

THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.446 of 2009

Arising Out of Nabinagar PS. Case No 40 .Year 2007, G.R. No. 667 of 2007, District-
AURANGABAD, giving rise to Sessions Trial No. 393 of 2007/80 of 2007.

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Bhola Paswan, son of Hira Paswan, resident of Village Baji, Police Station Nabi
Nagar, District Aurangabad (Bihar)

.... Appellant

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (DB) No. 377 of 2009

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- 1. Sahodri Devi, wife of late Basu Deo Chauhan
- 2. Dulariya Devi, wife of Sri Ran Jeet Chauhan

Both are residents of Village Mangi, Police Station Nabi Nagar, District
Aurangabad

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

(In CR. APP (DB) No. 446 of 2009)

For the Appellant : Shri Bachan Jee Ojha, Advocate
Shr Binod Kumar Pandey, Advocate
Shri Akhilesh Pandey, Advocate

For the Respondent : Sushri Shashi Bala Verma, A.P.P..

(In CR. APP (DB) No. 377 of 2009)

For the Appellants : Dr. Leelawati Kumar, Advocate
For the Respondent : Shri D.K.Sinha, A.P.P.

Sushri Shashi Bala Verma, A.P.P.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
and
HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 09-04-2015

The two appeals arising out of the judgment of conviction dated 7.4.2009 and order of sentence dated 13.4.2009 passed by the learned Presiding Officer, Fast Track Court No. II, Aurangabad, in Sessions Trial No. 393 of 2007/80 of 2007, have been preferred by the three appellants to challenge the correctness of the findings of their guilt and appropriateness of their sentences.

2. The two appellants, namely, Sahodri Devi and Dulariya Devi of one of the two appeals as also the solitary appellant Bhola Paswan of other appeal were held guilty of committing the offence under Section 302 of the Indian Penal Code and while appellant Bhola Paswan was directed to suffer rigorous imprisonment for life as also to pay a fine of Rs. 5,000/- else, to suffer simple imprisonment for three months, the two lady appellants were in addition to being directed to suffer rigorous imprisonment for life were directed to pay a fine of Rs. 2,000/- each, else to suffer simple imprisonment for fifteen days.

3. We have heard the two appeals together and we are disposing them of by the present common judgment.

4. It was a written report (Ext.-2) ascribed by P.W. 6 Shrawan Chauhan and signed by Budhni Devi (P.W. 4), the informant, which was the basis for institution of the First Information Report by Nabi Nagar Police Station on 18.4.2007. It was stated in the written report that on 16.4.2007 at about 4 P.M. the ox of Sahodri Devi had grazed the brinjal plants of the informant and the cattle was taken into the custody by the deceased Umesh Chauhan and had been tied down at his house. On 17.4.2007, appellant Sahodri Devi came to the house of the informant (P.W.4) and requested for the release of the cattle and as appears from the F.I.R. the informant allowed the same to be taken away. However, it was stated by P.W. 4 that the animal should not be allowed to graze the crops raised after so much of labour and investment.

5. It was stated that while appellant Sahodri Devi had come seeking release of the cattle other appellants along with the acquitted accused Shanker Chauhan and Kanti Devi also came to speak in support of appellant Sahodri Devi and during that course they had stated that the ox should not have been brought to the house of the informant but still they had gone away from there.

6. It was stated that, subsequently, the accused persons



assembled near the straw of the informant and had some deliberations between themselves. It was in the above connection that the informant stated that on 18.4.2007 at about 9 A.M. when she was coming from her field with her husband and when they had reached near the house of appellant Dulariya Devi, appellant Bhola Paswan came there and fired a shot from his pistol which hit left ribcage of her husband as a result of which the deceased Umesh Chauhan was seriously injured. While he was being shifted to the hospital, he breathed his last and the informant along with her accompanying witnesses, like, P.W. 6 Shrawan Chauhan and P.W.3 Dilip Chauhan brought the dead body to the Police Station and lodged the report.

7. P.W. 7 S.I. Muzaffar Alam stated that after the case was registered the Officer-in-charge of the Police Station handed over the charge of investigation to him and he came to the place of occurrence to inspect the same. He found that it was a road which was running from east to west, i.e., from village Mangi to Hasanpur and during that course of investigation the Investigating Officer found blood stains in a circular area of 1½ ” to 2”. As appears from the evidence of P.W.7, he did not seize the blood stained earth. Inquest report had been prepared by S.I.Shatrughan Prasad Singh and the dead body was sent for post-mortem examination and after close of the investigation five accused persons were sent up for trial, out of whom

accused Shanker Chouhan and Kanti Devi were acquitted of the charges while the appellants of the two appeals were convicted and sentenced, as noted above.

8. The defence of the appellants was also of innocence and false implication and it further appeared during the course of hearing of the appeals that the trend of cross examination also indicated as if the deceased might have been killed by someone else and it was an implication on the part of the police also which had been instrumental in creation of the written report.

9. Shri Bachan Jee Ojha, learned counsel appearing on behalf of the appellants took us through the evidence of the witnesses and has submitted that none of the witnesses appeared to be the eye witness to the occurrence. The submission also was that the Investigating Officer did not appear going to the field where the brinjal plants were grazed by the ox and the evidence of the witnesses indicated as if the ox which had been taken into custody by the deceased had already been released. As such, there was no reason for the accused persons to commit the offence. It was, lastly, submitted that the deceased was a man of questionable antecedent and behaviour who was also facing a charge of having kidnapped a young lady of the village and possibly he had been killed by someone other than appellant Bhola Paswan.

10. Sushri Shashi Bala Verma, learned Additional Public Prosecutor was submitting that oral evidence was acceptable and the same was getting support amply from the medical evidence and the charges, as such, appeared corroborated and established. However, Sushri Verma was fairly identifying some of infirmities in the prosecution evidence and was luke warmed in her address to the learned counsel for the appellants.

11. After having gone through the evidence of the witnesses, what we found was that the prosecution case suffers from many pitfalls. It was not one which could be discarded as a mere co-existence by keeping on the record on account of human treatise in being inconsistent if many persons are narrating the same facts in court where a situation may arise that narrations have some variance between themselves. The evidence of the witnesses appears pointing out as if no one could be the witness to the real occurrence. We shall point out as to how the witnesses may not be acceptable or trustworthy witness a little bit later.

We want first to point out that grazing of the brinjal plants by the ox belonging to one Sahodri Devi had resulted into the cattle, which had committed trespass over the field of the deceased, to be apprehended and brought to his house for being tied down there. The very written report indicated that the incident had occurred on

16.4.2007 and on 17.4.2007, i.e., after one day of the occurrence appellant Sahodri Devi had gone to the house of the informant for taking release of the animal apprehended by the deceased and the informant had allowed the cattle to be taken out. Thus, there was release of the cattle which was the subject matter of offence of cattle trespass and we are of the view that if that issue had been resolved amicably by the parties then there was no reason for them and especially for the accused persons to sit down to discuss the issue and as a consequence thereof to commit the murder. There was no issue left after the release of the cattle and if there was a rankle boiled into between the deceased and the accused that must have been died down as soon as the animal was released. Besides the above, what we have found was that the very apprehension of the cattle was on account of its trespass into the brinjal field of the deceased and the same had allegedly grazed upon the plants. It was, as such, an important part of the prosecution story on account of being the point of ignition as regards final act of killing the deceased. Any member of the prosecution side could have been seriously interested in leading the Investigating Officer to the field where the brinjal plants had been grazed. The Investigating Officer himself ought to have been extremely interested in finding out as to whether there was any sign of grazing of the brinjal plants and if it had been found by him then he

was supposed to have recorded that fact with quite some objectivity in his record and then ought to have narrated the facts before the learned trial Judge..

12. While perusing the evidence of P.W.7, the Investigating Officer of the case, we were anxiously searching for that very part of evidence on visiting the brinjal field so as to know as to whether there was any mark of plants having been grazed by any cattle. We failed to find any evidence even of visiting that particular field rather in paragraph 17 of his evidence P.W. 7 has stated that he had indeed never visited any brinjal field. We failed to appreciate as to why the prosecution was so indifferent in leading to such an important place which could be containing the evidence of grazing of the brinjal plants by any cattle and why not the Investigating Officer was himself interested in going to such a field. Thus, what we find is that the genesis of the occurrence or the stratum of the prosecution case that there was firstly grazing by the ox of the brinjal plants and secondly the ox was apprehended by the deceased which was brought to his house for being tied down, appears not supported up to the hilt. The point of ignition, i.e., the continued confinement of the ox into the custody of the deceased at his house appears not available as the prosecution story itself indicates that there had been an amicable release of the ox on the request of the appellant Sahodri Devi. If the

ox itself had been released amicably, then we do not see any particular reason for the accused persons to hatch up a plan to kill the deceased.

13. As regards the merit of individual evidence of the witnesses, P.W. 1 Anil Chouhan stated that he was never related to the deceased. As against his claim P.W. 2 Dilip Chouhan, who happened to be related to the deceased as his cousin, stated that Anil Chouhan was also a cousin of the deceased. Anil Chouhan P.W. 1 had stated that at the time of occurrence he was sitting under a Mahua tree and the place where the deceased was shot was at a distance distance of 20-25 yards. As per the evidence of P.W. 1 the place of occurrence and the place where he was sitting had no intervening structures or anything like that so as to obstructing the vision of the witness. But, in his cross examination he stated, as may appear from paragraph 11, that after he had heard the sound of gun shot he came rushing to the place of occurrence to find P.W. 5 Manoj Chouhan and P.W. 2 Dilip Chouhan P.W. 2 had stated that he had heard the sound of gun shot and that he had learnt about the incident from the persons who had assembled at the place of occurrence when he reached there. P.W. 2 had stated in his cross examination that the place where Umesh Chouhan was shot injured and the Mahua tree where P.W.1 was sitting was intervened by a Arhar field. Thus, what appears probability, as may appear from the evidence of P.W. 2 paragraph 9,

is that vision was not free if someone was sitting under the Mahua tree to see the occurrence which was taking place near the house of Dulariya Devi.

14. P.W. 3 Arun Kumar Chouhan is the son of the informant and he in his examination-in-chief gave evidence as if he were also an eye witness to the occurrence. However, when we considered his evidence in paragraphs 10 and 11 in cross examination we came to find that he had not given evidence as eye witness to the occurrence. P.W. 3 stated that he and his father were only at the field and they were irrigating the brinjal field. As may appear from paragraphs 9 and 10 of his evidence, one of the nuts of Hoda machine had slipped out and P.W.3 got engaged in properly tightening up that particular nut and in the meantime his father had left for taking his meal. This evidence in paragraphs 10 of P.W. 3 tells two things--- (i) that P.W. 3 and his father Umesh Chouhan were the persons who were present at the field and Budhni Devi P.W. 4 was not present there and as may appear from paragraph 10 of the evidence of the witness the deceased had left for his house for taking lunch. Thus, the claim of the informant that she had also at the field and was moving behind him appears a doubtful proposition. The further inference which appears from the evidence of P.W. 3 is that P.W. 3 had never been an eye witness to the occurrence. This inference can not only be



drawn merely on considering the evidence at paragraph 10 of P.W. 3 rather the evidence of P.W. 3 in paragraph 11 clarify the inference vividly when he had stated that while he was fixing the nut to be tightened he heard the sound of gun shot and also a hulla coming from the village side. The hulla was that someone had shot other and it was raised by the villagers and that the villagers had converged upon the place of hulla. P.W. 3 stated that hulla which was coming was that appellant Bhola Paswan had fired a shot and the villagers were running towards the place of occurrence and P.W. 3 himself also ran with them to the place of occurrence when he found that four persons had already assembled there and they were raising the hulla and by that time his mother had also reached there and she was attempting to collect and lift his father. For that purpose, P.W. 4 was aided by some co-villagers. Thus, the complete reading of paragraph 10 and 11 of his evidence, besides others, indicating that P.W. 3 must be an eye witness to the occurrence also creates a doubt in his competency and completely rules out claim of P.W. 4 that she was moving on the same boat behind her husband who was shot injured by appellant Bhola Paswan.

15. We have just pointed out with reference to the evidence of P.W.4, the investigating Officer and P.W.3 and when we had perused the evidence of P.W. 4 we found that she had seen the

appellant Bhola Paswan for the first time in the village. If P.W. 4 had the occasion of seeing the appellant Bhola Paswan for the first time and that too on those moments then she could not have named him nor she could have been in a position to describe appellant Bhola Paswan. Bhola Paswan was not the co-villager of P.W. 4 Appellant Bhola Paswan being seen at the village for the first time could not be known and identified as was done by P.W.4. Her claim of identification of appellant Bhola Paswan revolves round into serious doubt and that fact appears further corroborated and confirmed when we had considered the evidence of P.W. 6 Shrawan Chouhan who was none else than one of the agnatic relations of the deceased and out of sheer simply it was his duty to spend some time with the informant on account of the injury which was inflicted upon the deceased he had come to the scene of the occurrence and then had moved with the injured to the Police Station. These facts appear stated by P.W. 6 in paragraph 10. In the same paragraph P.W. 6 has stated that he had ascribed a written report as per the dictation of the Officer-in-charge on behalf of the informant and her family members who had ultimately asked P.W. 6 to note down the written report. On account of the above facts stated by P.W. 6, he was declared hostile and as such it could be the facts as regards the prosecution and that the prosecution ought to have put those facts to the witness by drawing



the attention of the witness and then ought to have challenged by suggesting him that that he had not made those statements anywhere before deposing in court. However, what we find is that the prosecution merely wanting P.W. 6 to make those statements and was not challenging the witness on his earlier statement. P.W.7 was not the Officer-in-charge of the Police Station who had obtained the written report and had drawn up the F.I.R. and thereafter had ordered investigation to be taken by P.W. 7. In absence of any contradiction coming from the Officer who had received the written report and had drawn up the F.I.R. of the case itself, we have no other option but to accept the statement of P.W. 6 as the only version as regards the ascribing of the written report.

16. On consideration of the evidence of P.W. 6, we have no other option but to accept the written report giving all facts at the behest of the Officer-in-charge of the Police Station probably to ensure that the appellant Bhola Paswan, who was to be imagined indulged in criminal activities, should be properly booked and punished by being implicated.

17. The other evidence of the witnesses, like, P.W. 5 Manoj Chouhan does not require mentioned as he had not supported the prosecution case and had been declared hostile.

18. On perusal of the evidence of the witnesses what we

find is that the credibility of the witnesses did not inspire confidence. In fact, we do not find their evidence trustworthy and reliable when we find the prosecution evidence to be not sufficient and trustworthy justifying judgment of conviction and order of sentence.

19. In the result, the two appeals succeed. They are allowed by setting aside the judgment of conviction and order of sentence. They are acquitted of the charges they had been found guilty of.

20. Appellants Sahodri Devi and Dulariya Devi are on bail. They stand discharged from the liabilities of their respective bonds.

21. Appellant Bhola Paswan is in custody. He is directed to be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J)

(Amaresh Kumar Lal, J)

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