

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.172 of 1992

Arising Out of PS.Case No. -191 Year-1984 Thana -Sasaram District- SASARAM (ROHTAS)

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1.Timal Sah son of Haricharan Sah
2.Nandu Choudhary @ Nandu Mallah son of Late Aliya Mallah.
3.Kameshwar Prasad @ Kameshwar Kahar son of Late Jagdish Kahar,
All residents of Mohalla Bharatiganj, P.S. Sasaram, District- Rohtas.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. B.P.Pandey, Sr.Advocate.
M/s. Pramod Kumar
M.S.C. Giri, Advocate.
For the State : Mr.Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And
HONOURABLE JUSTICE SMT. ANJANA MISHRA
C.A.V. JUDGMENT
(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)
Date: 20-05-2015

These three appellants herein, after facing trial for offence under Section 302/34 of the Indian Penal Code, have been convicted by Judgment and order of conviction dated 6th May, 1992 and an order of sentence dated 7.5.1992, to undergo imprisonment for life by the 3rd Additional Sessions Judge, Rohtas, Sasaram, in Sessions Trial No.24 of 1985 arising out of G.R. Case No.932 of 1984, Sasaram P.S. Case No.191 of 1984.

2. The informant in this case is Rameshwar Prasad, P.W.6 who states in the fard beyan that when he came to the shop at Sasaram, his nephew (Bhagina) Ayodhya Prasad came to him and told him that the dead body of his younger brother, namely, Krishna Prasad was lying in Baba Ke Talab. He further told the informant that he came to know about the same from Chandra, a shop



keeper who had gone to ease himself near the Talab. Accordingly, the informant went to Baba ke Talab and saw that the dead body of his nephew Krishna Prasad lying at the bank of the pond and that he was wearing Full pant and bush shirt and shoes. The informant, after informing the family members regarding the occurrence went to the police station and apprised the police of the occurrence. It was stated by the informant that Krishna Prasad, the nephew of the informant was dealing in coal business along with the accused, Timal Sah and Nandu Malah resident of Mohalla- Bhartiganj and one Kameshwar Kahar of Mohalla- Gorakshani. It was stated that his nephew had taken Rs.8000/- earlier from his home around 20-25 days back for the said purpose. The deceased was also last seen at the Dharamshala Chowk at around 8P.M.with the three accused persons who stated to the informant that they were going to get coal from outside. Thereafter, at around 10 P.M. the informant saw Timal and Kameshwar in their underwear near Kargahar Mor and Nandu Malah was also seen with Full pant rolled up. On enquiry by the informant as to why they were standing there putting on underwear, it was stated that they were waiting for Krishna and thereafter the informant went away to his shop and in the morning the dead body of his nephew Krishna Prasad was discovered. It was alleged by the informant that the three accused persons, in order to grab the said Rs.8000/- of Krishna Prasad had indulged in the said crime. It was further stated that Peon of the Vakalatkhana had also seen the aforesaid three accused persons going with the nephew of the informant. Accordingly, the fardbeyan was recorded and Sasaram P.S. Case No.191 of 1984 was instituted on 5.1.1985 against the appellants under Section 302/34 of I.P.C.

3. After completion of the investigation by the police the chargesheet was submitted against all the three appellants. Cognizance having

been taken, the case was committed to the court of Session and charges were framed against all the three accused persons under Section 302/34 of the I.P.C. which ultimately led to their conviction and sentence to undergo imprisonment for life.

4. The case of the defence was a complete denial of offence and they alleged that they have been falsely implicated in the case out of sheer enmity. It was stated that appellant no.2 was working in the hotel of the informant and had left the work on account of non-payment of wages which had incurred the wrath of the informant. It was stated that the appellant no.3 had set up a typing table by the side of the informant's shop which had resulted in displeasure of the informant and had generated into animosity between them. A suggestion was also advanced by the accused persons that the deceased had illicit relationship with some other persons and the paramour of the wife of the deceased could have killed him as no soon after the occurrence, the wife of the deceased had being thrown out/ and or ran away and had subsequently remarried. As such, the possibility of false implication cannot be ruled out.

5. The prosecution has examined ten witnesses to prove its case. P.W.1 is the mother of the deceased Krishna Prasad. She has stated that her son had taken money from her about eight days back for bringing coal. This ran contradictory to the version of the informant as the informant Rameshwar Prasad stated that Krishna Prasad the deceased had taken away Rs.8000/- from his house 20-25 days back. Though in her examination she stated that her son was in the coal business along with the accused persons, in her cross examination, the mother had further stated that the deceased was working in the coal business singularly/exclusively and it was his wife who was keeping Account of the business. Therefore, the motive assigned by the informant that the accused

persons took away the deceased and killed him for his money is hardly likely. Further more, if the wife of the deceased had been keeping Account of the business of the coal being dealt with exclusively by the deceased as is evident from paragraph 4 of her cross examination, there arose no question as to why he should borrow money from his mother for the purpose of bringing any coal. This also falsified the story of there being any transaction with the accused persons.

6. P.W.2 is one Vishwanath Paneri, a Vendor, having a pan gumti situated near Kargahar mor. He has stated that at 10 O' Clock in the night on the said date, the informant Rameshwar Prasad came to his gumti to take pan. At the said point of time he saw three persons coming who were none other than the accused, namely, Timal Sah, Nandu Mallah and Kameshwar Prasad who were wearing underwear. Rameshwar Prasad enquired as to where was Krishna. To the said query, they answered that they were looking for him and went away. The evidence of this witness does not indicate anything further except that he had identified the three accused persons in the light of his shop. He also averred that the deceased Krishna was in the coal business.

7. P.W.3 is also a pan shop vendor who has come forward to support the last seen story of the informant that the informant came to his shop at Dharamshala More and stated that at 8 O' Clock four persons came to his shop, namely, Krishna, Nandu, Timal and Kameshwar. On enquiry made by these witnesses as to where they were going, Krishna answered that he was going to get coal from outside, as Krishna was related to him. This witness claimed to be recognizing him. This witness has further stated that the four persons, namely, Krishna, Timal, Nandu and Kameshwar often took betel on his shop. P.W. has also admitted that the deceased Krishna did not have a coal shop. This witness is however not an independent witness as he is related to the deceased.

8. P.W.4 is one Bajrangi Prasad who has a shop and has stated that there was some altercation between the deceased 15-20 days and the accused persons prior to the occurrence. He states that he had reported the matter to Ayodhya and Rameshwar. He has also stated that this enmity between the accused persons and the deceased had been going on between past 15-20 days. He has stated that he communicated regarding this enmity to Rameshwar (informant) and had also informed him that the accused threatened Krishna with dire consequence.

9. P.W.5 (Ayodhya Prasad) is the brother of the deceased who has stated that Krishna Prasad met him just before his murder at his Sasaram Kutchery Hotel. He stated that Krishna demanded money to bring coal from Jharia. Krishna further told him that he had taken Rs.8000/- from his house. Though he did not give him money when he went home in the evening his mother informed him that Krishna had taken Rs.8000/- from her on the same day and had gone to bring coal along with the accused, Nandu, Kameshwar and Timal. Thus, this witness tried to prove that Krishna went with them to bring coal from Jharia and was last seen with them. However, the following morning when he opened his shop he came to know that the dead body was lying in the Baba ke Talab. This witness further stated that thereafter he went and informed maternal uncle Rameshwar Prasad, P.W.6 (informant) and they together went to inform the family and also went to the police station to inform police about the occurrence. The witness further went on to state that his uncle had informed him that Krishna had been seen by him previous evening and on enquiry Krishna stated that he was going to Jharia to bring coal. Krishna also had own Account in the Punjab National Bank in which he used to deposit money and withdraw money. P.W.5 also could not say as to what was the nature of the business of the deceased and if at all he was in to the coal business exclusively or was undertaking the same

business with others. His testimony is vague and this witness further stated that 10-15 days previously Bajarangi Prasad told him that Timal had told that he would kill Krishna as 15-20 days prior to that date there had been serious dispute between the accused persons and the deceased.

10. P.W.6 is the informant himself, Rameshwar Prasad who has stated that he was informed by Ayodhya Prasad, brother of the deceased Krishna that Krishna's dead body was lying near the bank of tank. In his deposition the informant has further stated that Krishna had taken Rs.8000/- from his house 8-10 days prior to the occurrence. He had also seen Krishna along with Timal, Nandu and Kameshwar at around 8.30 at Dharamshala Chowk previous night and thereafter around 10 O' Clock in the night while he was going to sleep in his shop he saw Nandu, Timal and Kameshwar coming from the northern side of Kargahar Mor, Timal and Kameshwar were wearing underwear whereas Nandu had rolled up his pant and was wearing bushirt and on query from them, as to where was Krishna, the three accused persons answered that they were also looking for him and, in fact, they looked very agitated. This witness also disclosed that there was Account in the name of Krishna in Punjab National Bank. The informant P.W.6 has deposed that he learnt from Bajarangi that 15-20 days previously Krishna had hot talks with the accused persons in connection with the money. Timal had told Bajarangi that he would not be spared and for this reason the accused persons had killed Krishna. P.W.6 further stated that the place of occurrence is a few steps to the north of the place where the accused persons were last seen and on being queried had appeared to be mentally disturbed and had run away.

11. P.W.7 is a Doctor who conducted the postmortem on the deceased. He has found the blood coming out from nostril and mouth. He has



further found swelling on the neck, front 3-1/4" x 1/4". Swelling extending from thorax to the umbilicus 10" x 2", which he opined to be caused by hard and blunt substance. The doctor also found that there was congestion of brain, trachea and lungs. Heart was found partially empty. Stomach was empty. There was no foreign body either in oesophagus or in the stomach or lungs. The deceased had broken ribs and the thoracic body cavity contained about 1-1/2 litre of blood. The doctor, in his cross examination also opined that the blood comes only from nostril and mouth in the living condition. It was suggested by the defence that the blood have been seen to have been coming out from the nostril, the time of death might have been morning rather than night. Thus, it is evident, that even the time of death as stated by the prosecution becomes doubtful. As such, the conviction arrived at cannot be sustained on the basis of speculation

12. P.W.8 is a formal witness who has proved the F.I.R. (Ext.3) and P.W.10 is the formal witness who has proved the charge sheet.

13. P.W.9 is the I.O. of the case. He has stated that he was posted as Sub Inspector at Sasaram Town at the time of investigation. He states that he also sent the body for postmortem examination. The place of occurrence is Baba Ka Pokhara to the north of G.T. Road and the west of Collectorate which is a lonely place. He stated that he examined the witnesses, whereas the accused had absconded. He also checked the Pass Book of the deceased of Punjab National Bank. This witness also proved some contradictions such as there is no mention of the statement of Vishwanath Paneri with regard to burning of Petromax in his shop on the date of the occurrence. P.W.9, the I.O. has also not stated that the deceased Krishna was killed by the accused for taking Rs.8000/- Though it was the statement of Prabhawati Devi mother who asserted that Krishna was killed for taking money. Similar case was also made out by the Informant. The I.O. in his

deposition has pointed out that the deceased had been operating his bank account at intermittent interval and also just prior to the date of occurrence. Hence, it is strange as to why he would need to borrow money from any one.

14. The accused have also been examined and in their defence have stated that they have denied having any business relation with the deceased Krishna. They have also denied having taken Rs.8000/- from deceased for any business purpose leave, alone coal business. Accused Nandu Choudhary also denied that they have had any verbal altercation with the deceased 15-20 days prior to the occurrence.

15. Having gone through the evidence placed before the Court by the prosecution it is evident that the investigation in the case has not been carried out carefully and the motive behind the crime as alleged by the prosecution remains to be remote probability. Though the informant in his fardbeyan has alleged that it was because of the fact that the deceased had given Rs.8000/- for coal business which was not being returned by the accused persons, the said crime had been committed by them. This angle does not seem to have been proved. The fact that all four persons, the three accused and the deceased were in the coal business has also not been investigated or proved. The mother Prabhawati Devi says that the victim had taken money 8-10 days prior to the occurrence and the accused persons had killed Krishna and taken away the same from him.

16. The mother of the deceased Prabhawati Devi has also given the suggestion that the wife of the deceased had gone away only 14-15 days after her son was murdered. The prosecution has also not clearly answered the suggestion of the defence made at the instance of the accused persons that the wife of the deceased had illicit relation and that, in fact, her paramour was being

responsible for the said murder.

17. The story of the deceased having a coal business also remains vague and indistinct. While one witnesses had stated that it was his exclusive business, others had gone to suggest that they, i.e., the deceased and the accused persons had been conducting the same jointly. Another brother says that the money was taken the same day. The story of coal business varies from person to person. The prosecution has tried to carve out a case gradually while indicating that the deceased Krishna had taken money from his mother to pay the accused persons, all such contradictions clearly raised doubt and as such bare suspicion and probability cannot form the basis of any conviction.

18. Regarding the theory of “last seen” as has been made out by the informant we can well comprehend as to why the same could have been done by the prosecution. It appears that the Informant had an animus with the accused persons for implicating them. We are also constrained to note that P.W.9 has not clearly gone into the theory of “last seen” which was clearly propounded by the informant in his fardbeyan. While the informant and P.W.2 and P.W.3 states that the deceased was seen near the place of occurrence on the night before his dead body was found, the mother in her deposition says that after the dead body was found they were speculating about who could have done the act.

19. The statement of witness P.W.6 (informant) indicates only a broken stream of events and casts a cloud on the prosecution case and the last seen theory cannot, thus, form the basis of conviction, benefit of which can accrue to the advantage of the appellants. The defence has clearly stated that there had been animosity between Rameshwar Prasad informant and the accused. Appellant No.2 who had stopped working in the meat shop on account of non-payment and

Accused no.3 had set up a typing table next to his shop which he was not removing despite protest by the informant. A Pan Gumti was running next to the sweet shop of the informant by Timal Sah which had evoked wrath of the informant, leading the informant to fabricate the story of “last seen” and implicate them in the present case.

20. For the reasons stated above and under the facts and circumstance, the very basis of the prosecution case cannot be sustained as against the appellants. We thus consider it proper and in the interest of justice to set aside the order of conviction as against these appellants. The appeal thus succeeds and the appellants are acquitted of their charge. The order of conviction dated 6.5.1992 and order of sentence dated 7.5.1992 passed by the 3rd Additional Sessions Judge,Rohtas at Sasaram, in Sessions Trial No.24 of 1985 arising out of G.R.Case No.932 of 1984, Sasaram P.S. Case No.191 of 1984 is set aside. The appellants are directed to be released and their bail bonds stand extinguished.

(Anjana Mishra, J)

Navaniti Prasad Singh,J. **I agree.**

(Navaniti Prasad Singh,J.)

AnilKrSinha/-
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