

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.479 of 1993
With
Criminal Appeal (DB) No.512 of 1993
With
Criminal Appeal (DB) No.10 of 1994

(AGAINST THE JUDGMENT OF CONVICTION AND THE ORDER OF SENTENCE, DATED 18.10.1993, PASSED BY SHRI BRAJ KISHORE THAKUR, SESSIONS JUDGE, BHAGALPUR IN SESSIONS TRIAL NO. 86 OF 1983, ARISING OUT OF KHARIK POLICE STATION CASE NO. 36 OF 1982.)

Bashisth Narain Rai @ Bashisth Rai son of late Bhubneshwar Rai, Resident of Village- Tulsipur, P.S. Kharik, District- Bhagalpur.

.... Appellants **(In Criminal Appeal No. 479 of 1993)**
With

1. Satrugan Rai, son of late Bhubneshwar Rai, Resident of Village- Tulsipur, P.S. Kharik, District- Bhagalpur.

.... Appellant **(In Criminal Appeal No. 512 of 1993)**
With

1. Parmanand Rai,
2. Umesh Rai,
3. Kare Rai,

All sons of late Bhubneshwar Rai, Resident of Village- Tulsipur, P.S. Kharik, District- Bhagalpur.

.... Appellant **(In Criminal Appeal No. 10 of 1994)**

Versus

The State of Bihar

.... Respondent **(In all the Appeals)**

Appearance :
(In all these appeals)

For the Appellants : Mr. Hare Krishna Kumar, Advocate
Mr. Uday Shankar Saran Singh, Adv.

For the Respondent: Mr. Ajay Mishra, APP

Mr. Neeraj Kumar @ Sanidh, Advocate, appearing as Amicus Curaie
-----In Cr. APP (DB) No.479 of 1993

Mr. Suneil Kumar Thakur, Advocate, appearing as Amicus Curaie
-----In Cr. APP (DB) No.512 of 1993

Ms. Fauzia Shakil, Advocate, appearing as Amicus Curaie
-----In Cr. APP (DB) No.10 of 1994

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

ORAL JUDGMENT

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

Date: 26-06-2015

Under challenge, in the present appeals, are the judgment of conviction and the order of sentence, dated 18.10.1993, passed, in Sessions Trial No. 86 of 1983, by learned Sessions Judge, Bhagalpur, whereby various sentences have been passed against the accused-appellants.

2. By the impugned judgment, the learned trial Court has convicted the accused-appellant, namely, Satrugan Rai, under Sections 148 and 302 of the Indian Penal Code, the accused-appellant, namely, Basisth Rai, under Sections 147 and 302 read with Section 149 of the Indian Penal and accused-appellants, namely, Parmanand Rai, Kare Rai and Umesh Rai, under Sections 148 and 302 read with Section 149 of the Indian Penal Code. For his conviction under Section 302 of the Indian Penal Code, accused-appellant, Satrugan Rai, has been sentenced to suffer imprisonment for life and for his conviction under Section 148 of the Indian Penal Code, he (Satrugan Rai) has been sentenced to undergo rigorous imprisonment for a period of two years. For their conviction under Section 302 read with Section 149 of the Indian Penal Code, the accused-appellants, namely, Parmanand Rai, Umesh Rai and Kare Rai, have been sentenced to suffer imprisonment for life and, for their conviction under Section 148 of the Indian Penal Code, they (Parmanand Rai, Umesh Rai and Kare Rai) have been sentence to suffer rigorous imprisonment for two



years. For his conviction, under Section 302 read with Section 149 of the Indian Penal Code, accused-appellant, Basisth Rai has been sentenced to suffer imprisonment for life and, for his conviction under Section 147 of the Indian Penal Code, he (Basisth Rai) has been sentenced to suffer rigorous imprisonment for a period of one year. All the sentences having been directed to run concurrently.

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

(i) On 13.3.1982, informant, Jaldhar Rai, had gone to School, where he used to teach, leaving behind his wife, Rani Devi (PW 1), and his sister-in-law, Kaushalya Devi (since deceased) at his house. In the absence of the informant, accused Bhubneshwar Rai (since deceased) built a room of thatches on the land of the informant. Although the informant's family members tried to stop accused Bhubneshwar Rai from raising the said construction, the accused aforementioned did not pay any heed to the objections so raised.

(ii) The informant returned home from the school at about 4.00 PM and, on noticing the said thatched room, went to the house of accused Bhubneshwar Rai to protest. The objection, so raised by the informant, infuriated accused Bhubneshwar Rai, whereupon accused Bhubneshwar Rai and Parmanand Rai, both armed with axes, accused Umesh Rai, armed with spade, and Shatrughan Rai, armed with *khanti* (i.e., shovel) and Kare Rai,



armed with dagger, chased the informant aiming to assault him. The informant was taken inside his room by his wife (PW 1). Having entered into the room, PW 1 (Rani Devi) closed the door from inside; but the informant's sister-in-law, Kaushalya Devi (since deceased) remained in the courtyard, whereupon accused Shatrughan Rai gave Kaushalya Devi a blow by means of *khanti* (i.e., shovel) on her head and as Kaushalya Devi fell down, she was further assaulted by accused Bhubneshwar Rai, Parmanand Rai and Umesh Rai. Kaushalya Devi died on the spot.

(iii) An oral information was given by the informant, Jaldhar Rai, to the Officer-in-Charge, Naughachia (Kharik) Police Station, on 13.03.1982, at 05:15 PM, as regards the occurrence, the said information was reduced into writing in the form of *fardbeyan* and, treating the same as First Information Report, Naughachia (Kharik) P.S. Case No. 36 of 1982, under Sections 147/148/149/302 of the Indian Penal Code, was registered against all the accused aforementioned.

4. During investigation, inquest was held over Kaushalya Devi'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 all the accused persons aforementioned.

5. At the trial, charges were framed, under Section 148 and also under Section 302 read with Section 149 of the

Indian Penal Code. A separate charge was framed, under Section 302 of the Indian Penal Code, against accused Shatrughan Rai. All the accused pleaded not guilty to their respective charges.

6. In support of their case, prosecution examined altogether 12 (twelve) witnesses including the doctor (PW 11), who had conducted the *post mortem* examination on the dead body of Kaushalya Devi. 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, the case of the defence being that they had been implicated falsely in the case, because of previous animosity. The further case of the defence was that Manoj Rai, son of the informant, had given a blow, by means of *khanti* (i.e., shovel), on the accused Bhubneshwar Rai and as accused Bhubneshwar Rai ducked, the blow fell on the head of Kaushalya Devi, who died. The defence, in support of its case, adduced evidence by examining five witnesses.

7. During trial, accused Bhubneshwar Rai died and the trial continued against the remaining accused.

8. Having found the present appellants guilty of the offences charged with, the learned trial Court convicted them accordingly and passed sentences against them as mentioned above.

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

10. While Cr. Appeal (DB) No. 479 of 1993 has been preferred by accused-appellant, Bashisth Narain Rai @ Bashisth Rai, Cr. Appeal (DB) No. 512 of 1993 has been preferred by accused-appellant, Satrugan Rai; whereas Cr. Appeal (DB) No. 10 of 1994 has been preferred by accused-appellants, namely, Parmanand Rai, Umesh Rai and Kare Rai.

11. As these three appeals have arisen out of the judgment and order, dated 18.10.1993, passed, in Sessions Trial No. 86 of 1983, by learned Sessions Judge, Bhagalpur, we propose to dispose of these three appeals by this common judgment and order.

12. We have heard Mr. Hare Krishna 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. We have also heard Mr. Sunil Kumar Thakur, Mr. Niraj Kumar @ Sanidh and Ms. Fauzia Shakil, learned Counsel, appearing as *Amicus Curiae*, in the appeals aforementioned.

13. While considering these three appeals, let us, first, take note of the evidence given by Dr. H. I. Ansari (PW 11), who had, admittedly, conducted, on 14.03.1982, at 04.00 PM, *post mortem* examination on the dead body of Kaushalya Devi. According to this witness, on conducting *post mortem*

examination, he found following injuries:

- "i) Lacerated wound on the right side of the head in the parietal region ½" x ½" x bone deep.*
- ii) Linear bruise 3" x ¼" on the antero medical surface (front portion of the right thigh).*
- iii) Bruise on the lower part of the chest over the xithoid process of the external (lower part) of the size 3" x ½".*
- iv) Swelling on the left side of the head in the parietal region.*

14. All the above injuries, according to the doctor (PW 11), were *ante mortem* in nature and caused by *hard and blunt objects*.

15. In the opinion of the doctor (PW 11), cause of death was shock and hemorrhage, which resulted from the injuries to brain, liver and lung.

16. The question, however, remains: whether the accused-appellants or any of them had caused the death of Kaushalya Devi?

17. While considering the question, so posed, it may be pointed out that in the First Information Report, the informant (PW 10) named four persons as witnesses to the occurrence, namely, Genda Pd. Singh (PW 4), Anmol Rai, Anita Devi and Manoj Kumar Singh. Out of these four witnesses, only Genda Prasad Singh has been examined, but he, having turned hostile, has been cross-examined by the prosecution.

18. Apart from PW 4 (Genda Prasad Singh),



prosecution also examined PW 5 (Birendra Mandal) and PW 8 (Anand Prasad Singh) as eye witnesses; but both witnesses, having turned hostile, they, too, have been cross-examined by the prosecution. Nothing could be elicited from their cross-examination to show that they had turned hostile and/or they had witnessed the occurrence.

19. In fact, at the time of cross-examination of PWs 4, 5 and 8, the prosecution alleged that these three witnesses had, while giving their statements, under Section 161 Cr.P.C., implicated the accused aforementioned as the assailants. The prosecution accordingly put the statements of these witnesses, which were said to have been made to the Investigating Officer during investigation. The Investigating Officer having, however, not been examined by the prosecution, the previous statements, said to have been made during investigation by PWs 4, 5 and 8, have remained unproved.

20. Situated thus, it becomes clear that there is nothing available on record to show that PWs 4, 5 and 8 were eye witnesses to the occurrence of assault as described by the informant and the members of his family.

21. What also follows from the above discussion is that though more than one person were present at the place of occurrence, prosecution's case has been supported only by the members of the family of the deceased and no other independent witness.



22. With the infirmities in the prosecution's case, when we turn to the evidence of PW 1 (Rani Devi), we notice that according to her evidence, when her husband returned home from school and noticed that a thatched room had been built by accused Bhubneshwar Rai, her husband (PW 10) went to the house of accused Bhubneshwar Rai to protest. Afraid of the fact that Jaldhar Rai might be assaulted by the accused, both, PW 1 (Rani Devi) and Kaushalya Devi, brought Jaldhar Rai to their own courtyard. Soon thereafter, according to the evidence of PW 1, accused Bhubneshwar Rai, Shatrughan Rai, Parmanand Rai, Umesh Rai and Kare Rai came to the courtyard of the informant and accused Shatrughan Rai, who was armed with a *khanti* (i.e., shovel), gave a blow, on the head of Kaushalya Devi, by means of *khanti* and, on seeing the assault on Kaushalya Devi, PW 1 (Rani Devi), according to her evidence, ran away, out of fear, with her husband (PW 10) and entered into the room of their house and closed the door from inside and on this, the accused persons began to pull down the ridge with *spade* and *shovel* and she began to scream from inside the room. Because of the *hulla* so raised, their co-villagers arrived and the accused fled away. It is the further evidence of PW 1 that she saw the occurrence of assault on Kaushalya Devi from inside the room, which she had bolted from inside.

23. Clearly thus, the description of the occurrence which had been given, in her examination-in-chief, by PW 1,



was contradicted by her cross-examination inasmuch as she has deposed, in her examination-in-chief, that she saw the assault on Kaushalya Devi, while she (PW 1) and her husband (PW 10) were present at their courtyard and, then, they went running to their room and closed the door from inside, whereas this witness has stated, in her cross-examination, that she saw the occurrence of assault on Kaushalya Devi from inside the room, where she and her husband were present having bolted the door from inside. Both these versions of the occurrence being inherently inconsistent, incoherent and contradictory in nature, no reliance can be placed on the testimony of PW 1.

24. The above impression that PW 1 is not at all a reliable witness is gets strengthened by the fact that while the First Information Report alleges that all the accused had come, armed with various weapons, to the courtyard of the informant, aiming to assault the informant and, then, accused Satrugan Rai had given a blow by means of *khanti* (i.e., shovel) on Kaushalya Devi's head leading to her death, PW 1, nowhere, deposed that the accused came, armed with various weapons, aiming to assault her husband, i.e., the informant (PW 10).

25. The above inference that PW 1 cannot be at all relied upon is reinforced, when we notice that according to the evidence of PW 1 (Rani Devi), Kaushalya Devi was dragged by the accused persons to the courtyard of the accused, while she was lying injured at her courtyard. The medical evidence on



record, which we have re-produced above, does not reveal any sign of laceration or abrasion or bruise on the dead body of Kaushalya Devi, consistent with the assertion of PW 1 that she had been dragged, while she was lying injured at the courtyard. In fact, it is not even whispered by the remaining prosecution witnesses that Kaushalya Devi's dead body was found lying at the courtyard of the house of the accused and not the courtyard of the informant.

26. Coming to the evidence of PW 3 (Jugal Kishore Rai), who is son of the younger brother of the informant, we notice that according to his evidence, after PW 1 and PW 10 had entered into their room and closed the door from inside, Kaushalya Devi, who remained at the courtyard, was assaulted by accused-appellant, Satrugan Rai. This description of the occurrence, we have already indicated above, is belied by the evidence given by PW 1 in her examination-in-chief inasmuch as her evidence, in her examination-in-chief, is that Kaushalya Devi was assaulted at the courtyard of the informant's house before PW 1 and her husband (PW 10) had entered into their room having ran away from the courtyard and closed the door of the room from inside.

27. We may also point out that according to the evidence of PW 3 (Jugal Kishore Rai), when Kaushalya Devi was lying injured, accused-appellant, Umesh Rai, had given a blow, by means of a spade, on the rib of Kaushalya Devi and accused-

appellant, Parmanand Rai, had given blow, by means of axe, on Kaushalya Devi. This witness has also deposed that the assailants dragged Kaushalya Devi to their house, while she was lying at her courtyard. One can clearly notice that this assertion of PW 3 does not receive any support from the medical evidence on record.

28. When we turn to the evidence of PW 7 (Manoj Kumar Rai), who is son of the informant, we notice that according to him, too, his mother took his father inside their room and closed the door from inside, whereupon Kaushalya Devi, who had remained at the courtyard, was assaulted by accused-appellant, Satrugan Rai, by means of *khanti* (i.e., shovel) on her head and when she fell down, the accused-appellant, Umesh Rai, assaulted Kaushalya Devi by means of spade on her ribs and, then, accused Bhubneshwar Rai (since deceased) and the accused-appellant, Parmanand Rai, assaulted Kaushalya Devi on both her thighs. Here, again, we find that as far as PW 7 is concerned, he alleges that accused Bhubneshwar Rai and the accused-appellant, Parmanand Rai, had both given blows, by means of axe, on the thighs of the said deceased, which has not been supported by the remaining prosecution witnesses. This apart, the description of the occurrence, so given by PW 7, is not supported by the medical evidence on record.

29. On turning to the evidence of the informant (PW



10), we notice that according to his evidence, blows were given on him (PW 10) by means of axe by accused-appellants, Parmanand Rai and Bhubneshwar Rai, on Kaushalya Devi, but he ran and entered into his room with his wife. At the same time and in the same breathe, PW 10 also claims that while running away, out of fear, he saw accused-appellant, Satrugan Rai, giving a blow, by means of *khanti* (i.e., shovel) on Kaushalya Devi's head and, then, accused-appellant Parmanand Rai gave a blow, by means of axe, on the rib of Kaushalya Devi.

30. The description of the occurrence, so given by PW 10, is belied by the description of the occurrence given by his son, PW 7, and his nephew, PW 3, inasmuch as PW 3 and PW 7 have deposed that Kaushalya Devi was given blow on her head by accused-appellant, Satrugan Rai, by means of *khanti* (i.e., shovel) after PW 1 and PW 10 had already entered their room and closed their room from inside.

31. Thus, the description of the occurrence, given by PW 10, shows that the assault, on Kaushalya Devi, took place before he entered into the room and closed the door from inside, which is not supported by the remaining witnesses of the prosecution.

32. From the depositions of PWs 1, 3, 7 and 10, what clearly transpires is that they have given inconsistent and contradictory versions of the occurrence. This apart, as has been rightly pointed out by Mr. Hare Krishna Kumar, learned



counsel for the appellants, that PWs 1, 3, 7 and 10 are all members of the same family and since the neighbours, who are independent witness and who, were present at the place of occurrence, ought to have been examined by the prosecution, but Jagrup Mandal and Anmol Rai, whose names appeared in the First Information Report as witnesses to the occurrence, have not been examined and withheld by the prosecution.

33. Because of the nature of the evidence, which has been adduced by the prosecution, we are clearly of the view that Jagrup Mandal and Anmol Rai were withheld from the Court as their evidence would not have supported the case of the prosecution. This apart, those independent witnesses, such as, PWs 4, 5, 8, who were examined, did not support the prosecution's version of the occurrence. In fact, they denied that they had witnessed the occurrence and the prosecution failed to prove the statements of these witnesses, which were claimed to have been made, during investigation, by these witnesses.

34. What emerges from the above discussion is that the evidence, adduced by the prosecution, is nothing but an admixture of half-truth and untruth and the truth, if any, is so inextricably mixed with half-truth and untruth that it has become impossible to disengage the truth from falsehood.

35. Situated thus, we are clearly of the view that in the facts and attending circumstances of the present case,

prosecution has failed to prove its case beyond reasonable doubt and the accused-appellants ought to have been accordingly accorded, at least, benefit of doubt.

36. In the result and for the forgoing reasons, we allow these three appeals. The impugned conviction of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offences, which they stand convicted of, and they are hereby acquitted of the same under benefit of doubt.

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

38. Let the Amicus Curiae be paid a fee of Rs.5,000/- each.

39. 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.)

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

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