

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.67 of 2014

Arising out of judgment and order dated 26th November, 2013 passed in Sessions Trial No.
37 of 2010/42 of 2013 passed by 1st Additional District & Sessions Judge, Bhabhua
(Kaimur)

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Lala Ram @ Suresh Ram S/O Ganga Ram Resident Of Village Patkholia, P.S-
Kudra District- Kaimur (Bhabhua)

..... Appellant/s

Versus

The State Of Bihar

..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikramdeo Singh, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 15-03-2018

The sole appellant in the present Criminal Appeal has moved this Court for setting aside the judgment dated 26.11.2013 passed by learned 1st Additional District and Sessions Judge, Bhabhua, Kaimur, (hereinafter referred to as the 'trial court') in Sessions Trial Case No. 37/42 of 2010/2013 arising out of Kudra PS Case No. 80 of 2009 under Section 302/34 of the Indian Penal Code read with Sections 25 and 27 of the Arms Act. By the impugned judgment the learned trial court has held the appellant guilty under Section 302 IPC and sentenced him to undergo life imprisonment with



a fine of Rs.5000/-. In case of non-payment of fine, the appellant will be required to undergo simple imprisonment of three months.

It appears from the records received from the learned trial court that the prosecution case is based on the written report submitted by one Kedar Ram (PW 5) who alleged that on the date of occurrence, i.e. on 4.6.2009, as usual, he had gone to work in the house of Shrimoni Choubey where at about 6 A.M. he got information that a quarrel has broken out between his family members and the family members of Ganga Ram. PW 5 is said to have reached his house where he found that Ganga Ram, son of Lal Bihari Ram, and Ram Iqbal Ram as also Lala Ram son of Ganga Ram, all lashed with weapons were abusing and saying that who had taken away their 'goitha'. The informant (PW 5) claimed that he made them cool only some time after the peace prevailed, Ganga Ram and Ram Iqbal Ram lashed with 'katta' in their hands rushed towards the son of the informant, at this stage Lala Ram (the appellant) who had a knife in his hand attacked the son of the informant in his stomach by knife and due to that the informant's son became seriously injured. The co-villagers chased the accused persons but in course of chase Ganga Ram fled away firing from the 'katta' in his hand but Ram Iqbal Ram and Lala Ram were caught by the co-villagers. In course of chase, Lala Ram got some minor injuries on his head. Ram Iqbal Ram was



caught with '*katta*' and one cartridge.

On information to the police station given by the Chowkidar and villagers police came and thereafter Ram Iqbal Ram together with one '*katta*' and one cartridge as also this appellant were handed over to police and his injured son was brought to Kudra hospital for treatment but had died on the way.

On the basis of the written report of PW 5 Kedar Ram, Kudra PS Case No. 80 of 2009 dated 4.6.2009 under Section 302/34 IPC and Sections 25 (1A) and 1(B)/26/27/35 of the Arms Act was registered. After enquiry, police submitted charge-sheet under the aforesaid provisions in the court of Chief Judicial Magistrate, Bhabhua, who took cognizance of the offence and committed the records of the case to the court of sessions. On receipt of the records, charges were framed against three accused persons. The present appellant was charged under Section 302/34 IPC, whereas Ganga Ram and Ram Iqbal Ram, the other two accused persons, were charged under Section 302/34 IPC with additional charge under Sections 25 and 27 of the Arms Act.

In course of trial, the prosecution examined 7 witnesses, whereas the defence examined one witness. On behalf of the prosecution, certain Exhibits were marked. At the same time, on behalf of the defence also, some documents were brought on record.



Ext. 1 is the seizure list, Ext. 2 is the post mortem report, Ext. 3 is the written report of the informant (PW 5) which is the basis of the FIR and Ext. 4 is the written report of witness Manoj Kumar Tiwary (PW 7).

The defence has denied the alleged occurrence and has taken the stand that this is a case of false implication.

The learned trial court found that all the witnesses had said about Lala Ram assailing Bahadur Ram with knife. So far Ganga Ram is concerned, he was not caught at the spot and his name was not taken by the informant in his evidence. The court also found that from the FIR or the evidence of any of the witnesses it would not appear that Ganga Ram and Ram Iqbal Ram had common intention to kill the deceased as alleged. There is also no evidence that Ganga Ram and Ram Iqbal Ram assailed Bahadur Ram with any weapon. The trial court however held that Bahadur Ram got knife blow in his stomach from Lal Ram (the appellant) and all the witnesses (PWs 1, 2, 3, 5 and 6) have consistently stated about the time, the place and the manner of occurrence. The learned trial court accepted that on the point of this charge there are some infirmities in the evidence of these witnesses but those differences are not such that their whole evidence is to be disbelieved.

The learned trial court relied upon the corroboration by



the evidence of the doctor witness and Ext.2 and held that on this point the defence has not given any satisfactory answer. The learned trial court found that from Ext. B and D it would be clear that on 4.6.2009 a quarrel had taken place between the parties. The case of the defence that Raghunath Ram assailed Lala Ram with knife but that hit Bahadur Ram is not proved. PW 7 Manoj Kumar Tiwary, according to the learned trial court, has stated that he had no knowledge of the incident and he had written application in the village on the instruction of the informant. The trial court disbelieved the case against Ganga Ram and Ram Iqbal Ram taking note of the evidence of the informant (PW 5) and the Investigating Officer (PW 6). The court was of the view that the fact of recovery of pistol and bullet from Ram Iqbal Ram and fire done by Ganga Ram and Ram Iqbal Ram have got no consistent evidence of the witnesses as each of the witnesses has said different version from the others. Accordingly, so far as Ganga Ram and Ram Iqbal Ram are concerned, even though they were charged under Sections 25/27 of the Arms Act the learned trial court found that the prosecution has not been able to fully establish the charge under Sections 25 and 27 of the Arms Act beyond all reasonable doubts.

Submissions of the Appellant

While assailing the impugned judgment convicting the



present appellant the learned counsel representing the appellant submits that the learned trial court has committed serious error in appreciating the facts and evidence available on the record. Learned counsel points out that according to the prosecution case, the present appellant had assaulted the son of the informant by a chhura (knife). The appellant was said to have been caught on chase by the co-villagers but the alleged chhura (knife) has not been recovered either from his possession or at his instance from any other place. Nobody has said as to what happened to the said chhura (knife). In course of evidence, the prosecution witnesses are totally silent on this aspect of the matter. Learned counsel further points out that from the written report dated 4.6.2009 (Ext. 3) it would appear that the informant claims himself to be an eye-witness. He has stated that this appellant gave a chhura blow in the stomach of the informant's son but there is no allegation of repetition of the blow. However, when the post mortem report showed two injuries on the dead body of the deceased, in course of trial PW 5 improved upon his statement and said that the appellant had given chhura blow twice. According to the learned counsel, PW 5 had come out with this statement for the first time only to make his case consistent with the post mortem report. It is his submission that in fact from the evidence available on the record, it would appear that PW 5 was not present on the place of occurrence



and only later on he has falsely implicated the present appellant who are own *gotias* of the informant.

It is submitted that in the present case, the I.O. has also deposed who has stated that on 4.6.2009 he had gone to the village where the occurrence took place on information received over telephone. The I.O. has stated that FIR was lodged at about 8.30 A.M. He has further stated that Om Prakash Singh had returned the police station with the written report of the informant (PW 5) which is the basis of registration of the FIR. PW 6 has taken charge of the investigation thereafter. He has stated that he had not been to the place of occurrence and was handed over the investigation by Om Prakash Singh who was the Officer Incharge of the police station at the relevant time.

Learned counsel submits that the deposition of the I.O. (PW 6) would show that the inquest report was prepared at the police station at about 9 A.M. The inquest report did not report as to from which place the dead body was brought to the police station. It does not mention the description of the cloth which were found at the time of post mortem of the dead body and those clothes were not brought in the court. The '*katta*' and live cartridge which were allegedly recovered as per the seizure list were also not brought in the court room. The Investigating Officer also denied the suggestion that at his



instance Manoj Tiwary had prepared the FIR at the police station. The case diary did not mention about the location of the place of occurrence though the I.O. claimed that he had gone to the place of occurrence but he has not written as to who told him about the place of occurrence in paragraph-34 of his cross-examination. He has stated that he had not found any blood-stained soil at the place of occurrence. Learned counsel has also pointed out to the statement of the accused recorded under section 313 CrPC and submits that requirement of Section 313 CrPC has not been complete in terms and spirit keeping in mind the judicial pronouncement of the judgment of the Hon'ble Supreme Court in the case of *Sukhjit Singh vs. State of Punjab [(2014) 10 SCC 270]*.

According to the learned counsel for the appellant, it is a case of false implication only and the guilt of the accused-appellant has not been proved beyond all reasonable doubts.

Learned counsel also submits that there are findings of the learned trial court that the witnesses are not consistent on the point of the other two accused being lashed with 'katta' and alleged firing, it would therefore cannot be believed to prove the charges under Section 25 and 27 of the Arms Act, would prove fatal to the prosecution because it creates a reasonable doubt on the entire manner of occurrence.



Submissions of Prosecution

On the other hand, the learned APP representing the State submits that there are only minor discrepancies in the statement of the prosecution witnesses. Learned counsel submits that the injuries stated by PW 5 in his evidence in course of trial are duly supported by the post mortem report as also the inquest report which have been proved in course of trial and have been marked Ext. 4. Learned counsel, therefore, opposes the submission of the learned counsel representing the appellant and submits that since the knife injuries have been found on the body of the deceased and the same is corroborated from the post mortem report, there is no reason to disbelieve the informant (PW 5) and other PWs who have stated that the appellant was caught on chase.

Consideration

Having heard learned counsel representing the appellant as also the learned APP for the State and upon perusal of the records received from the learned trial court we find that there are vital contradictions in the statement of the prosecution witnesses. In the written report dated 4.6.2009 (Ext.3) the informant (PW 5) has not stated about repetition of blow by knife, however after the post mortem report came and it was found that there were two injuries on the stomach which were caused by a sharp pointed weapon, the



informant in course of his evidence in trial improved upon his statement to support the prosecution case taking a cue from the post mortem report. The learned trial court has found that the prosecution has not been able to give consistent statement as regards Ganga Ram and Ram Iqbal Ram lashed with *katta* and fleeing away, if this is the finding of the learned trial court then the entire manner of occurrence becomes doubtful and the court is inclined to take a view that the informant (PW 5) was not present at the time of alleged occurrence and has only later on created a story. The prior enmity between the prosecution and the defence is admitted and, therefore, the prosecution is not consistent with the manner of the occurrence, the possibility of false implication cannot be ruled out.

We also find substance in the submission of the learned counsel representing the appellant that if the appellant was caught by the villagers on chase when he was trying to flee away after causing injury why the prosecution is totally silent about the non-availability or non-seizure of the chhura (knife). The story of the prosecution about another accused Ram Iqbal having been caught with '*katta*' and cartridge has already been found doubtful by the learned trial court, in such circumstances, the case of the present appellant cannot be brought home where there is no recovery of knife nor any explanation has been offered by the prosecution as to what happened to the said



knife and the case of the appellant in the opinion of this Court seems standing on a better footing. It creates a hole in the prosecution case which cannot be filled up by surmises and conjectures in order to convict the appellant.

It is well settled that enmity cuts both ways. If due to prior enmity it is assumed that this appellant had given the knife blow in the stomach of the deceased, at the same time it may also be liable to be believed that due to prior enmity the appellant may be falsely implicated. In the entire prosecution evidence there is no whisper on the fact as to why and under what circumstances the knife could not be recovered particularly when the appellant was apprehended by the villagers. It is also not known as to how the Investigating Officer was explained about the non-seizure of chhura (knife).

Learned counsel for the appellant has rightly pointed out that from the written report (Ext. 3) it appears that police came to the village where Ram Iqbal Ram and this appellant were handed over to the police. It is stated in Ext. 3 that the informant's son in injured condition was brought to the hospital when he died on the way, which again throws some doubt that in case the son of the informant was brought to the hospital and he had died on the way itself, how police records the inquest report in the premises of the police station. The I.O. has in his deposition has stated that he assumed charge of



investigation at about 8.30 A.M. when the FIR was registered and at about 9 A.M. he had prepared the inquest report which is mentioned in paragraph-3 of the case diary. If it is so, then it is apparent that the informant's son was not brought to the hospital for treatment. The dead body was directly brought to the police station where the inquest report was prepared. The prosecution case seems to be doubtful because if Om Prakash Singh, the then officer-in-charge, had gone to the place of occurrence and had returned to the police station with the written report of PW 5 which is the basis of registration of the FIR, the written report itself contains a stipulation that the informant's son had died on the way. Non-preparation of inquest report at the time of submission of the written report by PW 5 and no recovery of the blood-stained soil from the place of occurrence are the other reasons to create doubt in the mind of this Court that the whole manner of occurrence are not inspiring confidence. The appellant has been in custody for more than eight years. The material contradictions in the prosecution story creating a reasonable doubt in the minds of this Court gets further strengthened, on a perusal of the statement of the accused made under Section 313 CrPC. It is crystal clear from the statement of the accused under Section 313 CrPC that all the incriminating materials which were collected by prosecution in course of trial were not pointed out to the accused-appellant. In this



connection we refer to Paragraphs -11, 12 and 13 of the judgment of the Hon'ble Apex Court rendered in the case of ***Sukhjit Singh vs. State of Punjab [(2014) 10 SCC 270]*** which read as under :-

11. In this context, we may profitably refer to a four-Judge Bench decision in Tara Singh v. The State wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus: "30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them.

He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice."

12. In Hate Singh Bhagat Singh v. State of Madhya Bharat, Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the code expressed thus:-

"8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his



own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness-box."

13. *The aforesaid principle has been reiterated in Ajay Singh v. State of Maharashtra in following terms:*

"14. The word "generally" in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give."

A cumulative effect of the material contradictions which we have noticed in the prosecution version and the non-observance of the requirement of Section 313 CrPC would lead us to conclude that the prosecution has failed to prove the guilt of the accused-appellant beyond all reasonable doubts and the accused-appellant has made himself entitled to get the benefit of doubt.

In the result, we set aside the impugned judgment, acquit



the sole appellant, namely, Lala Ram @ Suresh Ram giving him the benefit of doubt and allow the appeal. The appellant shall be released forthwith, if not wanted in any other case.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

mr1./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	21.03.2018
Transmission Date	21.03.2018

