

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.136 of 2007

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

- =====
1. Hari Sonar, son of Late Sri Kishun Sao.
 2. Babloo Sonar, son of Sri Hari Sonar.
Both resident of Mohalla-Naya Tola, Bhikhanchak, Naharpar, Chitkohra, P.S.
Gardanibagh, District Patna. Appellants.

Versus

The State of Bihar Respondent.

=====

Appearance :

For the Appellants : Mr. Devendra Kumar Sinha, Sr. Adv.
Mr. Abhinay Raj, Adv.
Mr. Pramod Kumar Sinha, Adv.
For the Respondent : Mr. A.K. Sinha, Adv.

=====

**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
AND
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date: 26-07-2017

This appeal has been preferred against the judgment and order of conviction dated 19.01.2007 and order of sentence dated 20.01.2007 passed by the learned Additional Sessions Judge, Fast Track Court No.1, Patna in Sessions Trial Case No.1280 of 2004/Tr. No.65 of 2006, arising out of Gardanibagh P.S. Case No.699 of 2003, whereby convicted the appellants, namely, Hari Sonar and Babloo Sonar for the offence punishable under Section 302/34 of the Indian Penal Code and further convicted appellant Babloo Sonar for the offence punishable under Section 27 of the Arms Act and sentenced them to undergo imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code and further sentenced appellant no.2-Babloo Sonar to undergo rigorous imprisonment for



three years for the offence punishable under Section 27 of the Arms Act. Both the sentences of appellant Babloo Sonar were directed to run concurrently.

2. The factual matrix of the case is that Gardanibagh P.S. Case No.699 of 2003 was instituted under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act against the appellants and two to three unknown miscreants, on the basis of the fardbeyan of Smt. Minta Devi recorded by S.I. B.P. Singh on 23.10.2003 at 11 PM at Chitkohara Bazar, Sabjimandi with the allegation in succinct that in the night of fateful day she along with her elder son Raj Kumar (deceased) and younger son Kunal Kumar was vending vegetables at her shop located in the Sabjimandi, Chitkohara Bazar. At around 9 PM, Babloo Sonar, Hari Sonar along with 2-3 unknown miscreants arrived at her shop and took her son Raj Kumar with them. After a short while, she heard a loud sound amidst bursting of crackers and hulla that Babloo Sonar after gunning down Raj Kumar Rajak has fled towards mosque along with his father and others. On hearing the hulla, she along with her son Kunal Kumar rushed and when they come near the mosque located near the bridge on Chitkohara Bazar road they found blood oozing from the head of Raj Kumar. Her son divulged that Babloo Sonar had shot at him in companion of his father Hari Sonar (appellant no.1) and others. Soon



thereafter, her son died. Then, she took the dead body of her son to her shop at Sabjimandi. After sometime, the police of Gardanigabh P.S. arrived and took the dead body of the deceased in its custody. The bone of contention is said to be that two months back Babloo Sonar had kidnapped her daughter's son (Nati), namely, Deepak Rajzak and demanded ransom of Rs.1 lac in lieu of his release. She could not cough up his demand. Her daughter's son any how managed to escape from his captivity. Due to the aforesaid reason, Babloo Sonar and his father along with others gunned down her son.

3. The aforesaid case was investigated by the I.O. and on conclusion of the investigation and finding the case to be true, the I.O. submitted chargesheet under Sections 385/302/34 of the Indian Penal Code and Section 27 of the Arms Act against the appellants. On perusing the chargesheet & case diary, the learned Magistrate took cognizance of the offence under Sections 385/302/34 of the Indian Penal Code and committed the case to the Court of Sessions for trial, which on transfer came before Additional District and Sessions Judge, Fast Track Court No.1, Patna for trial. The charge under Sections 385/302/34 of the Indian Penal Code and Section 27 of the Arms Act was framed against the appellants, to which they pleaded not guilty and claimed to be tried.

4. To substantiate its case, the prosecution has



examined altogether six witnesses. Bijendra Razak, the father of the deceased, as P.W.1, Kunal Kumar, the brother of the deceased, as P.W.2, Rajni Devi, sister of the deceased, as P.W.3, Minta Devi, mother of the deceased, as P.W.4 (informant), Dr. Arun Kumar Singh, who conducted the autopsy of the dead body, as P.W.5 and Ambika Prasad Singh, an Advocate's Clerk as P.W.6. Out of the aforesaid witnesses, P.W.6 happens to be a formal witness. In documentary evidence the prosecution has also filed several documents.

5. The statements of the appellants were recorded under Section 313 Cr.P.C. The case of the defence is complete denial of the offence claiming themselves to be innocent. In buttress of their case, the appellants have examined one witness, namely, Raj Kumar as D.W.1.

6. After hearing the parties and perusing the records, the learned trial Court convicted the appellants under Section 302/34 of the Indian Penal Code and further convicted the appellant no.2- Babloo Sonar for the offence punishable under Section 27 of the Arms Act and sentenced them as detailed in earlier paragraph.

7. Being aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence, the appellants have preferred this appeal.

8. The point for consideration in this appeal is as to



whether the prosecution has been able to bring home the charge levelled against the appellants beyond all reasonable doubt.

9. It has been submitted by learned counsel for the appellants that all the material witnesses happens to be the family members of the deceased and there is vital contradictions in their statements inter se and between their testimony and the prosecution case as narrated in the fardbeyan. In view of the aforesaid contradictions, the statements of the witnesses does not appear to be reliable and worth credence. The occurrence is said to have taken place in a crowded area near mosque on the Chitkohara Bazar road but no independent witness has been examined by the prosecution which creates serious doubt about the prosecution case. Appellants are said to have taken the deceased with them from his vegetable shop located in Sabjimani, Chitkohara Bazar and gunned him down but as per the prosecution case and account of P.W.2-Kunal Kumar the appellant-Babloo Sonar was in inimical terms with the deceased so it is against the natural course of conduct that the deceased would accompany the appellants who happens to be on inimical terms with the deceased and none has seen the appellants taking the deceased with them so the theory of last seen does not stand established. It has further been submitted by learned counsel for the appellants that the injury sustained by the deceased was such grievous that he might not



be in a position to speak. Thus, the story of the prosecution that the deceased divulged the name of the appellant no.2-Babloo Sonar as his assailant to the informant does not appear to be acceptable and convincing. Further submission is that the place of occurrence was crowded place but none has seen the appellant escaping from the place of occurrence after allegedly committing the occurrence. The I.O. of the case has also not been examined by the prosecution so the place of occurrence does not stand established due to non-examination of the I.O. The contradiction between the statements of witnesses recorded in the Court and that recorded before the I.O. under Section 161 Cr.P.C. could not be corroborated causing great prejudice to the appellants. Thus, the prosecution case has failed to substantiate its case beyond all reasonable doubt on all the aforesaid counts.

10. On the other hand, learned A.P.P. vehemently opposing the submission of the learned counsel for the appellants has submitted that the learned trial Court has passed the impugned judgment and order of conviction and sentence correctly appreciating the evidence & facts and law involved in the case and the same is correct, legal and valid and this appeal has no merit in it and is liable to be dismissed.

11. Heard the parties and perused the records.

12. From perusal of the records, it appears that as per



the fardbeyan of the informant at the time of occurrence she was sitting at her vegetable shop located in Sabjimandi of Chitkohara Bazar along with his sons Raj Kumar and Kunal Kumar and after taking away Raj Kumar by the appellants and others there was loud sound & hulla. On hearing hulla, she rushed to the place of occurrence only with her son Kunal Kumar. But, in quite contradiction to the aforesaid prosecution case, the informant, P.W.4 has stated in her examination-in-chief about the presence of her husband (P.W.1) and daughter Rajni Devi (P.W.3) also along with her son Kunal Kumar (P.W.2) at her shop who also rushed to the place of occurrence with them. As per the fardbeyan, the informant (P.W.4) took the dead body of her son, Raj Kumar from the place of occurrence to her vegetable shop located at Sabjimandi, Chitkohara Bazar before arrival of the police and no police had arrived at the place of occurrence by that time but in quite contradiction to the aforesaid case of the prosecution the informant has stated in her examination-in-chief that S.I. had arrived at the place of occurrence and taken the dead body in his custody. As per the statement of the informant, as stated in the fardbeyan, her son Raj Kumar divulged the name of Babloo Sonar (appellant no.2) as his assailant before his death but, in quite contradiction to the aforesaid statement of the informant P.W.2, who was her companion to the place of occurrence has stated that Raj



Kumar (deceased) had divulged the name of Hari Sonar and Babloo Sonar as his assailants. As per the statement of the informant (P.W.4), as mentioned in the fardbeyan, two months before the occurrence, Babloo Sonar had kidnapped her daughter's son and demanded ransom of Rs.1 lac in lieu of his release but she could not cough up his demand and any how the victim had escaped from the captivity of the Babloo Sonar and due to the aforesaid animosity the appellant no.2 has murdered his son. Likewise, P.W.2 has also stated in his examination-in-chief that Babloo Sonar had kidnapped his nephew for ransom and demanded ransom from him but as they did not cough up the demand of ransom he committed the occurrence, but, in quite contradiction to the aforesaid prosecution case and the statement of P.W.2, P.W.1 who happens to be the father of P.W.2 and deceased and husband of the informant, has vented his ignorance about the motive of the occurrence. As per the statement of the informant as recorded in the fardbeyan, Babloo Sonar (appellant no.2) along with his father Hari Sonar (appellant no.1) and 2-3 unknown miscreants had arrived at her vegetable shop and took her son Raj Kumar (deceased) with them. But, in quite contradiction to the aforesaid prosecution case, P.Ws.1, 2, 3 and informant herself in their respective examination-in-chief have taken only the name of the appellants, Hari Sonar and Babloo Sonar as the person arriving at the



shop of the informant and taking the deceased with them.

13. Thus, from the above discussions, it appears that there are vital contradictions between the prosecution case and the statements of witnesses and also between the statements of witnesses inter se. As the aforesaid four witnesses happens to be the informant, her husband, son and daughter, they happen to be highly interested witnesses of the case and in view of aforesaid vital contradictions their testimonies do not appear to be worth credence and reliable and do not inspire our confidence to uphold their conviction.

14. As per the prosecution case and the statement of the witnesses, the place of occurrence was surrounded by several shops and the number of people had congregated at the place of occurrence but none of the independent witnesses have been examined by the prosecution to substantiate the escaping of the appellants from the place of occurrence none of the witness has come forward with the claim to have seen the appellants at the time of occurrence. There is no eye witness of the occurrence and it appears to be a case of circumstantial evidence.

15. As per the prosecution case, the appellants Hari Sonar and Babloo Sonar took the deceased with him at the time of occurrence and after a short while of taking of the deceased with them, the occurrence of gunning down of the deceased took place.



Thus, the appellants appear to be last seen with the deceased. But, as discussed hereinabove in the earlier paragraphs, there is contradiction between the prosecution case and the statement of the witnesses about the number of persons taking the deceased with them at the time of occurrence. Appellant no.2-Babloo Sonar and his father appellant no.1-Hari Sonar are said to have taken the deceased with them. As evident from the fardbeyan and the statement of P.W.2, there was animosity between the Babloo Sonar and the deceased over kidnapping of the nephew (Bhagina) of the deceased, namely, Deepak Kumar two months ago by Babloo Sonar and demanding of ransom of Rs.1 lac by him for release of the victim but not coughing up the demand and escaping of the victim from his captivity suo motu. So once the Babloo Sonar was on inimical terms with the deceased then how the deceased would have accompanied said Babloo Sonar and his father in the night. It is against the natural course of conduct and beyond all stretch of imagination that a person would go with a person who is on inimical terms that too in the night. Moreover, there is no case of the prosecution that the appellants forcibly took the deceased with them. So the story of the prosecution of last seen of the appellants with the deceased appears to be not convincing and acceptable.

16. Then, the only fact remains to indicate the



complicity of the appellants in the occurrence is that the deceased just before his death has named the appellant no.2-Babloo Sonar as his assailant. Regarding the aforesaid assertion, there is also contradiction between the fardbeyan and the statement of the witnesses as discussed by us in the earlier paragraphs. Moreover, from perusal of the injury, found by the doctor, conducting the autopsy of the dead body of the deceased, as ante-mortem injury on the person of the deceased it appears that the doctor has found one entry wound of 1" diameter with surrounding lacerated wound of 3 ¼"x2½" on the back of neck, below occipital tubercle, 4" from left ear and 4" from the right ear, margin lacerated, inverted and blackened with fracture underlying bone 1st cervical vertebra and exit wound 1"x ½" on left cheek, 2½" from left ear 2" from left mouth angle and 2" below from eyebrow corner with fracture of underlying bone mandible. The said injuries are such that for a person sustaining such injuries and of such magnitude on his head, neck and cheek, it is quite impossible to speak. So, in our considered view, these injuries would also rule out the case of the prosecution with regard to divulgence of the names of the appellants by the deceased to the informant just preceding to his death. I.O. of the case has also not been examined by the prosecution and due to non-examination of the I.O., the contradiction between the statement of the witnesses as given



in Court and that before the I.O. under Section 161 Cr.P.C. could not be corroborated by the defence causing great prejudice to the appellants.

17. Considering the aforesaid facts and circumstances of the case, we find that the prosecution has utterly and miserably failed to substantiate the case and the guilt of the appellants beyond all reasonable doubts. In the result, the impugned judgment and order of conviction & sentence passed by the lower court is set aside and the appeal is allowed. As the appellants are on bail, they are discharged from the liabilities of bail bonds.

(Samarendra Pratap Singh, J.)

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07.08.2017
Transmission Date	07.08.2017

