

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.232 of 1994

=====

Ram Pravesh Rai, son of Late Mithu Rai, resident of Kursaha, P.S.-
Mohiuddinagar, District-Samastipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Amish Kumar, Amicus Curiae
For the Respondent/s : Mr. A.K Sinha, A.P.P.

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 11-11-2017

None appears on behalf of the appellant.

Mr. Amish Kumar, Advocate, who is present in the Court,
is appointed as Amicus Curiae on behalf of the appellant to assist
this Court.

Let a copy of the brief be handed over to him.

Heard parties.

The appellant has filed this appeal assailing the judgment of
conviction and order of sentence dated 5.04.1994 passed by 1st
Additional Sessions Judge, Samastipur in Sessions Trial No. 54 of
1993/6 of 1993 arising out of Mohiuddin Nagar P.S. Case
No.18/91 of 1986 by which he has been convicted for the offence



punishable under Section 302 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life.

The police recorded the fardbeyan (Ext.3) of one Ram Govind Rai of village-Kurshaha, P.S.-Mohiuddin Nagar in the private clinic of Dr. B.P. Sinha, I/c of State Dispensary of Mohiuddin Nagar on 18.02.1991 at about 8.00 P.M. The informant stated that today on 18.02.1991, he had come to Mohiuddin Nagar Bazar at about 4.00 P.M. for engaging labourer. In the market itself, he met with his cousin brother Indradeo Rai (deceased), who was on a cycle. He told him that he had come to the market for purchase of household articles and after purchase, he would return back soon. He proceeded to engage labourers. While coming back to his house at about 5.00 P.M. when he reached near the 'Dera' of one Ram Khelawan Rai, in the east of pitch road, found that his said brother Indradeo Rai lying on the ground and accused Ram Pravesh Rai was giving iron rod blows to him. The cycle of his brother was lying there. When he saw his brother being assaulted by accused Ram Pravesh Rai, he raised alarm and as soon as reached near the place of occurrence, accused fled away towards west. As his brother was badly injured, he had to take care of him and, as such, he could not chase the accused. On his hue and cry, several co-villagers who were in the market and persons residing



in the vicinity of the place of occurrence arrived there. With their help, on a cot he brought his brother to Mohiuddinnagar government hospital where treatment started but his brother succumbed to his injuries. Ram Sikil Rai, Makhan Rai, Dinkar Rai, his co-villagers and Yogendra Rai and other several persons were witnesses of the occurrence. The motive of the occurrence was that about a week ago accused Ram Pravesh Rai had engaged a tractor and was carrying soil on it through the onion seeding field of the deceased. The deceased had protested and accused had threatened him to remove this world.

On the basis of aforesaid fardbeyan of the informant (Ext.3), a formal FIR was drawn up by the police under Section 302 of the Indian Penal Code. The police took up the investigation of the case. After investigation, the police submitted charge sheet against the appellant. Thereafter, cognizance was taken and the case was committed to the court of sessions, where charges were framed under Section 302 of the Indian Penal Code, to which, the accused person pleaded not guilty. Thereafter, trial started against the appellant.

During trial, the prosecution has examined altogether ten witnesses in support of its case. P.W.1 is Dinkar Rai, P.W. 2 is Ram Sikil Rai, P.W. 3 is Makhan Rai, P.W. 4 is Kalasman Devi, P.W. 5



is Ram Govind Rai, P.W. 6 is Dr. Anil Chandra Sinha, P.W. 7 is Shibjee Singh, P.W. 8 is Jiwach Choudhary, P.W. 9 is Ram Prasad Pandit and P.W. 10 is Chandra Bhushan Rajak.

The defence has also examined two witnesses on its behalf. D.W. 1 is Baleshwar Paswan and D.W. 2 is Shambhu Roy.

The trial court after hearing learned counsel for the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charge under Section 302 of the Indian Penal Code against the appellant and, accordingly, the aforesaid judgment of conviction and order of sentence has been passed.

Now this Court is required to reappraise the prosecution evidence to see as to whether the prosecution has been able to substantiate its case beyond shadow of all reasonable doubts or not?

P.W.1 is Dinkar Rai, who claims to be an eye witness to the occurrence. He has stated that he had seen the accused-appellant assaulting with iron rod to the deceased causing several injuries due to which he fell down and became unconscious even then he was again assaulted 2-4 times. He has further stated that from the injury upon the head of the deceased, blood was oozing out but he further said that on the place of occurrence there was no blood.



From his deposition, it appears that he is a chance witness as he was by chance present at the place of occurrence when he was returning back from his sister's village to his home. He has stated that the police has recorded his statement. However, P.W.10, i.e., the Investigating Officer has stated in paragraph 17 of his cross-examination that P.W.1 has never said before him that he was returning from his sister's home 'Telgawan'. He has also not stated that he had seen the accused-appellant assaulting the deceased by iron rod. The same thing has been stated regarding P.W.2 by the Investigating officer as he has not stated before him that the accused had assaulted the deceased by iron rod rather P.W. 2 has stated before him that the accused was assaulting the deceased by "Paati of Khatiya" (side wood panel of the cot). The same thing has been stated by the P.W.10 regarding P.W.3 that he has not stated before him that the accused was being assaulted by iron rod rather he was being assaulted by side wood panel of the cot. He has further stated that he has not recorded the further statement of the informant. So far as the informant is concerned, he has stated in his fardbeyan that the accused-appellant was assaulting the deceased by iron rod and his cycle was found lying besides him and after alarm being raised by him, the accused-appellant fled away towards west and on raising alarm, many persons of the



locality, who were present in the market, came there and, thereafter, the deceased was taken to the hospital. However, in paragraph 21 of his cross-examination, he has stated that when he was 5-6 'Lagga' from the place of occurrence, he saw certain persons assembling there. He saw 2-4-10 persons were coming there. They were neither taking care of the deceased nor were they given drinking water. He said that everybody reached there at the same time and no alarm was raised which is in contradiction of his statement made in his FIR where he has stated that he saw the accused assaulting the deceased and when he fell down and on raising alarm certain persons of the locality came there. He has further stated that he has stated before the police that he had seen the deceased being assaulted in standing position also and he has not stated before the police that his brother (deceased) fell down, whereas the Investigating Officer in paragraph 20 of his cross-examination has clearly stated that he has not recorded further statement of the informant which falsifies his claim. The doctor, i.e., P.W. 6, who had done autopsy on the dead body of the deceased, has stated that in view of number and nature of injury, all the injuries cannot be caused by a single weapon. Thus, the same does not support the ocular evidence. The Investigating Officer has also not found any blood from the place of occurrence.



It is startling that even after so many injuries, no drop of blood was found at the place of occurrence. The same is the position with the inquest report. Even in the inquest report, it is not stated that even no blood was oozing out from the body, whereas P.W. 1 has stated in paragraph 9 of his deposition that blood was oozing out from the injury on head.

Above all, while examining the accused under Section 313 Cr. P.C., it is startling to notice that no question regarding manner of occurrence has been asked from the accused as to whether he was assaulted by side of wood panel of cot or iron rod.

Now, the question would be whether the same has been caused prejudice upon the accused or not? The Apex Court in ***Ranvir Yadav Vs. State of Bihar [(2009) 6 Supreme Court Cases 595]*** has held that since in that case neither any incriminating material nor any accusation specifically was put to accused in his examination under Section 313, such lapse on the part of trial court in such circumstances would be fatal and impugned judgment convicting the accused liable to be set aside.

However, in a subsequent judgment rendered by the Apex Court in ***Nar Singh Vs. State of Haryana [(2015) 1 Supreme Court Cases 496]***, the Apex Court has formulated a question whether a trial is vitiated or not on account of such lapse. The



answer has been given that burden would be on the accused to prove that the case on such non-compliance has occasioned failure of justice to him.

In the present case, it is apparent from the discussion made above that there is no certainty regarding nature of weapon which was used and there is no certainty regarding the place of occurrence though there has been nine injuries including some on the head and even though one of the prosecution witness, as noted above, has stated that the blood was oozing out from the head injury but not a single drop of blood has been found at the place of occurrence. The inquest report shows that blood was not oozing out which raises a question mark on the place of occurrence when the defence witness has stated that death was outcome of an accident causing multiple injuries. The deposition of the Investigating Officer has raised a question upon the so-called eye witnesss, i.e., P.Ws. 1, 2 and 3 and even the informant as he has said that at that point of time 2-10 persons had reached the place of occurrence along with him, whereas in the FIR, he has merely stated that he was present there at the time of occurrence.

That apart, none of the FIR witnesses have been examined in the case.



It appears that FIR was registered on 18.02.1991 and the same was received on 20.02.1991 in the court. Thus, there was delay of two days for which there was no explanation. Section 157 of the Code of Criminal Procedure is one of sections which have been incorporated in chapter 12 which starts from Section 154 of the Code of Criminal Procedure. Section 154 of the Code of Criminal Procedure relates to registration of the case of cognizable offence. Section 157 of the Code of Criminal Procedure mandates the police to transmit the report of cognizable offence “forthwith” to the concerned Magistrate empowered to take cognizance of such offence. This is a mandatory section and it has to be followed. The mention of word “forthwith” is designed to keep the Magistrate aware regarding investigation of a cognizable offence and also that if some direction is required, such direction can be issued. However, mere delay in dispatching of the FIR may not be a ground to throw away the prosecution case but it is a circumstance which has also to be considered. If the delay is long and there is no explanation then such FIR can be said to be an afterthought and may not be the correct version of the occurrence.

On analysis and scrutiny of the aforesaid facts and circumstances of the case, it has to be held that not asking any question regarding the manner of occurrence from the accused



while examining him under Section 313 Cr. P.C., has definitely caused serious prejudice to the appellant which amounts to failure of justice.

Considering the materials available in records and in view of the discussion aforesaid, we are of the view that the prosecution has not been able to bring home the charges and benefit of doubt has to be given to the appellant.

In the result, this appeal succeeds. Judgment of conviction and order of sentence are set aside. The appellant is acquitted of the charges by giving him benefit of doubt. Since, the appellant is on bail, he is discharged from the liabilities of his bail bonds.

Let a copy of the first page and last page of the judgment be handed over to Mr. Amish Kumar, learned Amicus Curiae so that he may be able to get the prescribed fee from the Patna High Court Legal Service Committee.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	28.05.2018
Transmission Date	28.05.2018

