

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.352 of 1994

(Against the judgment of conviction and order of sentence dated 27.06.1994 passed by Shri Murari Lal Kejriwal, learned 5th Additional Sessions Judge, Siwan in Sessions Trial No. 234 of 1993 with S.T. No. 277 of 1993, arising out of Darauli (Siwan) P.S. Case No. 68 of 1992)

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1. Vyas Choubey son of Vishwanath Choubey, resident of Village- Garwar, Police Station- Darauli, District- Siwan.
 2. Vishwanath Choubey, son of late Mahasay Choubey, resident of Village- Garwar, Police Station- Darauli, District- Siwan. Appellant/s
- Versus
- The State of Bihar Respondent/s
- =====

Appearance :

For the Appellant/s : Mr. Niraj Kumar @ Saneedh, Advocate
For the Respondent/s : Ms. S. B. Verma, 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: 14-12-2017

The instant Cr. Appeal has been filed by two appellants, namely, Vyas Choubey (appellant no.1) and Vishwanath Choubey (appellant no.2) against the judgment of conviction and order of sentence dated 27.06.1994 passed by learned 5th Additional Sessions Judge, Siwan in Sessions Trial No. 234 of 1993 with S.T. No. 277 of 1993, arising out of Darauli (Siwan) P.S. Case No. 68 of 1992, whereby the appellants have been convicted under Sections 302/34 of the Indian Penal Code and sentenced to undergo RI for life.

2. During the pendency of this appeal, appellant no.2 Vishwanath Choubey died and as such the appeal on behalf of appellant no., namely, Vishwanath Choubey, stands abated.



3. The prosecution case in brief is that on the day and at the time of occurrence (03.12.1992 at 5.00 P.M.), the informant, namely, Radhey Shyam Choubey, along with his father Ram Sewak Choubeyn (deceased), his uncle Ram Jeet and his younger brother Gauri Shankar were carrying the paddy crop bundles from the western field and the last bundle of the paddy was being brought/carried on the respective over-heads of these four persons, out of whom Ram Sewak was ahead of all, followed by the informant, thereafter Gauri Shankar and in the last of the queue (line) was Ram Jeet. Immediately when Ram Sewak reached in front of the house of accused Vyas Choubey, on the road, Vyas Choubey with a Bhala, Arjun Choubey with a big knife, Guddu Choubey also with a knife, who from before were hiding in the southern Palani. All of a sudden thronged Ram Sewak and Vishwanath abetted "Sale Ko Maro". On which Vyas thrashed Ram Sewak and assaulted by Bhala, above the right portion of the neck and also on the Panjara. Arjun assaulted Ram Sewak by knife on the head and on the chest, whereas Guddu assaulted Ram Sewak by knife in stomach and on the hand. Ram Sewak, after receiving such injuries became restless and raised alarm "Bachao-Bachao", on which these three persons, Radhey Shyam, Gauri Shankar and Ram Jeet threw their respective paddy bundles and rushed to save Ram Sewak, on which Vyas, Arjun and Gudd chased



these three persons, so these three persons ran raising alarm, on which Ram Ekbal Choubey, Radha Kishun Nonia, Kamal Kishore Choubey and other co-villagers came at the place of occurrence and saw the occurrence. Seeing the co-villagers being assembled, the accused persons took to their heels. With the help of the co-villagers, Ram Sewak was lifted, but by that time Ram Sewak had already died. Ram Sewak was brought on a car to Darauli hospital, where the doctor declared him dead.

4. The reason for the said occurrence was that 2-3 years before the present occurrence, Vyas Choubey was caught red handed while committing theft of the Bullock of the informant for which the grand-father of the informant i.e. the father of Ram Sewak, had lodged a case, in the police station, and in the investigation a country made fire-arm was recovered from the house of Vyas Choubey, in which case, Ram Sewak was one of the witness. Ram Sewak was being pressed to compromise such earlier case to which Ram Sewak declined. Ram Sewak had also the partition dispute with his full brother Paras Choubey (Arjun Choubey is the son of Paras Choubey). One Ramashish Choubey, the Pattidar of the informant, had also not the good term with the family of the informant and due to such reason, the accused persons had committed the murder of Ram Sewak.



5. On the basis of the Fardbeyan of the informant Darauli (Siwan) P.S. Case No. 68 of 1992 was registered for the offence under Section 302/34 of the Indian Penal Code.

6. After investigation, the police submitted charge-sheet against four accused persons out of which accused Arjun Choubey and Guddy were juvenile at the time of occurrence and as such their case has been transferred to the Court of Juvenile Justice Board. Thereafter the learned Magistrate took cognizance and committed the case to the Court of Sessions for trial of accused Vyas Choubey and Vishwanath Choubey. Charges were framed against them for offence under Sections 302/34 of the Indian Penal Code and both of them pleaded not guilty and they were put on trial.

7. The prosecution examined altogether 11 witnesses in the trial. P.W.1 is Kamal Kishore Choubey, P.W.2 is Radha Kishun Chauhan, P.W. 3 is Radhey Shyam Choubey, P.W.4 is Photani Devi, P.W.5 is Ram Jeet Choubey, P.W.6 is Meera Devi, P.W.7 is Sunaina Kumar, P.W.8 is Gauri Shankar Choubey, P.W.9 is Braj Nandan Mehta, P.W. 10 is Samaya Nath Srivastava and P.W.11 is Dr. Ajit Kumar Sinha. The Court also examined two witnesses, namely, Ram Krishna Nonia (C.W.1) and Ram Ekbal Choubey (C.W.2). In addition thereto the documentary evidence as also adduced in para.7 of the judgment.



8. The trial court on the basis of the scrutiny of the evidence convicted the appellants for the offence under Sections 302/34 of the Indian Penal Code and sentenced to undergo R.I. for life.

9. We have heard Mr. Neeraj Kumar @ Sanidh, learned counsel appearing on behalf of appellant. He has drawn the attention of the Court to the fardbeyan, which was recorded on 03.12.1992. Referring to the fardbeyan, he submitted that as per the informant, the appellants have committed murder of the deceased by piercing Bhala, Chura, Chaku and Lathi on the neck and above rib and Panjara. There is definite story of the informant that Guddu Choubey has given knife blow on the hand and stomach of the deceased and the appellant Vyas Choubey has given Bhala blow on the neck of the deceased, but from the deposition of the doctor (P.W.11), who conducted post-mortem examination of the deceased, the corresponding injury found on the dead body of the deceased, does not correspond to the version of the informant. He submitted that from the deposition of doctor (P.W.11) it is apparent that there are 8 incised wound on the back whereas there is no explanation from the prosecution as to how the deceased sustained 8 incised wound on the back.

10. Mr. Sanidh appearing on behalf of the appellant



submitted that the post-mortem of the deceased was conducted on 04.12.1992 before 24 hours of the death, whereas the definite opinion of the doctor as to the time of death was 48 hours, which creates serious doubt about the manner of occurrence and the time of death. By no stretch of imagination, the death of the deceased occurred 48 hours before the time of post-mortem at 10.15 A.M. As per the informant, the incident took place at about 2.00 P.M. on 03.12.1992 and as such he suggested that in fact the deceased was killed much before 03.12.1992, as mentioned in the fardbeyan. He submitted that in addition thereto in the instant case, there was no trail of blood stain found at the place of occurrence, which falsifies the prosecution case as to the place of occurrence and the manner of occurrence. He submitted that from the fardbeyan itself, it is evident that there was difference between the appellant and the informant's side on account of partition and as such the informant has falsely implicated the appellants in the instant case. He submitted that from the fardbeyan, it is manifest that the informant has mentioned two different time of occurrence, one is 2.00 P.M. and in the second page of fardbeyan he has stated that the occurrence took place at 5.00 P.M. He next submitted that in the instant case, the fardbeyan was registered at 8.00 P.M. on 03.12.1992, the formal F.I.R. was drawn on 03.12.1992. In the formal F.I.R., the time of occurrence was 5.00 P.M. and it is also



evident that the F.I.R. was sent through special messenger on 04.12.1992, but it reached the Court of C.J.M., Siwan only on 08.12.1992 and this inordinate delay in reaching the F.I.R. in a case where the prosecution has admitted the previous enmity on account of the partition between the informant's side and appellant's side is fatal. He submitted that in the instant case, apart from the major contradiction in the version of the prosecution and the post-mortem report, the witnesses are also not consistent in the manner of commission of crime. Referring to the deposition of the investigating officer and the informant, he submitted that as per the informant where the deceased fell down, there was profuse bleeding, but from the deposition of investigating officer it is clear that there was no profuse bleeding and few drops of blood, which was not capable to collect as material for scientific examination was noted by the investigating officer.

12. Thus, in the totality of the facts situation, he submitted that the incident took place at different place, on different dates, i.e. earlier to the alleged date of occurrence 03.12.1992 at 2.00 P.M. or 5.00 P.M. (as there is unexplained contradiction in the version of the informant as to the time of occurrence). The absence of blood stained on the alleged place of occurrence was highlighted by Mr. Neeraj, learned counsel for the appellant, to make out a case of false



implication of the appellant on account of previous enmity.

13. Ms. S. B. Verma, learned A.P.P. appearing on behalf of the State submitted that in the instant case the doctor in his deposition has admitted that there was punctured wound on the abdominal area and as such the submission of Mr. Neeraj, learned counsel for the appellant, that the doctor's opinion falsifies the case of the prosecution as to use of Bhala is unsustainable. However, she admitted that in the fardbeyan allegation of Bhala blow by this appellant is on neck, but no such injury was found in the post-mortem report. The doctor to the contrary in his opinion, as to the injury, has not found penetrating or punctured wound on the neck of the deceased, rather it was incised wound, which is not attributed to Bhala blow.

14. We have heard the parties, examined the entire materials on record and the fardbeyan, the informant has mentioned on the top, the time of occurrence 2.00 P.M. on 03.12.1992, but in the bottom of the fardbeyan he has mentioned the time of occurrence as 5.00 P.M., which was also noted as the time of occurrence in the formal F.I.R. We have also noticed that in the fardbeyan, the reason for commission of crime, difference and dispute on account of partition between the informant's side and the appellant. We also find that from F.I.R. that formal F.I.R. was lodged on 03.12.1992 and it



was sent to Court on 04.12.1992, but it reached after inordinate delay on 08.12.1992. The delay in sending the F.I.R. is crucial in case where previous enmity, grudge or differences are the foundation of commission of crime and chance of false implication due to previous enmity. Reference in this connection may be made to the judgment of the Apex Court in the case of **State of Punjab Vs. Tarlok Singh**, reported in (1972) 3 SCC 869 para 5 and the judgment of the Apex Court report in the case of **Ishwar Singh Vs. State of Uttar Pradesh**, reported in AIR 1976 SC 2423 para 5 and 9, which are quoted herein below for ready reference:

15. Para. 5 of the judgment in the case of **State of Punjab Vs. Tarlok Singh** (supra) is as follows:

“5. First, the High Court noticed the suspicion created by the circumstance that the copy of the First Information Report purported to have been lodged at 3.45 p.m. did not reach the Magistrate at Dasuya till 8 a.m. the next day, even though it was sent through a special messenger. The distance between the scene of occurrence & Dasuya was only 15 or 16 miles. The inference sought to be drawn is that, in fact, the report was not lodged at 3.45 p.m., but at a much later hour, after the police had arrived at the scene of occurrence and there were consultations to decide what version should be put forward and who should be implicated for the murder. The prosecution, in fact, made no attempt to explain this delay. Such delay, thus,



caste doubt on the prosecution version that the Report was lodged at 3.45 p m. without lapse of unnecessary time.”

16. Para. 5 and 9 of the judgment in the case of **Ishwar Singh Vs. State of Uttar Pradesh**, reported in **AIR 1976 SC 2423** are as follows:

“5. Mr. Frank Anthony appearing for appellant Ishwar Singh submitted that in affirming the Judgment of the trial Court, the High Court also overlooked certain important aspects of the case that the Sessions Judge had failed to consider. He pointed out that the F.I.R. which is stated to have been lodged at 9.05 A. M. on February 14, 1973 was sent out from the police station the next day, February 15; the time when it was despatched is not stated, but it appears from the record that the Magistrate received it on the morning of February 16. The Court of the Magistrate was nearby, which makes it difficult to understand why the report was sent to him about two days after its stated hour of receipt at the police station. Section 157 of the CrPC, 1898 as well as of 1973 both require the first information report to be sent "forthwith" to the Magistrate competent to take cognizance of the offence. No explanation is offered for this extraordinary delay in sending the report to the Magistrate. This is a circumstance which provides a legitimate basis for suspecting, as Mr. Anthony suggested, that the first information report was recorded much later than the stated date and hour affording sufficient time to the prosecution to



introduce improvements and embellishments and set up a distorted version of the occurrence. In this case the suspicion hardens into a definite possibility when one finds that the case made in Court differs at least in two very important particulars from that narrated in the F.I.R. Mahabir Singh, who lodged the first information report, stated in-Court that he had invited some people to his house to effect a settlement between him and Ishwar Singh, and that he had also sent Ghanshyam to call Ishwar Singh there. The F.I.R. does not mention anything like this. From the F.I.R. it appears as if the accused persons came uninvited to his house, demanded why he had demolished the drain, and started assaulting him and the other persons who were present there. It is also difficult to understand why Mahabir should invite anyone to his house for a settlement, if really Ishwar Singh had permitted him to demolish the drain as he claimed. Further, the F.I.R. does not mention that Mahabir and Satyapal wielded lathis in their defence when attacked and that this resulted in some of the accused getting injured; but that is what both Mahabir (P.W. 1) and Satyapai (P.W. 2) stated in their evidence in Court. These variations relate to vital parts of the prosecution case, and cannot be dismissed as minor discrepancies. In such a case, the evidence of the eye-witnesses "cannot be accepted at its face value", as observed by this Court in *Mitter Sain v. State of U.P.* (AIR 1976 SC 1156).

9. We have pointed out that the trial Court in



convicting the appellants overlooked certain significant features of the case, namely, the inordinate and unexplained delay in despatching the first information report to the Magistrate; the difference in the account given by the prosecution witnesses and as appearing from the first information report of the occurrence; the absence of any statement in the first information report as to the injuries received by some of accused, and the non-examination of material witnesses. The High Court in affirming the Judgment of the trial Court also failed to advert to these circumstances. We do not therefore think that the case against the appellants has been proved beyond reasonable doubt. The appeals are accordingly allowed and the Order of conviction and the sentences passed on the appellants are set aside. We direct that the appellants be set at liberty forthwith.”

17. Enmity may be the reason for commission of crime, but it may also be a ground for false implication, particularly, in a case where the informant's side has no definite clue of the commission of crime and the assailant, then in that situation, there is every possibility of implication of the persons with whom the informant's side have previous enmity, grudge or difference. In the instant case, the informant has admitted the difference between the informant's side and the appellant on account of partition. There is inordinate delay in sending the F.I.R. The deposition of the doctor



(P.W.1) runs contrary to the prosecution definite case. The corresponding injuries are not found on the deceased as alleged by the informant in the fardbeyan. The time of death also does not correspond to the time of death as per the fardbeyan stands contradicted by the post-mortem report, as the time of post-mortem is 20 hours from the time of occurrence, if 2.00 P.M. is taken and 17 hours if 5.00 P.M. is taken at the time of occurrence, whereas the definite opinion of the doctor, as the time of death is 48 hours.

18. In addition thereto the deposition of the investigating officer in the instant case indicate that the witnesses have introduced the case for the first time in the Court and no such statement was made during the course of investigation, as evident from the para 16 onwards of the deposition of the investigating officer (P.W.9). From the deposition of investigating officer (P.W.9), we find that he has not found blood stained at the alleged place of occurrence, whereas the definite case of the informant was profuse bleeding at the place of occurrence, which stand contradicted by the investigating officer of the case.

19. The cumulative effect of the delay in sending the F.I.R., contrary version of the witnesses as to the manner of occurrence, time of occurrence, place of occurrence, absence of blood stain at the place of occurrence and the post-mortem report runs



contrary to the specific case of the informant as to the manner of injury and the weapon used coupled with the varying time of occurrence in the fardbeyan itself and the corresponding time as per the post-mortem report creates serous doubt about the commission of crime, in the manner prosecution has pleaded. If two views are possible, one which leads to commission of crime by the appellant and the other which is equally probable as to false implication due to previous enmity, it is safer to adopt that view, which is in favour of the accused-appellant.

20. Accordingly, in the totality of the facts situation discussed hereinabove, we extend the benefit of doubt to the appellant and allow the appeal, set aside the judgment of conviction and sentence and acquit the appellant from the charges leveled against him. The appellant is on bail, he is discharged from the liability of his bail bonds.

21. In the result, the appeal is allowed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.12.2017
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