

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.395 of 1993

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(AGAINST THE JUDGMENT OF CONVICTION, DATED 20.07.1993, AND ORDER OF SENTENCE, DATED 22.09.1993, PASSED BY SHRI BIPIN BIHARI VERMA, 3RD ADDITIONAL SESSIONS JUDGE, WEST CHAMPARAN, BETTIAH, IN SESSIONS TRIAL NO. 169 OF 1985, ARISING OUT OF SHIKARPUR POLICE STATION CASE NO. 108 OF 1984).

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1. Sheikh Sagir, S/o. Samsul Mian,
2. Sheikh Bhannu @ Sabir, S/o. Jamal Mian,
3. Sheikh Haroon, S/o. Sh. Hesab,
Appellant No.1 is resident of Sathi, P.O. and P.S. Sathi, District-West Champaran, appellant No.2 is resident of Dharampur, P.S. Sathi, District- West Champaran and appellant No.3 is resident of Bhatura, P.S. Shikarpur, District-West Champaran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Suraj Narayan Prasad Sinha, Sr. Advocate.
Mr. Mukesh Kumar, Advocate.
Mr. Mukesh Kumar, Advocate.
Mr. Shivji Singh, Advocate.
Ms. Neeta, Ms. Chitra, Ms. Sikha, Ms. Sangeeta, Advs.
For the Respondent/s : Mr. Sujit Kumar Singh, APP

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

ORAL JUDGMENT

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

Date: 09-04-2015

Under the judgment, dated 20.07.1993, passed,
in Sessions Trial No. 169 of 1985, by learned 3rd Additional
Sessions Judge, West Champaran, Bettiah, the appellants,
Sheikh Sagir, Sheikh Bhannu @ Sabir and Sheikh Haroon,

stand convicted under Section 302 read with Section 34 of the Indian Penal Code. In consequence of their conviction under Section 302 read with Section 34 of the Indian Penal Code, the appellants stand, under the order, dated 22.07.1993, sentenced to suffer imprisonment for life and pay a fine of Rs.5,000/- each and, in default thereof, undergo rigorous imprisonment for a period of two years.

2. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:

(i) On 24.09.1984, at about 4.00 PM, accused Sheikh Sagir and accused Sheikh Bhanu @ Sabir, accompanied by 5 to 6 persons, surrounded Kishori Sah, at Pokhra Chowk and stabbed him by means of dagger. On being so stabbed, Kishori Sah sustained incised and punctured wounds on various parts of his body including head. Having sustained the injuries, Kishori Sah fell down and died. Thereafter, Kishori Sah's brother, Lal Babu Sah (PW 6), went to the police station, where his statement, with regard to the occurrence, was recorded, on 24.09.1984, at 6.30 PM, as his fardbeyan and treating the same as First Information Report, Shikarpur Police Station Case No. 108 of 1984, under Section 302/34 of the Indian Penal Code, was registered against the accused persons, namely, Sheikh Sagir, Sheikh Bhannu @ Sabir and Sheikh Haroon.

(ii) On being informed about the occurrence, police reached to the place of occurrence, held inquest on Kishori Sah's dead body, which was also subjected to *post mortem* examination.

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

4. At the trial, when a charge, under section 302 read with Section 34 of the Indian Penal Code, was framed against the three accused persons, namely, Sheikh Sagir, Sheikh Bhannu @ Sabir and Sheikh Haroon, they pleaded not guilty thereto.

5. In support of their case, prosecution examined altogether eleven (11) 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 Sheikh Sagir, Sheikh Bhannu @ Sabir and Sheikh Haroon, had been proved guilty of the charge under Section 302 read with Section 34 of the Indian Penal Code, the learned trial Court convicted them accordingly. Following their conviction, sentence has been passed against the convicted persons as 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. Suraj Narayan Prasad Sinha, learned Senior Counsel, appearing on behalf of the appellants, and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor, appearing on behalf of the State.

9. While considering the present appeal, what needs to be pointed out is that according to the evidence of Dr. P.N. Gupta (PW 10), who had, admittedly, held, on 25.09.1984, *post mortem* examination on Kishori Sah's dead body, he (PW 10) found following *ante mortem* injuries on the said dead body:

"(a) Incised wound $3\frac{1}{2}$ " x $\frac{1}{4}$ " x scalp deep on the right side of the head;

(b) Incised wound 2" x $\frac{1}{4}$ " x scalp deep on the right side of the head about $\frac{1}{2}$ " below the injury No.(a);

(c) Incised wound $\frac{3}{4}$ " x $\frac{1}{4}$ " x skin deep on the right side of the forehead;

(d) Incised wound $1\frac{1}{2}$ " x $\frac{1}{4}$ " x skin deep on the right side of the upper side of the face, about $\frac{1}{2}$ " outside of the outer side of the right end.

(e) The punctured wound 2" x $\frac{1}{2}$ " into with peritoneal cavity with profusion of the loop of the intestine on the abdomen and about 1" below intestine.

(f) Punctured wound $1\frac{1}{2}$ " x $\frac{1}{2}$ " x peritoneal cavity with protrusion of the loop of the intestine above $1\frac{1}{2}$ " above and left of the umbilicus.

(g) Punctured wound 3 in number

(1) $\frac{1}{2}$ " x $\frac{1}{2}$ " x peritoneal cavity;

(2) $\frac{1}{4}$ " x $\frac{1}{4}$ " x peritoneal cavity;

(3) $\frac{1}{4}$ " x $\frac{1}{4}$ " x peritoneal cavity;

All the three injuries were found on the left side of the middle abdomen."

10. In the opinion of the doctor (PW 10), the death was caused by shock and hemorrhage due to injuries aforementioned. The doctor (PW 10) has also found that the injuries aforementioned have been caused by sharp-edged weapon.

11. Neither the findings of the doctor nor his opinion, with regard to cause of death of the said deceased and/or his opinion with regard to the nature of weapon, which might have been used, for causing assault on, and death of, the said deceased, were disputed either 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 10). From the above evidence of the doctor (PW 10), it clearly transpires that Kishori Sah had met with *homicidal* death.

12. The question, however, remains as to whether any of the accused-appellants or all of them had caused the death of Kishori Sah and thereby committed offence of murder *punishable* under Section 302 of the Indian Penal Code.

13. Bearing in mind the medical evidence on record, when we turn to the ocular evidence adduced by the prosecution, what attracts our attention, most prominently, is that although the prosecution examined as many as six witnesses claiming them to be eyewitnesses to the alleged occurrence of stabbing and killing of Kishori Sah, PWs 3, 4 and 5 have been declared hostile and though they were cross-examined by the prosecution, nothing, in particular, could be elicited from their cross-examination by the prosecution to show that Kishori Sah had been stabbed to death by any of the present accused-appellants.

14. The prosecution is, thus, left with the evidence of only two witnesses, namely, PWs 1 and PW 6, who have been treated as the eye-witnesses of this case.

15. Let us, first, consider the evidence of PW 1 (Tapesih Giri). According to his evidence, on 24.09.1984, in the



evening, when he was taking breakfast in a shop, he saw Kishori Sah running from the direction of southern side and he was being chased by 3 to 4 persons. It is in the evidence of PW 1 that though Kishori Sah tried to enter into a shop, he collided against rickshaw and fell down, whereupon accused Sheikh Sagir, Sheikh Bhannu @ Sabir and Sheikh Haroon, gave him multiple blows by means of knives and having injured Kishori Sah, all the three assailants fled away. It is also in the evidence of PW 1 that he, too, out of fear, left and did not inform anyone about the occurrence.

16. In his cross-examination, PW 1 has deposed that his statement was recorded after 3 to 4 days of the occurrence and explained as to how his statement happened to be recorded by the police. PW 1 has further deposed that he saw a crowd in front of the police station and he went inside and there he gave his statement.

17. The silence, which has been maintained by PW 1 despite the fact that he had seen a person known to him being stabbed to death, makes it unsafe to implicitly rely on his evidence. This apart, it is not the evidence of PW 1 that he decided 3-4 days after the occurrence to go to the police station and report the occurrence. Far from this he, according to his own evidence, happened to merely pass through the police station and, on noticing a crowd assembled there, he,

out of curiosity, entered the police station and gave his statement.

18. There is, therefore, no explanation, far less plausible and convincing, as to why PW 1 maintained silence and did not disclose the occurrence to anyone for a period of 3 to 4 days of his witnessing the accused-appellants allegedly assaulting Kishori Sah. In the complete absence of any explanation of belated disclosure of the occurrence to the police, the assertion, so made by PW 1, as to how he happened to report the occurrence to the police belatedly, does not at all inspire confidence.

19. Coming to the evidence of PW 6, we notice that according to his evidence, on 24.09.1984, at about 04:31 PM, he came to Narkatiyaganj Railway Station, and from Narkatiyaganj Railway Station, he (PW 6) reached Shivganj Bazaar and from there, at about 7:30 PM, when he reached at Pokhra Chowk, he saw the accused-appellants stabbing his brother, Kishori Sah, by means of daggers, which caused bleeding from his body. PW 6 has deposed that he became unconscious on seeing his brother being stabbed and when he regained his sense after sometime, he enquired from the people present there about his brother and they replied that his brother had been taken to hospital, where he was declared dead and, then, his (PW 6) statement was recorded by police.



20. Notwithstanding the fact that the evidence was given by PW 6 projecting himself as an eye-witness to the stabbing of his brother, Kishori Sah, to death, what cannot be ignored that this witness has deposed, in his cross-examination, that when he reached Pokhra Chowk, he heard *hulla* and people were running away and those, who had been running away, were not uttering name of Kishori Sah, but as far as he (PW 6) was concerned, he did not run away and came to the place of occurrence and saw what had happened. Obviously, the people would be running helter-skelter only on seeing stabbing of Kishori Sah. From the evidence so given, it becomes abundantly clear that Kishori Sah had already been stabbed before PW 6 proceeded towards the place of occurrence and could not have, therefore, seen the occurrence. This impression gets strengthened, when we notice the fact that in his further cross-examination, he (PW 6) has deposed that when he (PW 6) saw his brother, Kishori Sah, he saw Kishori Sah lying on his left writhing and crying out of pain.

21. In the face of the evidence, which has been given by PW 6, it is well-nigh impossible to rely on his evidence and even if his evidence is not rejected outright, as evidence of *wholly unreliable* witness, his evidence will fall in the category of those witnesses who are neither *wholly reliable* nor *wholly unreliable*. No different is the quality of evidence

given by PW 1 and he, too, could, at best, be regarded as a witness who is neither *wholly reliable* nor *wholly unreliable*.

22. It is trite that the witnesses, ordinarily, fall into three distinct categories, namely, (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. If the witness is wholly reliable, his evidence can be implicitly relied upon and such a witness's testimony can be made basis for conviction of an accused. Similarly, when a witness is found to be wholly unreliable, no reliance can at all be placed on his evidence and his evidence has to be rejected outright. When, however, a witness is found to be neither wholly reliable, nor wholly unreliable, his evidence cannot be accepted as true unless his evidence is found to have been corroborated by some credible independent evidence, direct or circumstantial.

23. The evidence of PW 1 and PW 2, which the prosecution has adduced in the present case, cannot be safely relied upon unless the same is found to have been corroborated by some credible independent evidence, direct or circumstantial.

24. It is also an undisputed proposition of law that one infirm witness cannot be treated to have corroborated the evidence of another infirm witness meaning thereby that witnesses of same brand cannot be taken to have corroborated each other. Thus, when a witness is neither wholly reliable nor wholly unreliable, his evidence cannot be taken to have been



corroborated by a witness of the same brand, namely, a witness, who is neither wholly reliable nor wholly unreliable, for, evidence is not to be counted, but weighed. It is not the number of the witnesses, which determines the outcome of a trial; rather, it is the inherent falsity or truth of the evidence given by the witness, which decides the outcome of trial. If each one of a large number of witnesses is found to be wholly unreliable, their evidence cannot become acceptable as true merely because a large number of similar brand of witnesses has corroborated each other.

25. A reference, with regard to the above position of law, may be made to the case of **Muluwa, S/o Binda and others Vs. The State of Madhya Pradesh, [AIR 1976 SC 989]**, wherein the Supreme Court has observed as follows :

"It is elementary that the evidence of an infirm witness does not become reliable merely because it has been corroborated by a number of witnesses of the same brand; for, evidence is to be weighed not counted. Since the evidence of P.Ws. 5 and 6 suffered from the same infirmities as that of Smt. Jugatia, it cannot be said that the trial Judge had no basis, whatsoever, for stigmatising it as unreliable."

(Emphasis is added)

26. Situated thus, it becomes clear that merely

because PW 1 and PW 6 have given evidence corroborating each other's evidence, their evidence cannot be made basis for holding them truthful witnesses, when each one of them is a witness, who is neither wholly reliable nor wholly unreliable, for, one infirm witness cannot be treated to have corroborated the evidence of another infirm witness.

27. 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 deserve to be accorded, at least, benefit of doubt.

28. Situated thus, 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.

29. In the result and for the foregoing reasons, 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.

30. Since the accused-appellants are on bail,

their bail bonds are hereby cancelled and their sureties shall stand discharged.

31. 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./A.F.R.

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