

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.513 of 1993

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(AGAINST THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE, DATED 12th OCTOBER, 1993, PASSED BY SHRI D.G.R. PATNAIK, 3rd ADDITIONAL SESSIONS JUDGE, SITAMARHI, IN SESSIONS TRIAL NO. 36 OF 1993/09 OF 1993, ARISING OUT OF SITAMARHI POLICE STATION CASE NO.310 OF 1992, CORRESPONDING TO G.R.NO. 1073 OF 1992)

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1. Rama Shish Chaudhary, son of Prameshwar Chaudhary
2. Ram Babu Chaudhary, son of Prameshwar Chaudhary
3. Sudhir Kumar @ Sudhir Sonar, son of Bhagwan Sah
All residents of Mohalla Mirchai Patti, Police Station Sitamarhi,
District Sitamarhi

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants: Mr. Prabhat Kumar
For the Respondent: Mr. Ajay Mishra, APP

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

ORAL JUDGMENT

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

Date: 22-07-2015

Under the judgment and order, dated 12.10.1993, passed, in Sessions Trial No. 36 of 1993/09 of 1993, by learned 3rd Additional Sessions Judge, Sitamarhi, all the appellants, 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

thus:

(i) On 07.10.1992, at about 09.00 AM, 11 persons, namely, Ram Sagar, Chhathi Lal, Sanjay Kumar, Lal Babu, Madan Prasad, Shambhu Prasad, Sanjay Kumar, Sanjay Rao, Anil, Suresh and Kaliya Bhati, along with some other unknown persons, came, variously armed with lethal weapons, with the intention of creating communal disturbance and assaulted the residents of Mirchaipatti mohalla, looted their properties and committed murder of Rafique Ansari, father of the informant (PW 5).

(ii) Later on, information was received at Sitamarhi Police Station that two dead bodies had been found lying in water beneath Mirchaipatti Ringh embankment. Having made, in this regard, Station Diary Entry No. 284, dated 11.10.1992, PW 7 (a Sub-inspector of Police, Sitamarhi Police Station) came to the said ring embankment and recovered two dead bodies in decomposed condition; out of these two said dead bodies, one dead body was of a pregnant woman and the other one was of a female child. Both the dead bodies were in highly decomposed state.

(iii) Inquests were held over the said two dead bodies, which were also subjected to *post mortem* examinations, on 11.10.1992, at about 04.25 PM by Dr. Rabindra Kumar Yadav (PW 6) at Sadar Hospital, Sitamarhi.



(iv) The informant, Neyaz Ansari (PW 5), son of deceased, Rafique Ansari, lodged a written information, at Sitamarhi Police Station, on 14.10.1992, at 03.30 PM, against the 11 (eleven) persons aforementioned as having entered into his house, killed his father and also looted their properties. Treating the said information as the First Information Report, Sitamarhi Police Station Case No. 310 of 1992 was registered, under Sections 147/148/149/302/452/380/427/188 of the Indian Penal Code and Section 27 of the Arms Act, 1959, against the said 11 (eleven) accused persons.

3. On 19.10.1992, Md. Idris Ansari (PW 1) gave a statement before police that on 08.10.1992, he learnt from his son, Md. Irshad Alam (PW 2), that on 07.10.1992, his mother, Kulsum Khatoon (wife of Md. Idris Ansari), and his sister, Juhi Khatoon (daughter of Md. Idris Ansari), were done to death by members of an unlawful assembly, who had committed communal disturbance, and, on raising *hulla*, the dead bodies had been thrown into water near Mirchaipatti Ring Bandh (embankment) and, out of the persons, who so constituted the unlawful assembly, Md. Irshad Alam (PW 2), son of Md. Idris (PW 1), had recognized Ramashish Choudhary, Ram Babu Choudhary and Sudhir Kumar i.e., the appellants herein.

4. No separate case was registered on the basis of the information, which Md. Idris (PW 1) so gave to the



police; rather, the said statement of Md. Idris was treated as a statement under Section 161 of the Code of Criminal Procedure in connection with Sitamarhi Sadar Police Station Case No. 310 of 1992 aforementioned. Later on, a statement of Md. Irshad Alam (PW 2), son of Md. Idris (PW 1), was also recorded by the police in the relevant case diary.

5. On completion of investigation, police laid *charge sheet*, under Sections 148/153A/452/149/302/380 of the Indian Penal Code and Section 27 of the Arms Act, 1959, against all the 11 (eleven) accused aforementioned. The learned trial Court separated the cases relating to murder of Kulsum Khatoon and Juhi Khatoon, which gave rise to Sessions Trial No. 36 of 1993.

6. At the trial, charges were framed, under Sections 148, 153(A), 452/149, 302/149, 380/149, 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959, against accused persons, namely, Ram Sagar Sah, Chhatti Lal, Shambhoo Prasad, Lal Baboo Sah, Sanjay Kumar, Ram Baboo Chaudhary, Ram Ashish Chaudhary, Sudhir Sonar including the appellants. All the accused persons pleaded not guilty to their respective charges.

7. In support of their case, prosecution examined altogether 15 (fifteen) witnesses. The accused persons 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 offences, which were alleged to have been committed by them, their case being that of denial. The defence, too, adduced evidence by examining seven witnesses.

8. Having found the appellants guilty of the offences charged with, learned trial Court convicted them accordingly and passed sentence against them as mentioned above. The learned trial Court, however, acquitted accused Ram Sagar Sah, Chhathi Lal Sah, Shambhu Prasad, Lal Babu Sah and Sanjay Kumar.

9. Aggrieved by their conviction and the sentence passed against them, the accused, as convicted persons, have preferred this appeal.

10. We have heard Mr. Prabhat Kumar, learned Counsel, appearing on behalf of the appellants, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

11. While considering the present appeal, what needs to be noted is that according to the evidence of the doctor (PW 6), who had, admittedly, performed, on 11.10.1992, at about 04:25 PM, at Sadar Hospital, Sitamarhi, *post mortem* examination on the dead body of Kulsum Khatoon, he found following injuries:

"(i) *One penetrating wound on left side of*

abdomen measuring 2" x 1/2" x cavity deep. Rigor mortis was absent and the body was highly decomposed.

(ii) *On opening of skull, the cranium was found intact and brain matter was pale and decomposed.*

(iii) *On opening of thoracic cavity, both lungs were found pale and decomposed.*

(iv) *Heart intact with empty chambers.*

(v) *On opening of abdominal cavity, all the abdominal viscera were pale but some part of intestine was eaten away by maggot or some animal.*

(vi) *Uterus found ruptured and cavity full of blood clot. One dead foetus was expelled from her uterus and the foetus was highly decomposed and emaciated."*

12. All the above injuries, according to the doctor (PW 6), were *ante mortem* in nature. In the opinion of the doctor (PW 6), death was due to shock resulting from uterine bleeding by above noted injury, which could have been caused by some sharp pointed weapon.

13. On the same day, i.e., on 11.10.1992, Dr. Rabindra Kumar Yadav (PW 6), had, admittedly, performed, at about 04:45 PM, at Sadar Hospital, Sitamarhi, *post mortem* examination on the dead body of Juhi Khatoon and found following injuries:

"(i) Left lower limb was sharply cut off above the ankle joint. The cut part of the limb

was missing.

ii) Right lower limb was sharply cut off above the knee joint and the cut part was missing.

iii) Both the above injuries could have been caused by any sharp cutting weapon such as garasa. In the opinion of the doctor, death could be due to excessive bleeding on account of above injuries leading to shock and haemorrhage."

14. In the opinion of the doctor (PW 6), death was due to shock and haemorrhage, as a result of excessive bleeding by above noted injuries, which could have been caused by sharp cutting weapon.

15. Neither the findings of the doctor (PW 6) nor his opinion, with regard to the cause of deaths of the said two deceased, were disputed by the prosecution or by the defence. This apart, we, too, do not notice anything inherently incorrect or improbable in the evidence given by the doctor (PW 6)

16. Considering the fact that the present appeal has arisen out of the allegations, which were made by Md. Idris (PW 1) on 19.10.1992, while giving statement in connection with Sitamarhi P.S. Case No. 310 of 1992, which had been registered on the basis of the First Information Report lodged by Md. Neyaz Ansari (PW 5), we keep ourselves confined

to the evidence, came on record on the charges framed by the learned trial Court as against the present appellants.

17. We may point out that the learned trial Court categorized the offences and the offenders under the following three different heads:

(a) The occurrence disclosed in the F.I.R. lodged by Md. Neyaz Ansari (PW 5), informant of Sitamarhi PS. Case No. 310 of 1992, dated 14.10.1992.

(b) The occurrence as alleged by Md. Idris (PW 1) in his statement recorded by the police on 19.10.1992.

(c) The occurrence relating to loot, arson and theft of properties from dwelling houses of Muslims communities.

18. The appellants aforementioned are concerned with the occurrence relating to killing of Kulsum Khatoon and Juhi Khatoon and throwing away the said two dead bodies into water, leading to making of Station Diary Entry No. 284, dated 11.10.1992, and, thereafter, Sub-Inspector of Police, Sitamarhi Police Station (PW 7) recovered the dead bodies and out of these two dead bodies, one dead body was of a woman and the other one was of a girl.

19. Md. Idris Ansari (PW 1), on 19.10.1992, in his statement before the police, had mentioned that on 08.10.1992, he learnt from his son, Md. Irshad Alam (PW 2),

that on 07.10.1992, his wife and daughter were done to death and their dead bodies were thrown in water near Mirchaipatti Ring embankment by a members of mob. Out of them, PW 2 identified the accused-appellants and others.

20. There is no dispute before us that the prosecution's case is based on the evidence of PW 1 and PW 2. This apart, PW 2 is the sole witness, who claims to have seen the occurrence of murder of his mother and sister, and it is on the basis of the information, which he had given to his father (PW 1), that the police came to know about the commission of murder at the hands of the present appellants.

21. Since PW 2 is the sole eyewitness to the occurrence and it is his evidence, which is material, let us, first, analyze his evidence. According to his evidence, on 07.10.1992, at about 08:30 AM, while he was playing on the embankment situated west to his house, he saw about 15 to 20 rioters killing his mother, Kulsum Khatoon, with lathis, *gadasas* and *bhala*, they also killed his sister, Juhi Khatoon, and threw both of them into water after killing them. Among the assailants, he saw and recognized Vinod Rai, Sudhir Kumar, Rambabu Pasi, Ramashish Pasi, Sanjay, Shambhu and Deepak. It is also in the evidence of PW 2 that he fled away from the place of occurrence and hide himself at Janki Asthan temple and when it was day light, he went to his father at Bhavdeopur and narrated the entire

occurrence to his father and told him that rioters had thrown his mother and sister into water after killing them.

22. In the facts and attending circumstances of the present case, the question, which arises for consideration, is: If the sole testimony of PW 2 was sufficient to base conviction of the accused-appellants for the charges, which they stood convicted.

23. With regard to the above, it may be noted that according to the evidence of PW 2, given in his examination-in-chief, on the alleged date of occurrence, i.e., on 07.10.1992, at about 10.30 AM, while he was playing on the Ring embankment, situated west to his house, he saw about 15-20 miscreants assaulting his mother, Kulsum Khatoon, with *lathi*, *garasa* and *bhala*, they also assaulted his sister, Juhi Khatoon, and after killing them, threw their dead bodies in water. PW 2 has also disclosed the names of eight accused persons including the appellants. PW 2 has further deposed that he (PW 2) fled away and concealed himself in Janki Asthan temple and, on the following morning, i.e., on 08.10.1992, he went to Bhavdeopur and narrated the occurrence to his father, Md. Idris (PW 1).

24. However, the Investigating Officer (PW 14) has confirmed that PW 2 had not stated, in his statement under Section 161 of the Code of Criminal Procedure, that on the



alleged date of occurrence, at about 08.40 AM, he was playing on the Ring Bandh (embankment), when the occurrence took place. Similarly, PW 2 had not stated before the police that after killing his mother and his sister, the miscreants had thrown their dead bodies in water; rather, he had stated before the Investigating Officer that after causing injuries, the miscreants had thrown them in water.

25. Coupled with the above, according to the evidence of Investigating Officer (PW 14), PW 2 had not disclosed the names of accused Vinod Rai, Ram Babu Chaudhary (appellant No.2), Ramashish Chaudhary (appellant No. 1), Sanjay son of Radhakishun, Shambhu and Deepak, as the assailants of his mother and sister; rather, he had stated before the Investigating Officer (PW 14) that the miscreants had caught hold of him and had concealed him in the house of Shafi Mistri and, later on, when he raised alarm, one of the miscreants opened the door of the house and he (PW 2) fled away to Janki Asthan temple through Ring Bandh (embankment).

26. Considering the fact that PW 2, in the light of evidence of the Investigating Officer (PW 14), had not named appellant No.1, Ramashish Chaudhary, as the person present amongst the assailants, it logically follows that his evidence, as regards appellant, Sudhir Kumar @ Sudhir Sonar, claiming to be an assailant of his mother (Kulsum Khatoon) and sister (Juhi

Khatoon), cannot be implicitly relied upon.

27. Situated thus, it is clear that the evidence of PW 2 is not wholly reliable evidence.

28. Necessarily, therefore, one has to look for corroboration of the evidence of PW 2. It may be noted that corroboration of the evidence of PW 2 is received from the evidence of his father, Md. Idris (PW 1). However, the evidence of PW 1 is that on the day of occurrence, i.e., on 07.10.1992, at 8.00 AM, he went to the residence of his sister, at Bhavdeopur and as there was communal disturbance in the town, his younger son, Md. Khurshid, also accompanied him, but on the way, he stayed in a temple, his son (i.e., PW 2) reached the house of his sister next day and told him (PW 1) that people had killed his mother and sister with lethal weapons and threw both of them in a water tank. What is also in the evidence of PW 1 is that his son (PW 2) also informed him that the assailants were 20 to 25 in numbers and among them, he had recognized Vinod Rai, Sudhir Sonar, Rambabu Pasi, Ramashish Pasi, Sanjay Kumar, son of Lalpari, Shambhu, the eldest son of Radhakishun, and Deepak Feriwala.

29. It is the further evidence of PW 1 that when curfew was lifted on 19.10.1992, he went to his mohalla and saw that his house was damaged, the articles kept at his house were looted and some articles were scattered, he did not



find his wife (Kulsum Khatoon) and his daughter (Juhi Khatoon) in the house, he came to know that the police had recovered two dead bodies from the water tank of Mirchaipatti Ring embankment, he, then, went to the hospital and came to know there that *post mortem* examination had been held on the dead bodies of his wife, Kulsum Khatoon, and his daughter, Juhi Khatoon. On the same day, he went to Sitamarhi Sadar Police Station from the hospital and gave his statement to the Sub-Inspector of Police, who recorded the same.

30. From the evidence of PW 1, it becomes clear that he does not have any personal knowledge that the appellants were the ones, who had killed his wife and his daughter; his evidence clearly demonstrates that whatever he has deposed against the appellants were on the basis of information derived by him from his son, Md. Irshad Alam (PW 2). The prosecution case, therefore, rests on the evidence of PW 2.

31. Because of the fact that we have already held that PW 2 cannot be treated to be a wholly reliable witness, his sole testimony was, undoubtedly, insufficient and too hazardous to base conviction of the appellants.

32. At any rate, therefore, in the light of the evidence on record and the law relevant thereto, the accused-appellants deserve to be accorded, at least, benefit of doubt.

33. In the result and for the forgoing reasons, we allow the 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.

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

35. 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.)

(Vikash Jain, J.)

A.I./N.A.F.R.

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