

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.89 of 1994
(Against the judgment of conviction and order of sentence dated
16.02.1994, passed by Shri Ramjee Pandey, 5th Additional Sessions
Judge, Samastipur in S.T. No. 175/198 of 1992)

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1. Parshuram Das, son of Bihari Das
2. Shiv Chandra Das, son of Banaras Das
3. Gobardhan Das, son of Palki Das, all residents of village-Harail, P.S.-Mohiuddin
Nagar, District-Samastipur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 96 of 1994

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1. Hari Shankar Das son of Ram Khelawan Das.
2. Malhu Das son of Bihari Das
3. Ram Lal Das son of Gena Das
4. Lalan Das son of Bulla Das, all residents of village- Harail, P.S. Mohiuddin
Nagar, District-Samastipur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No.89 of 1994)

For the Appellant/s : Mr. Srinandan Pd. Singh
Mr. Manoj Kumar no.1

For the Respondent/s : Miss S.B. Verma, APP
(In CR. APP (DB) No.96 of 1994)

For the Appellant/s : Mr. Srinandan Pd. Singh
Mr. Manoj Kumar no.1

For the Respondent/s : Miss 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: 12-12-2017

Both appeals arises out the judgment of conviction



dated 16.2.1994 in Sessions Trial No. 175/198 of 1992 whereby the 5th Additional Sessions Judge, Samastipur convicted the accused persons for the offence under sections 147 and 302/149 of the Indian Penal Code and they have been sentenced to undergo R.I. for life under section 302/149 of the Indian Penal Code and one year RI for offence under section 147 IPC. However, the sentences were directed to run concurrently.

2. During the pendency of appeal, the two appellants namely, Gobardhan Das (in Cr. Appeal No. 89 of 1994) and Malhu Das (in Cr. Appeal No. 96 of 1994) died and as such the appeal on their behalf stands abated.

3. The persecution case as discussed in the trial court is that about ten persons came in the Sahan of the deceased Kameshwar Singh @ Kari Singh assaulted the deceased with lathi and fists and slap. Upon which the deceased fell down on the ground. The informant raised alarm and the accused persons thereafter fled away. On the following day in the morning the deceased was taken to hospital and he died while he was on way to the hospital.

4. The police registered the case and started investigation. After investigation the police submitted charge-sheet and the case was committed to the court of sessions and on framing of charges, under sections 147, 447 and 302 and 149 of the Indian Penal Code the accused persons pleaded not guilty and as such they have



been subjected to trial.

5. On behalf of the prosecution, nine witnesses were examined. P.Ws. 1, 2, 3 and 4 are the witnesses on the point of occurrence. P.W.5 and P.W.6 are the co-villager who were declared hostile. P.W.7 is the doctor who conducted the post-mortem. P.W. 8 is the formal witness who has proved the writing of the formal FIR and Fard-beyan. P.W.-9 is the ASI who recorded the Fard-beyan of the informant.

6. The trial court on the basis of scrutiny of evidence convicted the accused persons for the offence under section 302/34 and 149 of the Indian Penal Code and sentenced to undergo R.I. for life as stated hereinabove.

7. Learned counsel appearing on behalf of the appellants has submitted that the instant case was registered by the informant on the next date of lodging of the fard-beyan of the alleged occurrence which took place at 7 p.m. but there is no explanation why Fard-beyan was lodged only on the next date at 10 a.m. There is absolutely no explanation why the deceased was not taken to hospital for treatment on 9.1.1992. The informant has mentioned that the deceased was badly injured in the assault and became senseless but the deceased was not taken to the hospital in the night and only in the next morning he was taken to the hospital where he was declared dead.



8. Learned counsel appearing on behalf of the appellants submits that in fact, the death of the deceased was not caused by assault of the appellants rather he was done to death at different place and no one has seen who has killed the deceased in the night and only in the morning when they learnt about death of the deceased, the informant took the deceased to the hospital. Thereafter, the Fare-beyan was lodged. Referring to the deposition of the witnesses who have admitted that the deceased was a man of criminal antecedent and accused in a dacoity case, he submitted that prosecution case is most improbable and no reliance can be given to the statement of the informant as there is no explanation for not lodging the FIR in the night when the occurrence took place at 7 p.m. in the evening. Referring to the unnatural and most artificial conduct of the informant in not carrying the deceased (injured) if he was badly injured and senseless in the evening to any hospital and waiting for the whole night is indicative of the fact that the informant has concealed the real fact. Referring to the depositions of the witnesses, he submits that in the instant case P.W.-1 is the informant who in his deposition has stated before the court that on hearing hulla he reached the place of occurrence i.e Darwaja of the deceased and saw the assailant. The time of occurrence is 7 P.M. however, there is no material indicated by the informant as a source to identify the assailants in the commission of crime at 7 p.m. in the village when it



became quite dark. Referring to the cross-examination he submitted that large number of the people reside in the neighbourhood of the deceased and the place of occurrence but they have not deposed in this case as a witness. In the cross-examination, P.W.1 has admitted that in the village there are doctors and government hospital at the distance of two kilometers but despite distance of only two kilometers injured (deceased) was not taken to the hospital for treatment. From the deposition of the P.W.1 at para-5 it is evident that the distance of the hospital was only 15-20 minutes walking time from the place of occurrence and the police station is also adjacent to the hospital yet Fard-beyan was not lodged nor information was furnished to the police when the distance is only 15-20 minutes walking distance. This witness in further cross-examination has admitted that he for the first time saw the deceased at the place of occurrence when he was senseless and blood was oozing out from his body and blood spread on the earth on one and half yard at the place of occurrence but no blood stained earth was found at the place of occurrence by the I.O. of the case. He (P.W.1) admitted in his cross-examination that deceased was habitual drunkard. P.W.1 has admitted in the cross-examination in para-9 that he has not seen the occurrence and it was only hearsay. Thus, on the admission of the informant that he was only a hearsay witness no reliance can be placed on his deposition. Referring to the deposition of P.W.2 widow of the deceased he submitted that the



assailants were assaulting her husband with lathi, iron rod and bricks. During cross-examination she admitted that she used to cook food after burning lamp in the night. In the process of cooking two and half hours are consumed and at the time of the occurrence she has cooked meal. Therefore, according to this witness, the time of occurrence is at least two hours after night. This witness has admitted that she reached the place of occurrence after hearing hulla that murder has been committed. Therefore, this witness has not seen the occurrence and as such she cannot be relied upon. This witness in the further cross-examination has admitted that she has not seen the culprits committing crime. She has only learnt about the incident from others and as such she was only a hearsay witness.

9. Referring to the cross-examination of the P.W.3 learned counsel appearing on behalf of the appellants submitted that this witness has also admitted that she has not seen the occurrence nor saw the assailant assaulting her father.

10. P.W.-4 is another witness he has admitted in his cross-examination that the deceased was an accused in a dacoity case in village. He admitted that he reached the place of occurrence and he saw injury on the forehead of the deceased. The other witnesses have been declared hostile.

11. Learned counsel for the appellants submitted that P.W.6 was declared hostile was the close relative of the deceased



where in her cross-examination she has admitted that none has seen the occurrence including herself. In fact the deceased has gone towards field and in the morning when P.W.6 woke up she saw the deceased senseless and thereafter the deceased was taken to the hospital where he died. This witness has admitted that the accused persons were implicated in this case at the instance of one Dhuna Singh, but after realising the false implication of the accused persons and about the innocence of the accused persons the family of the deceased has compromised with the accused persons.

12. Learned counsel appearing on behalf of the appellants further submitted that from the deposition of the witnesses, it appears that there are three versions as to the place of the occurrence. According to the informant, the place of occurrence is Darwaja of the deceased. According to the I.O. of the case the place of occurrence is Sahan in front of Darwaja of the deceased whereas according to P.W.2 the place of occurrence is the Darwaja of the informant. From the deposition of the witnesses there are major contradictions in the manner of assault. Different witnesses have stated different story about the assault of the deceased. Thus, on the basis of contradictions in the depositions of the witnesses as to the place of occurrence and absence of blood stains at the place of occurrence the prosecution case become doubtful. The unnatural conduct of the party in neither reporting the matter to the police in the



night nor taking the injured to the hospital for treatment also makes the prosecution case doubtful. The statement of the witnesses in the further cross-examination indicates that none of the them has seen the occurrence and as such the appellants deserve benefit of doubt as from the totality of facts situation, any reasonable man can understand that the occurrence took place at a different place and no one has seen the actual occurrence and due to previous enmity of one of the witnesses Dhuna Singh with whom the appellants had grudge, has implicated them in this case.

13. Counsel appearing on behalf of the State submits that it is true there are contradictions in the depositions of the witnesses as to the place of occurrence and the manner of assault and that the witnesses in their further cross-examination admitted that they have not seen the occurrence rather they have heard about the occurrence from others in this case but P.W. 4 has maintained that he has seen the occurrence and the appellants participation in the commission of crime.

14. We have heard the parties, perused the record and the discussion of the trial court and on scrutiny of the entire materials on record, we fail to digest the unnatural and artificial conduct of the informant side in neither reporting the matter to the police although the police station, according to the witnesses is on walking distance of 15-20 minutes. We also fail to appreciate the conduct of the informant



family in not taking the deceased for treatment to any hospital which was only 15-20 minutes walking distance when the deceased was seriously injured in a assault and became senseless. The veracity of the deposition of the witness is normal conduct. The incident as per informant took place at 7 p.m. and if the deceased sustained serious injury and became senseless in the assault, the natural conduct would have been to carry the injured to the hospital for treatment in stead of waiting for from 7 p.m. to 5 a.m. and taking the deceased to hospital when he was already dead. The aforesaid conduct is most artificial and unnatural. If the aforesaid conduct is taken into consideration for testing veracity of the prosecution case, in the light of the suggestion of the defence, it appears that the deceased was killed elsewhere and no one has seen the occurrence and only in the morning they came to know about the occurrence. This version is also probable in view of the fact that P.W.6 has admitted that in the morning she saw the deceased unconscious and thereafter the deceased was taken to the hospital and as such no one has seen him being assaulted by the appellants and only he was seen lying unconscious at the door of the informant. The witnesses have stated different story about the place of occurrence. The P.W.2 the I.O. of the case P.W.1 are at variance in the matter of place of occurrence. In addition thereto, as per P.W.1 there was profuse bleeding from the deceased at the place of occurrence which stands contradictory by the version of the I.O. In



addition thereto, the witness namely P.W.4 was given a definite suggestion that he used to extort the accused persons in the name of false case and this fact was also admitted by the P.W.6 in her cross-examination. Moreover, on the basis of materials on record, it appears that only empty formality was completed by the trial court while examining the accused under section 313 of the Cr.P.C. They were not confronted with all adverse circumstances on which the trial court relied in this case for their conviction. There is absolutely no motive attributed for commission of crime by the appellants. During course of examination of the witnesses it has come that the deceased used to take liquor regularly and he was also accused in a criminal case for commission of dacoity. Thus, totality of facts situation indicates that possibility of death of the deceased in a different manner at different place cannot be ruled out in view of the major contradictions in the version of the witnesses about the place of occurrence. The unnatural conduct of not taking the injured to the hospital for treatment nor reporting the matter to the police are definite material to indicate that the occurrence did not take place as suggested by the prosecution. Otherwise, if the occurrence took place at 7 p.m. and the deceased was seriously injured then the natural conduct of the informant's side would have been to inform the police about the occurrence and carrying the injured for treatment to hospital which was only 15 to 20 minutes walking distance. There are lack of material to lead only one



conclusion that the accused alone could have committed the alleged crime and in the absence of any motive in commission of crime the conviction of the appellants is not safe. Accordingly, we allow the appeal and set aside the judgment of conviction dated 16.02.1994 passed by 5th Additional Sessions Judge, Samastipur in S.T. No. 175/198 of 1992)

15. The appellants who are on bail is discharged from the liability of the bail bonds.

(Rajendra Menon, CJ)

Ravi/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	N/A
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