan, however, does not whisper regarding giving of the second blow by the appellant. The absence of the averment regarding the second blow given on the person of the deceased in the fardbeyan can never be taken as a legal infirmity in this case in view of the existence of injury on the temporal region of the deceased. For this the reasons are not far to seek. A plain reading of the fardbeyan (Ext. 2) shows that PW 1 left the place of occurrence when the blow on the neck of the deceased was inflicted by the appellant and she rushed to the house of the informant to give the information regarding the occurrence.

Therefore, PW 1 has no occasion to witness any subsequent assault perpetrated on the person of the deceased by the appellant. On that information PWs 4, 3 and 2 came to the place of occurrence where they found the deceased fallen on the ground having his neck severed and seeing the informant, the appellant chased him also to commit his murder and the informant fled away. Therefore, PWs 4, 3 and 2 have no occasion to see the actual assault on the person of the deceased. Therefore, the existence of the second injury on the left temporal region does in no way conflict with the manner of the prosecution case as averred in the fardbeyan as well as deposed by PW 1 on oath. Therefore, the finding of the two injuries on the person of the deceased by the medical witness can never be termed as infirmity of the prosecution case to cast a cloud of suspicion to the very warp and woof regarding the manner of the occurrence of this case. PW 1 is the most competent and natural witness of the occurrence as she has the occasion to witness the entire occurrence from the very beginning to the assault given on the

neck of the deceased by farsa by the appellant. PW 1 is equidistant relative of the appellant and the deceased. Admittedly, there is no enmity between the appellant and the deceased prior to the occurrence. PW 1 and her husband has also no enmity, grudge or annoyance against the appellant and special love for the deceased being an equidistant relative. Therefore, PW 1 cannot be said to have any animus to depose falsely in this case and to falsely implicate the appellant in the occurrence in question PW 4, the informant, PW 2, his wife and PW 1, the widow of the deceased have specifically deposed to have seen the appellant armed with farsa at the place of occurrence and they have also deposed that the appellant chased the informant with intention to commit his murder also. They have seen the deceased fallen on the ground having his neck severed. These witnesses though closely related to the deceased have also no enmity with the appellant existing and alive prior to the occurrence or on the date of the occurrence. Therefore, there is also no animus to them to falsely depose against the appellant. It is crystal clear from the evidence on the record that villagers assembled at the place of occurrence after the occurrence who can never be termed as ocular witness of the occurrence. It is the settled principle of law that the evidence of close relatives of the deceased cannot be discarded on the ground of their relationship with the deceased. However, the Court must scrutinize the evidence with care and caution. There is common tendency of outsiders not to get themselves involved in a criminal case and it would be quite natural that no independent witness would come forward to assist the prosecution in a case of murder. Even with regard to the interest witnesses being close relatives it is the duty of the Court to separate the truth from falsehood and the chaff from the grain and in view of the close relationship they would not leave out the real assailant and implicate any innocent person and while appreciating the evidence of a relative witness the approach must be; whether the evidence of the witness read as a whole appears to have a ring of truth. Once the impression regarding a ring of truth is found it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiency, draw backs and infirmity pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render, it unworthy of belief. Minor discrepancies or trivial

matter not touching the core of the case, a hyper technical approach in perusal of the evidence should be avoided. Keeping in view the principle of care and caution in scrutinizing the evidence of the related witnesses aforesaid of this case I see ring of truth in their evidence and their evidence is worthy of credit. The evidence of PW 1, the ocular witness read with the testimony of PWs 4, 3 and 2 establishes the fact beyond all reasonable doubts that the appellant has committed the murder of the deceased by causing injury on his neck by farsa and the learned Court below has rightly come to the finding of the guilty of the appellant in view of the evidence oral and documentary on the record and I see no illegality therein.

11. It is pertinent to mention at this stage that in view of the facts, circumstances and materials on the record, the offence against the appellant does not fall under the ambit of Section 304, Part I of the Indian Penal Code and the contention of the learned counsel for the appellant has no substance in respect thereof and the case law referred to above relied by the appellant is equally of no help to him. In course of the altercation the appellant was not armed with any lethal weapon. The appellant in course of altercation went inside the house and brought a farsa to commit the murder of the deceased and, thereafter, he gave a farsa blow on the neck of the deceased severing his neck from the back side. As per medical witness there is also a sharp cut, injury on the left, temporal region of the deceased and though this part of the assault could not be witnessed by PW 1 as she has left the place of occurrence to give the information to the informant regarding the occurrence. Therefore, the existence of two blows by farsa on the vital part of the body of the deceased after bringing the farsa from the house in course of altercation clearly indicates that the appellant had brought the farsa from his house with intention to commit the murder of the deceased. As such, it cannot be said that at the spur of the moment in course of altercation, the appellant had assaulted the deceased causing his death rather the act of the appellant is pre-determined and intentional one in committing the murder of the deceased. Furthermore, he also chased the informant to commit his murder when he saw him coming to the place of occurrence. Therefore, the appellant in the facts and circumstances of this case can never have the benefit of Section 304, Part I of the Indian Penal Code in this case and his case does not at all fall under ambit of Section 304, Part I of the Indian Penal Code.

12. Considering all the facts, circumstances and materials on the record, I see no illegality in the impugned judgment requiring an interference therein. The finding of the learned Court below is hereby affirmed. There is no merit in this appeal and it fails. The appeal is hereby dismissed.

Lakshman Urain. J.

13. I agree.

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