

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.618 of 2012

Arising Out of PS. Case No.-157 Year-1990 Thana- BIHPUR District- Bhagalpur

Arjun Mahto, S/O Late Sahdeo Mahto, Resident of Village- Marwa, P.S. Bihpur (NAUGACHIA), District Bhagalpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 557 of 2012

Arising Out of PS. Case No.-157 Year-1990 Thana- BIHPUR District- Bhagalpur

Daso Mahto. S/O Late Sahdeo Mahto @ Sahdeo Choudhary, R/O Village - Marwa, P.S. Bihpur (Naugachia), District - Bhagalpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 618 of 2012)

For the Appellant/s : Mr. Om Prakash Singh, Advocate

For the Respondent/s : Mr. A.K. Sinha (APP)

(In Criminal Appeal (DB) No. 557 of 2012)

For the Appellant/s : Mr. Om Prakash Singh, Advocate

For the Respondent/s : Mr. A.K. Sinha (APP)

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 14-11-2017

We have heard parties and have perused the records of these appeals.

The appellants have filed these appeals assailing the judgment of conviction dated 3.05.2012 and order of sentence



dated 7.05.2012 passed by Additional Sessions Judge-I, Naugachia in Sessions Trial No. 694 of 1992, T.R. No. 88/2011 arising out of Bihpur P.S. Case No.157 of 1990 by which the appellants have been convicted for the offences punishable under Sections 302/34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life with a fine of Rs.10,000/-each and in default of payment of fine, they have further been sentenced to undergo simple imprisonment for five months.

The prosecution case, in brief, is that on 12.09.1990 at about 11.00 P.M. the informant Jai Kishore Singh gave a fardbeyan stating therein that the servant of one Dhaneshwar Sharma. On previous night of 12.09.1990, the informant along with Mahindra Sharma (deceased) were sleeping at the 'Basa' of Jaideo Baba situated at north to the Assam Road, Jhandapur Chowk in Fulwari. At about 11.00 P.M. in the night, on hearing the sound of throttling (gagging) of Mahendra Sharma, the informant woke up and saw that two persons were pressing the neck of Mahendra Sharma (deceased). On inquiry by the informant, the appellants threatened the informant to keep silence otherwise they would also kill him. The informant identified them as Arjun Mahto and Daso Mahto. According to the informant, Arjun Mahto gave a 'Kulhari' (axe)



blow on the throat of Mahendra Sharma and at that time Daso Mahto had caught the hands of Mahendra Sharma. The informant also saw that two persons were standing on the road but he could not identified them. After assault, Daso Mahto threatened the informant that if he will disclose about the occurrence anywhere to anybody, they will kill him also. Thereafter, both the appellants fled away towards north side of the 'Basa'. It is further said that the informant ran towards Chowk and the injured Mahendra Sharma also ran behind him from the place of occurrence and reached near the Petrol Pump and fell down. In the meantime, the nearby people and shopkeeper assembled there. It is also said that Jamadar of the Jhandapur OP had also reached there and they sent the injured to Naugachiya Hospital for treatment. The statement of the informant was recorded. The reason behind the occurrence as alleged by the informant in his fardbeyan is that about 15 days back to the occurrence, the informant was assaulted by the appellant Arjun Mahto because the informant's buffalow had entered in his field on which Mahendra Sharma and his brother had abused Arjun Mahto.

On the basis of aforesaid fardbeyan, the FIR was registered under Sections 324, 307/34 of the Indian Penal Code vide Bihpur P.S. Case No.157 of 1990. Later on, Section 302/34 was also



added. The police took up the investigation of the case. After investigation, the police submitted charge sheet against the appellants under Sections 302/34 of the Indian Penal Code. Thereafter, the Additional Chief Judicial Magistrate, Naugachia took cognizance and committed the case to the court of sessions, where charges were framed, to which, the accused persons pleaded not guilty. Thereafter, trial started against the appellants.

During trial, the prosecution has examined altogether eleven witnesses in support of its case. P.W. 1 is Kishore Singh @ Jai Kishore Singh, P.W. 2 is Sadanand Sharma, P.W. 3 is Sikandar @ Siko Sharma, P.W. 4 is Upendra Sharma, P.W. 5 is Ghutar Sao, P.W. 6 is Dhaneshwar Sharma, P.W. 7 is Shrawan Kumar Modi, P.W. 8 is Sarbeshwar Yadav, P.W. 9 is Pawan Kumar Rai, P.W. 10 is Rajendra Sharma and P.W. 11 is Dr. B.P. Chaudhary.

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 charges against the appellants and, as such, the 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?

On careful scrutiny of evidence of witnesses and on the basis of materials available on the record, it is crystal clear that out of eleven witnesses, P.Ws.2, 5, 9 and 10 have been declared hostile as they have not supported the prosecution case rather they have simply stated that they know nothing about the alleged occurrence and also that their statements were never recorded by the Investigating Officer. P.W. 8 is a formal witness, who has identified the signature of Ram Nagina Rai, the then Officer-in-charge of Bihpur police station. P.W. 1, who is the informant, has claimed to see the whole occurrence through his own eyes. P.W.3 and P.W. 4 are brothers of the deceased. P.W. 6 is the father of the deceased. P.Ws. 3, 4 and 6 have stated in their respective evidence that when they had reached at the place of occurrence, they saw the blood on Chauki.

From the perusal of the first information report and appraisal of the testimony of the witnesses, it appears that the informant is the sole eye witness of the occurrence as he was sleeping along with the deceased when in the midnight he saw that the accused persons caught hold of the deceased and Arjun Mahto assaulted him by axe on his neck. Apart from the two appellants, two other



unknown persons were also standing nearby. Since he is the sole eye witness, the case has to be carefully considered. In the FIR he has stated about the occurrence in the midnight but has not stated anywhere as to under which source of light he could recognise the assailants. He has admitted that he was serving the deceased but strangely the master and the informant were sleeping on the same cot and though serious injury was inflicted upon the deceased, the blood could not stain the clothes of the informant. This is further intriguing that after the assault, as stated by the informant in his fardebeyan as well as in his testimony before the court, the deceased ran up and came to a petrol pump and then fell down there on the cot. It is stated that the petrol pump is at a distance of about 200 yards from the place of occurrence. It is intriguing that, even after receiving such type of serious injury, the deceased could run about 600 feet. Though some of the witnesses have stated that they found blood stain on the *chauki* but sample of such blood stain has not been exhibited or produced before the court. There is a marked contradiction between the statement made by the informant in his fardebeyan and his deposition before the court as PW 1. In his fardebeyan he has stated that after assault he ran away and came to the *chauki* and behind him the deceased injured also came running and reached the petrol pump



which was at the distance of 200 yards and fell down but during his examination as PW 1, he has stated that it was the deceased who first ran away and he ran after him. Therefore, the first person to reach to the petrol pump was the deceased and not the informant according to his evidence but according to the F.I.R., the first person to reach the *chauki* was the informant himself and the deceased came running behind him up to the petrol pump. Both versions cannot be correct at the same time.

The independent witness viz. Shrawan Kumarm Modi, who has been examined as PW 7, has stated in his evidence that he runs a “Paan” Shop and in fact the injured Mahendra Sharma came running towards his shop and fell down and after about 10 minutes, his servant also came. The deceased after reaching there fell down on the cot and he had shown his injured neck then PW 7 informed the incident to the petrol pump owner. This version contradicts the version of the informant which has been given by him before the court as PW 1 as according to PW 7 he came ten minutes after the deceased which raises a serious doubt about his being with the deceased at the time when he was assaulted by somebody. There is no reason why the version of the independent witness, i.e., PW 7 should be disbelieved. That apart, in the fardebeyan the informant has stated about the genesis of the



occurrence which was about 15 days back when his she-buffalo went in the agriculture field of Arjun Mahto, on which Arjun Mahto assaulted him then the deceased and his brother abused him and threatened to assault him also. If this is considered to be correct then it is intriguing as to why he was spared by the appellants? Why, though he could easily identify the culprits, they allowed him to survive to file a case against them? It does not appear to be a natural conduct. That apart, PW 10, Rajendra Sharma, is the own brother of the deceased but he has not supported the case of the prosecution and he has been declared hostile. The witness of the fardebeyan Sadanand Sharma has also become hostile. Though as per the seizure list blood stained *Gamachha* was seized by the police from the place of occurrence but such *Gamachha* was never produced before the court as material exhibit.

Having regards to the aforesaid discussions, we are of the opinion that several doubts have arisen in this matter specially with respect to fact that the informant was an eye-witness and, as such, it will not be possible to uphold the conviction of the appellants on the basis of the sole eye witness PW 1.

Considering the facts and circumstances of the case, these appeals are allowed. Judgment of conviction and order of



sentence passed by the trial court are set aside. They are acquitted of the charges by giving them the benefit of doubts.

The appellant of Cr. Appeal (DB) No.618 of 2012, namely, Arjun Mahto, who is in jail custody, would be required to be released forthwith, if not wanted in any other case.

Since the appellant of Cr. Appeal (DB) No.557 of 2012, namely, Daso Mahto is on bail, he is discharged from the liability of the bail bonds.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
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