

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.35 of 1994

(Against the judgment of conviction dated 22.12.1993 and order of sentence dated 05.01.1994 passed by Shri Surendra Kumar Sinha, learned 2nd Additional Sessions Judge, Bhabhua in Sessions Trial No. 252/161 of 1992, arising out of Mohania P.S. Case No. 89 of 1991)

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Sheopujan Ram, son of Basant Ram, resident of Village- Mohammadpur, P.S.- Mohania, District- Bhabhua.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 46 of 1994

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Baban Ram, son of Bachan Ram, resident of Village- Mohammadpur, P.S.- Mohania, District- Bhabhua

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No.35 of 1994)

For the Appellant/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. L. K. Sharma, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CR. APP (DB) No.46 of 1994)

For the Appellant/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Prem Shankar Kumar, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 12-10-2017

Both the appeals arises out of the common judgment
of conviction dated 22.12.1993 and order of sentence dated



05.01.1994 passed by learned 2nd Additional Sessions Judge, Bhabhua in Sessions Trial No. 252/161 of 1992, arising out of Mohania P.S. Case No. 89 of 1991, whereby both the appellants have been convicted under Section 302/34 of the Indian Penal Code. The appellant Baban Ram (Cr. Appeal (DB) No. 46 of 1994) has been convicted under Section 27 of the Arms Act. Both the appellants have been sentenced to undergo R.I. for life under Sections 302/34 of the Indian Penal Code. However for want of sanction, no separate sentence was awarded under Section 27 of the Arms Act. The period of imprisonment already undergone by the appellant Baban Ram was allowed to be set off.

2. The prosecution case as appears from the fardbeyan of the informant is as follows:

The informant in his fardbeyan (Ext.-2) lodged on 14.08.1991 stated that in the night between 13/14.08.1991, at about 2.00 A.M., four persons entered into the outer house of the informant and the deceased, situated in village Mohamadpur, P.S. Mohania, District- Bhabhua in which the deceased Sudhu Ram, his wife Fatia Devi and the informant were sleeping on separate cots. He got up on interrogating sound of “who is there, who is there”. Then he saw that four persons were standing near the cot of his grand father (deceased) armed with gun and “Katta” and his grand-father had also stood up



by then near his cot. He also interrogated that as to who were there. Then, he flashed the torch light, which was on his bed and by that time he heard the sound of firing which hit his grand-father and he fell down in restless condition and then he succumbed to his injury. The accused started fleeing away and out of them, the informant identified two of them, namely, Baban Ram, son of Sheo Bachan Ram and Sheo Pujan Ram, son of Basant Ram, however, other accused persons were not identified. Baban Ram was armed with gun and Sheo Pujan Ram was armed with a small "Katta". He claimed to have correctly identified the two accused in the flash of torch light. According to the fardbeyan the occurrence took place at about 2.00 A.M. On the halla raised by him, his neighbourers and co-villagers namely, Ramjee Ram, Maraho Ram, Sohan Ram and others assembled, but by that time they had fled away.

3. On the basis of the fardbeyan of the informant Mohania P.S. Case No. 89 of 1991 was registered under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

4. The police after investigation submitted charge-sheet against the appellants, thereafter the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions for trial. The appellants pleaded not guilty and as such they were put on trial.



5. On behalf of the prosecution, altogether 08 witnesses were examined. P.W. 1 is Ulfatia, P.W.2 is Rajendra Ram, P.W. 3 is Surendra Ram, P.W. 4 is Ram Nagina. P.W.5 is Bansh Ropan, P.W.6 is Laxman Ram, P.W. 7 is Krishna Kumar Ram, and P.W. 8 is Dr. Kaushal Kishore Prasad Srivastava, who performed the post-mortem of the deceased.

6. Mr. Ramakant Sharma, senior counsel appearing on behalf of the appellants in both the appeals submitted that the appellants are convicted by the trial court in a case of absolutely no evidence. He submitted that the finding of the trial court is perverse. Referring to the evidence of the prosecution witnesses, he submitted that the prosecution has examined 08 witnesses and out of these witnesses, P.W.2 and P.W.4, the sons of the deceased were declared hostile. The alleged occurrence took place at around 2.00 A.M. in the night and in fact no one seen the occurrence and the appellants have been falsely implicated in this case. He submitted that even the sons of the deceased, who were examined as P.W.2 and P.W.4 have admitted that they have not seen the occurrence and as such they have been declared hostile by the prosecution.

7. Mr. Sharma pointed out that P.W.1, the widow of the deceased in her deposition before the court admitted that she woke up after hearing the sound of firing and saw her husband in a restless



condition. She admitted that there was total dark and she also admitted that the face of the assailants was not visible due to dark and she further admitted that her eye site is poor and as such she could not identify the assailants. She has only heard from the villager of the village the name of the accused and as such she has disclosed their name. P.W.3 has stated in his deposition that he reached the place of occurrence after the murder of Sudhu (deceased) and the widow was weeping and on enquiry she has not disclosed anything, as she was not in a position to make any statement. He admitted that he has enmity from before with Baban Ram and Sheopujan Ram, appellants in these appeals and as such he disclosed their name before the police, although they have no hands in the commission of the crime. Mr. Sharma referring to the deposition of P.W.5 submitted that P.W. 5 has stated before the Court that he does not know how the deceased died and when he reached the house of the deceased, he found Sudhu died. He retracted from the statement recorded by the police and said that he has not made any statement to any one that Baban Ram and Sheopujan Ram (appellants) have any hands in the commission of murder of Sudhu. Mr. Sharma placed reliance on the statement of P.W. 6 Laxman Ram (grand son of the deceased) from whose cross-examination it is apparent that criminals/dacoits used to pass through the road, which is adjacent to their house. He has stated that after



hearing the sound of firing he approached his grand-father and saw in restless condition after sustaining fire-arm injury. He has disclosed the name of the assailants on hearing name from others. He has heard the name of appellants from others and as such he has mentioned their name in the F.I.R.

8. Mr. Sharma, learned senior counsel referring to the deposition of P.W.7 (investigating officer of the case) stated that Bansropan Ram and Nagina Ram have not said that they have seen the assailants in the torch light. Accordingly, he submitted that in the instant case no one has seen the occurrence and even the family members have deposed before the Court that they have not seen the assailants committing murder of the deceased. In the aforesaid circumstances, the finding of the trial court is only based on suspicion. He submitted that suspicion howsoever strong cannot partake the character of proof and the trial court has committed gross error in holding the appellants guilty of the commission of offence. He submitted that by any standard of proof the finding of the trial court is perverse and as such unsustainable.

9. Mr. Ashwani Kumar Sinha appearing on behalf State during the court of argument conceded that the finding of the trial court is not supported by the evidence. The trial court has convicted the appellants only on the basis of circumstantial evidence,



although the trial court noted in para 22 of the judgment that oral evidence is of shaky nature, but the trial court convicted the appellants on the basis of circumstantial evidence, objective evidence and medical evidence.

10. We have gone through the entire record and on scrutiny of the evidence, we find substance in the submission of Mr. Rama Kant Sharma, learned senior counsel appearing on behalf of the appellants that the witnesses have not identified the assailants. In fact, in the dead night when the crime was committed no one was in a position to identify the real culprit. The widow and other family members of the deceased have admitted in the court in their cross-examination that they reached the place of occurrence after the murder of the deceased and in the dead night at 2.00 A.M. they woke up only after hearing the sound of firing. Some of the witnesses have admitted the previous enmity and as such they have named the appellants. The family members have admitted before the court that they have not seen the real assailants and they have named appellants in the F.I.R. only on hearing their involvement in the commission of crime from the villagers. None of the villagers have claimed that they have seen the commission of crime in the dead night inside the house.

11. In the totality of the facts situation, we are of the considered view that there is no ocular evidence or circumstantial



evidence, which leads to only one conclusion that the appellants have committed the crime, there is absolutely no motive in the instant case for commission of crime. In view of the above, we are of the considered view that the judgment of conviction and order of sentence passed by the trial court cannot be sustained and is accordingly set aside and the appeals are accordingly allowed. The appellants, who are on bail, are accordingly discharged from the liabilities of their bail bonds.

12. In the result, both the appeals are allowed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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