

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.42 of 2016

Arising Out of PS. Case No.-75 Year-2008 Thana- NOKHA District- Rohtas

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1. Govind Ram Son of Late Samundra Ram,
 2. Laxmi Narain Ram, Son of Govind Ram, Both are residents of village - Tilai, P.S. - Nokha (Dharampura), District - Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vikram Deo Singh & Mr. Arvind Kr. Pandey, Advocates
For the Respondent/s	:	Mr. S.N.Prasad APP
For the Informant	:	Mr. Raghunandan Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date : 15-11-2017

Appellant Govind Ram (A1) and appellant Laxmi Narain Ram (A2) are father and son. They stood charged under Section 302 of the IPC and Section 27 of the Arms Act, besides other minor penal provisions of the I.P.C. By the impugned judgment dated 3rd day of November, 2015 passed in Sessions Trial no. 594 of 2008 A1 is convicted under Section 302/34 of the IPC and sentenced to suffer R.I. for life whereas A2 convicted under Section 302 of the IPC and sentenced to suffer R.I. for life. Both of them were also held guilty under Section 27 of the Arms Act for which separate sentence was imposed. The learned



Trial Court, however, acquitted Ram Das Ram, Ramakant Ram and Rakesh Ram, who too were charged under Sections 147, 148, 302 and 323/149 of the IPC.

2. Facts and circumstances leading to the trial are as follows:- Informant Gopichand Ram (PW5) lodged a 'Fardbeyan' on 19.6.2008 at 4.45 P.M. at the Sasaram Sadar, Hospital alleging that on the previous night his house was forcibly thatched by the accused persons. In the morning the matter was reported to the police whereafter the police arrived and admonished them not to quarrel and instructed both the parties to come to the police out post with their papers. After the police left, it is alleged, that at about 1 P.M. in the day, the appellants armed with country made pistol and rifle together with other accused(s) arrived at the house where the informant, his cousin brother Vimal Ram (deceased), Dhanji Ram, Akhilesh Ram and Pramod Ram (PW2) were sitting. At the instigation of other co-accused A1 fired from his country made pistol (katta) upon the deceased in his abdomen whereafter A2 also fired from his rifle causing injury on the abdomen of Vimal Ram. Seeing the firing the other persons present there started fleeing from the place of occurrence. Other co-accused(s) (since put on trial and acquitted) assaulted Dhanji Ram, the



informant and other witnesses including PW3, Reshma Devi(wife of the informant) and PW4 Dharmawati Dei (wife of the deceased). After thrashing them the accused persons left the place of occurrence. The injured Vimal Ram was taken to hospital at Sasaram for treatment but he died on the way. The recording of the 'Fardbeyan', at the hospital by the informant ignited an investigation which was taken up by PW-7. It may be noted that the police had also registered a counter case against the informant of the present case and one Dhanji Ram on the basis of the 'Fardbeyan' made by A1 while admitted at the Sadar hospital, Sasaram. A death inquest proceeding was conducted at the hospital itself witnessed by PW-2 and informant, (PW4). The postmortem examination on the dead body was conducted by PW-8 (Sidheshwar Prasad Singh) on 19.6.2008. The autopsy report furnished by the doctor is Ext. 3.

3. On conclusion of investigation charge sheet was filed leading to the present trial on the file of the learned Trial Judge where charges were framed and read over/explained to the appellants to which they pleaded not guilty and claimed to be tried.

4. The defence of the appellant was false implication due to long standing enmity between them. Several documents



vide Exts. A- 'Fardbeyan' of A1, Ext. B- Charge sheet filed in said case lodged by A1, Ext-C, D, E and F which are injury reports of A1 and A2 were filed which was duly proved by DW1.

5. To establish the prosecution case beyond shadow of doubt, the prosecution examined 08 PWs. PW-1 Raj Keswar Ram, PW-2, Pramod Ram, PW-3 Reshma Devi, PW-4 Dharmawati Devi and PW-5 have testified as eye witness to the occurrence. Some of them also claimed to have received injury at the hands of the other co-accused(s) (since acquitted). However, their injury reports have not been produced at the trial. PW-6 Kedar Singh is a formal witness who has proved the 'Fardbeyan' and the relevant part of the case diary etc. PW-7, as stated above, is the police officer who was then posted at Nokha police station and conducted the investigation. PW-8 is Dr. Sidheshwar Prasad Singh who conducted the postmortem examination and proved the postmortem report (Ext.3).

6. On critically analyzing the evidence adduced at the trial, the learned Trial Court, found the ocular account narrated by PWs 1 to 5 containing the grains of truth and held the appellants guilty.

7. Heard Mr. Vikdramdeo Singh, learned advocate for



the appellants, counsel for the informant and the APP for the State. Perused the evidence on record.

8. Learned counsel for the appellants has submitted that the first version of the prosecution case has been suppressed by the prosecution. Informant has said about giving statement at the police station whereas the present FIR was recorded at the Sadar hospital, Sasaram. He has not stated about going to Sasaram in connection with treatment of the victim. In this connection, he also cited the evidence of PW-3 Reshma Devi wife of the informant who had candidly stated to have made the first statement before the police and put her thumb impression and the case was registered on her statement. Secondly, it has been submitted that the manner of occurrence, as depicted by the prosecution, is doubtful. There is sharp contradiction between the ocular account given by the prosecution and the objective finding of the doctor (PW8) in the postmortem report (Ext.3). Almost all the prosecution witnesses have stated about the firing twice at the deceased, firstly, by A1 and then by A2 which hit him. The doctor found only one injury on the dead body. Almost all prosecution witnesses are specific in stating about such firing at the deceased from a distance of 10 paces to 25 paces. The doctor found the wound of entry caused by fire



arm surrounded by burnt skin which indicates firing from a very close range. It is also the consistent prosecution case that the deceased was assaulted with lathi causing several injuries to him. The doctor, however, specifically states that except the two injuries communicating to each other caused by fire arm no other injury was found on the dead body. He would also urge that the prosecution miserably failed to prove the genesis of the occurrence. The appellants had also received grievous injuries in course of the occurrence vide Exts. C, D, E and F but the prosecution has failed to explain those injuries. The immediate reason for the occurrence was the forcible thatching of the hut/house by the appellants which was claimed by the prosecution. PW1 has, however, admitted that the hut on which the accused(s) had worked on in the night was situated within the boundary of the house of the appellants. Although PWs, 3,4 and 5 claimed to have received injury in course of the occurrence but they have not placed on record any document in support thereof. In fact, the Court, on an appraisal of the evidence, acquitted the appellants of the charge punishable under Sections 323/149 of the IPC. Three accused(s) taking the trial with allegation of their participation in the crime have been acquitted. Part of the prosecution case thus stands disbelieved.



9. Learned counsel for the informant and the State, however, supported the findings of the guilt recorded by the learned Trial Court. They would submit that the place of occurrence and the time of occurrence stand proved from the evidence on record. The deceased died of fire arm injury is also proved. True it is that the incident on the relevant date and time of occurrence gave rise to two versions of the case but the first case was lodged by the informant. Subsequently, the second case was lodged by A1.

10. As the contention of the appellant is principally based on the objective finding of the doctor, it is apt to first examine the relevant findings of the autopsy surgeon in the autopsy report. The doctor (PW8) found the following antemortem injuries:-

“External injury

1. About 1”x 1” x cavity deep lacerated wound over Rt. Side abdomen below coastal margin mid auxiliary line. Margin inverted. Burn of the skin around wound.

2. About 2”x 2” x cavity deep lacerated wound over mid abdomen just below and Rt to umbilicus, margin everted, omentum protruding through the wound

Note On probing wound no.1 and 2 communicating each other hence wound no.1 is wound of entry and wound no.2 is wound of exit.”



11. The doctor, on dissection, found the stomach containing the semi digested food in the gut. In his cross-examination, he specifically stated that except the two above injuries no other injuries was found by him on the cadaver.

12. We have carefully gone through the evidence of PWs, 1,2,3, 4 and 5. All of them in unambiguous manner have stated about firing at the deceased twice by fire arm which hit the deceased. The first firing was made by A1 followed by the firing made by A2. PW-5 has stated about firing made at the deceased from a distance of 10 ft whereas PWs 1 and 3 have stated that such firing was resorted at the deceased from a distance of 25 ft and 20 paces respectively. PW-5, PW-3 and PW4 have also stated about the assault on the deceased by the other accused persons with lathi causing several injuries. PW-3 (wife of the informant) has gone to the extent of alleging that the deceased had received 40 to 50 assault on his entire body caused by lathi and she could notice blood oozing from those wounds. Some of the injuries were also caused by lathi on his head. Surprisingly, the doctor did not find those injuries. He was not even cross examined on this point by the defence.

13. The old enmity between the parties is well expositied. PW-5(informant) has stated that the parties were



logged in a land dispute since last 06 years inasmuch as Court proceedings were also pending between them. We are also mindful of the fact that co-accused(s) Ram Das Ram, Ramakant Ram and Rakesh Ram who are distantly related to the appellants and against whom there was specific allegation of causing injury to the victim by lathi by almost all witnesses were acquitted by the learned Trial Court on finding no satisfactory evidence against them. In a case where the deep routed enmity between the parties is established the chances of false implication becomes brighter. In the case of **Sri Niwas vs. Ram Bharosey & Ors.** since reported in AIR 1994 SC 1539 the Apex Court held that if the oral testimony of witnesses irreconcilably in conflict with the medical evidence it can safely be presumed that true picture of the occurrence was not placed by the prosecution before the Court. The accused persons would be entitled to the benefit of doubt. The medical evidence materially contradicts the prosecution case both on the number of injuries caused by fire arm sustained by the deceased as well as distance from which it was fired. The doctor found burn marks around the wound of entry whereas the consistent case of the prosecution is that both the appellants had fired from a distance ranging from 10 ft. to 20 ft. Presence of burn injury on



the victim also discredits the ocular account given by the prosecution. The Apex Court had an occasion to deal with the said aspect of the case in **AIR 2016 SC 4150 (Pankaj v. State of Rajasthan)**. It was held that in a case it was due to injuries or wounds caused by lethal weapon it is always the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with weapon with which and in manner in which they are alleged to have been caused. After taking note of the view expressed in Modi's jurisprudence (24th Edition) the Apex Court held that the findings of the doctor not compating with the prosecution case it was not appropriate to convict the appellants by ignoring such an important aspect.

14. In relation to the incident in question A1 had also lodged a case. The evidence of the I.O. clarifies that while A1 and A2 were admitted in Sasaram hospital, the 'Fardbeyan' of A1 was recorded by him and both of them were taken into custody and placed under the custody of the constable. After the recovery of their injuries the appellants were produced before the Court after four days. Many witnesses including the informant have admitted that a case was lodged by A1 in relation to the same incident against the informant (PW-5) and



one Dhanji Ram. Ext. A is the F.I.R. of the counter version whereas Ext. B is the charge sheet filed in the case. Every witness has denied to have caused any injury to the appellants. The evidence on record leave no room of doubt that the appellants had also received injury in course of the incident. If the prosecution is silent on how such injury was sustained by the appellants in course of the occurrence a serious doubt is cast on the prosecution case about narration of true facts before the Court. Reference in this regard be made to the case of **Lakshmi Singh & Ors. vs. State of Bihar (AIR 1976 SC 2263)** wherein it was observed that non-explanation of the injuries sustained by the accused is an important circumstance from which the Court can draw the inference that the prosecution has suppressed the genesis and the origin of the occurrence and has , thus, not presented the true version or that the witnesses who had denied the presence of the injuries on the person of the accused(s) are lying on a most material point and their evidence is unreliable.

15. The bone of contention between the parties was the sharing and possession of a tract of land on which the appellants had forcibly constructed the roof. PW-1 is an independent witness. He has stated that the place where construction of the roof was underway was within the boundary of the appellants.



The I.O. has also found so. These facts, clearly established at the trial create a doubt about the truthfulness of the prosecution case. What adds to this is the statement of PW-3 when she asserts that her statement was first recorded by the police whereafter she put her thumb impression on which the case was established. The statement of the informant and other witnesses were recorded thereafter. Conversely, the informant has specifically stated that after the incidence he had gone straight to the police station where he made the 'Fardbeyan' which was witnessed by PW-2. He is the resident of village Tilai falling within Nokha, Dharampura police station. The FIR was recorded by Shri K. N. Pandey, Sub Inspector of Police, Sasaram (Town) police station at Sasaram Sadar hospital. No where PW-5 (informant) has stated that he had accompanied the deceased to the Sasaram hospital. His evidence is that on receiving assault the deceased had died at the place of occurrence itself. Neither the statement which was made by the informant at the police station nor the one made by PW-3 at the place of occurrence itself has been produced by the prosecution. The inference in law will be adverse to the prosecution .

16. Before we part with the case another submission of the appellants merits to be noticed. It has been canvassed that



the medical evidence starkly contradicts the prosecution case which goes to the root and cannot be ignored. In addition to what has been noticed above, the medical evidence also suggest the incongruity of the prosecution case. PW-3 being wife of the informant has at least clearly stated that the deceased had not taken food since morning whereas the doctor found semi digested food in his guts/abdomen. This is yet another circumstance to doubt the truthfulness of the prosecution case.

17. To sum up, the prosecution has miserably failed to establish the genesis and manner of occurrence. It is difficult for the Court to convict the appellants in view of the serious doubt being cast upon the prosecution case by the deficient quality of ocular evidence and unsupportive/inconsistent medical evidence. The entire story put up by the prosecution deserves to be rejected. When the evidence produced by the prosecution has neither quality nor credibility it would be inequitable to rest conviction upon such evidence. The evidence on record produced by the prosecution is not sufficient to bring home the guilt of the appellants. Consequently, the appellants are acquitted of the charge. The judgment of conviction recorded against them by the learned Trial Court is set aside. Both the appellants are stated to be in jail. They are directed to



be set at liberty forthwith, if not wanted /required in any other case.

18. The appeal is allowed.

I agree

(Kishore Kumar Mandal, J)

(Madhuresh Prasad, J)

shyambihari/-

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