

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.56 of 1994

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1. Chhotak Ram, s/o Chandrika Ram @ Nithali Ram
 2. Ashok Pd. Ram s/o Chandrika Ram @ Nithali Ram
 3. Guput Ram s/o Raja Ram
 4. Chandrika Ram alias Nithali Ram s/o Ugrah Ram
 5. Kishori Yadav
 6. Nanu Yadav, both sons of Brahmdeo Yadav
 7. Mallu Ram s/o Dhenukdhari Kahar
 8. Rajendra Ram s/o Mallu Ram, all resident of village- Pirauta, P.S. Arrah (Mufassil), Distt. Bhojpur (Arrah)
 9. Kishun Prasad s/o Munna Prasad, resident of village- Barkagaon (Akhtiyarpur) P.S. Udwant Nagar, Distt. Bhojpur (Arrah) --Appellants
- Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Pratik Mishra, Advocate
For the State	:	Mr. Abhimanyu Sharma, A.P.P.
For the Informant	:	Mr. Rajiv Ranjan Jha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date : 14-11-2017

During the pendency of this appeal appellant No. 4, Chandrika Ram alias Nithali Ram and appellant No. 9. Kishun Prasad have died and as such the appeal on their behalf stands abated.

2. The present appeal arises out of judgment of conviction and order of sentence dated 4th February, 1994 passed by 3rd Additional Sessions Judge, Arrah in Sessions Trial No. 76 of 1985 arising out of Arrah Mufassil P.S. Case No. 13 of 1984, whereby the appellants, Chhotak Ram, Kishori Yadav, Nanu Yadav, Rajendra Ram, Kishun Prasad (now dead) were convicted



under Sections 147 and 302/34 of the Indian Penal Code and they have been sentenced to undergo rigorous imprisonment for life and R.I. for six months, whereas appellant Ashok Ram, Guput Ram, Chandrika Ram (now dead) and Mallu Ram have been convicted under Sections 148 and 302/34 and they have been sentenced to undergo rigorous imprisonment for life and R.I. for one year. However, all the sentences were directed to run concurrently.

3. The case of the prosecution in short is that on 16.2.1984 at village Pirauta P.S. Arrah Mufassil District-Bhojpur at about 6.00 PM the informant Dhanji Yadav went to the well of Brhamdeo Lal of same village and saw that some people were surrounding Gopali and his Bhawa (his younger's wife) namely, Moti Devi was raising hue and cry. The informant went to the tree of Sahjan near Gopali Yadav and saw that Gopali Yadav was empty hand. He also saw that Chhotak Ram armed with Lathi, Ashok Ram, armed with Barcha, Guput Ram, Deoraj Ram with Bhala, Nithali Ram armed with Barcha, Kishori Yadav, armed with lathi, Nunu Yadav, Mallu Kahar armed with lathi, Bhallu Ram armed with farsa, Rajendra Ram and son in law of Deoraj Ram armed with lathi were surrounding Gopali Yadav, Guput Ram was armed with pistol who instigated to assault after seeing him and said that his people were also gathering. Thereafter, accused Ashok



assaulted Gopali with Barcha on his head and he fell down. Thereafter all the accused persons began to assault Gopali with lathi and lathi portion of Farsa. Accused Guput was standing with pistol and was scaring the people. The informant protested but he was assaulted by Ashok with lathi portion of Barcha. Accused Kishori Yadav assaulted with lathi on his neck. On hulla Bhavnath Yadav, Baliram Yadav and others reached there. Accused Chhotak Kahar also assaulted Baliram with lathi on his wrist and west. Accused Ashok snatched his wrist watch. Accused persons also assaulted Baliram after entering into his house and took away silver Hasuli. They also caused his carries to Moti Devi. The alleged occurrence took place because Gopali lived in the house of Brahmdeo Lal and grew Tomato, Brinjal and Potato in the courtyard. Brinjal and Tomato was plucked by the family members of Mithali Ram and pot to was also uprooted. Gopali forbid them from doing such act. The fardbeyan of Dhanji Yadav, the informant was recorded in the Sadar Hospital, Ara by the police on the basis of which FIR was drawn up. In course of investigation, Gopali Yadav succumbed to injuries.

4. On the basis of the fardbeyan Arrah Mufassil P.S. Case No. 13 of 1984 was registered for the offences under Sections 147,148,149, 323, 324, 379, 312 and 302/34. After



investigation police submitted charge sheet against the 11 persons and on framing of charge, the appellants pleaded not guilty and as such they have been subjected to trial.

5. On behalf of the prosecution 7 witnesses were examined and on behalf of the defence 6 witnesses were examined. The accused persons apart from plea of false implication due to enmity have pleaded alibi and the trial court acquitted Deo Raj Ram and Bhallu Ram alias Satyanarayan Ram on consideration of the impeachable material of alibi and the remaining 9 were convicted.

6. Mr. Pratik Mishra appearing on behalf of the appellants have made brief submission before this Court that in the instant case the conviction of the appellants is unsustainable as the prosecution has miserably failed to establish the charge beyond all reasonable doubt. The judgment is based on assumption and presumption. The Trial Court has not considered the case of false implication on account of previous enmity. He submitted that in the instant case the trial court has failed to appreciate the crucial fact that the prosecution has failed to explain the injury on the person of Ashok Pd. Ram, appellant No.2 and Chandrika Ram (now dead), appellant No.4. He submitted that in the instant case the prosecution has made pick and choose in the examination of



the witnesses. The most important and material witness, namely, Brahmdeo Lal was not examined in this case as the deceased used to live in the house of Brahmdeo Lal, where the alleged occurrence took place, the other residents of the house were not examined and as such the prosecution must suffer for non-examination of the material witness who would have unfolded the true narrative of the case. He submitted that in the instant case the IO did not find any material at the alleged place of occurrence. The Trial Court has committed error in convicting the appellants when the trial court disbelieved the major part of the prosecution as to assault of P.Ws. 2 and 3.

7. Mr. Mishra referring to the deposition of various witnesses submitted that there is major contradiction in the version of the PWs. about the manner and place of occurrence. He submitted with reference to the deposition of P.W.5 the IO of the case that the IO in most unambiguous term deposed in this case that he did not find at the alleged place of occurrence the plants of tomato, brinjal, etc. He has categorically stated that no sign of any injury on the neck of Moti Devi was found. The IO has also stated that the witnesses have not stated about the occurrence and assault by the accused persons in their statement before the police and as such counsel for the appellants submits that the manner of



occurrence was for the first time developed in the court and the witnesses have not stated before the police about the manner of occurrence and as such the counsel for the appellant submits that in view of the contradiction in the version of the witnesses in the court and before the police, their statement cannot be relied upon. Referring to the deposition of PW3, Mr. Mishra submitted that this witness has stated that Barcha was nailed on the forehead of the deceased but the post mortem report does not support that claim. Referring to the post mortem report he submitted that the doctor has categorically opined that none of the injuries was caused by any penetrating and pointed weapon and as suchs the version of the prosecution stands falsified by the ante-mortem injury found by the doctor in the post mortem. Counsel for the appellants submitted that cause of death was mentioned as head injury and the Doctor has opined that injury nos. 2 and 5 can be caused by fall also. In such a situation he submits that the appellants have been falsely implicated in this case on account of previous enmity and the trial court committed error in convicting them in view of the medical report which suggests that cause of death due to head injury may be caused on account of fall also and considering the fact that the specific case of the prosecution that the appellants' side have given Barcha blow on the forehead of the deceased has



not been supported by the medical evidence and as such the conviction of the appellant is unsustainable coupled with the fact that 2 out of the 11 accused against whom charge sheet was submitted were acquitted by the trial court on consideration of the fact that their plea of alibi was proved during the trial.

8. Mr. Abhimanyu Sharma, counsel for the State submitted that it is true that two out of eleven accused were acquitted by the trial court on the ground of their alibi established during trial but that cannot be a ground to brush aside the entire prosecution case.

9. We have heard the parties and gone through the entire materials on record. In the instant case apart from the discrepancy in the manner of assault by Barcha and the definite opinion of the doctor that none of the injury was by penetrating or pointed weapon falsifies that allegation. In addition thereto the major part of the version of the prosecution was disbelieved by the trial court as to the injury on P.Ws. 2 and 3. In addition thereto the prosecution has not explained the injury on the person of the appellant Nos. 2 and 4 (now dead). We have examined the record and from the record it transpires that during the trial the trial court has only completed formality while examining the accused persons under Section 313 Cr.P.C. The examination of the accused under



Section 313 Cr.P.C. is not an empty formality. The law requires that the accused must be confronted with each and every circumstance during the course of trial. The judgment of the Apex Court in the case of **Sukhjit Singh Vs. State of Punjab: (2014) 10 SCC 270** is settler on the point. Paras 11 to 14 of the said judgment is quoted below:

“ 11. In this context, we may profitably refer to a four-Judge Bench decision in *Tara Singh v. The State* [AIR 1951 SC 441] wherein, Bose, J. explaining the significance of the faithful and fair compliance of Section 342 of the Code as it stood then, opined thus:

"30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance



which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fail within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice."



12. In *Hate Singh Bhagat Singh v. State of Madhya Bharat* [AIR 1953 SC 468], Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the code expressed thus:

"8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal PC. are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused, person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness-box."

13. The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra* [JT 2007 (8) SC 644 : 2007 (12) SCC 341] in following terms:

"14. The word "generally" in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole



case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give."

14 In view of the aforesaid enunciation of law, there can be no scintilla of doubt that the when the requisite questions have not been put to the accused it has caused immense prejudice to him, more so, when there is no evidence to establish his complicity in the alleged abduction."



10. Apart from the contradiction in the version of the prosecution witnesses the fact that witnesses have not stated before the police and for the first time in the court itself they developed the story in the background of the fact that there was previous enmity and there is no explanation of the injury on the appellant nos. 2 and 4(now dead) and the failure of the court to confront the appellants with all adverse circumstance while examining the accused under Section 313 Cr.P.C., we are of the considered view that the appellants deserves to be acquitted in this case. As the effect of the non-compliance of the mandatory provisions of Section 313 Cr.P.C. goes to the root of the case and the failure to put questions to the accused caused prejudice and as such we are left with no option to allow this appeal set aside the judgment of conviction.

11. Since the appellants are on bail, they are discharged of their bail bonds.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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