

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.42 of 1993

Against the judgment of conviction and order of sentence dated 12.01.1993 passed by 1st Additional Sessions Judge, Samastipur, in Sessions Trial No.211 of 1991/22 of 1991, arising out of Chakmehsi P.S. Case No.7 of 1990.

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1. Upendra Sharma
 2. Devendra Sharma
 - Both are sons of late Supatra Sharma
 3. Rajendra Rai
 4. Yogendra Rai
 - Both are sons of late Ram Lochan Rai.
- All are resident of village Hasan Nagar, Police Station Chak Mehshi, District-Samastipur.

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Ajay Kuamr Thakur, Advocate
Mr. Md. Imteyaz Ahmad, Advocate
Mr. Ravi Ranjan, Advocate

For the Respondents : Dr. Mayanand Jha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 22-01-2015

This appeal is preferred by the four accused, who were tried by the Court of 1st Additional Sessions Judge, Samastipur, in Sessions Trial No.211 of 1991. All the four were accused of committing the offences punishable under Section 302 of the Indian Penal Code by killing one Ramudgar Sah. The trial Court convicted the appellants for

the said offence and sentenced them to undergo R.I. for life imprisonment through order dated 12.01.1993.

The version of the prosecution as presented before the trial court is as under:

The deceased and his wife by name Kanta Devi, P.W.2, were running a medical shop in a portion of their house. On 15.01.1990 at about 9 P.M. the deceased and P.W.2 were sleeping in their house along with their two minor children. One unknown persons knocked the door and on hearing it, the deceased got up from the bed, proceeded towards door with a lamp in one hand and torch in the other hand and opened the door. The person, who knocked the door, is said to have asked for medicine for cough. When the deceased proceeded to the room where medicines were stored, the four persons, the appellants herein, entered the room and fired shots at him. On hearing the shots, P.W.2 got frightened and went underneath the cot in the other room. Thereafter, the first appellant has taken the motorcycle that was in the room and the fourth appellant has taken away Dhoti, tape recorder and coat from the house.

On hearing the cries of P.W.2, several persons, including P.Ws 1, 4 and 5 came to the spot and that P.W.2



told them that the appellants herein caused the death of her husband. Those persons have gone to the police station and informed the Station House officer. At about 2 A.M. on the next day, the Investigation officer has come to the place, recorded the statement of P.W.2 and commenced the investigation. The other formalities, such as conducting the autopsy and postmortem were complied with. The postmortem report was obtained and thereafter charge-sheet was filed against the four appellants herein alleging that they committed the murder of the deceased.

In the trial Court, as many as 11 witnesses were examined on behalf of prosecution and certain materials were exhibited. On behalf of the defence, as many as 8 witnesses were examined. As observed earlier, the trial Court convicted the appellants and sentenced to undergo R.I. for life imprisonment.

Sri Imteyaz Ahmad, learned counsel for the appellants, submits that there is inconsistency in the evidence of the alleged eye witness, P.W.2. He submits that even according to P.W.2, it was a dark night with full of fog and that there was no electricity at all. He submits that if the deceased had opened the door on the knocking by a stranger, it is just understandable as to how the appellants



herein, could be identified by the P.W.2. He further submits that the prosecution was so casual and routine that without even attributing any specific fatal injury to any of the appellants herein, the omnibus allegation was made and all of them were convicted for the offence punishable under Section 302 of the Indian Penal Code. He contends that P.W.1 admitted that he is an accused in a case between himself and the appellants herein and that evidence of such a witness cannot be believed at all. Other grounds are also urged.

Dr. Mayanand Jha, learned Additional Public Prosecutor, on the other hand, submits that although P.W.2 is only an eye witness, her evidence was supported and corroborated by the evidence of other witnesses. He submits that though it was a night without there being electricity, the deceased was holding a lamp and it would not have been difficult for P.W.2, to identify the appellants, particularly in view of the fact that they are from the same village. He further submits that the prosecution was able to provide all the links to establish, involvements of the appellants herein with the crime.

P.W.2 is the only eye witness, in the instant case. A perusal of the statement recorded from her which

constituted the basis for prosecution, reveals that the deceased and herself had already taken dinner and were sleeping and at that time a person came and knocked the door. Even according to her, none of the appellants are the persons who knocked the door. The deceased is said to have opened the door and on being requested he went inside to get the medicine for cough.

The only reason for the P.W.2, to see something beyond the room, was that she heard some sound of pistol shots. It was not even mentioned by her that she entered the room. Except stating that the appellants herein, entered and fired at her husband, she did not state as to where the person who came for medicine has gone out and how was it possible for her to identify them when there was no light at all.

Obviously because she was the only eye witness and the informant, the defence subjected her, to extensive cross-examination. A perusal of the same reveals several discrepancies in her evidence. At one place, P.W.2 stated that she alone took dinner at 9 P.M. and thereafter her husband, the deceased, came and after taking dinner in a span of about half an hour, he went out. She further stated that she accompanied him. However, she did not state as to

where they had gone. Even if this is to be taken as true, the plea that the incident leading to the death of the deceased occurred at 9 P.M. becomes unbelievable.

P.W.2 further stated that after the incident occurred, the neighbours, P.Ws.1, 4 and 5 and others came to the spot and she told them that her husband was killed by the appellants herein. Information to the police was furnished by P.Ws.1, 4 and 5 and some others, who are said to have visited the house of the deceased. If what is stated by P.W.2 is true, these persons ought to have informed the names of the appellants to the Station House Officer. In his evidence, the Investigating Officer, P.W.8, did not mention that P.Ws.1, 4 and 5 have revealed to him, the names of the assailants. In their evidence also, P.Ws.1, 4 and 5 did not state that when they first visited the place of occurrence, P.W.2 had revealed to them, the names of the appellants.

When this is inconsistency and lack of coherence in the entire case, it is just impermissible for a Court to convict the appellants.

Another aspect is that the Investigating Officer, who visited the spot did not find any lamp or torch on the spot. That belies the very version of the P.W.2. Added to that, if the death was caused through shots of bullets, heavy

burden rested upon the prosecution, firstly to recover the weapon and thereafter, to identify the person who is said to have used it. No such effort was made in this regard. In the entire evidence, nowhere it is mentioned as to which of the appellants herein fired the bullets and with what weapon. Even if the death may have been caused in all probability by firing the bullets by one person, unless other persons are shown to be conspirators, it is impermissible to array them as accused, much less to convict them.

Under these circumstances, we find it difficult to sustain the judgment of the trial Court. We, therefore, allow this appeal and set aside the conviction and sentence ordered by the trial court against the appellants herein. Since they have already been released on bail, they are discharged from the liabilities of their bail bond.

(L. Narasimha Reddy, CJ)

(Gopal Prasad, J)

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