

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.268 of 1993

1. Anil Singh, son of Pramod Singh (appellant no.2)
2. Pramod Singh, son of Keshar Singh,
Both residents of village- Maranpur, P.S. Civil Lines, Gaya (accused)

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Animesh Kumar Mishra, Amicus Curiae
For the Respondent/s : Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 06-11-2017

Appellant no.1, Anil Singh is son of Pramod Singh, who is appellant no.2. Both appellants were convicted and sentenced by the Judgment dated 23.04.1993 passed in Sessions Trial No. 325 of 1992/105 of 1992, arising out of Gaya Civil Lines P.S. Case No.233 of 1991. Both the appellants have been convicted under Section 302/34 of the Indian Penal Code and they were directed to undergo rigorous imprisonment for life. Besides this, they were directed to pay a fine of Rs.1000/- each and in default thereof, they were directed to undergo rigorous imprisonment for further six months.



2. Short fact of the case is that on 17.08.1999 at about 10.30A.M. one Sub Inspector of Police, Sri Ram Baboo Prasad of Kotwali Police Station recorded fardbeyan of Ganesh Yadav(P.W.5), son of the deceased. The fardbeyan was got recorded in Pilgrim Hospital, Gaya on the same day i.e. 17.08.1991 at 12.00 noon and after recording fardbeyan, a formal F.I.R. vide Civil Lines P.S. Case No.233 of 1991 was registered under Section 302/34 of the Indian Penal Code against both appellants. In the fardbeyan, the informant disclosed that Anil Singh(appellant no.1) and Pramod Singh (appellant no.2) had taken a room in the house of the informant on rent since they were having small house. Both the accused persons were not behaving properly and this was the reason that about eight days back, they were got evicted. At the time of eviction, accused persons had threatened to kill the informant side by firing and bomb. On 17.08.1991 at about 7.00A.M., both appellants started to block the drain, which was prevented by the informant and his mother, namely, Smt. Dulari Devi. Thereafter, accused persons started abusing and they returned to their house and they came out carrying Chhura (knife). The informant stated that appellant no.1 Anil Singh gave knife blow on left side of the rib of his mother. Thereafter, the informant raised alarm. In the meanwhile, appellant



no.2, Pramod Singh gave second knife blow on the lower portion of the left chest and again Anil Singh (appellant no.1) gave third knife blow, which was hit on the chest of the mother of the informant and she fell down. Thereafter, accused persons fled away. The informant disclosed that he along with Sanjay Kumar and other persons of Mohalla had seen the occurrence and mother of the informant was carried to Pilgrim Hospital for treatment and while she was under treatment, she succumbed to the injuries. The informant claimed that his mother was killed by both accused persons (appellants) by giving knife blow. The said fardbeyan was also witnessed by Ramratan Yadav (P.W.2), husband of the deceased and father of the informant.

3. After recording fardbeyan, Gaya Civil Lines P.S. Case No.233 of 1992 was registered on the same day and the police investigated the case. During investigation, the accusation was found true and, as such, chargesheet was submitted on 01.05.1992 and cognizance order was passed. After completing formalities regarding supply of police papers, the case was committed the court of Sessions on 25.06.1992 and thereafter it was numbered as Sessions Trial No. 325 of 1992/105 of 1992. In the case on 27.08.1992 charge under Section 302/34 of the Indian Penal Code was framed against both appellants. Since both appellants denied



the charges and claimed to be tried, the prosecution to establish its case examined altogether seven witnesses. The informant Ganesh Yadav was examined as P.W.5, whereas husband of the deceased Ramratan Yadav was examined as P.W.2. The daughter-in-law of the deceased, namely, Munni Devi was examined as P.W.3. The doctor, namely, Dr. Mithilesh Kumar Sinha, who had conducted the postmortem examination on the dead body of the deceased, was examined as P.W.6 and the postmortem examination report was got exhibited, which was marked as Ext.1. Shyamlal Thakur (P.W.1) was tendered, whereas Dayal Goswami (P.W.4) had turned hostile. In the case, during trial, one police constable, namely, Rajendra Prasad was examined as P.W.7, who proved formal F.I.R.(Ext.2), inquest report (Ext.4) and even the prosecution got proved paragraph nos.1 to 29 of the case diary and got it exhibited, which was marked as Ext.5.

4. Before proceeding, it is necessary to indicate that on the last date of hearing i.e. 11.08.2017 since none had appeared on behalf of the appellant, the Court, considering the fact that the appeal was of the year 1993, had requested Sri Animesh Kumar Mishra, learned counsel to assist the Court as amicus curiae and, accordingly, he has argued the case.



5. Sri Animesh Kumar Mishra, learned counsel (Amicus curiae) after placing the entire evidence i.e. documentary and oral evidence, has argued that it was a case of no evidence. He has argued that the occurrence had not been seen by any of the witnesses, but it appears that subsequently, the case was made out as if the informant as well as one Munni Devi had seen the occurrence. However, on minute examination of their evidences, it is evident that there are certain inconsistency, which indicates that they were not witness to the occurrence. He further submits that it is a peculiar case, in which without establishing the place of occurrence, the appellants were held guilty and convicted. In the case, neither any seizure list was prepared nor clothes, which the deceased was wearing at the time of occurrence, were got exhibited nor were produced before the trial court. The persons, who were witness to the inquest report, were never produced for their examination and the inquest report was got proved by a police constable. He further submits that though as per prosecution case, the occurrence had taken place at 7.00 in the morning, none of independent witnesses have come forward to support the prosecution case. He submits that one of the witnesses, who was independent witness, namely, Dayal Goswami, was examined as P.W.4, had not supported the prosecution case and, as such, he was



declared hostile. In sum and substance, it has been argued that the prosecution has miserably failed to prove its case beyond all reasonable doubt and the appellants are entitled to be acquitted extending the benefit of doubt.

6. Sri Ajay Mishra, learned Addl. Public Prosecutor has opposed the appeal and submits that in this case, evidence of P.W.3 Munni Devi and P.W.5 Ganesh Yadav (informant) are sufficient to show involvement of both the appellants and, as such, the learned trial judge has rightly held the appellants guilty and passed Judgment of conviction.

7. Besides hearing learned counsel for the parties, we have also perused the entire evidence available on record. After going through the entire evidence, the Court is, prima facie, satisfied that the prosecution had not proved its case beyond all reasonable doubt. In this case, the informant, who has been examined as P.W.5, himself has claimed that in the occurrence, his mother Dulari Devi was done to death by both the appellants, but surprisingly this witness in his evidence has stated that in the occurrence, altercation and abuse by the appellants to the mother of the informant, was going on for an hour and while the dispute was going on, the informant himself has stated that he returned to his house and after half an hour when he came out, he saw that his



mother was stabbed by both the appellants. This witness in his fardbeyan has made specific statement that three knife blow was given on the mother of the informant, but during postmortem examination only two penetrating wounds were found on the person of the deceased. It is also difficult to perceive that a son, in whose presence, his mother was being assaulted, will go away from the place of occurrence and will not try to save his mother, who died subsequently. Surprisingly, the informant in the midst of fight had entered into his house and after half an hour, he came out and, thereafter he had seen the occurrence, which appears to be improbable. So far as evidence of P.W.3, daughter-in-law of the deceased is concerned, it also appears to be suspicious. This witness has stated as if at the time of occurrence, she tried to save her mother-in-law and in that event she was also assaulted, but nothing has been whispered by the informant in the fardbeyan or during examination in the trial court. Subsequently, this witness (P.W.3) was introduced to show as if she had also witnessed the occurrence, which creates serious doubt on the prosecution case. In the evidence of these two witnesses, who were said to be eye witnesses to the occurrence, there are several infirmities. In the case, the prosecution has miserably failed to establish the place of occurrence. It is also peculiar to notice that the informant had



stated that due to rain, no blood mark was found either at the place of occurrence or on the clothes of the deceased or the informant, since a plea was taken that at that very time, there was heavy rain. In a case, in which there was allegation of stabbing injury in the chest, it is difficult to perceive that there was no sign of blood either on the cloth of both of the informant or the deceased or even at the place of occurrence. In the case, the prosecution had not bothered to establish as to at which place the dispute had taken place. Even in respect of the inquest report, though inquest report was prepared in the female ward of Pilgrim hospital, Gaya, the prosecution had not bothered to examine any of the witnesses to the inquest, particularly in view of the fact that in the case during trial the Investigating Officer had already died. In such circumstances, it was mandatorily required on the part of the prosecution to get the inquest report properly proved by a person, in whose presence it was prepared. However, in the present case, inquest report was proved by a police constable, who was not having any connection with investigation or who was not present at the time of preparing inquest report. In this case, formal F.I.R. was proved by the constable, who was examined as P.W.7. So far as allegation of the prosecution that the deceased was given three knife blow is concerned, that allegation also come into cloud on



perusal of postmortem examination report. In the postmortem examination report, only two injuries were found, which was noticed by the doctor, who was examined as P.W.6. At this juncture, it would be appropriate to quote injuries incorporated in the postmortem examination report (Ext.1) of the deceased, which is as follows.

“1. Incised penetrating wound over left 5th intercostal space in left mid clenealer line over left breast size $\frac{3}{4}$ ” x $\frac{1}{4}$ ” x chest cavity deep. There was perpenetration of left lung and breast chamber. Chest cavity was filled of blood and blood clots, 4th and 5th ribs of left side partly sharply cut.

2. Incised penetrating wound over left lateral aspect of lower part of chest size $\frac{3}{4}$ ” x $\frac{1}{4}$ ” into chest cavity deep. There was partial sharp-cut of 7th & 8th ribs of left side. Spleen was found penetrated”

8. The Post-mortem Examination Report makes it clear that on the person of the deceased, there were two penetrating injuries, whereas the informant had made statement as if three knife blow was given on the person of the deceased. This fact creates serious doubt on the prosecution case. Moreover, in the present case, none of the neighbours of the informant or independent witnesses have come forward to depose as if occurrence had taken in their



presence, whereas the informant has stated that other persons had also seen the occurrence. One fact has also been noticed that in the Mohalla/Colony, where appellants were residing, there were only accused persons of a caste other than the caste of the informant and during trial itself, the informant has accepted that he had purchased the house/land from the appellants through a registered sale deed. This transaction was made much after the occurrence of the present case. It also appears that on meager consideration amount, the sale deed was executed.

9. The evidence of P.W.3 Munni Devi also creates serious doubt on the prosecution case since earlier the informant in his deposition has not stated as to whether Munni Devi had tried to save the deceased and in that event she had received injury or not, but during her evidence Munni Devi has stated that while trying to save her mother-in-law, she was also assaulted and she had received injury, but no injury report of Munni Devi was brought on record save and except her statement, which has been made during trial.

10. After closure of the prosecution evidence, though formality was done to explain evidences collected during investigation against the appellants, while recording statement under Section 313 of the Code of Criminal Procedure, on perusal of statements



recorded under Section 313 of the Code of Criminal Procedure, the Court is satisfied that the prosecution had not substantiated the circumstances, which were placed before him and, as such, recording of statement under Section 313 of the Code of Criminal Procedure was not in accordance with law.

11. In view of facts and circumstances, particularly inconsistency in the evidence, it is evident that the prosecution had not established its case beyond all reasonable doubt and, as such, the Court is of the considered opinion that it is a fit case to pass order of acquittal extending the benefit of doubt to the appellants. Accordingly, the Judgment of conviction and sentence dated 23.04.1993 passed by the learned 11th Addl. Sessions Judge, Gaya in Sessions Trial No.325 of 1992/105 of 1992 is hereby set aside and the appeal is allowed.

12. Since the appellants are on bail, they are discharged from the liability of their bail bonds.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

nawalkrs/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
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