

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.136 of 2010

Arising Out of P.S.Case No. 124 Year- 2007 Sadar Hajipur District- VAISHALI(HAJIPUR)

1. Ram Nath Rai
2. Harendra Rai
3. Sheonath Rai
4. Shambhu Rai
5. Babli Rai, all sons of Jhimi Lal Rai, All resident of village Terasia, P.S. Sadar (Ganga Bridge), District Vaishali

.... Appellants

Versus

State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 235 of 2010

Arising Out of P.S.Case No. 124 Year- 2007 Sadar Hajipur District- VAISHALI(HAJIPUR)

Munna Rai son of Ram Nath Rai, Resident of village-Terasia, P.S. Ganga Bridge, Sadar, District-Vaishali

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. S.N.P. Sinha, Sr. Advocate
Mr. Mukesh Kumar
Mr. Jitendra Narain Sinha
Mr. Rohit Kumar
Mr. Shiv Jee Singh
For the State : Mr. Dilip Kumar Sinha
Ms. Shashi Bala Verma

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
and
HONOURABLE SHRI JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT
(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)
Date: 18-05-2015

The two appeals have been preferred by six appellants to set up a challenge to the correctness of finding of guilt against them recorded by the learned Presiding Officer, Fast Track Court No.III,



Vaishali at Hajipur in Sessions Trial No.230 of 2008/231 of 2008 and 266 of 2009. By judgment dated 08.01.2010 by which the five appellants of the two appeals had been guilty of committing the offence under Section 302/34 Indian Penal Code. The solitary appellant Munna Rai of the other appeal was also held guilty of committing offence under Section 302/34 Indian Penal Code as also Section 27 Arms Act. The appellants were heard on sentence on 11.01.2010 and they were directed to suffer rigorous imprisonment for life for being convicted of the offence under Section 302/34 IPC and also to pay a fine of Rs.10,000/-, else to suffer simple imprisonment for two years. As regards the sentence inflicted upon Munna Rai for being convicted under Section 27 of the Arms Act, he was directed to suffer rigorous imprisonment for three years and to pay a fine of Rs.5,000/- also without there being any direction by the learned trial Judge as to in case of default what was the alternative sentence in terms of imprisonment which that appellant was to suffer.

2. The appeals have been heard together and are being disposed of by the present common judgment.

3. The prosecution case was as contained in Ext-3, the fardbeyan of P.W.4 Uma Rai, who stated that the appellants were erecting a Palani on his land which was objected to by him and his other family members. The six appellants stated that they were not



considered anything and the informant should be shot dead. It was stated that appellant Munna Rai, thereafter, fired a shot from his country made pistol at the informant but he evaded. The shot hit the ten year old niece of P.W.4 named Ruby Kumari in her chest as a result of which she fell down and died instantaneously.

4. The reason for the commission of the offence was that the appellants were attempting to take forcible possession of the land belonging to the informant. It was stated that the occurrence had been seen by Badri Rai (not examined), Kanti Devi (not examined) and others.

5. On the basis of Ext-3, the FIR of the case Ext-5 was drawn up by P.W.10 S.I. Puran Prakash Gupta and after closing the investigation, he submitted chargesheet for the trial of the occurrence which ended in the impugned judgment.

6. The defence of the appellants was of non-participation and false implication on account of land dispute.

7. Shri Suraj Narain Prasad Sinha, learned senior counsel appearing on behalf of the appellants in the two appeals took us through the evidence of witnesses and submitted that there was an information earlier lodged by P.W.4 at the police station as appears stated by him in paragraph-21 and that the information was suppressed and the present FIR was fabricated by the police with a



new story so as to implicating the present set of appellants. Submission was that the above appears substantiated by the circumstance that the FIR had reached the nearest Magistrate on the 30th of April, 2007 though the same had been drawn on 27.04.2007 at 4:00 P.M. It was contended that the present fardbayan was hit by Section 162 Cr.P.C. because, as appears from the evidence of the investigating officer (P.W.10), after having reached at the place of occurrence, he did not record the fardbayan or any statement so as to taking up the investigation and straightway held inquest upon the dead body of deceased Ruby Kumari to prepare the inquest report Ext-2 and then dispatched the dead body for postmortem examination by preparing the dead body Challan. Submission was that the inquest was held at 12.20 P.M. whereas the fardbayan, as per the document was recorded at 12.45 P.M. and during this duration of 25 minutes no one had come forward to state to P.W.10 as to what had really happened as regards the murder of the ten-year-old child Ruby Kumari. Submission was that the genesis of the occurrence was not established or rather was incorrectly stated by the informant and the witnesses and it appears very much probable from their own evidence that the Palani or hut was existing at least two years prior to the incident and that was probably lying on the land of the appellants and there was no reason for the informant to interfere with the peaceful possession of



appellants over the land even if it is assumed that the appellants had gone to make any repairs in the Palani or to re-construct it. Submission was that the investigating officer also did not find any signs of creating a hole so as to fixing poles for putting up the Palani nor did he find any materials scattered or left at the place of occurrence suggesting that the appellants had indeed attempted to erect the Palani at the place of occurrence. It was further contended that while P.Ws.1 and 2 stated that the accused persons attempted to erect the Palani on their land just by the side of their house or in front of it, other two witnesses, P.Ws.3 and 4, i.e., Minta Devi and the informant himself shifted the site of erection of the Palani from that particular place which was narrated by P.Ws.1 and 2 to a field. It was submitted that the shift in the prosecution story might appear minor, but it has its own impact on the prosecution story so much so that the serious doubt has crept into the veracity of its story. None of the witnesses, it was contended, named the five appellants of Cr.Appeal (DB) No.136 of 2010 before the police and considering the over all infirmities which appear in the evidence of the prosecution, it was neither safe nor prudent to uphold the judgment of conviction and order of sentence.

8. Shri Dilip Kumar Sinha, learned Additional Public Prosecutor appearing on behalf of the State was initially submitting



that, might be, that the five appellants may not have been named by the witnesses during investigation but as regards the act of appellant Munna Rai of firing the fatal shot which killed the deceased Ruby Kumari, the witnesses appear consistent. Submission was that P.W.7 Dr. Amresh Kumar had found the corresponding injury and appellant Munna Rai did not have any real reason to kill the little child Ruby Kumari.

9. While examining the contentions of the parties in the light of the evidence and the circumstances appearing therefrom, we had initially had the impression as if the appellants had by cross-examining the witness set up a plea as if they had acted in exercise of their right of private defence of property because P.W.1 Ganaur Rai who happened to be the brother of the informant (P.W.4) and the father of the deceased Ruby Kumari, had attempted to the maximum extent by stating that there was already a Palani or a Jhopari on the land which was made subject matter of dispute by filing the report for at least two years prior to the incident. He had admitted that fact in paragraph-22 of his evidence. So far as the other parts of his evidence is concerned, on consideration of the same from paragraphs-16 to 22, we found a strong probability appearing from his evidence firstly, as if the accused persons were creating a new Jhopari as appears from paragraph-20 of his evidence on the land which was purchased by his



father some times back as appears from paragraph-21 of his evidence. But, he further appeared stating in paragraphs-25 and 26 as if the accused persons had created the different structures so as to assembling them into a Jhopari and attempted to put the same up on a land which as per the claim of P.W.1 had belonged to him. This inference appeared from paragraphs-25-26 of P.W.1. But that particular claim of P.W.1 that the appellants had assembled some structures so as to ultimately assembling and erecting the Jhopari on the land belonging to the informant or P.W.1 appears not acceptable because P.W.10, the investigating officer of the case while inspecting the place of occurrence did not find any such signs which could be suggestive of any structures being created by the appellants so as to putting up a Jhopari on any particular land. The evidence of P.W.10, the investigating officer, indicated as may appear from paragraph-17 of his evidence that he did not find any blood at the scene of occurrence. Indeed he find straw scattered or any pit created for fixing the pole upon which the structure could be put to create the Jhopari. We have already referred to the evidence of P.W.1 in paragraph-22 to note that there was already a Jhopari which was in possession of the accused persons probably for more than two years of the incident. That part of the evidence of P.W.1 gets further corroboration from the evidence of P.W.2 Bachchi Devi who happened to be the wife of



P.W.1 and mother of the deceased that there was already a Palani and that Palani was existing on the land belonging to the accused persons. (P.W.2 paragraphs-11 and 18) P.W.2 stated that appellant Munna Rai had fired a shot from his Palani who was standing on his own land as appears from paragraph-11 and also from paragraph-5 of P.W.2. We have just referred to the evidence of the investigating officer who did not find any signs or marks or any attempt suggestive of the fact that the appellants had attempted to erect a Palani at any land which was visited by the investigating officer. Thus, the very reason for which the occurrence had generated or had occurred on 27.04.2007 as per the prosecution appears not established rather what appears from the very prosecution evidence is that the prosecution witnesses were giving evidence which could suggest as if there were a Palani some times for two years from the date of occurrence and the accused persons had never done an act towards erection or construction of any Palani. In fact, the evidence of P.Ws.1 and 2, we have just referred to in its entirety, suggested to us that the accused persons might have attempted to carry out some repair work in their Palani or Jhopari and probably that was objected to by the informant and his men. In our opinion, that right had never accrued to them to raise any objection in respect of any act of possession which was being committed by the appellants in respect of their existing Palani at the place of occurrence.

This major defect in the prosecution case creates a serious doubt as regards the veracity of its story and raises initial doubt in our mind as regards the truthfulness of the story which was stated by the witnesses.

10. P.W.4, the informant of the case after having narrated the manner of incident and the background facts which had generated the incident stated in paragraph-21 that he rushed to the Ganga Bridge Police Station and he gave his statement before the Officer-in-Charge (please see paragraphs-21 and 24 of P.W.2). The investigating officer came with him to the place of occurrence and showed the same to him. That there was initially a report which had moved the investigating officer to come to the place of occurrence appears probabalized also by the fact that the investigating officer, both in his examination-in-chief in paragraphs-2 and 3 had stated that after coming to the place of occurrence, he held inquest upon the dead body of deceased Ruby Kumari and prepared the report Ext-2 and thereafter, prepared the dead body Challan to send the dead body with the Challan for post mortem examination. He stated in paragraph-4 that after having performed the above two steps in the investigation of the case, he recorded the fardbeyan of informant Uma Rai, son of Ganaur Rai (P.W.1). In the first line of his evidence P.W.10 stated that he had learnt at the police station that a murder had been



committed at village-Terasiya and, accordingly, he taking with him, the Sadar Inspector of Police came to the village. If there was no information received by P.W.10 disclosing the commission of a cognizable offence, we do not see any reason as to why he should not first search for a person to take his statement as to what had really happened as a result of which Ruby Kumari had been murdered. His evidence does not suggest that he had no information or that he had searched for an information so as to reducing it into writing so as to taking up the investigation of the case. It appears the reason for which he without searching for any one, proceeded to hold inquest upon the dead body prepared the report Ext-2 and thereafter, dispatched the dead body, after preparing the dead body Challan for post mortem examination. The cross-examination part of the evidence of P.W.10 appears in paragraph-14 and it appears stated by him emphatically while repelling a suggestion that he had firstly recorded the fardbeyan and thereafter, proceeded to investigate the case and stated emphatically that indeed he first prepared the inquest report and thereafter, took the fardbeyan of the informant. These two actions of P.W.11 point out two things to us. The first inference which is to be drawn on the above evidence of P.W.10 is that he had definitely an information with full details of the manner of occurrence as regards the commission of the murder of deceased Ruby Kumari and that was



the reason that he did not search for any one and straightway proceeded to hold inquest or to dispatch the dead body for post mortem examination. The other inference which we could draw from the above evidence of P.W.10 was that for 25 minutes during which period, the investigating officer was at the place of occurrence to hold inquest and to prepare the report besides sending the dead body for post mortem examination, no one indeed was ready to come to him to narrate to him as to how Ruby Kumari had been murdered and by whom. The second inference is more damaging to the prosecution claim that the manner of occurrence which was narrated by it in its fardbeyan or through the evidence of witnesses was the trustworthy manner of occurrence, which was not to be acceptable. We could not see any reason as to why in 25 minutes between the preparation of the inquest report and recording of the fardbeyan. No one could come forward to give his or her statement. P.W.2, the mother of the deceased appears making natural acceptable evidence when she stated in paragraph-17 that as soon as her daughter was hit by the shot, she picked up the child to take her into her lap and, as such, no blood had fallen on the ground. We find the statement very natural and we on this basis have all the reasons to assume that a mother should have been present with the dead body of the child throughout till it had been dispatched to the hospital for post mortem examination. Why



should P.W.10 not question P.W.2 as to how her daughter had been murdered and why he should not record her statement, if there was no first information report regarding the incident. These questions of ours go unanswered and lead us to the only inference that indeed there was a report which had moved the investigating officer to come to the place of occurrence to take up the investigation in the manner as was narrated by him. The above doubt of ours gets cemented when we find other circumstances appearing from some of the unchallenged documents, like, the FIR. The fardbeyan was drawn up by P.W.10 at the place of occurrence at 12:45 P.M. on 27.04.2007. The inquest report was prepared on the same day at 12:20 P.M. and as appears from the postmortem examination, the dead body had reached the hospital, i.e., Sadar Hospital, Vaishali at Hajipur for post mortem examination at 1:30 P.M. We find that there is no mention as to what was the reference on in respect of which the dead body had been transmitted to the hospital by the police. At the top of the document, the inquest report Ext-2, is the mention of Ganga Bridge police station without any number and the postmortem report does not even contain that statement also. Thus, the two important documents, like the inquest report and the postmortem examination report (Ext-1) do not contain the reference in respect of which those were prepared. We may appreciate that the distance between Ganga Bridge police station



and the hospital in Hajipur was very short and the I.O. could have gone to the police station for obtaining the case number or the FIR number of the case and, as such, he might have been in a position to indicate that particular detail. But he did not do so. But, what was the reason for him not to dispatch the copy of the special report, i.e., the copy of the FIR to the nearest Magistrate 'forthwith as is directed by Section 157 (1) Cr.P.C.'. The report as appears from the copy of it was received by the Chief Judicial Magistrate, Vaishali at Hajipur on the 30th of April, 2007, i.e., on the 4th day of the institution of the same. We do not want to burden our judgment by citations of this Court or the Supreme Court as to what is the purpose of sending the report forthwith to the nearest Magistrate and want only to remind ourselves that the forthwith dispatch of the copy of the report to the nearest Magistrate envisages elimination of any chance of fabrication of the report with collusion of the police officer and the prosecution party and further eliminates the chances of the document being viewed with suspicion as a document which was brought into existence after much consultation and deliberations. When we were looking to the copy of the FIR, we found that there is a specific column at the foot of the document requiring the mention of the date and time on which the copy was transmitted to the Court from the police station we were perturbed to find that the officer who had



drawn up the FIR on 27.04.2007 had not mentioned the date and time of dispatch of the document from the police station to the nearest Magistrate. We have just noted that the distance between Ganga Bridge police station and the Sadar Hospital, Vaishali at Hajipur is very short. We could further note that the distance between the Ganga Bridge police station and the seat of the Court in Vaishali at Hajipur to us appear shorter than the hospital. We can take judicial notice of it and it could be within a few minutes that any document could be carried from the Ganga Bridge police station to the seat of the Court for laying it down before the Chief Judicial Magistrate, Vaishali at Hajipur. We could not find any reason as to why such a shorter distance was travelled in four days so as to laying down the copy of the FIR before Chief Judicial Magistrate, Vaishali at Hajipur. We are fairly of the view that the reason was not otherwise than to weave out the story to implicate the accused persons to generally or specially by slapping specific individual allegations as in the case of appellant Munna Rai so as to making it convenient for the witnesses to support the story during trial.

11. Besides the above, we find many pitfalls in the evidence of the witnesses. We have already noted that from the admission of P.Ws.1 and 2 it has been established that no Jhopari was being erected on the day of occurrence on any of the land belonging to



the prosecution party rather the probability indicated as if the appellants might have attempted to repair their own Jhopari and there was some obstruction into their act by the informant and others. That part of the story also appears false when we had considered the evidence of two other witnesses P.Ws.3 and 4. P.W.3 is the sister of P.W.2 and Sali of P.W.1 and as per her claim she had come to take part in a marriage which had taken place in the family of the informant. The bride was elder sister of the deceased Ruby Kumari and P.W.3 had stayed over in the house. P.W.3 stated that the accused persons attempted to raise a Palani or a Jhopari into a field (*Khet*) belonging to the prosecution party. This was a new story as regards the place where the Jhopari or Palani was attempted to be erected. It had never been the story of the prosecution. And, when we were considering the evidence of P.W.4, we found this situation more compounded by the informant when he was also giving a go bye to his earlier story contained in the fardbeyan by stating that indeed the Palani was attempted to be erected by the appellants in his field. We may at the cost of repetition again refer to the evidence of P.W.10, the investigating officer who had not found, as we have already noted, any signs of erection of Palani any where on or around the place of occurrence.

12. All the witnesses had equivocally claimed that they



had named the five appellants of Cr.Appeal (DB) No.136 of 2010, but when P.W.10 was cross-examined to seek the proof of their claim, he stated that non of the witnesses had ever named the five before him. Thus, what we find is that there has been serious attempt on the part of the prosecution not only to shift the place of occurrence but also in naming the accused persons and when it is found that those appellants were implicated in the background of enmity which was admitted by PW-4 and all witnesses when they stated that the two parties had litigated under proceedings under Section 144 Cr. P.C. for some land or the other, then it is always dangerous for us to act upon the evidence of such partisan witnesses, who appear generally changing their statements from stage to stage of the case. In fact, what we were sure about was that the witnesses had lost credibility on account of the above improvements or narrations which had been made by them and it was at all not safe to act upon their evidence to sustain the convection.

13. After analyzing the arguments of the parties in the light of the evidence, we conclude that the evidence of witnesses was as infirm and unsafe to be relied upon for being used to sustain the judgment of conviction and order of sentence. In our opinion, the prosecution was guilty of suppressing the true facts relating to the murder of Ruby Kumari and the implication of the appellants also

appear not established by the evidence of the witnesses, as a result of which, we find merit in the two appeals. They are allowed by setting aside the judgment of conviction and order of sentence. The five appellants in Cr. Appeal (DB) No. 136 of 2010 are on bail. They shall stand discharged from the liabilities of their respective bail bonds. Appellant Munna Rai Cr. Appeal (DB) No. 235 of 2010 is in custody. He shall be released forthwith if not wanted in any other case.

(Dharnidhar Jha, J)

(Ahsanuddin Amanullah, J)

Brajesh Kumar/Saif.

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