

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 397 of 1993

Against the judgment of conviction and order of sentenced dated 16.07.1993, passed by Sri D.G.R. Patnaik, Additional Sessions Judge, III, Sitamarhi, in Sessions Trial No. 167 of 1983/26 of 1992 arising out of Sonbarsa P.S. Case No. 103 of 1981

Sarvalal Rai, son of Hanuman Rai, resident of Singnwahinitola Khutna, P.S. Sonbarsa, district Sitamarhi

..... Appellant

Versus

The State of Bihar

..... Respondent

Appearance :

For the Appellant : None

For the Respondent : Mr. Sujit Kumar Singh, APP

Mr. Bharat Lal, Advocate as Amicus Curiae

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

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

Date: 10-04-2014

Under the judgment, dated 16.07.1993, passed, in Sessions Trial No. 167 of 1983/26 of 1992, by learned Additional Sessions Judge III, Sitamarhi, the appellant, Sarvalal Rai, stands convicted under Section 302 of the Indian Penal Code. Following his conviction, the appellant has been sentenced to suffer imprisonment for life.

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

(i) On 18.12.1981, at about 08.00 A.M. when the informant, Ram Tapsi Rai (P.W. 3), was cooking meals at his house, Ram Naresh Rai and Ram Kripal Rai came there and informed him (Ram Tapsi Rai) that Gagan Rai was digging the land, which was held under a lease by the family of the informant, and,

on hearing the same, when the informant, accompanied by Ram Naresh Rai and Ram Kripal Rai, went to his land, he (informant) found that accused, namely, Bhane Rai and Kameshwar Rai, armed with guns, Sarvalal Rai, Rameshwar Rai, Mahendra Rai, Kishun Dev Rai, Udai Rai, Vijay Rai, Ramnagina Rai, Rambabu Rai, Raj Nandan Rai, Jang Bahadur Rai, Panni Lal Rai and Yugeshwar Rai, all armed with *lathis*, had assembled there, whereupon accused Bhane Rai instigated others to kill the informant and his companions, whereupon accused Sarvalal Rai assaulted Ram Naresh Rai by means of a *lathi* on his head and, having suffered injury on his head, Ram Naresh Rai fell unconscious.

(ii) Following assault on Ram Naresh Rai by accused Sarvalal Rai, accused Udai Rai gave one more blow, by means of *lathi*, on Ram Naresh Rai. When the informant and Gosai Rai rushed forward to save Ram Naresh Rai, other accused persons assaulted the informant and the said Gosai Rai by means of *lathis* and injured them. On hearing *hulla* raised at the place of occurrence, informant's co-villagers arrived and while all accused took to their heels, accused Sarvalal Rai and accused Gagan Rai were apprehended by the informant; but accused Sarvalal Rai, somehow, managed to free himself and fled away. However, accused Gagan Rai was kept apprehended by the informant.

(iii) Though the informant went to Sonbarsa Police Station and orally reported the occurrence to the Officer-in-Charge there, the oral information, so given by him, was not reduced into

writing at the said Police Station; rather, the police officer, along with the informant, came to the place of occurrence, where, on findings Ram Naresh Rai, dead, *inquest* was held on the said dead body, which was also subjected to *post mortem* examination, and, on completion of the investigation, police laid charge *sheet*, under Sections 147/148/149/302 of the Indian Penal Code, against the accused aforementioned.

3. At the trial, when a *charge*, under Section 302 of the Indian Penal Code, was framed against accused, Sarvlal Rai and Udai Rai, under Section 302 read with Section 149 of the Indian Penal Code against accused, Gagan Rai, Bhanna @ Bhagwan Dutt Rai, Rameshwar Rai, Mahendra Rai, Krishnadeo Rai, Bijai Rai, Ram Nagina Rai, Ram Babu Rai, Jang Bahadur Rai, Raj Nandan Rai, Panni Lal Rai, Jugeshwar Rai and Asharfi Rai, under Section 148 of the Indian Penal Code against Bhanna Rai @ Bhagwan Dutt Rai, under Section 147 of the Indian Penal Code accused Gagan Rai, Bhanna Rai @ Bhagwan Dutt Rai, Rameshwar Rai, Mahendra Rai, Udai Rai, Krishnadeo Rai, Bijai Rai, Ram Nagina Rai, Ram Babu Rai, Raj Nandan Rai, Jang Bahadur Rai, Panni Lal Rai, Jugeshwar Rai and Asharfi Rai and under Section 323 of the Indian Penal Code against accused, Mahendra Rai, Ram Nagina Rai, Jang Bahadur Rai and Jugeshwar Rai, to the charges, so framed, all the accused, aforementioned, pleaded not guilty to their respective charges.

4. In support of their case, prosecution examined as many as 3 (three) witnesses. The accused were, then, examined

under Section 313 (1) (b) of the Criminal Procedure Code and, in their examinations aforementioned, the accused persons denied that they had committed the offence, which was alleged to have been committed by him, the case of the defence being that of denial. No evidence adduced on behalf of the defence.

5. Having, however, arrived at the finding that the accused Sarvalal Rai, alone had been proved guilty of the offence under Section 302 of the Indian Penal Code; whereas accused Udai Rai, Ram Nagina Rai and Yugeshwar Rai, had been proved guilty of the offence under Section 323 of the Indian Penal Code, and all the accused persons had been proved guilty of the offence under Section 147 of the Indian Penal Code, learned trial Court, while convicting the accused Sarvalal Rai, as mentioned hereinbefore, released rest of the accused on execution of bonds, under Section 3 and 4 of the Probation of Offenders Act, for maintaining peace and good behaviour for a period of one year.

6. Aggrieved by the conviction and sentence passed against him, Sarvalal Rai, as a convict, has preferred this appeal.

7. We have heard Mr. Bharat Lal, Advocate, as *Amicus Curiae*, and Mr. Sujit Kumar Singh, learned Additional Public Prosecution, appearing for the State.

8. While considering the present appeal, what is of paramount importance to note is that according to the evidence of the informant (P.W. 3), soon after the occurrence, he went to Sonbarsa Police Station and orally reported the occurrence to the

police, but, the police officer, instead of recording his statement, brought the informant back to the place of occurrence and it was on arrival at the place of occurrence that the informant's statement was recorded, which has been treated as the First Information Report of the case.

9. From the facts noted above, it becomes clear that the arrival of police, at the place of occurrence, was pursuant to the information of commission of cognizable offence to the police and, hence, the informant's (P.W. 3) statement, which has been treated as the First Information Report, could not have been regarded as the First Information Report inasmuch as the same being a statement, recorded during investigation of the case, ought to have been treated as the informant's statement made under Section 161 of the Criminal Procedure Code. In law, it was the information, which PW 3 had orally given to the police officer, which was the First Information Report and ought to have been treated as such.

10. Coupled with the above, we notice that according to the evidence of the doctor (P.W. 1), who had, admittedly, held, on 19.12.1981, *post mortem* examination on the dead body of Ram Naresh Rai, he found the following *ante mortem* injuries:

- "(i) Sharp cut on scalp left side 1½" deep to bone x ¼" caused by sharp instrument
- (ii) Two scratches on left thigh each 1" x 1/6" caused by blunt weapon.
- (iii) Lacerated cut below and out of left ear ½" x 1/3" x ¼" caused by blunt weapon
- (iv) On opening the scalp one linear fracture of 4" in height extending from upper part of

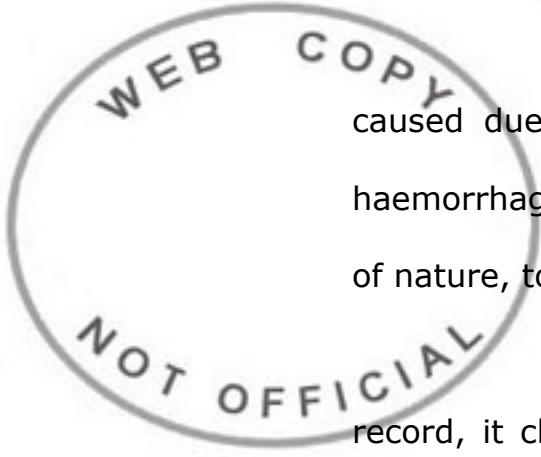
the frontal bone left side to cut left parietal bone. Two transverse fracture crossing the first fracture line each about 2½" in length."

11. In the opinion of the doctor, the death was caused due to injury Nos. (i) and (iv) resulting into shock and haemorrhage, injury No. (i) being sufficient, in the ordinary course of nature, to cause death of a person.

12. From a close scrutiny of the medical evidence on record, it clearly transpires that injury No. (i) and injury No. (iv) are really caused by one external injury and, hence, there was, in the light of the medical evidence on record, only one blow given on the left side of the skull of Ram Naresh Rai.

13. Coupled with the above, what can also not be ignored is that according to the doctor (P.W. 1), injury No. (i) was caused by sharp cutting weapon and such an injury is possible to be caused by bamboo splinter if the sharp-edge is used. Though a bamboo splinter, according to the doctor, could have caused the said injury, there is no evidence that any piece of bamboo splinter was used, while assaulting Ram Naresh Rai, nor is there any ocular evidence to show that Ram Naresh Rai was assaulted by any sharp-edged weapon.

14. Situated, thus, it is clear that the medical evidence on record, completely belies the possibility of injury No. (i) having been caused by a *lathi* inasmuch as the said injury was caused either by a sharp cutting weapon or by a piece of bamboo splinter.



15. Bearing in mind the medical evidence on record, let us come to the evidence of the informant (P.W. 3). This witness's evidence is that on the day of the occurrence, at about 08.00 o'clock in the morning, when he (informant) was cooking meals, Ram Naresh Rai (since deceased) and Ram Kripal Rai came to him and told him that Gagan Rai was digging earth on the land, which was jointly held by him (P.W. 3), Ram Naresh Rai and Ram Kripal Rai. On receiving this information, according to the evidence of P.W. 3, he (P.W. 3), accompanied by Ram Naresh Rai and Ram Kripal Rai, came to their land, where accused Bhanna Rai exhorted others and, then, accused Sarvalal Rai assaulted on the head of Ram Naresh Rai by means of a *lathi* and, on receiving the blow, Ram Naresh Rai fell on the ground, whereupon the accused Udai Rai gave a blow by means of a *lathi* on Ram Naresh Rai and, then, other accused, Bhane Rai and Kameshwar Rai, Sarvalal Rai, Rameshwar Rai, Mahendra Rai, Kishun Dev Rai, Udai Rai, Vijay Rai, Ramnagina Rai, Rambabu Rai, Raj Nandan Rai, Jang Bahadur Rai, Panni Lal Rai and Yugeshwar Rai, assaulted the informant and his companions. It is in the evidence of the informant (P.W. 3) that accused Bhanna Rai and accused Kameshwar Rai were armed with gun, while others were armed with *lathis* and as Ram Naresh Rai died at the place of occurrence, he (P.W. 3) went to the Police Station, along with the Chowkidar, to inform the police about the occurrence, but the information, given by him (PW 3), was not recorded at the Police Station and that his statement was recorded

at the place of occurrence and that at the place of occurrence, the police officer also held inquest on Ram Naresh Rai's dead body, the inquest report being Exhibit 1.

16. What is, now, of great significance to note is that though in his evidence, the informant (P.W. 3) has claimed that despite the fact that he had informed the police about the occurrence, the police did not record the information, which the informant (PW 3) had so given, the Investigating Officer has not been examined in the present case. Neither any explanation has been offered by the prosecution, in this regard, nor is any explanation discernible, in this regard, from the materials on record. What was the oral information given to the police, as regards the occurrence, by the informant (PW 3), remains, thus, a mystery.

17. The inference, therefore, which is irresistible to draw is that the Investigating Officer has been withheld by the prosecution inasmuch as his evidence would not have supported the evidence of the informant that though he had reported the occurrence at the place of occurrence, the police officer, instead of recording his statement, came to the place of occurrence and it was at the place of occurrence that the informant's statement was recorded; otherwise also, it is not at all reasonable to believe that a police officer, on duty, at a Police Station, would leave the Police Station without making, in the general diary, any entry as regards his departure from his police station. The initial information,

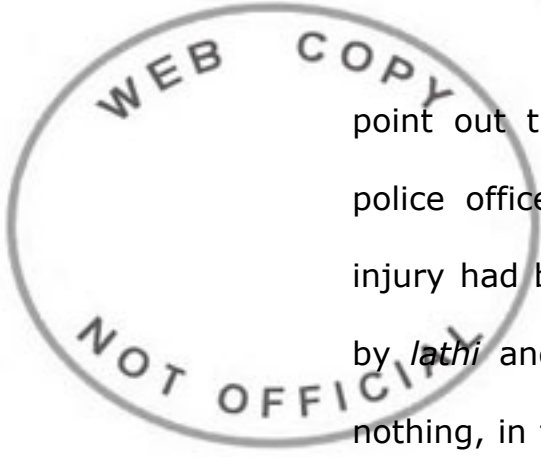
therefore, given to the police, with regard to the occurrence, has been clearly suppressed.

18. With regard to the above, we may also hasten to point out that the inquest report (Exhibit 5) mentions that the police officer, while holding the inquest, was informed that the injury had been suffered by the said deceased on being assaulted by *lathi* and also by the blunt edge of spade, whereas there is nothing, in the evidence on record, to show that any weapon other than *lathi* was used, while allegedly assaulting Ram Naresh Rai.

19. It is also important to note that it is the specific evidence of the informant that Ram Naresh Rai was given blow by means of *lathi* on his head and, in the light of the evidence on record, a blow by *lathi* could not have caused injury No. (i), coupled with the internal injury, which has been described as injury No. (iv), which caused the death.

20. As far as PW 2 (Nagendra Singh) is concerned, he (PW 2) has merely proved the handwriting of the then Officer-in-Charge, on the *fardbeyan* (Exhibit-2).

21. Because of the nature of evidence, which has been adduced by the prosecution, apart from the fact that there is clear conflict between the medical evidence, on one hand, and ocular evidence, on the other, we also find that in the light of the discussions held above that the evidence of the informant cannot be regarded as the evidence of a wholly reliable witness and, hence, based on the evidence of the informant, the medical



evidence on record can not be ignored.

22. Because of what has been discussed and pointed out above, we are clear of the view that in the case, at hand, prosecution had failed to prove its case beyond all reasonable doubts and the accused-appellant ought to have been accorded, at least, benefit of doubt.

23. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellant and the sentence passed against him by the judgment and order, under appeal, are hereby set aside. The accused-appellant is held not guilty of the offence, which he stands convicted of, and he is hereby acquitted of the same under benefit of doubt.

24. Since the accused-appellant, namely, Sarvalal Rai, is on bail, he is discharged from the liabilities of his bail bonds.

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

26. 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.)

A.F.R.,
S.A./Kundan

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