

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.124 of 1993

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AGAINST THE JUDGMENT OF CONVICTION, DATED 04.03.1993, AND THE ORDER OF SENTENCE, DATED 11.03.1993, PASSED BY SRI BRAJ BIHARI SINHA VTH ADDITIONAL SESSIONS JUDGE, NALANDA AT BIHARSHARIF IN SESSIONS TRIAL NO. 639 OF 1990/269 OF 1990

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Binod Kumar, son of Ram Chandra Prasad, resident of village Diha, Ariyari, district Munger Appellant

Versus

State of Bihar Respondent

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Appearance :

For the Appellant : Mr. Rajendra Prasad, Senior Advocate
Mr. Ram Prasad Singh, Advocate

For the Respondent : Mr.Ajay Mishra, APP and
Dr.Rajesh Kumar Singh, Advocate

Mrs. Rina Sinha, Amicus Curiae

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
AND

HONOURABLE MR. JUSTICE I. A. ANSARI

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 23-03-2015

This appeal has been filed against judgment of conviction, dated 4th March, 1993, passed in Sessions Trial No. 639 of 1990/269 of 1990, whereby the learned 5th Additional Sessions Judge, Nalanda, at Biharsharif, has convicted the sole appellant, under Section 302 of the Indian Penal Code, for having committed murder of one Balo Mahto and sentenced him, on 11.03.1993, to suffer imprisonment for life.

2. The prosecution case, in short, as disclosed in the *First Information Report* (Exhibit 3) of Kedar Mahto (PW 6) recorded, on 02.07.1990, at 06.15 PM, at Meherpar, by Sub-Inspector of Police, M. A. Hannan, Officer-in-Charge,

Murarpur Police Station, is as follows:-

(a) On 02.07.1990, at about 05.30 AM, informant's father, namely, Balo Mahto, (since deceased) had come to his new house from his residential house situated at Meherpar, police station Murarpur, district Nalanda. After a little while, informant (PW 6) also started for his new house. In the meantime, he heard sound of firing.

(b) On hearing the sound of firing, he rushed towards the new house and saw the accused, Binod Kumar, lowering the shutter of the house and at that time, the accused was armed with a country-made pistol.

(c) On seeing the informant (PW 6), the accused fled away towards south. As per the informant (PW 6), witnesses, namely, Rajendra Chaudhary (PW 1), his son, Jogendra Chaudhary (PW 2), Lakhan Mahto and others also saw accused, Binod Kumar, fleeing away from there. The informant (PW 6) heard his father crying in pain. The informant lifted the shutter and found the western door locked. He, however, entered into the room from eastern side by pushing it open and found that his father had died by then. Some blood had oozed out of his head. According to the informant (PW 6), his father, Balo Mahto, had initiated marriage negotiation of his daughter, Sharda Kumari.

(D) On account of some monetary dispute on the previous day, the accused had threatened the informant's father with dire consequences.

3. Based on the *fardbayan* and treating the same as First Information Report, Murarpur Police Station Case No. 334 of 1990 was registered, under Section 302 of the Indian Penal Code and, upon completion of the investigation, police submitted *charge sheet*, under Section 302 of the Indian Penal Code, against the accused.

4. At the trial, when a charge under Section 302 of the Indian Penal Code was framed against the accused, he pleaded not guilty thereto.

5. The prosecution, in support of its case, examined altogether 09 (nine) witnesses. PW 1 (Rajendra Chaudhary), PW 2, Jogendra Chaudhary and PW 6 (Kedar Prasad) have claimed to have seen the accused-appellant, Binod Kumar, fleeing away with pistol from the new house of the deceased. PW 3 (Jageshwar Mahto) and PW 5 (Kailash Prasad) are witnesses to the inquest of the deceased. PW 4 (Anand Mishra) is a witness to the seizure of blood-stained trouser and red shirt from the house of Bundi Mahto, wherein the accused used to reside. PW 7 (Dr. Ravi Ranjan Rajesh) is said to have performed *post mortem* examination on the dead body of the deceased. PW 8 (Alok Kumar Pandey) is

the Investigating officer of the case, whereas PW 9 (Ramanand Singh) is a Constable of Murarpur Police Station, who has produced, in Court, the seized fired cartridge of .315 bore, blood-stained earth, white trouser and a red shirt, which were Material Exhibits I, II, III & IV respectively.

6. The accused, in his statement under Section 313 (1)(b) of the Code of Criminal Procedure, denied having committed the offence as alleged by the prosecution.

7. The learned trial Court, upon consideration of the evidence on record, convicted the accused under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life.

8. Being aggrieved, the sole convict has preferred the instant appeal.

9. The appellant submits that there is no credible eyewitness to the occurrence. The evidence of PW1, PW 2 and PW 6, who claimed to have seen the appellant fleeing away from the place of occurrence, are at variance with each other on material issues. As per the evidence of PW1, PW 6 could not have seen the appellant either lowering the shutter or fleeing away from the place of occurrence inasmuch as the latter reached there much after the occurrence. As per evidence of PW 2 himself, he arrived much after other

witnesses had already arrived at the place of occurrence and, as such, he, too, could not have been in a position to witness the occurrence. Further-more, the room, wherein the deceased was found lying, stood locked from outside and inside and, as such, no one from outside could have possibly shot him dead. Learned counsel submits that the possibility of suicide cannot be ruled out. Further-more, as per wounds of entry and exit, the deceased was fired upon from a higher position, which fits in with the theory of suicide.

10. The issues, before this Court, are: whether the deceased was murdered and if it is so, whether it is the appellant, who had committed the murder?

11. The prosecution, in support of its case, has relied upon the *post mortem* examination report and, in particular, the evidence of PW1, PW 2 and PW 6, in order to show that it was the appellant and none else, who had committed the murder.

12. Dr. Ravi Ranjan Rakesh (PW 7) has deposed that he held the *post mortem* examination on the dead body of Balo Mahto, aged about 55 years, on 02.07.1990, at about 04.30 PM, and found following injuries:-

"i. one abrasion over the front of right forearm size 2" x 1/2"

ii. Lacerated wound with inverted skin margin, charring, blackening with signing of hair over

the scalp of frontal region right side, of the size 1" x ½" x brain cavity deep, the same being the wound of entry.

iii. Lacerated wound with averted skin margin with blood clots with protrusion of brain material over the scalp of left temporal region back to the left ear, of the size of 2" x 1" x brain cavity deep, the same being the wound of exit."

13. The doctor (PW 7) has opined that the death was caused by fire-arm injuries. It is evident from *post mortem* report and evidence of the doctor (PW 7) that the deceased was shot dead.

14. The vital issue would still remain, namely, whether the appellant had committed murder by shooting to death Balo Mahto by means of a fire-arm.

15. As already indicated above, the prosecution, in support of its case that it is the appellant, who had committed the murder, has examined three witnesses, namely, PW1, PW 2 and PW 6. None of them has claimed to be eye witnesses of the occurrence; but all of them have unequivocally stated that they saw the appellant fleeing away with fire-arm from the place of occurrence after hearing the sound of firing.

16. PW 1 (Rajendra Chaudhary) is a tenant in the

new house of the deceased. He had deposed that at about 06:00 AM or 06.30 AM, he was present on the roof of his house and, on hearing the sound of firing, he came down and saw Balo Babu lying dead. This witness claims that he also saw accused Binod Kumar, in red shirt and white trouser, running away from the place of occurrence armed with a pistol. This witness has also deposed that the marriage of deceased's daughter was to take place with appellant, Binod Kumar, but heated argument took place between both of them on the night preceding the day of occurrence with respect to some money matters.

17. PW 2 (Jogendra Chaudhary), son of Rajendra Chaudhary (PW 1), too, claims to have seen the occurrence. His evidence is that he saw the appellant fleeing away with a country-made pistol. He has deposed that at about 06:00 AM, he was returning after answering call of nature and as soon as he reached near the house of Balo Mahto (deceased), he saw Binod Kumar, armed with a country-made pistol, fleeing away from the place of occurrence and when he went in front of the house of Balo Mahto, he found Balo Mahto dead. PW 2 has further deposed that there was some dispute between the appellant, Binod Kumar, and Balo Mahto, the deceased, with respect to scheduled marriage of latter's daughter

with the former.

18. PW 6 (Kedar Prasad), who is informant of the case, has supported the prosecution's case as recorded in the First Information Report. It is in the evidence of PW 6 that on the fateful morning, he was coming to his new house and as soon as he reached the road, he heard sound of firing from the direction of his new house, he rushed towards his house and saw accused, Binod Kumar, lowering the shutter of the shop of the building and at that time, the accused was armed with a pistol and fled away towards the south of the road and as the father of PW 6 (Kedar Prasad) was crying in pain, he entered into the room by pushing the door open and saw blood oozing out from the head of Balo Mahto, but by that time, Balo Mahto was already dead, whereupon he raised alarm and the people from neighbourhood arrived there. It is also in the evidence of PW 6 that there was hot exchange of words between his father and the appellant, Binod Kumar, the preceding evening on money matters relating to scheduled marriage of his sister, Sharda Kumari, and he (PW 6) claims that his father had informed him of this incident.

19. The defence has argued that the statement of PW 1 and PW 2 are at variance with those of PW 6. We find some substance in the submission of learned counsel

appearing for the defence. PW 1, who is a tenant in the new house of the deceased, has deposed, at paragraph 22 of the deposition, that on fateful morning, he was on the roof of his house and, on hearing the sound of firing, he rushed to the ground floor and at paragraph 20, he has deposed that he saw Balo Mahto crying in pain in the room inside the building, he raised *hulla* for 2 to 3 minutes and, then, he rushed to the house of Balo Mahto and informed his son (the informant) and daughter, who, in turn, came running to the place of occurrence. We find that the evidence of PW 1 differs from the evidence of PW 6 inasmuch as PW 6 claims that he rushed to the place of occurrence on his own upon hearing sound of firing and, in the meantime, PW 1 and PW 2, who had also gathered there, saw the accused fleeing away; whereas PW 1 claims that it was upon information given by him (PW 6) that PW 1 and his sister came to the place of occurrence.

20. If we accept the evidence of PW 1 to be correct, the evidence of PW 6 (the informant) has to be held untrue, because of the apparent contradiction in the evidence of these two witnesses. We find that the Investigating Officer (PW 8), too, has denied that PW 1 had made any such statement, referred to above, during investigation. The evidence of the Investigating Officer casts a shadow of

doubt on the credibility and trustworthiness of the evidence of PW 1 and, as such, it would not be safe to place reliance on his evidence to discredit the evidence of PW 6, which, in the context of circumstances of the present case, is required to be examined independent of the evidence of PW 1.

21. On coming to the evidence of PW 2, we find that his evidence is also at variance with the evidence of his father, PW 1 and PW 6 inasmuch as the former states that the appellant, Binod Kumar, was fleeing away with two others with a pistol and he also stated, in his cross-examination, that by the time, he reached the place of occurrence, 10 to 15 persons had already assembled near the place of occurrence. In view of his own evidence, it is doubtful if he was able to see the appellant, Binod Kumar, fleeing away from the place of occurrence inasmuch as it is the prosecution's case that the accused fled away soon after opening fire.

22. This leaves us with the lone oral testimony of PW 6. The prosecution argues that the conviction can be sustained even on testimony of a single eye witness if it is unambiguous and free from doubts. We would agree with the proposition of law canvassed by learned counsel for the appellant. But it is also equally well settled that if the

conviction has to be sustained on the evidence of solitary eye witness, his testimony is to be scrutinized very cautiously and only if the evidence is of unflinching nature and does not admit of any doubt that the conviction can be based on such evidence.

23. PW 6, in his evidence, has stated that the accused was wearing a red shirt, which the police subsequently seized from his house. We find that PW 6 had not made any such statement in his *fardbeyan*. This improvement appears to have been made in order to bring his evidence in tune the evidence of alleged seizure of shirt. PW 8 (the Investigating Officer), in his evidence, has deposed that a *chauki* (i.e., wooden cot) was found at the place of occurrence. PW 6, the informant, nowhere, states, in his evidence, about the presence of '*chauki*' at the place of occurrence. This aspect, in paragraph 12 of the deposition of PW 6, shows that the door was locked from outside as well as from inside and he does not remember whether he stated under Section 161 of the Code of Criminal Procedure that he had entered the house after lifting the shutter. In paragraph 28, he (PW 6) has deposed that after five minutes of raising alarm, people arrived at the place of occurrence, whereas as per his *fardbayan*, PW 1 and PW 2 had gone to the place of occurrence no sooner he

had come. There appears to be apparent contradictions in the deposition of PW 6 and it would not be safe to sustain the accused-appellant's conviction solely on the evidence of PW 6.

24. Besides this, we find that the PW 8 (Investigating Officer) came to the place of occurrence after receiving telephonic message at the police station at 05.45 AM. He (PW 8), in this regard, recorded a *sanha* and, thereafter, he (PW 8) proceeded to the place of occurrence and prepared inquest report. However, the *sanha*, which was the earliest information and would have been a very important piece of evidence in the facts of the case, has not been produced by the police on record.

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

26. In view of the circumstances discussed above, we do not find that the prosecution has been able to prove its case beyond all the reasonable doubt.

27. In the result and for the forgoing reasons, we allow this appeal. The impugned conviction of the accused-appellant and the sentences passed against him by the judgment and order, under appeal, are hereby set aside. The

accused-appellant is held not guilty of the offences, which he stands convicted of, and he is hereby acquitted of the same under benefit of doubt.

28. As the appellant is already on bail, the bail bonds are hereby cancelled and his sureties shall stand discharged.

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

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

(Samarendra Pratap Singh.)

I.A.Ansari,J.: I agree

(I. A. Ansari, J.)

Shashi/NAFR.

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