

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction and order of sentence dated 24.02.1994, passed by Shri Anant Prasad Shrivastava, learned Sessions Judge, Saran, Chapra in S.T. No. 341 of 1987, arising out of Mashrakh P.S. Case No. 134 of 1986)

Criminal Appeal (DB) No.179 of 1994

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1. Shanker Singh, son of Sri Nain Singh
2. Kameshwar Singh, son of Sri Nain Singh
Both resident of Village- Dumduma, Police Station- Mashrakh, District- Saran
.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shambhu Sharan Singh, Amicus Curiae

For the Respondent/s : Mr.

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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: 16-09-2017

On repeated calls, no one appears on behalf of the appellants. Mr. Shambhu Sharan Singh, learned Advocate, who is present in Court, is appointed as Amicus Curiae to assist the Court.

2. The instant appeal has been preferred by the appellants against the judgment of conviction and order of sentence dated 24.02.1994 passed in S.T. No. 341 of 1987, by the learned Sessions Judge, Chapra, whereby the learned Sessions Judge convicted the appellants under Sections 302/34 of the Indian Penal



Code and sentenced to undergo imprisonment for life.

3. The prosecution case in brief is that on 01.08.1986, at about 7.00 P.M., the deceased Dilip Singh was fired by the appellant no.1 and thereafter appellant no.2 gave 2-3 dagger blows on his shoulder and stomach thereafter the deceased raised halla and on his raising halla other witnesses assembled and he was taken to Masrakh hospital. The fardbeyan in the instant case was recorded at Masrakh hospital at 9.45 P.M. allegedly in presence of Dr. Kumar Birendra Prasad. The deceased succumbed to the injuries on the same day at 10.05 P.M.

4. On the basis of the farbeyan Mashrak P.S. case No. 134 of 1986 was registered for the offence under Sections 302/34 of the Indian Penal Code.

5. The police after investigation submitted charge-sheet and the case was committed to the Court of Sessions. Thereafter charges were framed and both the appellants pleaded not guilty and as such the trial commenced against the appellants for offence under Section 302/34 of the Indian Penal Code.

6. During the course of trial, the prosecution examined 13 witnesses. P.W.1 Kailash Sah, who is also an F.I.R.



witness, is the Shopkeeper of the tea stall, where the deceased took the tea before the alleged occurrence. P.W. 2 Parshuram Giri is the Pujari of the temple where the deceased took shelter after the alleged assault. P.W. 3 Sawalia Tiwary is another F.I.R. witness, P.W.4 is Dr. N. K. P. Saha, who conducted the post-mortem, P.W. 5 Paras Singh is a local resident, P.W. 6 Yogendra Manjhi is a Chaukidar, who carried the dead body for post-mortem, P.W.7 Gauri Shankar Tiwari is also a local resident, P.W.8 Mohmood Mistry is a local resident, P.W. 12 is also a local resident, P.W.9 Narendra Prasad Singh is the investigating officer, P.W.10 is Dr. Kumar Birendra Prasad, who examined the deceased, P.W.11 Muneshwar Pathak is the Sub-inspector of Police, who has submitted charge-sheet in the instant case and P.W. 13 Tarkeshwar Singh is the compounder of Mashrakh hospital.

7. Out of the aforesaid 13 witnesses, P.Ws. 1, 2, 3, 5, 7, 8 and 12 are the witnesses connected with the occurrence of the case and rests are formal witnesses.

8. The trial court on the basis of Ext.2, the fardbeyan recorded by the officer-in-charge of Mashrakh police station purportedly recorded in presence of the Dr. Kuamr Birendra Prasad, is the statement of the deceased itself and on the basis of



scrutiny of the evidence of doctor and investigating officer of the case, treating the statement of the deceased made before the police as dying declaration convicted the appellants under Sections 302/34 of the Indian Penal Code and sentenced them to undergo imprisonment for life.

9. Mr. Shambhu Sharan Singh, who is appointed as Amicus Curiae in this appeal to assist this Court on behalf of the appellants, has submitted that in the instant case there is no eye witness. He submitted that the statement of the deceased, which was allegedly recorded by the Sub-inspector of Police in presence of the doctor cannot be taken as dying declaration and conviction only on the basis of the alleged dying declaration is unsustainable. He submitted that the entire investigation in the instant case is perfunctory. Mr. Shmabhu Sharan Singh has drawn our attention to the infirmity in the conduct of the trial. He submitted that the deceased was taken to the hospital alive in injured condition and the officer-in-charge has allegedly recorded the statement at 9.45 P.M. when the doctor, who attended the deceased in his examination-in-chief has found the deceased is pulse less at 10.05 P.M. It is beyond apprehension that the O.D. Slip was sent at 9.30 P.M. to Mashrak police station and within 15 minutes the officer-in-charge of Mashrak



police reached the hospital and recorded the statement, the story of recording of statement pursuant to O.D. slip sent at 9.30 P.M. is under serious doubt. Referring to Ext.5 (inquest report) he submitted that the inquest report was prepared at 11.45 P.M., which is after the information sent by the doctor to the Mashrak police station at 11.30 P.M. Therefore, there is apparent contradiction in the prosecution case on the point of time of recording statement of the deceased by the police. He also highlighted that so long the deceased was conscious and was taken to hospital, he has not disclosed either to P.W.1 or P.W. 2 about the assailant while he was in conscious position. This further creates doubt in the story of recording fardbeyan by the police, as the witnesses have specifically stated in their deposition, particularly, P.Ws.1, 2 and 3 that the deceased remained conscious for 7 - 10 minutes in the temple and thereafter he lost his conscious and he had not named any one while he was conscious that who were the assailant. Mr. Singh also referring to the deposition of other witnesses submitted that all the witnesses, who assembled after the occurrence, have categorically deposed that while the deceased was conscious, even after asking he has not disclosed the name of any assailant and he has become unconscious before he was taken to hospital and as such the story of recording



fardbeyan by the police in presence of the doctor is highly suspicious. Referring to the statement of P.Ws. 6 and 7, he submitted that the deceased was a known criminal and in the totality of the facts situation, the story built up at the hospital about the alleged recording of fardbeyan as to the manner of occurrence implicating the two appellants is full of conjecture and surmises and cannot be a ground to convict the appellants.

10. We have gone through the materials on record. In the instant case there is no eye witness. From the scrutiny of the deposition of the witnesses, who were competent witness on the point of the physical condition of the deceased immediately after the alleged occurrence of firing and stabbing, particularly, P.Ws. 1, 2 and 3 they have categorically stated that the deceased has not disclosed the name of any assailant while he was conscious and he became unconscious within 7-10 minutes when he took shelter at the temple. None of the witnesses accompanying the deceased has stated that the deceased has disclosed the name of these appellants as assailants.

11. We find substance in the submission of Mr. Singh that recording of fardbeyan of the deceased appears to be most improbable in view of the categorical statement of the witnesses that the deceased, while he was conscious, has not disclosed the name of



any of the assailants, much less the appellants and he lost his sense within 10 minutes of the occurrence and as such the deceased was not in a position to make any statement to the police. In addition thereto, we find that the statement of the doctor that the injured was found pulse less and as such it renders the case of prosecution that the deceased's statement, which was the fardbeyan, is most doubtful, if the deceased was pulse less, one cannot accept the prosecution case that an injured in pulse less condition was in a position to make fardbeyan. In addition thereto from the record, it appears that there are contradiction in the record of the hospital as to the information sent to the police and preparation of the inquest report.

12. In view of the aforesaid facts and circumstances, particularly, when there are definite statement of the witnesses that the deceased while conscious has not disclosed the name of any assailant and thereafter he was unconscious, the manner in which the alleged fardbeyan was recorded and treated as being dying declaration for convicting the appellants is not above doubt, particularly, in view of the fact that the defence has raised specific plea of their false implication due to political reason that they have opposed in election of the local M.L.A. and that is why they have been falsely implicated in this case due to political rivalry. Since the



deceased was also veteran criminal, as per the deposition of the witnesses and as such the commission of offence by other rival cannot be ruled out. In the entire case, the prosecution has not been able to attribute any motive against the appellants for committing the murder of the deceased. The cumulative effect of all the shortcomings in the prosecution case leads to only irresistible conclusion that the prosecution has not been able to establish the charge beyond all reasonable doubt. Accordingly, the appellants are acquitted in this case and they are extended the benefit of doubt, as we cannot approve the judgment of conviction on the basis of the fardbeyan, which was treated as dying declaration when the attending facts and circumstances indicate that the deceased was not in a position to make any statement as to the incident and the assailants. More so, when the deceased has not disclosed, while he was alive and conscious immediately after the occurrence.

13. Accordingly, this appeal is allowed. The appellants, who are on bail, are discharged from the liabilities of their bail bonds, pursuant to the order granting bail dated 04.07.1994.

14. Let the 1st and last page of the judgment be handed over to Mr. Shambhu Sharan Singh, who appears in this appeal, as Amicus Curiae for needful.



15. The Patna High Court Legal Services Authority is directed to pay the fixed remuneration to Mr. Shambhu Sharan Singh, who is appearing in this appeal, as Amicus Curiae.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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