

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.247 of 1993

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(AGAINST THE JUDGMENT OF CONVICTION, DATED, 7TH APRIL, 1993, AND THE ORDER OF SENTENCE, DATED, 8TH APRIL, 1993, PASSED BY SHRI RAM NATH RAM MAHTO, 6TH ADDITIONAL SESSIONS JUDGE, CHAPRA, IN SESSIONS TRIAL NO. 409 OF 1989/36 OF 1991, ARISING OUT OF GARKHA POLICE STATION CASE NO. 144 OF 1988, CORRESPONDING TO G.R.NO.2766 OF 1988).

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1. Paras Rai, son of Raghu Rai,
2. Arjun Rai, son of Krishna Rai,
3. Dina Nath Rai, son of Jai Kishun Rai,
All resident of village- Tahal Tola, Police Station- Garakha, District- Saran.
..... Appellants

Versus

The State of Bihar

..... Respondent

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Appearance :

For the Appellant/s : NONE

For the Respondent/s : Mr. Ajay Mishra, APP

Mrs. Soni Shrivastava, learned Counsel, as *Amicus Curiae*

Mr. Kumaresh Singh, learned Counsel, as *Amicus Curiae*

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 11-05-2015

Under the judgment, dated 07.04.1993, passed, in Sessions Trial No. 409 of 1989/36 of 1991, by learned 6th Additional Sessions Judge, Chapra, the accused-appellants, Paras Rai, Arjun Rai and Dinanath Rai, stand convicted under Section 307 read with Section 34 of the Indian Penal Code. Following their conviction, the accused-appellant, Dinanath Rai, has been sentenced to suffer imprisonment for life under

Section 307 Part-II of the Indian Penal Code, and accused-appellants, Paras Rai and Arjun Rai, have been sentenced to suffer rigorous imprisonment for a period of ten years under Section 307 Part-I of the Indian Penal Code.

2. The case of the prosecution, as unfolded by the First Information Report, lodged by Chabila Rai (PW 6), may, in brief, be described as under:

(i) The informant, Chabila Rai (PW 6), his brother, Laloo Rai (PW 4), and others were to sit with accused Paras Rai and others for settlement of their dispute with regard to the land, which both parties claimed to be their own land. Pursuant to the decision to sit for settlement, the informant (PW 6) and his brother (PW 4) were to examine, on 03.09.1988, at about 10.00 AM, papers relating to proceedings between the parties under Section 144 Cr.P.C. In accordance with the understanding so reached, when both parties were busy in conversation with each other, differences cropped up between them and altercation followed, whereupon accused Paras Rai asked his associates to assault. On being so exhorted, accused Dinanath Rai gave a blow on the abdomen of Chabila Rai (PW 6) by means of a *bhala* (spear) and accused Arjun Rai assaulted Chabila Rai (PW 6) with *bricks*.

(ii) On witnessing the occurrence of assault on Chabila Rai (PW 6), when his brother, Laloo Rai (PW 4), came

to save Chabila Rai (PW 6), accused Arjun Rai gave a blow by means of *spear* on Laloo Rai, which caused injury on the left hand of Laloo Rai (PW 4). This was followed by assault on the informant, Chabila Rai (PW 6), and his brother, Laloo Rai (PW 4), by accused Munshi Rai, Jai Govind Rai, Ram Babu Rai, Rajendra Rai, Butan Rai, Bhukhal Rai and Satguna Rai by means of *lathis* and *spears*.

(iii) The two injured, namely, the informant, Chabila Rai (PW 6), and his brother, Laloo Rai (PW 4), were carried to Sadar Hospital, Chapra. While the injured were lying under treatment at the said hospital, Dadan Singh, Investigating Officer (not examined), recorded the statement of Chabila Rai with regard to the occurrence. Based on the said information and treating the same as First Information Report, Garkha Police Station Case No. 144 of 1988, under Sections 147/148/149/323/324/337/307 of the Indian Penal Code, was registered against 08 (eight) accused persons, namely, Paras Rai, Dinanath Rai, Arjun Rai, Munshi Rai, Ram Babu Rai, Bhukhal Rai, Rajendra Rai and Trigun Rai.

3. On completion of investigation, *charge sheet* was laid, under Sections 147/148/149/323/324/337/307 of the Indian Penal Code, against eight accused persons aforementioned.

4. At the trial, charges, under Sections 148 and

307 read with Section 34 of the Indian Penal Code, were framed against the accused aforementioned. To the charges so framed, all the accused pleaded not guilty.

5. In support of their case, prosecution examined altogether 08 (eight) witnesses including PW 7 (Dr. Sidheshwari Prasad), who had examined, treated and furnished the injury reports of the injured. Accused were, then, examined under Section 313(1)(b) of the Code of Criminal Procedure and, in their examinations aforementioned, all the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that they had been falsely implicated in the case inasmuch as the informant, Chabila Rai (PW 6), his brother, Laloo Rai (PW 4), and their associates had assaulted Paras Rai and others during the said sitting, which had taken place for settlement of their dispute with regard to the land, and, as a result thereof, as many as six persons were injured amongst the accused and, on the basis of the information received in this regard, Garkha Police Station 143 of 1988 under Sections 147/148/149/323/324/307 of the Indian Penal Code, was registered against Chabila Rai (PW 6), Laloo Rai (PW 4) and others. In support of its case, the defence, too, adduced evidence by examining two witnesses.

6. Having arrived at the finding that accused

Paras Rai, accused Dinanath Rai and accused Arjun Rai, had been proved guilty of the charge under Section 307 read with Section 34 of the Indian Penal Code, learned trial Court convicted them accordingly. Following their conviction, sentence has been passed against the convicted persons as mentioned above. Having, however, found remaining accused persons, namely, Munshi Rai, Ram Babu Rai, Bhukhal Rai, Rajendra Rai and Trigun Rai, not guilty of the offences charged with, learned trial Court has acquitted them accordingly.

7. Aggrieved by their conviction and the sentence passed against them, all the convicted persons have preferred this appeal.

8. We have heard Mrs. Soni Shrivastava and Mr. Kumaresh Singh, learned Counsel, appearing as *Amicus Curiae*, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

9. While considering the present appeal, it needs to be noted that the doctor (PW 7) has deposed that he had examined, on 03.09.1988, at about 01.45 PM, the informant, Chabila Rai (PW 6), and found the following injuries on his person:

"(i) *Sharp penetrating wound 1¼" x ¾" x abdominal cavity deep on the lowest portion of the chest right side on the interior auxiliary line;*

(ii) Bruise red 2" x 1½" with surrounding defused swelling 3½" x 2½" on the front of the lower abdomen suprapubic region."

10. In the opinion of the doctor (PW 7), injury No.(i) was caused by sharp pointed weapon, such as, *bhala* and injury No. (ii) was caused by hard and blunt substance, such as, *lathi*. It is in the evidence of the doctor (PW 7) that on taking X-ray, he (PW 7) came to the finding that air-pockets, in deep muscle layer, were present in the right side of abdomen and free gas was present under left diaphragm suggesting perforation of gastro-intestinal canal. In the opinion of the doctor (PW 7), therefore, this injury was fatal to life.

11. Dr. Sidheshwari Prasad (PW 7) has examined Laloo Rai (PW 4) on 03.09.1988, at 1.45 PM, at Sadar Hospital, Chapra, and found following injuries on his person.

"(i) Sharp punctured wound 2" x 1/6" x muscle deep on the left upper arm;

(ii) Bruise red 1 ½" x 1" x surrounder swelling 2 ½" x 2" on the back right lumber region."

12. In the opinion of the doctor, injury No.1 was caused by sharp pointed weapon, such as, *bhala* and injury No. (ii) was caused by hard and blunt substances, such as, *lathi*.

13. As has been correctly pointed out by the

learned trial Court in the judgment, under appeal, that the injuries suffered by the informant (PW 6) and his brother (PW 4) have not been in dispute at the trial.

14. The question, however, remains: whether the accused-appellants were the ones, who had assaulted and injured the informant, Chabila Rai (PW 6), and his brother, Laloo Rai (PW 4), and, if so, whether the prosecution had succeeded in proving its case that the accused-appellants had committed, in furtherance of their common intention, the offence of attempt to murder.

15. According to the evidence of the informant, Chabila Rai (PW 6), on the day of occurrence, at about 10.00 AM, while he was stacking bricks in front of the door of his house, accused Paras Rai arrived there and forbade him (PW 6) to do so. As the informant protested to the obstruction so raised by accused Paras Rai, accused Paras Rai said that he (i.e., Chabila Rai) would not understand without being assaulted, whereupon accused Dinanath Rai assaulted the informant with a *bhala* (spear) and accused Arjun Rai gave Chabila Rai's brother, Laloo Rai, blows by means of a *spear* and *lathi*.

16. Because the injuries so received by the informant and his brother, they were carried to the hospital and they were treated there and, during the course of their

treatment, Chabila Rai's statement was recorded as *fardebayan* (Exhibit-1) and, treating Chabila Rai's said statement as the first information report, the police case, as mentioned hereinbefore, was registered.

17. Broadly in tune with the above evidence of the informant (Chabila Rai) is the evidence of his brother, Laloo Rai (PW 4). Are the two prosecution witnesses believable and reliable is the question, which we have to, now, answer?

18. What is, however, of immense importance to note, while considering the veracity of the evidence of the two witnesses, namely, Chabila Rai (PW 6) and Laloo Rai (PW 4) is that according to the informant (PW 6) and his brother (PW 4), PW 1, PW 2, PW 3 and PW 5 were present, when the occurrence took place. However, all these witnesses, namely, PW 1, PW 2, PW 3 and PW 5 have been disbelieved by the learned trial Court.

19. The prosecution's case, therefore, comes to rest on the evidence of the informant (PW 6) and his brother (PW 4) and the claim of PW 6 and PW 4 that PW 1, PW 2, PW 3 and PW 5 had witnessed the occurrence of assault on PW 6 and PW 4 has to be rejected as wholly untrue.

20. Because of the fact that the informant and his brother had, admittedly, a land dispute with the appellants and, according to the First Information Report, it is because of



this land dispute that a sitting between the two parties had taken place, where the informant and his brother had suffered assaults at the hands of the accused-appellants, it becomes abundantly clear that the relationship between the informant and his brother, on the one hand, and the accused-appellants, on the other, was inimical in nature and, hence, the evidence of the informant and his brother needs to be closely scrutinized so that the veracity of their evidence can be meaningfully tested.

21. In other words, there was, admittedly, a land dispute between the parties concerned souring thereby their relationship. Both the parties, therefore, had inimical relation with each other. Enmity is a double-edged weapon, which cuts both the ways. While enmity may be a reason for committing an offence, such as, murder, enmity may also be a reason for either falsely implicating an enemy as an accused or roping in an enemy, who may be innocent, along with the guilty ones.

22. Bearing in mind the principle governing the appreciation of evidence of inimical or partisan witnesses, it may, now, be noted that while, according to the *fardbeyan*, the occurrence had taken place, when the sitting was in progress for examining the orders passed under Section 144 Cr.P.C. with regard to the disputed land, exchange of words between the

parties took place and the same allegedly resulted into assaults on the informant and his brother.

23. The above version of the occurrence, depicted in the First Information Report, has been given a complete go-by, at the trial, by the informant and his brother inasmuch as the evidence of these two witnesses is, now, to the effect that on the day of occurrence in the morning, while the informant was arranging bricks in front of the door of his house, accused Paras Rai arrived there and asked the informant, Chabila Rai, to stop stacking the bricks and when the informant protested to such obstruction, accused Paras Rai told the informant (PW 6) that he (PW 6) would not understand without being assaulted and, then, accused persons, namely, Dinanath Rai, armed with *bhala*, Arjun Rai, armed with *brick* and *lathi*, Munsai Rai, Rajendra Rai, Ram Babu, Bhukhal Rai, and Trigun Rai, all armed with *lathis* and *bhalas*, assaulted the informant (PW 6) and his brother (PW 4). Accused-appellant, Dinanath Rai, assaulted the informant's brother, Laloo Rai (PW 4), by means of spear and even accused Arjun Rai gave him a blow by means of *spear*.

24. Thus, the genesis and manner of the occurrence have been completely changed at the trial from what had been, in the light of the contents of the First Information Report, the initial version of the occurrence. This

apart, what is of immense importance to note is that the First Information Report was recorded, in the present case, while PW 6 was undergoing treatment at Sadar Hospital, Chapra, on 03.09.1988, at about 08:35 PM.

25. Interestingly enough, according to the evidence of PW 1, while the informant (PW 6) remained unconscious for two-days, PW 4 remained unconscious for ten days. So far as PWs 2 and 3 are concerned, their evidence is that the informant (PW 6) became unconscious at the place of occurrence. As far as PW 4 is concerned, the informant became unconscious at the place of occurrence and remained unconscious for 5-6 days and that the F.I.R. was recorded one or two days after the occurrence. PW 5 claims that PW 4 and PW 6 both became unconscious at the place of occurrence and remained unconscious for two-three days; whereas the evidence of PW 6 is that he became unconscious at the place of occurrence.

26. Thus, the consistent evidence on record, adduced by the prosecution, is that the informant became unconscious at the place of occurrence and he remained unconscious for, at least, one or two days; whereas the First Information Report is shown to have been recorded on 03.09.1988 at about 08:35 PM, when the informant was, according to the evidence on record, lying unconscious.



27. The defence has, therefore, considerable force in impugning the veracity of the evidence of the prosecution witnesses that it was on 03.09.1988, at 03:00 AM, that the informant, Chabila Rai (PW 6), had given his statement, while lying under treatment in the said hospital and the same had been treated as the First Information Report. What is also noticeable, in this regard, is that while the First Information Report was transmitted to the Magistrate on 05.09.1988, the First Information Report was received by the Magistrate concerned on 06.09.1988.

28. Mere failure, on the part of the police, to transmit, forthwith, First Information Report to the jurisdictional Magistrate may not always be fatal, yet, in the context of the facts of the present case, the delay, in transmission of the First Information Report to the jurisdictional Magistrate and the belated receipt thereof by the jurisdictional Magistrate, cannot be ignored, particularly, when we find that First Information Report was said to have been recorded on the very day of occurrence on 03.09.1988 at 3.00 PM, whereas the evidence of the informant and his brother speak loud and clear that informant became unconscious at the place of occurrence and regained his conscious after two days.

29. No wonder, therefore, that it is submitted, on behalf of the accused-appellants, that the prosecution has

suppressed the genesis of the occurrence and presented before the Court a *colourized* version of the occurrence and without determination of the truth, the learned trial Court ought not to have held the prosecution's case as having been proved and convicted the accused-appellants without knowing the truth.

30. Coupled with the above, we have already pointed out above that though according to the informant and his brother, PWs. 1, 2, 3 and 5 were present at the place of occurrence and they had witnessed the occurrence, the evidence of PW 1, PW 2, PW 3 and PW 5 have been held unreliable by the learned trial Court itself.

31. The evidence, therefore, adduced by the informant (PW 6) and his brother (PW 4) ought to be closely scrutinized before the Court places reliance on their evidence. In this regard, it needs to be pointed out that the evidence of the informant is that stones and bricks were hurled at him at the place of occurrence. The informant was, however, found to have suffered only one defused swelling and his brother was found to have suffered a bruise on the back of his limber region.

32. Clearly thus, the evidence of the informant and his brother suffered from exaggeration. Incumbent, therefore, it was, on the part of the trial Court, to be cautious in placing implicit reliance on their evidence.

33. Moreover, the informant has deposed that the accused-appellant, Dinanath Rai, armed with *bhala* and accused-appellant, Arjun Rai, armed with *lathi* and *bhala* and the other accused, namely, Munshi Rai, Ram Babu Rai, Rajendra Rai, Trigun Rai were also present at the place of occurrence with *farsa* and *lathis* and incident was witnessed by PW 1 (Achari Rai), PW 2 (Banjari Rai), PW 3 (Brij Bihari Rai) and PW 5 (Baiju Rai); but all these witnesses aforementioned have been disbelieved by the learned trial Court.

34. On the contrary, from the evidence adduced by the defence, it has surfaced that on the basis of a First Information Report, lodged by DW 1, Garkha Police Station Case No. 143 of 1988, under Sections 147/148/148/323/324/307 of the Indian Penal Code, was registered against PW 1 and others and the case so lodged by the accused party was before the lodging of the First Information Report, in the present case, by the informant, Chabila Rai (PW 6).

35. It has also surfaced from the evidence of DW 1 that his statement was recorded by the police on the day of the occurrence, i.e., 03.09.1988, at about 06.45 PM, while Ram Kripal Rai, Dinanath Rai, Trigun Rai, Arjun Rai were undergoing treatment at Sadar Hospital, Chapra, on being allegedly assaulted by the prosecution party.

36. It is not in dispute that the Ram Kripal Rai



(informant of Garkha Police Station Case No. 143 of 1988) and his associates had also sustained injuries and were undergoing treatment at the same hospital and at the same time, when Chabila Rai (the informant of the present case) and his brother, Laloo Rai, were being treated by the doctor there. The defence has also successfully proved the injury reports of Ram Kripal Rai, Binda Rai, Arjun Rai, Trigun Rai, Kishun Rai as Exhibit-B series.

37. From the evidence discussed above, what clearly surfaces, if we may reiterate, that as many as five of the accused were required to be treated at Sadar Hospital, Chapra, and some of them had sustained grievous injuries. These injuries, sustained by the accused party, have not been explained by the prosecution nor is there any explanation discernible, in this regard, from the evidence on record.

38. In the absence of any convincing explanation having been offered or being discernible, in this regard, from the evidence on record, prosecution's case must necessarily fail on the ground that the prosecution has not presented before the Court the truth and whole of the truth, particularly, when the Court is unable to shift the truth from falsehood. Reference may be made, in this regard, to the cases of **Takhaji Hiraji V. Thakore Kubersing Chamansing**, reported in **(2001) 6 SCC 145**, wherein the Court has held



that it cannot be laid down as a matter of law or as invariable rule that whenever an accused is found to have sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and, on the failure of the prosecution to do so, the prosecution's case should be disbelieved. Explaining the position of law in this regard, the Court has held that before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may adversely affect the prosecution's case, the Court has to be satisfied of the existence of two conditions, namely, (i) that the injury on the person of the accused was of a serious nature and (ii) that such injuries must have been caused at the time of the occurrence in question and that non-explanation of injuries assumes greater significance, when the evidence consists of interested or partisan witnesses or where the defence gives a version, which competes in probability with that of the prosecution. The Court has laid down that where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood, the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be the sole basis to reject the testimony of the prosecution witnesses and, consequently, the whole of the prosecution case.

39. From the evidence discussed above, what



clearly surfaces, if we may reiterate, is that as many as five of the accused were required to be treated at Sadar Hospital, Chapra, and some of them had sustained grievous injuries. These injuries, sustained by the accused party, have not been explained by the prosecution nor is there any explanation discernible, in this regard, from the evidence on record. In the absence of any convincing explanation having been offered or being discernible, in this regard, from the evidence on record, prosecution's case must necessarily fail on the ground that the prosecution has not presented before the Court the truth and whole of the truth, particularly, when the Court is unable to sift the truth from falsehood.

40. Situated thus, this Court is left with no option but to hold, and we do hold, that the prosecution has suppressed the correct version of the occurrence and presented before this Court an admixture of half-truth and untruth and since the truth, if any, is so inextricably mixed with the falsehood that it has become wholly impossible to disengage the truth, if any, from the half-truth and untruth.

41. It, therefore, follows from the above discussion that in the present case, the prosecution fails, because of the suppression of truth by the informant and his brother, and other prosecution witnesses.

42. Though the informant and his brother did



suffer injuries as found by the doctor, the fact remains that merely because they had sustained injuries, the conviction of the appellants cannot be sustained, especially, in the absence of the prosecution having been able to adduce credible, convincing and reliable evidence proving that the accused-appellants were the ones, who had, in furtherance of their common intention, caused the injuries, which had been suffered by the informant (PW6) and his brother, Laloo Rai (PW 4).

43. We have already pointed out above and we may hasten to add again that mere corroboration of one witness's evidence by another witness will not make their evidence reliable unless the Court has reasons to believe the evidence as true, particularly, when they are members of the same family and have inimical relation with accused party.

44. Situated thus, we are clearly of the view that in the facts and attending circumstances of the present case, the appellants ought to have been accorded, at least, benefit of doubt.

45. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellants and the sentence passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offence, which

they stand convicted of, and they are hereby acquitted of the same under benefit of doubt.

46. Since the accused-appellants are on bail, their bail bonds are hereby cancelled and their sureties shall stand discharged.

47. Let the *Amicus Curiae* be paid a fee of Rs.5,000/- each.

48. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J.)

(Vikash Jain, J.)

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