

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.426 of 1993
With
Criminal Appeal (DB) No.448 of 1993
With
Criminal Appeal (DB) No.449 of 1993

(AGAINST THE JUDGMENT OF CONVICTION AND THE ORDER OF SENTENCE, DATED 20.08.1993, PASSED BY SHRI NAWAL KISHORE PRASAD, SESSIONS JUDGE, NALANDA, AT BIHARSHARIFF, IN SESSIONS TRIAL NO. 498 OF 1992, ARISING OUT OF CHANDI POLICE STATION CASE NO. 293 OF 1992.)

Rajendra Mahto son of late Krishna Mahto, Resident of Village- Makunadan Bigha, P.S. Chandi, District- Nalanda.

.... Appellants **(In Criminal Appeal No. 426 of 1993)**

With

1. Sudama Mahto, son of late Krishna Mahto, Resident of Village- Makunadan Bigha, P.S. Chandi, District- Nalanda.

.... Appellant **(In Criminal Appeal No. 448 of 1993)**

With

Ram Ratan Mahto, son of late Krishna Mahto, Resident of Village- Makunadan Bigha, P.S. Chandi, District- Nalanda.

.... Appellant **(In Criminal Appeal No. 449 of 1993)**

Versus

The State of Bihar Respondent **(In all the Appeals)**

Appearance :
(In all these appeals)

For the Appellants : Mr. Sanjay Kumar, Advocate

For the Respondent: Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
AND
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

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

Date: 30-06-2015



Under challenge, in the present appeals, are the judgment of conviction and the order of sentence, dated 20.08.1993, passed, in Sessions Trial No. 498 of 1992, by learned Sessions Judge, Nalanda, at Bihar Shariff, whereby the appellants, namely, Rajendra Mahto, Sudama Mahto and Ram Ratan Mahto, 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 by the First Information Report, may, in brief, be described as under:

(i) On 06.08.1992 at about 7.30 PM, after taking his dinner, Jagdish Prasad (since deceased) went out of his house in the lane to have a walk. Following her husband, Balmati Devi (PW 5), too, went out of her house with a bucket along with a torch and proceeded towards hand-pipe, located near the house of Ramkeshwar Mahto. When Jagdish Prasad, while walking, reached near the house of Ramsaran Mahto, accused Rajendra Mahto, Sudama Mahto and Ram Ratan Mahto came out of their house, caught hold of Jagdish Prasad, forcibly made him lie down on the ground and while others were holding Jagdish Prasad, accused Ram Ratan Mahto fired from his pistol at Jagdish Prasad. The bullet so fired hit the left eye of Jagdish Prasad. Thereafter, accused Sudama Mahto fired from his pistol

at Jagdish Prasad, which hit his neck. At that time, accused Rajendra Mahto, who was holding a rifle in his hand, was catching hold of Jagdish Prasad.

(ii) On noticing her husband being shot by the accused aforementioned, Balmati Devi (PW 5) raised *hulla* saying, "*Jan Mar Diya Bachao*", whereupon her mother-in-law, Samudri Devi (PW 4), her sister-in-law, Sushila Devi (PW 3), and several other co-villagers came running and saw the accused aforementioned fleeing away. Injured Jagdish Prasad succumbed to his injuries at the place of occurrence, whereupon his dead body was carried to his residence.

(iii) Gopal Prasad (PW 6), father of the deceased, received, on the following day, i.e., 07.08.1992, the information, at his house, from Sadhu Prasad, a co-villager of the deceased, that Jagdish Prasad had been killed.

(iv) On the following day of the occurrence, i.e., 07.08.1992, on hearing that some murder had taken place at village Mukunandan Bigha, the Officer-in-Charge, Chandi Police Station (PW 8), came to the house of the deceased and recorded, at 8.30 AM, the statement of Balamati Devi (PW 5), wife of the deceased, with regard to the occurrence as her *fardbeyan* and, treating the same as First Information Report, Chandi P.S. Case No. 293 of 1992, under Sections 302/34 of the Indian Penal Code, was registered against all the accused

aforementioned.

3. During investigation, inquest was held over Jagdish Prasad's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, a *charge sheet* was laid, under Sections 302/34 of the Indian Penal Code, against all the accused persons aforementioned.

4. At the trial, charges were framed, under Sections 302/34 of the Indian Penal Code. All the accused pleaded not guilty thereto.

5. In support of their case, prosecution examined altogether 8 (eight) witnesses including the doctor (PW 7), who had conducted the *post mortem* examination on the dead body of Jagdish Prasad. The accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, the accused persons denied that they had committed the offence, which were 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 found the appellants guilty of the offence charged with, the learned trial Court convicted them accordingly and passed sentence against them as mentioned above.

7. Aggrieved by their conviction and the sentence passed against them, all the accused-appellants, as convicted persons, have preferred these three appeals.

8. While Cr. Appeal (DB) No. 426 of 1993 has been preferred by accused-appellant, Rajendra Mahton, Cr. Appeal (DB) No. 448 of 1993 has been preferred by accused-appellant, Sudama Mahto; whereas Cr. Appeal (DB) No. 449 of 1993 has been preferred by accused-appellant, Ram Ratan Mahto.

9. As these three appeals have arisen out of the judgment and order, dated 20.08.1993, passed, in Sessions Trial No. 498 of 1992, by learned Sessions Judge, Nalanda at Biharsharif, we propose to dispose of these three appeals by this common judgment and order.

10. We have heard Mr. Sanjay Kumar, learned counsel for the appellants in all the three appeals, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

11. While considering these three appeals, let us, first, take note of the evidence given by Dr. Shankar Kr. Jha (PW 7), who had, admittedly, conducted, on 07.08.1992, at 04.15 PM, *post mortem* examination on the dead body of Jagdish Prasad. According to PW 7, on conducting *post mortem* examination, he found following injuries:

"i) *Lacerated wound with inverted and black margin present over the front of neck just below right thyroid cartilage 1" x ¾" x 1" (wound of entry).*

Lacerated wound present over left side of neck just below tip of mastoid

margin everted 2" x ½" x 1" (wound of exit). Both wounds were communicating with each other.

ii) Lacerated wound with inverted and black margin found just below left eye 1 ½" x 1" x 2" blackening present over left side of forehead, temporal and maxillary regions. The maxillary bone was found fractured, middle ear cavity and mastoid on left side fractured, bullet lodged 1" behind left mastoid subcutaneously.

12. All the above injuries, according to the doctor (PW 7), were *ante mortem* in nature.

13. In the opinion of the doctor (PW 7), cause of death was shock and hemorrhage, which resulted from the injury No. (i) caused by fire-arm.

14. In his cross-examination, the doctor (PW 7) has deposed that the stomach of the deceased contained semi digested *Bhat* (i.e., cooked rice) and *Dal* (i.e., pulses). He further deposed that *Bhat* and *Dal* takes normally, inside the stomach, 1 to 1 ½ hours in getting semi-digested.

15. From the findings of the doctor (PW 7), it becomes clear that at the time of the death of the deceased, the stomach of the said deceased contained semi-digested food, meaning thereby that if the deceased had been killed at 7.30 PM on 06.08.1992, he ought to have taken the food at 06.30 PM



on 06.08.1992, whereas the evidence of PW 5, wife of the deceased, is that her husband went out of the house for a walk after having his dinner. This shows, as has been rightly contended by Mr. Sanjay Kumar, learned counsel for the appellants, that the evidence given by PW 5 is apparently untrue, for, her husband, Jagdish Prasad, had not gone out for walk after his dinner; rather, he had his dinner about one hour or one-and-a-half hour before he went out of his house.

16. Coupled with the above, though PWs 3 and 4 have projected themselves as eye-witnesses to the occurrence by describing whole of the occurrence, as has been done by PW 5, the fact remains that the First Information Report clearly shows that PWs 3 and 4 came to know about the occurrence after PW 5, the wife of the deceased, allegedly raised *hulla* on witnessing her husband being shot at by the accused-appellants. No credence can, therefore, be given to the evidence of PWs 3 and 4. Consequently, it cannot be believed that these two witnesses had seen the appellants shooting Jagdish Prasad.

17. What can also not be ignored and must not be ignored is that in the light of the evidence of PW 5, the co-villagers of the deceased had also come along with PWs 3 and 4 to the place of occurrence, yet none of the co-villagers has been examined in the present case as an eye-witness. This is yet another circumstance, which impairs the credibility of the

prosecution's case and the evidence adduced in this regard.

18. We are of the view that no one had seen, or, at least, PW 5 had not seen, the occurrence of Jagdish Prasad being fired at and that is the reason why the evidence of PW 5 as to how the occurrence had taken place is not supported by the medical evidence on record and as far as PWs 3 and 4 are concerned, their evidence, in the light of the evidence of PW 5, cannot, under any circumstances, be believed.

19. The inference that the names of the assailants were belatedly disclosed becomes strengthened from the fact that PW 6 (Gopal Prasad), who is father of the deceased, has deposed that on 07.08.1992 (i.e., on the following day of the occurrence), at about 6.30 AM, he received information, at his house, from Sadhu Prasad, a co-villager of the deceased, that Jagdish Prasad had been shot dead. In fact, in his cross-examination, PW 6 has conceded that Sadhu Prasad did not inform him about the name of the assailants.

20. It is impossible to believe that PW 6 would not be interested in knowing the names of the assailants of his son. Naturally, PW 6 was not informed about the names of the assailants, because of the fact that Sadhu Prasad, a co-villager, did not know himself as to who the assailants were.

21. No wonder, therefore, that the statement of PW 5 (Balamati Devi) was recorded on 07.08.1992 at 08.30 PM at the

residence of the deceased, whereas on 07.08.1992, at 06.15 AM, police received information at the Police Station that some unpleasant incident had occurred in village Makunandan Bigha, that is, the village, which the deceased belonged to.

22. We may pause here to point out that it was improper, on the part of the learned trial Court, to have recorded the vague evidence of a prosecution witness, namely, the Investigating Officer (PW 8) inasmuch as the evidence of the Investigating Officer (PW 8) does not reveal as to what was the '*unpleasant news*' which he had received. In fact, the unpleasant news ought to have been brought on record inasmuch as the expression '*unpleasant*' is only opinion or conclusion; whereas neither opinion nor conclusion could have been recorded as evidence, when opinion or conclusion of the Investigating Officer, not being an expert, was irrelevant and, therefore, inadmissible in evidence. At any rate, name of the accused-appellant was disclosed to the police only when the police arrived at the house of the deceased.

23. Belated disclosure of the names of the assailants coupled with the fact that the medical evidence on record belies the assertion of PW 5 (Balamati Devi) that she had witnessed the occurrence and the fact that PWs 3 and 4 cannot, in the light of the evidence on record, be believed, we have no option but to hold, and we do hold, that the prosecution has miserably



failed to prove its case beyond reasonable doubt. This inference is re-enforced to the fact that PW 5 claims that first bullet fired by accused-appellant Ram Ratan Mahto which hit left eye of the deceased and the bullet fired by accused-appellant Sudama Mahto which hit the neck of the deceased, we wonder as to how in the darkness of the night, PW 5 (Balamati Devi) could have seen not only the assailants but the place of occurrence where the bullet fired at by particular assailants, had injured the said deceased.

24. Because of what have been discussed and pointed out above, we do not find that the evidence, adduced by the prosecution, was sufficient to hold that the accused-appellants were guilty of the offence, which they had been charged with. At any rate, the accused-appellants deserved to be accorded, at least, benefit of doubt.

25. In the result and for the forgoing reasons, we allow these three appeals. 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.

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

discharged.

27. The Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the lower court record.

(I. A. Ansari, J.)

(Vikash Jain, J.)

A.F.R./A.I.

U T