

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.109 of 1994

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Dhukh Bhanjan Singh, son of late Munnilal Singh, resident of Village
Baruari, P.S. Gaighat, Distt. Muzaffarpur

... .. Appellant

Versus

The State Of Bihar

... .. Respondent/s

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with
Criminal Appeal (DB) No. 116 of 1994

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Jai Nandan Singh @ Mohani, son of late Munnilal Singh, resident of village
Baruari, P.S. Gaighat, Distt-Muzaffarpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Neeraj Kumar @ Sanidh, Advocate Mrs. Ranjana Sinha, Advocate
For the State	:	Mr. Shiwesh Chandra Mishra, 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 : 11-11-2017

Both the appeals arise out of common judgment of conviction and order of sentence dated 2nd March, 1994 passed by Shri Mishri Lall Choudhary, 1st. Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 383 of 1991/ 20 of 1991 arising out of Gaighat P.S. Case No. 76 of 1990, whereby the appellants



were convicted under Section 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

2. The prosecution case, in short is that the informant Ashutosh Kumar Singh, sala of the deceased Arun Kumar Singh used to reside in the house of Arun Kumar Singh in connection with certain business. In the night of 9.12.1990 at about 10.30 O'clock the deceased Arun Kumar Singh along with the accused persons and one Sheo Narain Singh were taking wine in the '*angan*' of the house of the deceased Arun Kumar Singh and the informant at that time was sitting at the '*Darbaja*' of one Raj Kumar Singh and all of a sudden he heard voice of accused Jai Nandan Singh who was saying that his mother and brother are being abused and he will not spare him and he will kill him. On hearing this sound the informant went in the '*angan*' and saw the two accused persons and one Sheo Narain Singh were fleeing away, it is the case of informant that he saw accused Jai Nandan Singh was armed with a dagger. The informant raised alarm and the above named miscreants fled away towards the house of Jainandan Singh. On the *hulla* of the informant the nearby people, Amrendra Kumar Singh, Prem Kumar Singh, Jagannath Pd. Singh, Sarbeshwar Pd. Singh, Anil Kumar Singh and Akhileshwar Pd. Singh came and the deceased told the name of these three persons.



A jeep was being arranged for taking the deceased Arun Kumar Singh to Hospital but in the mean time the deceased died. On 10.12.90 at about 7.45 A.M. the police arrived there and the written report was given to the police by the informant.

3. The police investigated the case and on conclusion of the investigation the I.O. submitted charge-sheet against three accused persons, two appellants before this Court and one Shiv Narain Singh. However, trial of Shiv Narain Singh was split up by order dated 1.4.1992 and the trial court on denial of the allegations leveled against the appellants conducted trial. On behalf of the prosecution 8 witnesses were examined. They are Shyam Nandan Singh, PW-1, Jagannath Pd. Singh, PW-2, Akhileshwar Pd. Singh, PW-3, Dr. Manoranjan Kumar Shrivastava, PW-4, Ram Bhawan Singh, PW-5, Anil Kumar Singh, PW-6, Sarbeshwr Pd. Singh, PW-7 and Amrendra Kumar Singh, PW-8. The informant of this case was murdered and as such he was not examined.

4. The trial Court on scrutiny of the evidence convicted the appellants for offence under Section 302/34 and sentenced them to undergo rigorous imprisonment for life.

5. Mr. Niraj Kumar, Advocate appearing on behalf of the appellants in both the criminal appeals has submitted that in the present case the appellants have been convicted on the basis of so



called dying declaration of the deceased, who was not in a position to make any statement as per the deposition of the Doctor, P.W. 4. He submitted that in the instant case, apart from PW-1, all the witnesses were declared hostile. The informant was killed and as such he was not examined in this case. Referring to the deposition of P.Ws. 2,3,6,7 and 8, who were declared hostile, counsel for the appellants submitted that in such a situation when the witnesses have turned hostile, the informant was not examined and the Doctor has opined that the deceased, after sustaining injury, was not in a position to make any dying declaration, the conviction of the appellants is unsustainable.

6. Mr. Niraj Kumar submitted that the trial court committed error in convicting the appellants notwithstanding the fact that P.Ws. 2,3,6,7, and 8 have not supported the fact that the informant told the name of the appellants in commission of the crime. He submitted that PW-1 is only a hearsay witness and not an eye witness to the occurrence and as such his evidence is inadmissible. Referring to the deposition of P.W.4 he submitted that the opinion of the Doctor as to the cause of death itself is not sufficient to hold that the appellants were involved in the commission of the crime. He submitted that in the absence of corroboration of testimony of P.W.1, the conviction of the appellants is unsustainable.



7. Mr. Niraj Kumar highlighted that the wife of the deceased, who was in the house at the time of occurrence, was not examined and failure to examination of the wife of the deceased is adverse circumstances and sufficient to disbelieve the case of the prosecution. He submitted that the trial court without any legal evidence, convicted the appellants.

8. Mr. Shiwesh Chandra Mishra, appearing on behalf of the State submitted that the appellants have been rightly convicted by the trial court in the instant case. Referring to the hostile witnesses he submitted that the statements of the hostile witnesses are admissible under Sections 145 and 147 of the evidence Act for the purpose of contradiction and corroboration. He submitted that in totality of the facts of this case the informant of this case was killed and other witnesses were terrorized and as such they turned hostile. He submitted that the appellants were not convicted on the basis of dying declaration of the deceased but on the basis of the materials available on the record and on scrutiny of the evidence of the witnesses. He has drawn our attention to the discussion of the trial court and meticulous scrutiny of the materials therein.

9. In the instant case the fardbeyan was lodged by one Ashutosh Kumar Singh, brother-in-law of the deceased Arun Kumar Singh. The fardbeyan indicates that the informant heard



hulla and the voice of Jai Nandan Singh who was abusing the deceased and claiming that he will kill him. The informant has stated that on hearing this, he rushed to the *Angan* where he saw Jainnandan Singh carrying dagger in his hand, Dukh Bhanjan Singh and Shiv Narayan Singh fleeing away and on his alarm, the neighbours Amrendra Kumar Singh, PW-8, Prem Kumar Singh, Jagarnath Pd. Singh PW-2, Sarbeshwar Singh, P.W.7, Anil Kumar Singh, P.W. 6 and Akhileshwar Prasad Singh, P.W.-3 rushed to the place of occurrence and in their presence the names of the assailants were disclosed by the deceased. Thereafter a jeep was arranged for carrying the victim for treatment to the hospital. However, the deceased breathed his last in the meanwhile.

10. During the trial P.W.2, who was declared hostile has stated that at 10.30 pm on 9.12.1990 while he was sleeping in his room on hearing *hulla* he went to the *angan* of the deceased and heard the appellants and Shiv Narain Singh have fled away after assaulting the deceased by dagger and the deceased was lying in the injured condition. This witness was cross-examined on the point that he has made statement before the police that he saw Arun Kumar Singh caught by Shivnandan Singh, Dukhbhanjan Singh and Jainandan Singh was giving indiscriminate dagger blow. He was given suggestion in the instant case that he has turned



hostile out of the fear as he has changed his previous statement on account of murder of the informant of this case.

11. P.W.3, another witness who was declared hostile. P.W.,4 the Doctor who conducted post mortem, has deposed that ante-mortem injuries were found on the body of the deceased and the injuries were caused by sharp pointed weapon that may be *chura*. The deposition of the doctor as to the weapon used at the time of death corresponds to the manner of crime alleged by the prosecution at the time of occurrence. P.W.5, the IO of the case, in his deposition has stated that he has inspected the place of occurrence. He also seized huge quantity of blood stains from the wall and also blood stained mark at the door of the house of accused Jai Nandan Singh. This witness has stated that he tried to examine the widow of the deceased but she was not in a position to give statement as she become senseless and her mental condition was not good. The IO has stated that the hostile witnesses, namely, P.Ws. 2 and 3 have stated before him that Jai Nandan Singh assaulted the deceased with dagger and other co-accused had caught the deceased.

P.W.7 in his deposition has stated that he has seen the accused Jainandan Singh, Dukhbhanjan Singh and Shiv Nandan Singh fleeing from the house of the deceased at a distance of 50 miters. P.W. 8, was turned hostile in the instant case. This witness stated



before the police that he went to the *angan* of the deceased and he saw the accused Dukhbhanjan Singh and Arun Kumar Singh, the deceased and Jainandan Singh was assaulting him with Chura.

12. The trial court has noted the fact that several letters were written to the S.P. Banka for ensuring the evidence of the widow of the deceased but no response was received. The trial court noted the documentary evidence in the trial namely, the seizure list, post mortem report, fardbeyan, inquest report, etc. and on the basis of the materials held out that the witnesses have seen the accused persons fleeing away from the *angan* of the deceased immediately after the occurrence and assault. The informant of this case was not examined as he was killed.

13. We have heard the counsels for the parties. In this case the informant was killed. The witnesses have turned hostile. The widow has neither made statement before the police nor in the court. The witnesses who turned hostile were suggested that they have resiled from their statement made to the IO only because they were under fear on account of killing of the informant. The trial court has considered one important adverse circumstance against the accused persons that none of the accused persons after hearing the news of murder, although they were close neighbour of the



deceased, reached the place of occurrence which is a very strong circumstance against the accused persons.

14. The submission of the appellants that the conviction was based on the dying declaration is misconceived. In fact the trial court has disbelieved the dying declaration. However, the trial court has rightly convicted the appellants on the basis of the evidence of hostile witnesses and on the basis of the materials including the deposition of P.W.5, IO of the case, who found marks of blood stain in *angan* of the deceased and at the door of the accused Jainandan Singh. The witnesses of this case were consistent on the point of accused persons immediately after the occurrence fleeing away from the place of occurrence, the conduct of the accused not reaching the place of occurrence even after the knowledge of murder of the deceased is yet another incriminating circumstance. We find substance in the submission of Mr. Mishra appearing on behalf of the State that out of fear witnesses have turned hostile in this case.

15. The submission of counsel for the appellant that the prosecution has miserably failed to bring home the charges as to the witnesses who were cited on behalf of the prosecution have turned hostile and as such the conviction of the appellants is not justified. The submission of the counsel for the appellants is totally



misconceived and submission that once the witnesses turned hostile, his previous statement to the police is of no relevance and cannot be a ground of conviction, it may be relevant to mention here that the Apex Court has occasion to consider the issue of treatment of testimony of the hostile witnesses in numerous cases. Reference in this connection may be made to the judgment of the Apex Court reported in the case of **Guddu Ram Vs. State of Himachal Pradesh (2013) 11 SCC 546** and **Attar Singh v. State of Maharashtra, (2013) 11 SCC 719**. The judgment of the apex Court in paras 20 and 26 in **Guddu Ram's** case is relevant and quoted below.

20. In *Karuppanna Thevar V/s. State of T.N.*, (1976) 1 SCC 31 this Court held that the testimony of a hostile witness may not be rejected outright "but the court has at least to be aware that, prima facie a witness who makes different statements at different times has no regard for truth. The court should therefore be slow to act on the testimony of such a witness and, normally, it should look for corroboration to his evidence."

Similarly, in *Bhagwan Singh V/s. State of Haryana*, (1976) 1 SCC 389 this Court held:

"8.....But the fact that the court gave permission to the prosecutor to cross-examine his own witness, thus characterising him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is



no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence."

(Incidentally this passage is incorrectly attributed to P.N. Bhagwati, J in Rabindra Kumar Dey V/s. State of Orissa, (1976) 4 SCC 23. It should be correctly attributed to P.K. Goswami, J).

26. No doubt, proof cannot be substituted by robust suspicion. But if all the facts and circumstances point to only one conclusion, it is difficult to ignore them and even in a case of circumstantial evidence, it is possible to secure a conviction. The present case is much stronger since there is an eyewitness to the incident and both the Trial Court and the High Court accepted the version of events given by Jai Pal Singh. In such circumstances, we should not normally interfere with the conclusion expressed concurrently by the Trial Court and the High Court. We have recently expressed this view in Ramachandran V/s. State of Kerala 2012 (10) SCALE 592 and it need not be repeated. Interference is, however, permissible in exceptional circumstances - but we do not find the circumstances of this case to be exceptional.

The judgment of the Apex Court in **Attar Singh v. State of Maharashtra, (2013) 11 SCC 719** is yet another judgment of the Apex Court which underlines the principle to be followed in the matter of hostile witnesses in paras 15,16 and 17 of the judgment it has been held as follows:

15. Similarly, other High Courts in the matter of **Gulshan Kumar v. State** : (1993) Cri.L.J. 1525 (Del.) as also **Kunwar v. State of U.P.**: (1993) Cri.L.J. 3421 (All) as



also *Haneefa v. State* : (1993) Cri.L.J. 2125 (Ker) have held that it is not necessary to discard the evidence of the hostile witness in toto and can be relied upon partly. So also, in the matter of *State of U.P. v. Chet Ram* (1989) 2 SCC 425, it was held that if some portion of the statement of the hostile witness inspires confidence it can be relied upon and the witness cannot be termed as wholly unreliable. It was further categorically held in the case of *Shatrughan v. State of M.P.: 1993 Cri LJ 120 (MP)* that hostile witness is not necessarily a false witness. Granting of a permission by the Court to cross-examine his own witness does not amount to adjudication by the Court as to the veracity of a witness. It only means a declaration that the witness is adverse or unfriendly to the party calling him and not that the witness is untruthful. This was the view expressed by this Court in the matter of *Sat Paul v. Delhi Administration* : AIR 1976 SC 294.

16. Thus, merely because a witness becomes hostile it would not result in throwing out the prosecution case, but the Court must see the relative effect of his testimony. If the evidence of a hostile witness is corroborated by other evidence, there is no legal bar to convict the accused. Thus testimony of a hostile witness is acceptable to the extent it is corroborated by that of a reliable witness. It is, therefore, open to the Court to consider the evidence and there is no objection to a part of that evidence being made use of in support of the prosecution or in support of the accused.

17. While examining the instant matter on the anvil of the aforesaid legal position laid down by this Court in several



pronouncements, we have noticed that the support rendered by the daughter Mangibai approving the incident should be accepted as reliable part of evidence in spite of she being a hostile witness. The witness Mangibai's evidence pushes the accused with his bag to the wall and the accused is obliged to explain because her evidence shows that the accused was the only person in the company of the deceased soon before the death. The defence of the accused that Nagibai's injury was a result of fall is ruled out by medical evidence and the details available of the location in the panchnama of offence. The courts below thus have rightly drawn some support from the reports of the chemical analysis since all the articles of the victims and clothes of the accused are found having blood stains of human blood group A. This was in view of the fact that the results of the analysis for determination of the blood group of the victim and accused were conclusive when blood sent to phial was analysed. Thus, the evidence of the daughter of the deceased coupled with other material as also evidence of other witnesses i.e. Ramesh, Khandu, Bhatu and Makhan, provided a complete chain and the prosecution successfully proved that the incident occurred in the manner and the place which was alleged.

16. We find that in the present case the evidence of hostile witnesses cannot be discarded outrightly in view of the judgment of the Apex Court in Gudu Ram (supra) and Attar Singh (supra). The deposition of the witnesses are admissible for the purpose of



contradiction and corroboration under Sections 145 and 147 of the Evidence Act. We have examined the deposition of the witnesses who turned hostile and we find that they are consistent in their statements before the police on the point of fleeing away the accused persons immediately after the occurrence, which are relevant and corroborates the basic prosecution case that the appellants have committed murder of the deceased and thereafter they fled away. The factum of the crime and participation of the accused in the commission of the crime is supported by the evidence of P.W. 5, IO, who found blood stains in the *angan* of the deceased, the place of occurrence and back of the house of the appellant Jainandan Singh and the circumstance that despite the accused being neighbors of the deceased they have not visited the place of occurrence when there is no case that they were on inimical terms. Thus, in the totality of the fact situation, the statement of the hostile witnesses before the police, according to this court, is admissible under Section 145 of the Evidence Act.

17. We find substance in the submission of counsel for the State that after killing of the informant of this case the witnesses were under terror and as such they have turned hostile that appears to be the precise reason for the widow not appearing in the court for deposition in this case. Keeping the totality of the facts and



circumstances in mind, we are of the considered view that the conviction of the appellant by the trial court needs no interference. These two appeals are accordingly, dismissed.

18. We find that the trial court has discussed the entire aspects of the case and has rightly convicted the appellants. We find no error in the appreciation of the trial court and as such we uphold the judgment and order of conviction and sentence passed by the trial court. Since the appellants are enjoying the bail, they are directed to surrender and serve the remaining sentence and in case they fail to surrender, the concerned police officials are directed to take step for their arrest so that they may serve the remaining part of sentence in terms of the judgment of the trial court.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

spandey/-

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