

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.461 of 1993

=====

(AGAINST THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE, DATED 03RD AUGUST, 1993, PASSED BY SHRI ASHOK KUMAR VERMA, 6TH ADDITIONAL SESSIONS JUDGE, ARRAH, IN SESSIONS TRIAL NO. 215 OF 1992, ARISING OUT OF KOILWAR POLICE STATION NO.95 OF 1991, CORRESPONDING TO G.R. NO.2367 OF 1991.)

=====

1. Sheo Dayal Dhanuk, S/o. Khelu Dhanuk,
2. Bhuar Dhanuk, S/o. Sheodayal Dhanuk,
3. Sudama Dhanuk, S/o. Sheodayal Dhanuk,
4. Subhug Dhanuk, S/o. Sheodayal Dhanuk,
All are resident of village- Birampur, P.S. Koilwar, District- Bhojpur.

.... Appellants

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Niraj Kumar @ Sanidh, *Amicus Curiae*
For the Respondent/s : Mr. Ajay Mishra, APP

=====

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
and
HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

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

Date: 09-03-2015

Under the judgment, dated 03.08.1993, passed, in Sessions Trial No. 215 of 1992, by learned 6th Additional Sessions Judge, Arrah, the four appellants, namely, Sheodayal Dhanuk, Bhuar Dhanuk, Sudama Dhanuk and Subhag Dhanuk stand convicted under Section 302 read with Section 34 of the Indian Penal Code. Following their conviction, the accused-appellants have been sentenced to suffer imprisonment for life.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be described as under:



(i) In the night of 26-27th September, 1991, Ramchandra Dhanuk, father of the informant, Kamal Dhanuk (PW 3), went to sleep at his paddy field in order to take care of the boring pump machine, which had been installed there. All the four accused persons, namely, Sheodayal Dhanuk, Bhuar Dhanuk, Sudama Dhanuk and Subhag Dhanuk were heard by Kamal Dhanuk (PW 3), his brother, Wakil Dhanuk (PW 1), and Arjun Dhanuk (PW 2), discussing among themselves that they had finished their enemy. The accused were also heard by PW 1, PW 2 and PW 3 planning to flee away. Arjun Dhanuk (PW 2), then, went to their field along with Bhim Dhanuk (not examined) and Arjun Dhanuk (PW 2) and found his father, Ram Chandra Dhanuk, lying dead, in a pool of blood, with injuries on his body.

(ii) Accompanied by the village Chaukidar, informant, Kamal Dhanuk (PW 3), went to Koelwar Police Station and lodged there an information, in writing, with regard to the occurrence. Based on the said information and treating the same as First Information Report, Koelwar Police Station Case No. 95 of 1991, under Section 302/34 of the Indian Penal Code, was registered against the accused aforementioned, namely, Sheodayal Dhanuk, Bhuar Dhanuk, Sudama Dhanuk and Subhag Dhanuk.

3. During investigation, inquest was held over

Ramchandra Dhanuk's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, *charge sheet* was laid, under Sections 302/34 of the Indian Penal Code, against the four accused persons above mentioned.

4. At the trial, a charge, under section 302 read with Section 34 of the Indian Penal Code, was framed against four accused persons, namely, Sheodayal Dhanuk, Bhuar Dhanuk, Sudama Dhanuk and Subhag Dhanuk. To the charge so framed, the accused pleaded not guilty.

5. In support of their case, prosecution examined altogether six (6) witnesses. 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 offence, which was alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced by the defence.

6. Having, however, arrived at the finding that accused-appellants, Sheodayal Dhanuk, Bhuar Dhanuk, Sudama Dhanuk and Subhag Dhanuk, had been proved guilty of the charge under Section 302 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 already mentioned above.

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

8. We have heard Mr. Niraj Kumar @ Sanidh, learned Counsel, appearing as *Amicus Curiae*, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

9. Before we come to the accounts of the occurrence given by the witnesses of the prosecution, it is, in the facts and circumstances of the present case, necessary to take into account the medical evidence on record. PW 6 (Dr. Girish Deo Narayan Singh) is the doctor, who had, admittedly, conducted the *post mortem* examination, on 27.09.1991, at about 3.00 PM, on the dead body of Ram Chandra Dhanuk and found the following external injuries:

"(i) Incised wound measuring 3" x 1¹/₂" X neck muscle deep at the left side of neck. The carotid artery thyroid gland and trachea was divided.

(ii) Incised wound 1/2" X 1/4" X scalp deep on right side of forehead.

(iii) Abrasion 1" diameter at right arm.

On dissection:

All the external injuries were confirmed. Brain was pale. Heart's all chambers were empty. Stomach contained 8 ounces of semi digested food. Liver, spleen and kidneys were pale and bladder was empty.

10. In the opinion of the doctor (Dr. Girish Deo Narayan Singh), all the above injuries were *ante mortem* in nature and the death was caused due to shock and hemorrhage resulting from the injuries to the vital organs of the neck of the deceased. It is also in the opinion of the doctor that all the injuries were caused by sharp cutting weapon, such as, *Garasa* and were sufficient to cause, in the ordinary course of nature, death of a person.

11. Neither the defence nor the prosecution has disputed the correctness of the findings of the doctor and/or his opinion with regard to the nature of injuries or nature of weapon used. We, too, do not find anything inherently incorrect or improbable in the evidence given by the doctor.

12. Bearing in mind the medical evidence on record, when we turn to the remaining witnesses, adduced by the prosecution, we notice that PW 3 (Kamal Dhanuk) is the informant of the case, whose evidence is that on the night of the occurrence, his father, Ram Chandra Dhanuk, had gone to the field to keep guard on the boring pump machine lying at



their field and he (PW 3) and his brother, Wakil Dhanuk (PW 1), heard the accused persons talking amongst themselves in their house to the effect that they had finished their enemy and shall, therefore, make arrangement to flee away. Suspecting that the accused persons might have killed the informant's father, Ram Chandra Dhanuk, the informant's brother, Arjun Dhanuk (PW 2), accompanied by their maternal uncle (who has not been examined), went to the field and found Ram Chandra Dhanuk lying, in a pool of blood, dead with injuries on his body. Surprisingly, the evidence of the informant is that he went to the said field in the morning on the following day and saw his father's dead body.

13. Believing that the enemy, which the accused appellants had allegedly been talking about, was none other than the deceased, Ram Chandra Dhanuk, father of the informant, learned trial Court has held the accused-appellants guilty of the charge and convicted them accordingly. We find it wholly impossible to confidently uphold the conviction of the accused-appellants on the presumptuous nature of evidence inasmuch as there is not even an iota of material on record to show that the person, which the accused-appellants had allegedly been talking about, meant none other than the deceased, Ram Chandra Dhanuk. This apart, the evidence given by PWs 1, 2 and 3, as to what they had heard does not



inspire confidence inasmuch as we find that according to the evidence of PW 1, while he was lying on his cot and his wife was massaging his legs, the accused persons came to their verandah and they were discussing that they had killed their enemy. We find it well-nigh possible to confidently hold that if the accused-appellants were assailants, they would have come out to their verandah from inside their house and started discussing that they had killed the enemy. That the evidence of PW 1 is not reliable is also evident from the fact that though PW 1 initially deposed that he had heard the accused persons discussing that they had killed their enemy, when he (PW 1) was lying on his cot and his wife was massaging the legs, he (PW 1), later on, claims that he went near the verandah and standing there, he heard the accused persons having discussion as described hereinbefore.

14. Close on the heels of the evidence of PW 1, PW 3 has claimed that when he went to make water, his brother (PW 1) was standing near the wall and heard the accused persons talking that they had killed their enemy and that they were in the process of fleeing away and, thereafter, accompanied by Arjun Dhanuk (PW 2) and Bhim (maternal uncle of the deceased), he went and saw the dead body of Ram Chandra Dhanuk. Apart from the fact that Bhim has not been examined, Arjun Dhanuk (PW2) has deposed that Kamal



Dhanuk (PW 3) came to his house and disclosed to him that they had heard the accused persons talking and, then, all of them went to the field of deceased Ram Chandra Dhanuk and found the said deceased lying. If what PWs 1, 2 and 3 have deposed were true, there is no reason for PW 1 (Wakil Dhanuk), son of the deceased, to have not gone and seen his father's dead body at the place and remained at home inasmuch as it is the clear evidence of PW 1 that he went to the field next morning.

15. Situated thus, it is clear that apart from the fact that the evidence, given by the prosecution witnesses, is inherently untrustworthy and cannot be safely believed, we do not find that their evidence help the prosecution prove beyond reasonable doubt that accused-appellants were the ones, who had put to death Ram Chandra Dhanuk.

16. At any rate, in the light of the nature of the evidence on record, the prosecution could not have been held, and ought not to have been held, to have proved their case beyond reasonable doubt against the accused appellants. Consequently, the accused-appellants deserved to be accorded, at least, benefit of doubt.

17. For the foregoing reasons, 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.

18. In the result and for the reasons discussed above, 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.

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

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

21. 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.)

(Gopal Prasad, J.)

Mkr./-

U	√	T	√
---	---	---	---