

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.412 of 1994

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Against the Judgment of conviction dated 23.08.1994 and sentence order dated 25.08.1994 passed by the court of 7th Additional Sessions Judge, Rohtas at Sasaram, in Sessions Trial No. 330 of 1989.

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1. Ram Bachan Rai,
2. Jai Ram Rai,
3. Shivendra Rai, all sons of Ram Awadh Rai, resident of village Karansi, Police Station- Natwar, District- Rohtas.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 501 of 1994

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Ram Awadh Rai, son of late Nihora Rai, resident of village- Karhasi, Police Station- Natwar, District- Rohtas.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No.412 of 1994)

For the Appellant/s : Mr. Vikram Deo Singh, Advocate.

For the State : Mr. Dilip Kumar Sinha, A.P.P.

(In CR. APP (DB) No.501 of 1994)

For the Appellant/s : Mr. Vikram Deo Singh, Advocate.

For the State : Mr. Shivesh Chandra Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 19-02-2018

1. Both above stated Criminal Appeals have arisen out



of common Judgment of conviction and sentence order dated 23.08.1994 and 25.08.1994, respectively, passed by the learned 7th Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No. 330 of 1989.

The learned 7th Additional Sessions Judge, Rohtas at Sasaram, vide impugned Judgment of conviction and sentence order convicted the appellants in Criminal Appeal (DB) No. 501 of 1994 for the offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and accordingly, sentenced him to undergo rigorous imprisonment for life punishable under Section 302 of the Indian Penal Code and also to undergo rigorous imprisonment for three years for the offences punishable under Section 27 of the Arms Act. However, both the sentences were ordered to run concurrently.

The appellant, namely, Ram Bachan Rai, in Criminal Appeal (DB) No. 412 of 1994, was convicted for the offence punishable under Sections 302 read with Section 109 of the Indian Penal Code, whereas remaining appellants were convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and, accordingly, the above stated appellants, Ram Bachan Rai and remaining appellants were sentenced to undergo rigorous imprisonment for life for the above stated



offences.

2. In brief, the fact which lies to file these criminal appeals is that Natwar Police Station Case No. 70 of 1987 was registered on the basis of the Fradbeyan of P.W.5 (Rang Bahadur Rai). The Fradbeyan of P.W.5 was recorded on 27.12.1987, at about 01.30 P.M., at his Dalan. The aforesaid Fradbeyan was recorded by P.W. 9 (Ram Prasad) P.W.5 stated in his Fradbeyan that his father having taken meal was sitting in front of his Dalan. In the meantime, appellant, Ram Awadh Rai, in Criminal Appeal (DB) No. 501 of 1994, having armed with country made pistol, appellant Ram Bachan Rai in Criminal Appeal (DB) No. 412 of 1994 having armed with country made pistol and remaining appellants having armed with lathi came there and asked his father as to why he had not provided Tractor to them. They also stated that they would not allow him to use the passage, upon which, his father claimed that the passage was public path and thereafter, appellant, Ram Bachan Rai, exhorted the others to shoot his father whereupon appellant, Ram Awadh Rai, opened fire of his country made gun, which hit on the chest of his father and having got firearm injury, he fell down on the ground. P.W.5, Rang Bahadur Rai, claimed that at the time of alleged occurrence, he as well as his brother P.W.2, Nand Kishore Rai, were sitting in the *Baithka* of the Dalan and witnessed the



aforesaid occurrence. P.W.5 further claimed that he as well as his brother, P.W.2, ran to save the life of their father and seeing them the appellants took to their heels towards the Western side. P.W.5, further, claimed that P.W.1 (Mohan Rai) and P.W.3 (Nagina Rai) came there and saw the appellants fleeing from the place of occurrence. The aforesaid P.W.1 and P.W.3 tried to catch the appellant, but they managed to escape from there. P.W.5 further claimed that on the sound of firing and noise, several villagers came there. The reason behind the alleged occurrence is that his father had not provided Tractor to the appellant, which caused annoyance to them and thereafter they committed the murder of his father.

After investigation, police submitted charge sheet against the appellants except appellant, Ram Bachan Rai, who was not sent up for trial, but subsequently, cognizance of the offence was taken against him also and, accordingly, all the appellants after commitment, were put on trial before the court below. The appellant, Ram Awadh Rai, was charged for the offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. The appellant, Ram Bachan Rai, was charged for the offence punishable under Sections 302 read with Section 109 of the Indian Penal Code, whereas appellants, Jai Ram Rai and Shivendra Rai, stood charged for the offence punishable under Section 302/34



of the Indian Penal Code.

3. In course of trial, altogether, nine prosecution witnesses were examined and the prosecution got exhibited certain documents including the postmortem report in support of its case. The statement of appellants were recorded under Section 313 of the Cr.P.C., in which, they claimed there false implication and appellant, Ram Bachan Rai, specifically stated that at the time of alleged occurrence, he was at Sasaram. The appellants also examined two defence witnesses and got exhibited some documents. The learned trial court having scrutinized the evidences available on the record convicted the appellants in the manner as stated above.

4. Learned counsel for the appellants assailed the impugned Judgment of conviction and sentence order arguing that the prosecution could not succeed to prove the place of occurrence beyond all shadow of reasonable doubts, because the witnesses stated in course of trial that the deceased was killed at his *Varamdah* situated in front of *Dalan*, but the Investigating Officer found the dead body of the deceased on road lying on a cot. Learned counsel for the appellants submits that it was specific stand of the appellants that the deceased was killed somewhere else by unknown persons and, subsequently, the dead body was brought by his family members and after that the present case was lodged against the



appellants in planned manner. He further submitted that P.W.2 admitted in his evidence that within ½ hour of the alleged occurrence, he went to the police station and gave information to P.W. 9 (Ram Prasad) about the alleged occurrence, but P.W. 9 did not record his statement and asked him to reach at the place of occurrence. Learned counsel further submitted that the aforesaid fact was admitted by P.W.9 in his deposition, but P.W.9 fairly accepted that P.W. 2 (Nand Kishore Rai) had not disclosed the name of assailants before him. He further submitted that P.W.9 further admitted that he reached at the place of occurrence at about 1.10 P.M. and saw the dead body as well as inspected the place of occurrence and thereafter, at about 1.30 P.M., recorded the statement of P.W.5. Learned counsel further submitted that between aforesaid twenty minutes also, none had disclosed the name of the assailants and, as a matter of fact, in planned manner, P.W.5 in collusion with P.W.9 got recorded his Fradbeyan disclosing the name of the appellants as assailants and, therefore, the aforesaid circumstance creates doubt about the prosecution story.

Learned counsel further submitted that P.W. 5 admitted in his Fradbeyan that the deceased was sitting in front of his *Dalan* after taking the meal, but in course of postmortem examination nothing was found in the stomach of the deceased and it was



established that before his death, deceased had not taken meal but the learned court below ignored the aforesaid fact on flimsy ground, whereas the aforesaid fact creates doubt about the timing of occurrence.

He further submitted that the witnesses have stated about the sitting position of the deceased prior to the alleged occurrence and according to the prosecution witnesses, deceased was sitting on the cot facing towards north side and having got firearm injury he fell on his cot and at that time, the head of the deceased was in southern side whereas his legs were towards northern side, but when the Investigating Officer saw the dead body of the deceased, he found that the head of the deceased was in northern side and his legs were towards southern side and, therefore, the aforesaid circumstance clearly goes to show that the deceased was killed somewhere else and thereafter his dead body was brought to his house. He further submitted that the learned court below relied upon Ext.8 (Protest Petition), but as a matter of fact, Ext.8 was proved by an Advocate Clerk and, therefore, the contents of protest petition was not admissible in evidence, but, even though the learned court below realized upon the aforesaid protest petition.

5. On the other hand, learned Additional Public Prosecutor, supported the impugned Judgment of conviction and



sentence order, arguing that P.W.1, P.W.3 and P.W.5 claimed themselves to be an eye witness of the alleged occurrence and they have made consistent evidence on the point of killing of the deceased and the aforesaid prosecution witnesses very specifically stated that it were the appellants, who committed murder of the deceased. He further submitted that so far as P.W.4 and 6 are concerned, they came at the place of occurrence having heard sound of firing and noise and claimed to have seen the appellants fleeing from the place of occurrence. He further submitted that P.W.8 (Dr. Rama Shankar Tiwary), who had conducted the postmortem examination on the corpus of the deceased, proved the injuries found on the persons of the deceased as well as his cause of death and, therefore, if the entire evidence of the prosecution is taken in totality, there is no doubt that it were the appellants, who committed the murder of the deceased while he was sitting in front of his *Dalan* and there is no scope to interfere into the impugned Judgment of conviction and sentence order.

6. Having heard the rival contentions of both the parties, we went through the record. The claim of the prosecution is that at the time of alleged occurrence, the deceased was sitting at his *Varamdah* and P.W. 2 and P.W.5 were also sitting in their *Baithka* at the relevant time. Further, claim of the prosecution is that the



appellants came there and opened fire on the deceased. P.W.5 claimed in his Fradebyan that having got firearm injury his father fell on the earth, but in course of trial, P.W.1, P.W.2, P.W.3 and P.W.5 stated that the deceased having got firearm injury fell on the cot. It is obvious from the aforesaid fact that the prosecution changed its story in course of trial.

7. P.W.2, Nand Kishore Rai, stated in his examination-in-chief that he along with a person went to Natwar Police Station by motorcycle after alleged occurrence and narrated the entire occurrence to the Police Officer, but the Police Officer did not record his statement and proceeded to place of occurrence. This witness further stated that he, anyhow, reached to the place of occurrence and before his arrival to the place of occurrence, P.W.9 had already reached and recorded the Fradbeyan of P.W.5. P.W.9, the Investigating Officer, stated that P.W.2 had come to the Police Station after the occurrence and had narrated the entire occurrence, but had not disclosed the name of the assailants. P.W.9 further stated that on the request of P.W.2, he came to the place of occurrence and saw the dead body and thereafter recorded the statement of P.W.5.

8. One thing is very clear from the above statement of P.W. 2 and P.W.9 that information regarding the alleged



occurrence was given to P.W. 9 by P.W.2, but P.W.2 had not disclosed the name of assailants before the P.W.9 rather for the first time, name of the assailants was disclosed by P.W.5 in his Fradebyan when his Fradbeyan was recorded at 1.30 P.M., i.e., after three and half hours of the alleged occurrence. The learned trial court has discarded the aforesaid fact on the ground that P.W.9 was in collusion of the appellants, but we are of the view that the aforesaid fact was fatal to the prosecution case because non-disclosure of name of assailants before the P.W.9 by P.W.2 creates doubt about the prosecution case and Fradbeyan of P.W.5 appears to be after thought.

9. The prosecution witnesses claimed that the deceased was sitting in *Varamdah* of his house at the relevant time and furthermore, it has come in the evidence of prosecution witnesses including P.W.9 that there was a passage adjacent to *Varamdah* of the deceased and P.W.9 admitted that when he reached on the place of occurrence, the dead body of deceased was lying on the cot on the aforesaid passage. P.W.9 also found that the deceased was wearing only one shoe whereas another shoe was missing from there. The Investigating Officer found some blood on the cot and found blood on the ground and he seized the blood but did not send the blood sample was sent for chemical examination. Therefore, the



aforesaid circumstance creates doubt about the place of occurrence, because had the deceased sustained firearm injury inside his *Varanda* or *Sahan* land, his dead body would have certainly been lying at this *Varanda* or *Sahan* land and not on the road. The above stated facts support the story of the defence that the deceased was killed somewhere else and after that his dead body was brought near his house.

10. The postmortem report of the deceased also creates doubt about the prosecution story, because P.W.5, specifically, claimed in his Fradbeyan that the deceased was sitting at his *Sahan* land after taking meal, but in postmortem examination, the stomach of the deceased was found empty and, therefore, in our view, the learned counsel appearing for the appellants rightly submitted that the aforesaid circumstance creates doubt about the timing of the killing of the deceased.

11. Having considered the entire prosecution evidence in totality, we are of the view that the circumstances emerged from the prosecution evidence create doubt about the prosecution story and we are of the opinion that the impugned Judgment of conviction and sentence order cannot sustain in the eye of law. Accordingly, both the above stated Criminal Appeals are allowed and the impugned Judgment of conviction and sentence order dated



23.08.1994 and 25.08.1994, respectively, passed in Sessions Trial No. 330 of 1989 are hereby set aside. The appellants are on bail, they are discharged from the liabilities of their bail bond.

(Hemant Kumar Srivastava, J)
(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	AFR
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