

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.899 of 2007

- =====
1. Pramod Singh
2. Kapleshwar Singh @ Kapileshwar Singh, both sons of Krishnadeo Singh,
3. Krishnadeo Singh son of late Ishwar Singh, all residents of village-Sondiha,
P.S. Pasraha, Distt-Khagaria,
4. Manoj Singh son of Debi Singh, resident of Village-Mahdipur, PS.Pasraha,
Distt-Khagaria.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 782 of 2007

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1. Kamdeo Singh
2. Asin Singh, sons of Sri Sukhdeo Singh, both residents of village-Thatha, PS-
Mansi, Distt-Khagaria

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 816 of 2007

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Subodh Singh, son of Deo Narayan Singh, Resident of village, Sondiha, P.S.
Pasraha, Distt-Khagaria.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No. 899 & 782 of 2007)

For the Appellant/s : Mr. Ajay Kr. Thakur, Adv.
Dr. Anjani Pd. Singh, Adv.
Mr. Amir Alam, Adv.

For the Respondent/s : Susri Bala Verma, APP

(In CR. APP (DB) No. 816 of 2007)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Mr. Krishna Chandra, Adv.
For the Respondent/s : Susri Bala Verma, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

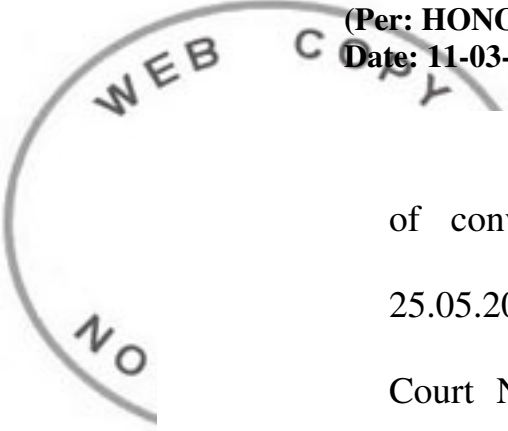
and

HONOURABLE SHRI JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

(Per: **HONOURABLE SHRI JUSTICE DHARNIDHAR JHA**)

Date: 11-03-2015



The present batch of three appeals arise out of judgment of conviction dated 24.07.2007 and order of sentence dated 25.05.2007 passed by the learned Presiding Officer of Fast Track Court No.2, Khagaria in two Sessions Trials No. 174/2001 and 114/2002. By the above judgment of conviction, the seven appellants of the three appeals were held guilty of committing offence Under Section 302/34 of the IPC and after being heard on sentence on 25.05.2007, each of them was directed to serve rigorous imprisonment for life and also to pay fine of Rs. 20,000/- else to serve simple imprisonment for six months. The learned trial court directed that in case of realization of fine, the same was to be paid to the informant and other kith and kin of the deceased as compensation. The three appeals have been heard by us together and they are being disposed of by this common judgment.

2. Before we set out the facts of the case, it appears pertinent to note that initially appellants, Kamdeo Singh, Aasin Singh, Promod Singh, Kapileshwar Singh, Krishnadeo Singh and Manoj Singh were charged together by order dated 16.01.2002 passed in Sessions Trial No. 174/2001 . The solitary appellant, Subodh Singh in



Criminal Appeal 816/2007 had not been put on trial on the ground of evading his appearance and it appears that after his appearance was procured, he was charged for committing an offence under Section 302/34 IPC by an order passed on 03.02.2003 in Sessions Trial No. 114/2002 which was registered on commitment of the case of the appellant, Subodh Singh. The two sessions trials proceeded independently and the same set of four witnesses namely, Radhey Singh, Arun Singh, Siyaram Singh and Vijendra Singh who had been examined as PWs 1 to 4 in Sessions Trial No. 114/2002, had also been examined in connected Sessions Trial No. 174/2001. The two trials proceeded separately up to the examination of PW-4 when on 21.03.2005, the trials were clubbed together and PWs-5 and 6 were examined after clubbing of the cases. It may be pertinent to point out that Investigating Officer of the case was not examined.

3. Coming to the facts of the case, the prosecution is based on the *Fard-e-beyan* of Radhey Singh who was examined as PW-1 in Sessions Trial No.114/2002 and PW-4 as Sessions Trial No. 174/2001. It was stated by him that he was searching for Suro Sah and he was going towards a field (probably a playground) which was situated in his village. At about 5:00 P.M., he found near the house of Ranvijay Singh (not examined) that all the appellants except appellant Subodh Singh were carrying arms and were assaulting the deceased,



Madhav Pd. Singh. It was stated that appellant, Promod Singh, Kapileshwar Singh and Krishnadeo Singh put the deceased down on the ground and mounted on his chest and thereafter appellant Promod Singh fired a shot into the temple of the deceased. Appellant Kapileshwar Singh pumped a bullet into the chest of the deceased while appellants Krishnadeo Singh and Pramod Singh fired one shot each which hit on the two arms of the deceased. As a result of the shooting made by the appellants upon the deceased, he died on the spot.

4. It was stated that while the above incident was under way, Dulo Devi wife of Bahadur Singh rushed to save the deceased but she was shot at by Sukhdeo Singh (not an appellant) and that hit into her chest and she fell down dead there. Appellant Aasin Singh and others were standing on guard ahead of the place where the two persons were killed and as soon as the informant attempted to proceed to intervene, he was also threatened with similar consequences by appellant Aasin Singh. After committing two murders, the accused persons ran away towards west.

5. It was stated by the informant that appellant, Krishnadeo Singh had borrowed Rs. 50,000/- from deceased, Madhav Singh as a premium for selling a particular land to the deceased, but he was not ready to scribe the deed and transfer the land for which the

deceased had made repeated requests and ultimately, the accused persons have come together to commit the murder of the deceased so as to digest the money advanced by the deceased to appellant Krishnadeo Singh.

6. We do not have the advantage of perusing the evidence of Investigating Officer. As such, we do not know as to how the investigation has commenced and proceeded. However, what appears to us from the cross-examination of the witnesses examined during trial, the defence had propounded the story that the deceased Madhav Singh was carrying an illicit relationship with the other deceased Dulo Devi and that the two had been found in a compromising position in the house of Dulo Devi and some of the relatives of Dulo Devi had shot them dead together and had picked the two dead bodies from the bed and put the same outside the house of Dulo Devi near the house of Ranvijay Singh in order to divert the investigation and also for creating a defence that unknown persons had got the present set of appellants implicated through informant, Radhey Singh.

7. We have already noted that prosecution had examined four persons in support of the charges, i.e., the informant, Radhey Singh, Arun Singh, Siyaram Singh and Vijendra Singh and had further examined PW-5, Dr. Ramanand Paswan, the doctor who

had performed postmortem examination on the two dead bodies.

8. PW-6, Dr. Dhanushdhari Prasad was one of the members of the Board of three doctors which was formed by the orders of the Civil Surgeon for holding postmortem examination on the dead bodies and he stated that the report was prepared by the PW-5 Ramanand Paswan and he along with third member of the Board, namely, Dr. B.M.P. Singh had signed after the autopsies on the two dead bodies had been performed and the documents in those behalf had been prepared. We have already noted that Investigating Officer had not been examined.

9. The defence had examined a solitary witness Promod Yadav who appears to have testified to the version put forth by the defence as we have already extracted while considering the evidence of the witnesses.

10. As we have already noted, Subodh Yadav, the solitary appellant of Cr.Appeal No. 816/2007 was put on trial quite belatedly by being charged with commission of offence under Section 302/34 IPC on 03.02.2003 and after the charge was framed against him, the same set of four witnesses were examined by the prosecution who had already been examined during trial of remaining appellants in Sessions Trial No. 174 of 2001. We have also noted that PW-5 Dr. Ramanand Paswan had not been examined in Sessions Trial No.

114/2002 and mere examination of PW-6 Dr. Dhanushdhari Prasad who had signed the postmortem examination report as one of the members of the Board after holding postmortem examinations on the two dead bodies, his evidence appears of not much consequence.

11. We, in order to appreciate the individual case of appellant Subodh Singh requested his counsel Sri Ajay Kumar Thakur to assist us regarding evidence of PW-1 Radhey Singh, PW-2 Arun Singh, PW-3 Siyaram Singh and PW-4 Vijendra Singh who were examined in Sessions Trial No. 114/2002. We accordingly, heard him on the merits of the evidence of the four witnesses also.

12. We have heard Susri Shashi Bala Verma, the learned Additional Public Prosecutor in the above appeal of Subodh Singh. After having gone through the evidence of the four witnesses, it is found that Subodh Singh was admittedly not named in the First Information Report. PW-1 in his evidence told the court that he had named Subodh Singh in his First Information Report which statement on mere perusal of the array of accused in FIR, appears quite a lie. When we scanned the evidence of witnesses, we found that there is motive assigned to the informant and his family members who were examined during trial. The brother of Subodh Singh had completed deal for selling his land to the informant, but this appellant Subodh Singh, had pressured his brother not to complete the deal and transfer

the land by executing the same. This fact has been admitted by more than one witness like PWs-1, 2 and even by PW-3.

13. Thus, we find some sort of motive appearing against Subodh Singh in the minds of these witnesses so as to implicating him. We have noted just now that Subodh Singh was the co-villager of informant and his family members who had appeared as prosecution witnesses. Even if there had been no evidence, we could have very well assumed that Subodh Singh and his family members were know to each other. The informant had admitted that the appellant was known to him and other witnesses. In this background of personal acquaintance of witnesses as regards the appellant Subodh Singh, it appears quite significant that his name was not appearing as accused in the FIR on account of having been named therein even as ordinary member of the mob. This is one of the circumstances which heavily weighed upon us as regards implication of the appellant Subodh Singh on account of motive suggested to the witnesses due to non transfer of the land by his brother.

14. In addition to the above circumstance, what we find is that there is no specific role assigned to the appellant and it was only Aasin Singh who was assigned the role of being on guard ahead of the scene of occurrence so as to obstruct the attempt by any one to save the two deceased persons. But what we find during consideration



of the evidence of witnesses was that if one witness had assigned the role of holding out threats by Asin, as was the fact of the case, the other was assigning that role to Subodh Singh. It was a serious improvement that a specific role was assigned to Subodh Singh who was not named in the FIR and that diminished the value of the evidence of witnesses as regards their veracity and truthfulness. These two reasons appear quite strong so as to doubt the implication of Subodh Singh. In our opinion, his conviction appears not sustainable.

15. As regards the other six appellants of the two appeals, we have already noted while discussing the nature of evidence of the prosecution, that it is an admitted fact that the witnesses were family members to each other. It was 5:00 P.M. on the 2nd Day of January, 2001 and there is no evidence on record that there was light on the spot. We may assume that at 5:00 P.M. in the month of January, the sun would have set down in the west and there might be darkness in the surrounding area, more particularly, in an area which was a rural village. In addition to that, what we find is that incident had taken place at about 5:00 P.M. on 02.01.2001 and the *Fard-e-beyan* was recorded on 02.01.2001 just after 1 and ½ hours of the two murders, i.e. at 6:30 P.M.. When we were looking into the paper book, we found the two inquest reports at pages 136 and 138. What was startling to us was that Column No.2 and 3 of the



documents were pointing out that the dead body had been found near the house of Ranvijay Singh on 02.01.2001 at 6:30 P.M. but the curious aspect of the matter was that the inquest was not held at that very time rather it was held on 03.01.2001 at 6:00 a.m. This inquest was held on the dead body of Madhav Singh and the other inquest was held on the dead body of Dulo Devi at about 10:00 A.M. on 03.01.2001. The Investigating Officer had not been examined, as we have noted at some earlier part of the judgment. It would have been legitimate for the defence as well as for the prosecution to put certain questions to him so as to reconciling time elapsed in holding inquest and the occurrence and the anomaly which appears from the above facts of holding inquest on 02.01.2001 at 6:30 p.m. in spite of seeing the dead body on 03.01.2001 at about 6.30 p.m. or 10:00 a.m., i.e., after more than 12 hours of seeing the dead body. This appears a serious lacuna. We find from the first column of the documents, the inquest report that the case or other details as regards the offence in respect of which the dead body had been seen and the inquest report had been prepared was not mentioned. We are astonished at the absence of the details in respect of date and time having not been given in Column No.1 of the documents. The Investigating Officer did not mention the details as to in what reference the dead bodies had been seen by him and the inquest reports had been prepared. This fact



of not putting down the details in context of the two dead bodies were seen and the two inquest reports were prepared clearly raised an inference in our minds that from 6:00 a.m. to 10:00 a.m on 03.01.2001 there was no Fard-e-beyan and police was groping in darkness as to how and by whom the two murders had been committed. These two documents of the prosecution which were brought on record by marking them as Ext-1 and Ext-1/A in the two sessions trials, create a serious doubt in the prosecution story.

16. If there was no report as found by us by referring to the inquest reports, the submission of the learned counsel for the defence that the FIR was a suspect record and as such it reached the Magistrate on 04.01.2001, has to be accepted. The prosecution has to fail on this count also.

17. The other fallacy or infirmity in the prosecution case, which we have come across, is that the Fard-e-beyan was very well recorded at the house of Rajvijay Singh and the manner of occurrence which has been described by the witnesses, gives an impression as if the occurrence took place amidst the village and just by the side of the house of the said Ranvijay Singh who should have seen it. But, Ranvijay Singh did not come forward to depose as a witness. So far as other deceased Dulo Devi is concerned, her husband was already alive but that man namely, Bahadur Singh also did not

come forward to say that the manner of occurrence which was proposed to be proved by the prosecution evidence of the four witnesses, was the real manner of occurrence and a true story as regards the commission of two murders. These are some of the reasons which raise serious doubts in the prosecution story and the suggestion to PWs that the two deceased were clinging to each other in a bed were seen by some of the relatives in the house of Dulo Devi and they got enraged and shot them dead. So as to diverting the investigation, a false story implicating the appellants was put forth.

18. In the result and also on reasons assigned by us, the three appeals succeed and the appellants of the three appeals are acquitted of the charge by setting aside the judgment of conviction and order of sentence passed against them.

19. Appellants Pramod Singh and Kapleshwar Singh @ Kapileshwar Singh are in custody. They shall be released forthwith if not wanted in any other case. Other appellants are on bail. They shall stand discharged from the responsibilities of their personal bail bonds.

(Dharnidhar Jha, J)

(Aditya Kumar Trivedi, J)

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