

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.113 of 1993

(AGAINST THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE, DATED 27.02.1993, PASSED BY SHRI RAM PRABODH SINGH, 2ND ADDITIONAL SESSIONS JUDGE, MUNGER, IN SESSIONS TRIAL NO. 152-A OF 1987, ARISING OUT OF SURAJGARHA POLICE STATION CASE NO. 85 OF 1986, CORRESPONDING TO G.R.NO.288 OF 1986).

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Ram Prasad Mahto son of late Ganesh Mahto, resident of Village-Ghoghi Bariarpur, P.S. Piri Bazar (Surajgarha) District Munger.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mrs. Fauzia Shakil, Advocate

For the Respondent : Mr. Ajay Mishra, A.P.P.

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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: 29-04-2015

Under the judgment, dated 27.02.1993, passed, in Sessions Trial No. 152-A of 1987, by learned 2nd Additional Sessions Judge, Munger, the accused-appellant, namely, Ram Prasad Mahton, stands convicted under Sections 302 read with Section 34 of the Indian Penal Code. Following his conviction under Section 302 read with Section 34 of the Indian Penal Code, the accused-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) Deceased Chandrika Singh was father of the informant, Vijay Shankar Singh (PW 3). On 13.04.1986, at about 6:30 PM, when Chandrika Singh, accompanied by his son, Vijay Shankar Singh (PW 3), was returning home from Piri Bazar, about 9-10 persons, armed with *farsas* (a sharp-edged weapon), *lathis* and *gandasas* (a sharp-edged weapon), assaulted Chandrika Singh, who fell down on being so assaulted.

(ii) Raising *hulla* that his father was being killed, PW 3 rushed to the house of his uncle and when he returned back to the place of occurrence, he found his father lying dead, his father's neck having been substantially cut from behind. On seeing his father lying dead, since PW 3 started wailing, many other persons came there.

(iii) On being informed about the occurrence, Investigating Officer (PW 6) arrived at the place of occurrence, where he recorded the statement of PW 3 in the form of latter's *farbayan* and, treating the same as First Information Report, Surajgarha Police Station Case No.85 of 1986 was registered, under Sections 147/148/149/302 of the Indian Penal Code, against 08 (eight) accused persons, namely, (1) Ram Prasad Mahton, (2) Chotan Mahton, (3) Mundrika Mandal, (4) Jagdish

Mandal, (5) Dewan Mandal, (6) Surendra Mahton, (7) Nageshwar Mahton and (8) Ramashish Mahton.

(iv) During investigation, inquest was held on Chandrika Singh's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, a *charge sheet* was laid, under Sections 147/148/149/302 of the Indian Penal Code, against ten (10) accused persons, namely, (1) Bindeshwari Mahto, (2) Haldhar Mahto, (3) Bholu Mahto, (4) Jagadh Manjhi, (5) Chotan Mahton, (6) Mundrika Mahton, (7) Jagdish Mahton, (8) Dewan Mahton, (9) Surendra Mahton and (10) Nageshwar Mahton.

3. When a charge, under Section 302 read with Section 34 of the Indian Penal Code was framed against the accused, Ram Prasad Mahto, he pleaded not guilty thereto.

4. In support of their case, prosecution examined as many as 7 (seven) witnesses. The accused was, then, examined under Section 313 (1) (b) of the Criminal Procedure Code and, in his examination aforementioned, the accused denied that he had committed the offence, which was alleged to have been committed by him, the case of the defence being that of denial and false implication in the case, because of pending litigations between the parties since the year 1982. No evidence was adduced on behalf of the defence.

5. Having, however, arrived at the finding that

accused-appellant aforementioned had been proved guilty of the *charge* under Section 302 read with Section 34 of the Indian Penal Code, learned trial Court convicted him accordingly. Following his conviction, sentence has been passed against the convict as mentioned above.

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

7. We have heard Mrs. Fauzia Shakil, learned Counsel, appearing for the appellant, and Mr. Ajay Mishra, learned Additional Public Prosecution, appearing for the State.

8. While considering the present appeal, it may be noted, at the very outset, that the relation, between the accused-appellant, on the one hand, and deceased Chandrika Singh and his family, on the other, was, admittedly, inimical in nature inasmuch as the parties had been litigating in the Court with regard to land dispute since the year 1982.

INIMICAL WITNESS

9. Enmity is a double-edged weapon, which cuts both the ways. While enmity may be a reason for committing an offence, such as, murder, enmity may also be a reason for either falsely implicating an enemy as an accused or roping in an enemy, who may be innocent, along with the guilty ones.

10. It is, therefore, incumbent, on the part of

the Court, while dealing with such a case, as we have at hand, to be cautious, while appreciating evidence.

11. In view of the fact that the relation between the accused-appellant, on the one hand, and the said deceased and his family, on the other, was inimical in nature, one has to bear in mind that while there is possibility of the accused-appellant having assaulted and killed Chandrika Singh, there is equally good possibility of the accused aforementioned having been implicated falsely.

12. The evidence, therefore, adduced by the prosecution needs to be closely examined and cautiously appreciated.

13. Let us, first, take note of the medical evidence. According to the evidence of the doctor (PW 4), who had, admittedly, on 14.04.1986, at about 11 AM, conducted *post mortem* examination on the dead body of Chandrika Singh, he found as follows:

"The deceased had an incised wound 6"x 4"x 4" starting from behind the neck below left ear going to the right shoulder. All the structures like bone, muscle, arteries and veins were sharply cut. There was one small injury also on the left wrist and ulna bone was dislocated."

14. In the opinion of the doctor (PW 4), the death was due to shock and hemorrhage as a result of the injury, which had been sustained on his back by the said deceased, the weapon being used was a heavy sharp-cutting weapon like *gandasa* or *farsa* and the time elapsed since death being 12-24 hours. The *post mortem* report has been proved and marked as Exhibit-2.

15. The findings of the doctor and/or his opinion, with regard to the cause of death and/or with regard to the nature of weapons used, have not been disputed by the defence. This apart, we, too, do not notice anything inherently incorrect or improbable in the evidence of the doctor (P.W. 4) and his opinion, as indicated above, clearly establishes the fact that Chandrika Singh had died, because of the injuries, which had been found by the doctor (P.W. 4) to have been sustained by the said deceased.

16. In the light of the medical evidence on record, it becomes clear that Chandrika Singh had suffered one fatal injury leading to his death inasmuch as he was found to have sustained an incised wound measuring 6"x 4"x 4" starting from behind the neck below left ear going to the right shoulder and there was one small injury on the left wrist with ulna bone having been dislocated.

17. Bearing in mind the medical evidence on



record, when we come to the evidence of the Vijay Shankar Singh (PW 3), the son of the said deceased, Chandrika Singh, and who has also been regarded as the informant in this case, we notice that this witness (PW 3) has deposed that, on 13.04.1986, at about 6:30 PM, when he, accompanied by his father, Chandrika Singh, was returning home from Piri Bazar and reached the unmetalled road in front of the house of Kulo Mahton and Bhikho Sao, his father was attacked by 9-10 persons from behind, these persons being accused Ramashish Mahton, Ram Prasad Mahton, Chotan Mahton, Jagdish Mahton, Nageshwar Mahton, Mundrika Mandal and Dewan Mahton. It is also in the evidence of PW 3 that while accused Ramashish Mahton and Chotan Mahton were armed with *farsas*, accused Ram Prasad Mahton was armed with *gandasa* and that rest of the accused were armed with *lathis*. PW 3 has further deposed that accused Ramashish Mahton assaulted his father with a *farsa*, while accused Ram Prasad Mahton assaulted his father with *gandasa* and, the blow of the *gandasa* caused a cut injury on his father's left ear, which extended up to the right shoulder, and as his father tried to defend himself by raising his left hand, his fingers also suffered cut injury. It is in the evidence of PW 3 that the blow, which had been given by accused Chotan Mahton, resulted into a cut injury on the palm of his father and his father fell down. It is also in the evidence

of PW 3 that when he asked the accused not to assault his father, accused Ramashish Mahton and accused Ram Prasad Mahton moved towards him (PW 3) to assault and he (PW 3) ran away raising *hulla*.

18. PW 3 has deposed that Arjun Singh, Tanik Singh, Vijay Kumar Singh, Ram Bhadra Pathak and Pramod Singh had also seen the occurrence.

19. PW 3 has further deposed that he went to his house and came back, with his uncle, to the place of occurrence and found his father lying dead and the accused having fled away.

20. In his *examination-in-chief*, PW 3 has clarified that he had a torch light in his hand and it was in the focus of the torch light that he had recognized the assailants. It is also the evidence of PW 3, in his *examination-in-chief*, that he informed Piri Bazar Police Station about the occurrence.

21. Trying to lend support to the evidence of PW 3, his uncle, Yogendra Prasad Singh (PW 2), has deposed that, on 13.04.1986, at about 6:30 PM, his nephew, Vijay Shankar Singh (PW 3), came to his house and told him that his father had been assaulted by Ramashish Mahton, Chotan Mahton and Ram Prasad Mahton and while accused Ram Prasad Mahton had assaulted Chandrika Singh by means of a *gandasa*, accused Chotan Mahton and accused Ramashish Mahton had assaulted



Chandrika Singh by means of *farsa*. It is in the evidence of PW 2 that his nephew (PW 3) had told him that Mundrika Mandal, Surendra Mahton, Nageshwar Mahton, Jagdish Mahton and Dewan Mandal had surrounded his father having *lathis* in their hands. It is also in the evidence of PW 2 that he went to the place of occurrence with some of his villagers and saw Chandrika Singh lying dead with blood oozing out of his wounds.

22. Before proceeding further, let us take note of the evidence of the Investigating Officer (PW 6), whose evidence is that, on 13.04.1986, at about 7:45 PM, he received a secret information that some persons had been assaulting Chandrika Singh in Bariyarpur village and, having made a station diary entry, in this regard, he proceeded towards the place of occurrence and, on arriving there, at 8 PM, he recorded the statement of PW 3, which, on being read out to PW 3, was signed by PW 3 on finding that his statement had been correctly recorded. This statement has been proved as Exhibit-3.

23. It is in the evidence of the Investigating Officer (PW 6) that he had prepared the inquest report of the dead body of Chandrika Singh and recorded the statements of the witnesses.

23. When the evidence of PW 2 and PW 3 are

read together, what becomes glaring to the eyes is that though PW 2 has deposed that his nephew, Vijay Shankar Singh (PW 3), had told him in detail about the occurrence, surprisingly enough, PW 3 has not whispered that he reported to his uncle that his father had been assaulted by whom or with what weapon his father had been assaulted.

24. The evidence, therefore, given by PW 2 that accused Ramashish Mahton, Chotan Mahton and Ram Prasad Mahton had assaulted Chandrika Singh is nothing, but *hearsay* and needs to be kept completely excluded from the purview of this Court's consideration.

25. Coupled with the above, though Exhibit-3, as indicated above, has been treated as the First Information Report of this case, the fact remains that in the light of the evidence of PW 6 (Investigating Officer), PW 6 had come to the place of occurrence pursuant to a secret information having been received that Chandrika Singh was being assaulted at Bariyarpur village. It clearly follows that arrival of PW 6, at the place of occurrence, was during the course of investigation to ascertain the correctness and veracity of the information, which he had received, and also the identity of the assailants, if any.

26. Necessarily, therefore, the statement (Exhibit-3), which has been proved to be the statement of PW 3, is nothing but a statement recorded during investigation of

the case and ought to have been treated as a statement made by PW 3 under Section 161 of the Code of Criminal Procedure.

27. What can also not be ignored, and must not be ignored, is that PW 3 has claimed that the accused were armed with *lathis*, *farsas* and *gandasas*. This apart, describing the occurrence, PW 3 has deposed that accused Ramashish Mahto assaulted his father with a *farsa*, while accused Ram Prasad Mahton assaulted his father with *gandasa* and the blow of the *gandasa* caused a cut injury on his father's left ear, which extended up to the right shoulder, and as his father tried to defend himself by raising his left hand, his fingers also suffered cut injury. It is in the evidence of PW 3 that the blow, which had been given by accused Chotan Mahton, resulted into a cut injury on the palm of his father and his father fell down; but the *post mortem* report (Exhibit-2) clearly shows a single cut extending from the left ear to the right of the neck. If Chandrika Singh had been assaulted by 9-10 persons, as has been alleged by PW 3, he would have suffered multiple injuries on his person, whereas he was found to have sustained, apart from incised wound on his neck, a cut on the left wrist and dislocation of ulna bone.

28. Thus, the medical evidence on record does not support the version of the occurrence, which has been given by PW 3.

29. Coupled with the above, irrespective of the fact as to whether the contents of Exhibit-3 ought to be regarded as the First Information Report or as the statement of PW 3 made during the investigation of the case, the fact remains that while the so-called first information report mentions that the assailants were armed with *lathis* and *farsas*, there is no mention about *gandasa* and it is only during trial that it has been mentioned by PW 3 that accused Ram Prasad Mahton had assaulted Chandrika Singh by means of *gandasa*.

30. The defence has considerable force, when it submits that on account of the fact that medical evidence on record shows that Chandrika Singh might have suffered assault by means of *gandasa* that PW 3 has made improvement on his previous statement and introduced *gandasa* as one of the weapons of assault.

31. Yet another important aspect of the evidence of PW 3 is that he claims, in his evidence, that he had a torch light, and it was in the focus of the torch light that he had recognized the accused. The very fact that PW 3 claims that he identified the assailants in the focus of the torch light shows that the place of occurrence was dark and had torch light not been there, PW 3 could not have recognized the assailants. Hence, it was natural, on the part of a witness, placed in a position in which PW 3 was placed, to have

mentioned, in the so-called First Information Report, that he had recognized the assailants in the focus of a torch light. Exhibit-3, however, makes no mention that the means of identification was a torch light.

32. In fact, the Investigating Officer (PW 6) has clearly deposed that neither he had asked for production of the torch light nor was the torch light produced before him and/or shown, though the torch light is claimed to have been produced before the Investigating Officer, who had succeeded PW 6. The succeeding Investigating Officer has not been examined at the trial. Situated thus, we have no option but to hold that the prosecution could not prove that PW 3 had a torch light in his hand and/or that it was in the focus of the torch light, held by PW 3, that he recognizes the assailants.

33. Coupled with the above, the narration of the occurrence, in the so-called first information report, shows that when Chandrika Singh was attacked and fell down, PW 3 ran to save his life. In such circumstances, it is not only difficult, but impossible to believe that PW 3 could have been waiting to see the entire occurrence of assault on his father in detail.

34. More importantly, PW 3 has deposed that he tried to save his father, but accused Ramashish Mahto and accused Ram Prasad Mahto moved forward and he (PW 3) had to run away. Exhibit-3, however, makes no mention of PW 3

making any attempt to save his father. It is yet another aspect in the evidence of PW 3, which renders his evidence unbelievable and untrustworthy.

35. What is of paramount importance to note is that according to the evidence of PW 3, the occurrence of assault on his father had also been seen by Arjun Singh, Tanik Singh, Vijay Kumar Singh, Ram Bhadra Pathak (PW 5) and Pramod Singh (PW 7). However, these witnesses have not at all supported the assertion of PW 3 inasmuch as all these witnesses have, in tune with each other, deposed that they had not seen the occurrence of assault on Chandrika Singh.

36. While the Investigating Officer's evidence shows that he found the dead body lying in a pool of blood, the evidence of the informant (PW 3) is that no blood was found at the place of occurrence. This assertion of PW 3 is, otherwise also, inherently unbelievable inasmuch as the injury, which had been sustained by the said deceased at the back of his neck, would have resulted into sufficient bleeding. No wonder, therefore, that clotted blood was found at the place of occurrence by the Investigating Officer (PW 6).

37. What logically follows from the above discussion is that the prosecution's case comes to rest against the accused-appellants on the sole testimony of PW 3. Though there is no impediment in law in convicting an accused on the

sole testimony of a witness, the witness, in such an event, has to be wholly trustworthy and reliable witness.

CLASSIFICATION OF WITNESSES

38. 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.

39. The evidence of the eye-witnesses, 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.

40. It is also an undisputed position 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.

41. 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 Supreme Court 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)

42. Situated thus, it is clear that merely because some persons, claiming themselves to be eye-witnesses, have given evidence describing the occurrence in tune with each other, their evidence cannot be made basis for holding them truthful witnesses, when their evidence is belied by the medical evidence on record unless their evidence is found to have been corroborated by credible independent evidence, direct or circumstantial.

43. Because of the fact that the evidence of PW 3 suffers from many vital infirmities, which we have indicated above, and his evidence has also contradicted the medical evidence on record, we find that PW 3 is not at all a reliable witness and his evidence could not have been made the foundation for convicting the accused-appellant.

44. 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 be held, to have proved their case beyond reasonable doubt against the accused appellant.

45. Situated thus, we are clearly of the view that in the facts and attending circumstances of the present case, the sole appellant ought to have been accorded, at least, benefit of doubt.

46. 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.

47. Since the accused-appellant is on bail, his bail bonds are hereby cancelled and his sureties shall accordingly stand discharged.

48. 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.)

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