

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1200 of 2007

(Against the judgment of conviction and order of sentence dated 10.08.2007 and 16.08.2007 respectively passed in S.T. No. 588 of 2004/135 of 2004 by Addl. Sessions Judge, F.T.C.-II, Nalanda at Biharsharif)

Moni Devi @ Mona Devi, wife of late Fulchand Ravidas, resident of Katona, P.S.- Katrisarai, District- Nalanda, at present village Ahiyapur, P.S- Sarmera, District- Nalanda.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 1094 of 2007

(Against the judgment of conviction and order of sentence dated 10.08.2007 and 16.08.2007 respectively passed in S.T. No. 37 of 2005/4 of 2005 by Addl. Sessions Judge, F.T.C.-II, Nalanda at Biharsharif)

Manoj Ravidas, s/o- Kailash Ravidas, resident of village Ahiapur, P.S.- Sarmera, District- Nalanda.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 1200 of 2007)

For the Appellant/s : Mr. Ansul
Mr. Anuj Kumar
Mr. Salma Naaz, Archit Rajpal.
For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CR. APP (DB) No. 1094 of 2007)

For the Appellant/s : Mr. Ansul
Mr. Satish Kr.Sinha
For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
and

HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 25-03-2015

Appellant Moni Devi (hereinafter referred to as A/1) of



Cr. Appeal No. 1200 of 2007 and appellant Manoj Ravidas (hereinafter referred to as A/2) of Cr. Appeal No. 1094 of 2007 were tried conjointly vide S.T. No. 588/2004 and S.T. No. 37/2005 respectively by the Addl. Sessions Judge, F.T.C.-II, Nalanda at Biharsharif and convicted under Section 302/34 IPC for committing murder of Fulchand Ravidas (son of the informant) and were sentenced to undergo rigorous imprisonment for life vide judgment of conviction dated 10.08.2007 and order of sentence dated 16.8.2007. A/1 was also imposed fine of Rs. 50,000/- and in default whereof to further suffer imprisonment for 02 years.

Mohan Ravidas (P.W. 10) lodged the fardbeyan recorded by Sub-Inspector of Police of Giriyak (Katrisarai) Police Station on 17.06.2004 at 2 p.m. at his house alleging therein that on 16.06.2004 while he was sleeping in his house after taking meal along with other family members at about 10 p.m., he heard the cry of the deceased who was sleeping in another room of the house with his wife (A/1). He rushed to the room of the deceased and saw him lying beneath the cot in a pool of blood having received injury in his abdomen wherefrom blood was oozing. On query, the wife (A/1) disclosed that A/2 had stabbed the deceased by means of a *chhura*. She further disclosed that A/1 belonged to the village to which she belonged. The informant alleged that the occurrence was committed by A/2 with the



connivance of A/1 (wife of the deceased) who was involved in a love affairs with A/2 before her marriage with the deceased. The Sub-Inspector of the concerned Police Station on getting information of the alleged occurrence reached the village the following day and recorded the fardbeyan (Ext.-4) at the house of the informant on 17.6.2004. A formal F.I.R. (Ext.1) was drawn and the criminal law was set in motion. Inquest report of the deceased (Ext.5) was prepared. The weapon of assault was also recovered nearby the place of occurrence and a seizure memo (Ext. 6) was prepared. Statement of witnesses were recorded and the dead body was sent for post mortem examination. After concluding the investigation, charge-sheet was first led against A/1 which, on being committed to the Court of Sessions, gave rise to S.T. No. 588/2004 on the file of the Trial Judge. In the meantime, the I.O. was transferred and his successor to the Office, on completing investigation, submitted charge-sheet against A/2 whereon cognizance of the offence was taken and later the case was committed to the Court of Sessions vide order dated 15.12.2004 which gave rise to S.T. No. 37/2005/04/2005. Both the trials were made cognate and charges were framed. The appellants abjured their guilt necessitating the trial. The Trial Court, as noticed above, on conclusion of trial held both of them guilty of the charge(s) and sentenced in the manner noticed hereinabove. Hence the appeal.

Heard Mr. Ansul for the appellants and Mr. Abhimanyu Sharma, learned A.P.P. for the State.

In order to establish the charges levelled against the appellants, the prosecution examined 12 witnesses out of whom P.W.- 1 Upendra Kumar is a formal witness who has proved the handwriting of the Officer-in-charge on the formal F.I.R. (Ext.1). P.W.- 2 Sukhdeo Ravidas is own brother of the informant who claims to have reached the place of occurrence soon after hearing the cry of the deceased and the informant. P.W.- 3 Kartik Lal, similarly, went to the place of occurrence on hearing *hulla* and saw the injured fallen on the ground having sustained injuries. The informant disclosed to him that A/1 had inflicted *chhura* injury on the deceased. He is also a witness to the inquest (Ext.2). P.W.-4 Sri Ravidas is neighbour of the informant who again rushed to the place of occurrence on hearing the shout of the informant. He too found the deceased lying inside the room in a pool of blood where the informant disclosed him that A/2 in connivance with A/1 had assaulted the victim as there was love affairs going on from before between A/1 and A/2. P.W.-5 Ramnandan Paswan is said to have deposed that on *hulla*, he went to the place of occurrence only to see the victim lying in the pool of blood in the room where the informant disclosed to him that due to love affairs, A/2 had committed the murder in conspiracy with A/1. P.W.-6 Bundel Ravidas is another



covillager who in his deposition has stated that on *hulla* raised by the informant and the family members, he went to the place of occurrence and found the victim lying on the floor near the cot having received injuries in his abdomen. This witness has, however, claimed to have seen two injuries received by the injured in his abdomen caused by sharp cutting weapon. He helped the other members in wrapping the wound in course whereof he could notice injuries on the abdomen of the victim. The informant revealed to him that the crime was committed by A/2 in the connivance of A/1 due to love affairs between them going on from before the marriage of the victim with Moni Devi (A/1). P.W.-7 Anil Ravidas is another covillager who is said to have deposed in similar terms that on *hulla*, he rushed to the place of occurrence and saw the victim lying on the floor near the cot having received injuries and narrated that the occurrence was committed by A/2. He, however, claims to have seen two injuries sustained by the victim in and around the abdomen. P.W.-8 Kedar Manjhi is yet another neighbour of the informant, who deposed in the similar terms. P.W.-9 is the mother of the deceased. During the relevant date and time of occurrence, she was sleeping with the informant in another room of the house. Yelling of the victim awoke her whereafter she along with the informant rushed to the room where the victim was sleeping and found him lying on the floor in a pool of



blood. The victim whispered to her that he was assaulted by A/2 due to his affairs with A/1 prior to marriage. P.W.-10 is the informant of the case whereas P.W.-11 is Dr. Dayanand Prasad, Civil Assistant Surgeon who held autopsy on the dead body of the deceased and submitted the report (Ext.3). P.W.- 12 Yogendra Prasad is formal witness who has proved the writing of the then Officer-in-charge as also signature (Ext. 2/2). Formal F.I.R. was marked as Ext.4. He has also proved the inquest report prepared in respect of the dead body by the Officer-in-Charge (Ext.5). Another seizure memo in respect of the weapon of assault has been proved by him as Ext. 6. The contents of the case diary written by the Officer-in-charge have been proved as Ext.7. Subsequent part of the case diary prepared by another Officer-in-charge has been proved as Ext. 7/1. Contents of the supplementary case diary prepared by the Officer-in-charge have been proved by him as Ext. 7/2. He has, however, shown his innocence in deposition about the contents of those documents which were proved by him.

Having set out the broad features of the case on which the prosecution relied, this Court would first consider the medical evidence of Dr. Dayanand Prasad who conducted the post mortem examination on the dead body. According to him, on 18.6.2004, while he was posted at the Sadar Hospital, Biharsharif, the dead body of the deceased duly identified by the Chowkidar was brought before him

for autopsy. On the same day at 7.30 a.m., he conducted the post mortem and found the singular following external ante mortem injury on the abdomen of the cadaver:

“3” x ½” x cavity deep incised wound over upper (R) abdomen.

Loops of intestine were found incised and perforated. According to him, the injuries was caused within 36 hours. Cause of death, according to the doctor, was serious shock and haemorrhage due to the aforesaid injury caused by sharp cutting weapon. This witness has not treated or gave any medical aid to the deceased when he was brought. He could not say from his examination that deceased was given any prior medical aid or not. On scrutiny of the evidence of the doctor, this much is evident that the death of the deceased was homicidal in nature.

This takes us to scrutinizing the evidence to find whether the prosecution has been able to prove the guilt of the appellants beyond shadow of doubt.

Learned counsel for the appellants has submitted that from bare perusal of the oral evidence of the witnesses, it is apparent that there is no eye witness to the occurrence. No one actually saw the hurling of the blows at the hands of the A/2 on the deceased or his escaping therefrom. The occurrence, as per the prosecution case, was



committed in the night of 16.6.2004 and if the evidence of the witnesses are to be believed then the injured was carried to the hospital for treatment on a tractor in night where he was declared dead. The body was then brought back to the house. Till then, no information was given to the police. It was the Chowkidar who in the following morning informed the Police about the occurrence which brought the I.O. to the place of occurrence and the fardbeyan was recorded in the afternoon at 2 p.m. There was, thus, ample opportunity for the informant to get all relevant information regarding the occurrence and incorporate them in the fardbeyan. Although, the fardbeyan is not the encyclopaedia of the chain of events but if the victim after having received injuries in his abdomen as found by the doctor was in a position to say about his assailant, this should have been disclosed in the fardbeyan. This case has been developed at the trial through the evidence of P.W. 2 (own uncle of the deceased), P.W. 9 (mother of the deceased) and by the informant himself. In this connection, he has drawn attention of the Court to the fardbeyan where the informant has stated that A/1 who was present inside the room when the deceased was inflicted with injuries who disclosed to him that it was A/2 who had committed the occurrence. In Court, at the time of trial, these three witnesses have gone to the extent of saying that when they reached inside the room of the victim, the



deceased having received the injuries was lying on the floor and named A/2 as his assailant and further that it was done with the connivance of the A/1 (his wife). This improvement in the case at the trial with a view to make the case full proof cannot be accepted, particularly, when the Investigating Officer of the case has not been examined in order to lend assurance to the Court that this improvement in the prosecution case was immediately disclosed to the Investigating Officer.

Admittedly, the deceased received the injuries while he was sleeping inside the room. After having received injuries, he fell down from the cot. Some of the witnesses wrapped his wound and he was shifted to the hospital on a tractor. In the morning, he was declared dead and they came back home with the dead body. The Police on receiving information about the occurrence from the Chowkidar of the village came to the place of occurrence and recorded the fardbeyan in the afternoon. There is no objective material on record except the oral evidence in order to infer that this improvement of making a dying declaration by the deceased was at all possible. The doctor of the hospital where the dead body was carried during the night has not been examined who could have deposed about the physical and mental condition in which the deceased was carried to the hospital Whether after having received the injury of the

nature as alleged by the prosecution, he was alive or in complete sense and in a position to make such disclosure about his assailant.

Learned APP, conversely, has submitted that the evidence on record conclusively prove the guilt of the appellants. The evidence of P.W. 2, P.W.9 and the informant (P.W. 10) would clearly demonstrate that the deceased made a dying declaration before he was carried to the hospital in the night for treatment where he was ultimately declared dead. At the very first instance, the informant alleged the motive for commission of the crime by the two appellants. The prosecution case of having inflicted dagger blow injuries to the deceased finds support from the medical evidence of the doctor.

On scrutiny of the evidence adduced by the prosecution, it appears that except P.W. 2 (uncle of the deceased), P.W. 9 (mother of the deceased) and P.W. 10 (informant), no one else has said that when they reached inside the room of the victim, the injured having received the injuries made any such statement in their presence or that such disclosure of assailant was made by the deceased. The occurrence was committed between 10-10.30 in the night of 16.6.2004. The injured was carried to the hospital on tractor after wrapping his injuries and at the hospital, the victim was declared dead. The informant returned with the dead body in the morning. No information of the occurrence, in the meanwhile, was given to the



Police. Upon return of the informant with the dead body, the next day, the Chowkidar gave information about the occurrence which brought the Police. There was enough opportunity for the informant (P.W.-10) to disclose in the fardbeyan about the dying declaration having been made by the injured before he succumbed to the injuries. When we turn to the fardbeyan (Ext.4), we find no such story was given out therein. On the contrary, a specific allegation was levelled that A/1, being the wife of the victim, was present inside the bed room who, on query, said that it was A/2 who had committed the crime. This is a serious contradiction in the case and would, to some extent, discredit the testimony of the informant. P.W. 9 is mother of the victim. In her deposition before Court, she has stated that on hearing cry of his son who was sleeping with his wife in another room of the house, she woke up and went inside the room along with her husband to find his son lying on the floor having received injury in his abdomen. The victim disclosed the name of the A/2 as his assailant who had committed the offence in conspiracy with his wife (A/2). In her cross-examination, she has deposed that on the relevant night of the occurrence, she was sleeping in another room with her children. On hearing cry of her son, she awoke and went there. She is, however, emphatic that she and her husband (P.W.10) entered the room of the victim simultaneously. According to her, when the deceased received



injuries, he was wearing only underwear and *ganji*. From the evidence of the P.W. 2 (uncle of the deceased), we find that he named the witnesses who had congregated in or around the room. He has, however, not named this witness as one who was seen present there. P.W. 3 is another witness who claims that he was the first who reached the place of occurrence after hearing the *hulla* to find the victim lying in a pool of blood near the cot on the floor. He has, however, not stated that the victim made any such whispering naming his assailant. P.W. 4 is another neighbour of the informant who soon reached the place of occurrence on hearing the *hulla*. In paragraph 12, this witness is categorical in saying that after he entered into the room of the victim, his father and other witnesses had also entered inside the room and prior thereto no one had gone inside the room. He saw the victim lying senseless. It was the informant and A/1 who disclosed the name of A/2 as the assailant. The informant also said that it was A/1 who, in connivance with A/2, got the occurrence committed. This witness has shown his ignorance about prior knowledge of any such love affairs going on between the appellants. On the date of occurrence itself, he could know about the same through the informant. This witness found the victim wearing shirt and pant when the *chhura* blow was inflicted on him. P.W. 5 has clearly said that when he reached the place of occurrence, he found the victim lying in



a pool of blood and it was the informant who disclosed that A/2 had inflicted the *chhura* blow on the deceased with active connivance of A/1. Almost similar is the evidence of P.W. 6. When he reached the place of occurrence, the victim had already sustained injuries in his abdomen and was lying on the floor. He was later transported to the hospital for treatment where he died. He named other witnesses who were present at the place of occurrence in which the name of P.W. 9 does not figure. He found the injured wearing only underwear and the upper part of the body was naked. We do not propose to repeat the evidence of P.W. 7 Anil Ravidas. His evidence is also to the same effect. One thing is evident from his evidence that he has not named the mother of victim as one who was present at the place of occurrence when he reached there. It was the informant who disclosed the name of the assailant and also about the connivance of A/1 with A/2 in commission of the crime.

The next relevant circumstance which the Court would examine is whether there was sufficient light inside the room when the occurrence was committed providing any opportunity to the victim to identify his assailant. In the fardbeyan, there is no mention of the source of identification. Almost all the relevant witnesses, in their respective depositions, have stated that the village of the informant was not electrified. Actually, none of the witnesses has claimed to



have actually seen the commission of the crime by the A/2 and/or his escaping therefrom. From the evidence of P.W. 4, it appears the first part of the month in which the occurrence was committed was dark half of the fortnight (*andheria*). Except P.W.1, no one has said about the presence of light inside the room or the house. He has said about presence of one *dhibri* inside the room. There is no seizure of the *dhibri*. In absence of the evidence of the I.O., we do not find any reliable evidence on record to show that there was any such sign of burning of *dhibri* found inside the room. We, therefore, take it that there was no source of identification available inside the room at night when the occurrence was committed.

Having scanned the evidence to infer the aforesaid, this Court would examine as to whether the story of victim having made a dying declaration naming the appellant as his assailant propounded at the trial can be accepted and the prosecution can be said to have proved the guilt of the appellants beyond shadow of reasonable doubt. Before we do so, we would first again comment on the evidence of the informant. As seen in the fardbeyan, which was lodged rather belatedly, he has disclosed his source of levelling allegation against A/2 on the information supplied to him by A/1 who was present inside the house. The fardbeyan does not disclose about the deceased having uttered the name of the assailant before he succumbed to the injuries.

In the *State of Punjab versus Mohri Ram 1994 SCC Supl (1) 632*, the Apex Court, faced with analogous situation, in paragraph 4 observed as such:

“4. In this case, initially we are faced with a question whether the version given in the FIR is correct and could be held to be a true version. No doubt, FIR is not substantive evidence. However, when the author of the report and who is a potential witness, namely, PW4, consistently speaks with a version given in First Information Report then the Court can look into the evidence as well as the earlier version, not for the purpose of mere scrutiny of the evidence, but to examine whether the very version given by this witness could be accepted and if the Court finds the earliest version given is suspicious and if the witness completely falls in line with such a version, then such evidence also becomes suspicious, particularly, in case of this nature arising out of acute enmity.”

Again in the case of *Ram Kumar Pandey versus State of Madhaya Pradesh A.I.R. 1975 SC 1026*, commenting on the improvement which was sought to be made by the informant at the trial, the Apex Court observed as under in paragraph 9:

“9. No doubt, an F.I.R. is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it. But, in this case, it had been made by the father of the murdered boy to whom all the important facts of the occurrence, so far as they were known up to 9.15 p.m. on 23-3-1970, were bound to have been communicated. If his daughters had seen the appellant inflicting a blow on Harbinder Singh, the father would certainly have mentioned it in the F.I.R. We think that omissions of such important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case.”



It has been vehemently submitted by Mr. Ansul that in the case at hand, the other witness avowed to have received the information about the killing of the victim by A/2 through the informant, as such, they can, applying the same yardstick, be not believed. We find some force in the said submission of the counsel for the appellants.

Adverting to the alleged dying declaration of the victim which has weighed heavily with the learned Trial Court in order to fasten the guilt on the appellants, this Court finds that dying declaration if found inspiring confidence of the Court in the particular facts of the case can be made the sole basis for holding the accused(s) guilty. However, in doing so, the Court has to scan the evidence properly in order to assure itself as to whether the victim was at all in a position to make such statement and that there was no embellishment in the prosecution case. In the case of ***Khushal Rao versus The State of Bombay A.I.R. 1958 SC 22*** on which the appellants have relied, the Apex Court reviewed the relevant provisions of the Evidence Act and various cases of different High Courts and gave out the following notes of caution for the Court in paragraph 21 thereof:

“21. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the



Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other piece of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.”

Seen thus, the Court has to consider scrupulously the various circumstances manifesting from the records in order to find whether the case put forth by the prosecution at the trial that the victim before he succumbed to the injuries disclosed the name of A/2 as his assailant. With a view to scrutinize the veracity of the dying



declaration, we find that except the three witnesses namely P.Ws. 2, 9 and 10, who are close relatives, no other witness has said about such declaration or disclosure made by the injured/victim before his death. The evidence of P.W. 10 cannot be accepted as he has materially contradicted himself from what he narrated in the fardbeyan. P.W. 9, as seen above, has not been named by any of the other witnesses as the one who was present when they arrived at the scene of the occurrence soon after hearing the shout. One of the witnesses has gone to the extent of saying that he entered the room of the victim first and only thereafter the other witnesses including the informant entered inside the room. He has not stated about the victim having made any such revelation before he was carried to the hospital. The presence of adequate light inside the room providing an opportunity to the victim to identify the assailant is another relevant factor. P.W. 2, being the uncle of the deceased, does not inspire confidence of the Court since he claims to have seen two injuries sustained by dagger blow in the abdomen by the victim/deceased whereas the doctor has found only one injury in the abdomen. His evidence, therefore, is not above board. To conclude, the circumstances emerging from the records and noticed hereinabove persuade us not to rely on the prosecution case as developed at the trial that the victim/deceased before succumbing to the injuries was in a position to identify his



assailant and name him. We may indicate here that the doctor who first examined the victim when carried to him could have disclosed about the physical condition of the victim but he has not been produced as a witness. We have already noticed that at least some witnesses have said that when they first saw the victim, he was lying senseless in a pool of blood. We are, therefore, not persuaded to find sufficient evidence on record to accept the theory propounded by the prosecution during the trial that the victim made a dying declaration.

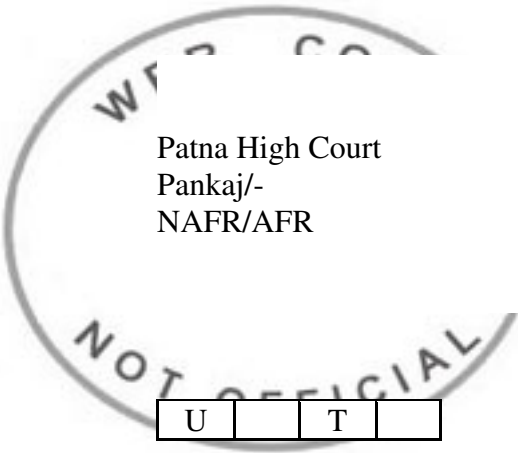
Although the motive for the occurrence is not necessarily required to be proved before the guilt can be fastened but once it is specifically alleged by the prosecution then it is expected of the prosecution to prove the same. We find from the evidence on record that except the disclosure of such love affairs between A/1 and A/2 going on from before stated by the informant to the Police and other witnesses through him, there is nothing tangible on the record to find that A/1, before her marriage, was having such affairs with A/2 which provided the motive to both of them to do away with the life of the deceased. At the cost of repetition, this Court would note here that no witness actually claimed to have seen the occurrence. In absence of the evidence of the Investigating Officer, it is not apparent to this Court as to the amount of blood oozed out from the body at the place of occurrence which would again be a relevant factor to consider as to

whether the victim was actually in a position to identify the assailant and narrate his name. In our considered view, non-examination of the Investigating Officer is another blow to the prosecution case and the appellants are entitled to benefit of doubt.

In view of the discussions made hereinabove, the appeal is allowed. The judgment of conviction and the order of sentence dated 10.08.2007 and 16.8.2007 respectively recorded by the Trial Court against the appellants is/are set aside. The appellant Moni Devi @ Mona Devi (Cr. Appeal (DB) No. 1200 of 2007) is stated to be in jail custody as the order granting her bail dated 05.02.2008 passed in Cr. Appeal (DB) No. 1264 of 2007 was recalled vide order dated 15.12.2014 while hearing Cr. Appeal (DB) No. 1264 of 2007 along with Cr. Appeal (DB) No. 1200 of 2007 on the ground of suppression of fact that she has not filed any other appeal although she has filed Cr. Appeal (DB) No. 1200 of 2007 against the same judgment of conviction and order of sentence. She is directed to be released from the jail custody forthwith if not wanted in any other case. However, appellant Manoj Ravidas (Cr. Appeal No. 1094 of 2007) is on bail and he is discharged from the liability of his bail bond.

(Kishore Kumar Mandal, J)

Samarendra Pratap Singh, J: I agree.



(Samarendra Pratap Singh, J)