

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.85 of 1993

Arising Out of PS.Case No. -48 Year- 1984 Thana -SADAR District- MUZAFFARPUR

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Mannu Kishore Bhagat @ Manun Bhagat, son of Ram Chalitar Bhagat, resident of
Village Manika Gazi/ Manishahi, P.S. (Sadar) Musahari, District Muzaffarpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant : Mr. Nawal Kumar Sinha No. 3, Advocate
Mr. Arun Kumar, Advocate

For the State : Mr. A.K. Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 08-05-2015

Sole appellant, by filing this appeal, assailed the judgment/ order dated 01.02.1993, passed by Sessions Judge, Muzaffarpur, in Sessions Trial No. 186/1985 whereunder, out of the three accused put on trial in connection with Muzaffarpur Sadar P.S. Case No. 48/84 dated 29.02.1984, appellant alone has been convicted for the offences under Sections 302/34 of the Penal Code and sentenced to suffer rigorous imprisonment for life.

2. Prosecution case, as set out in the fardbeyan of Chaukidar of Bit No. 2/12 Ganaur Singh, son of Ram Swarup Singh, resident of Village Bishunpur Manshahi within Sadar Police Station recorded by Sub-Inspector Umakant Baitha of Musahri O.P.



on 28.02.1984 around 5.00 P.M., is that in the night between 26-27.02.1984 he was on patrolling duty towards northern side of the village, hearing alarm raised from the southern end of the village, informant making enquiry came to the house of Mannu Kishore Bhagat, learnt from him that one dacoit has been killed, went near the dead body and found Rameshwar Manjhi, son of Churaman Manjhi, resident of Village Gangapur within Sadar Police Station dead. In the fardbeyan informant further stated that many persons collected at the place of occurrence and from them he could not ascertain as to who was the assailant of Rameshwar Manjhi. Scribe of the fardbeyan not only read over the statement to the informant but informant also read the same and having found the statement to be correctly recorded put his signature over the same. Besides the informant Arjun Baitha also put his signature as an attesting witness to the fardbeyan. Scribe forwarded the fardbeyan to Officer-in-Charge, Sadar Police Station for instituting a case under Section 304-A of the Penal Code against unknown and took up its investigation.

3. Officer-in-Charge, Sadar Police Station having received the fardbeyan registered Sadar P.S. Case No. 0048/84 for the offence under Section 304 of the Penal Code on 29.02.1984 against unknown with further endorsement that Sub-Inspector



Umakant Baitha has already taken up the investigation. First Information Report was forwarded from the police station on 01.03.1984 but was received in Court on 02.03.1984. In the light of the Inquest, post mortem report and statement of the villagers of Manshahi, Gangapur charge-sheet was submitted against Sidheshwar Bhagat, Anirudh Bhagat, Faguni Bhagat and the appellant. In the light of the charge-sheet cognizance for the offence was taken and after supply of police papers to the four accused persons case was committed to the Court of Sessions. Sessions Court framed charge against all the four accused persons under order dated 19.02.1990 to which the accused persons pleaded not guilty and claimed to be tried.

4. During trial accused Faguni Bhagal left for heavenly abode and proceedings against him was dropped under order dated 01.05.1991.

5. In support of the charge prosecution examined as many as 18 witnesses, out of whom P.W. 17 Ganaur Singh is the informant of the case. P.Ws. 1, 6, 7, 8 Nageshwar Narain Singh, Sonelal Bhagat, Jaigovind Bhagat, Shivchandra Ram are the co-villagers of the appellant. P.W. 9 Ghulli Devi is the wife of the deceased. P.W. 16 Dr. Manoranjan Kumar Srivastava is the surgeon, who conducted post mortem on the dead body of the



deceased. P.W. 18 Raj Kumar Verma is an Advocate's Clerk and has been examined to formally prove the fardbeyan, seizure-list and inquest report. P.Ws. 11, 12 Saukhi Manjhi, Darogi Manjhi are the co-villagers of the deceased. P.Ws. 2, 4, 10, 14 Julum Bhagat, Chandeshwar Bhagat, Yogendra Bhagat, Vishwanath Bhagat became hostile. P.Ws. 3, 5, 13, 15 Bisheshwar Bhagat, Bhairo Bhagat, Haridwar Bhagat, Bindeshwar Bhagat have been tendered.

6. Learned counsel for the appellant submitted that besides informant Chaukidar (P.W. 17), two sets of villagers, one residents of Village Manshahi and the other residents of Village Gangapur, have been examined to support the prosecution case but even if their evidence is accepted in entirety none of the villagers, either the residents of Village Manshahi or residents of Village Gangapur has seen the appellant assaulting the deceased, as such, his conviction cannot be maintained on the basis of the evidence led by the prosecution. In this connection, it is pointed out that P.Ws. 1, 6, 7, 8 are the residents of Village Manshahi and have only seen the dead body of the deceased lying in front of the house of the appellant.

7. Learned counsel for the appellant further submitted that the other set of villagers, namely, P.Ws. 11, 12 as also P.W. 9, the wife of the deceased have also not seen the



appellant assaulting the deceased. P.W. 9 stated in Paragraph 2 of her evidence that occurrence took place seven years earlier and she does not remember the actual date of occurrence. In the morning of occurrence her husband was at residence, appellant came, asked him to accompany for work as earlier also he used to come and ask her husband to work. P.W. 9 further stated that on the date of occurrence her husband did not return, next morning she could learn that her husband has been killed. In Paragraph 3 P.W. 9 stated that the dead body of her husband was found at some distance from the house of appellant and she had gone to see the dead body over which there were wounds. In Paragraph 4 P.W. 9 stated that Nageshwar and Sonelal had told her that appellant, Anirudh Bhagat, Sidheshwar Bhagat and Faguni Bhagat killed her husband, but she did not come forward to lodge the case as she was threatened by the appellant. In Paragraph 5 P.W. 9 stated that she did record her statement before the Officer-in-Charge and the Dy.S.P.

8. Learned counsel for the appellant submitted that the aforesaid evidence of P.W. 9 is not to be relied upon as her evidence that she recorded police statement before the Officer-in-Charge and Dy.S.P. is not to be accepted in view of the fact that the present fardbeyan was recorded on 28.02.1984 by the informant Chaukidar (P.W. 17) much after the inquest proceedings were



conducted on the dead body of Rameshwar Manjhi on 27.02.1984 between 4-7 A.M. in connection with Sadar P.S. Case No. 45/84 dated 27.02.1984 which was recorded by the appellant against unknown dacoits and was reported by the appellant on 27.02.1984 at 1.00 A.M. and actually recorded at 1.30 A.M. It is submitted that the present fardbeyan has been recorded on 28.02.1984 at 5.00 P.M. by the informant Chaukidar of the village (P.W. 17) when neither the wife of the deceased (P.W. 9) nor any of her villagers i.e. P.Ws. 11, 12 came forward to record the fardbeyan. It is submitted that if the wife (P.W. 9) and the villagers had seen the appellant asking the deceased at his house to accompany and work for him in the morning of 26.02.1984, such fact was required to have been disclosed by them after they saw the dead body near the house of the appellant in the morning of 27.02.1984 but neither the wife nor the villagers of the deceased have reported such fact to the police but in Court deposed that they were under threat from the appellant not to disclose such fact to the police. Aforesaid evidence appears to have been recorded only to sub-serve the prosecution case, as it is the own evidence of the wife and the co-villagers of the deceased that they did record statement before the Officer-in-Charge.

9. In the light of the assertion of the wife and the co-villagers of the deceased that they did record their police



statement, the question, which requires to be answered, is where is the statement and what are its contents. Investigating Officer of the case Sub-Inspector Sri Umakant Baitha, the scribe of the fardbeyan was required to be brought to the witness box to clear the mist about the police statement of the wife and the two co-villagers of the deceased. Prosecution has neither examined the scribe of the fardbeyan and the Investigating Officer of the case as a witness nor has given any explanation as to why he has not been produced for recording his evidence and to explain as why inquest proceedings on the dead body of Rameshwar Manjhi was conducted on 27.02.1984 between 4-7 A.M. in connection with Sadar P.S. Case No. 45/84 dated 27.02.1984 and why such case was found not true during investigation. The prosecution party having not explained the aforesaid laches as also failed to establish from the evidence that the appellant was seen assaulting the deceased, even if, we ignore the failure of the prosecution to explain the circumstances in which inquest proceedings of the dead body of Rameshwar Manjhi was conducted in connection with Sadar P.S. Case No. 45/84, which was found false during investigation and the case lodged by the Chaukidar, on the basis of the information derived from the appellant found true against the appellant during investigation, it may not be possible to maintain the conviction of the appellant as

none of the witnesses have seen the appellant assaulting the deceased. Accordingly, we set aside the judgment of conviction/ order of sentence dated 01.02.1993. Appeal is allowed. Appellant is on bail, is discharged from the liability of his bail bond.

(V.N. Sinha, J.)

(Nilu Agrawal, J.)

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