

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.494 of 1994

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1. Shibu Tanti @ Shibani Tanti @ Shibu Sharma,
 2. Basudeo Tanti @ Basudeo Sharma, Both sons of Late Miththu Tanti,
 3. Jogan Tanti @ Jogan Sharma, son of Late Ghoghahi Tanti, All residents of village-Bisunpur, P.S. Saharsa, District-Saharsa.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Shashi Dhar Jha, Advocate Mr. Sunil Kumar, Advocate
For the Respondent/s	:	Mr. S.N. Prasad, APP

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

And

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 05-03-2018

This Criminal Appeal (DB) has been preferred against the Judgment of conviction and order of sentence dated 09.09.1994 passed by the learned Addl. Sessions Judge-I, Saharsa in Sessions Trial No. 113 of 1981 by which and whereunder, he convicted the Appellant No.1 for the offence punishable under Sections 148, 324 and 302 of the I.P.C., the appellant No. 2 for the offence punishable under Section 148 and 324 of the I.P.C. and appellant No.3 for the offence punishable under Section 147 of I.P.C. and he sentenced the appellant No.1 to undergo Rigorous Imprisonment for one year for under Section 148 of



the I.P.C. and to undergo R.I. for two years for under Section 324 and further to undergo for life imprisonment for under Section 302 of I.P.C. The appellant No.2 has been sentenced to undergo Rigorous Imprisonment for one year for under Section 148 of I.P.C. and to undergo Rigorous Imprisonment for two years under Section 324 of I.P.C. and sentenced the appellant No.3 to undergo Rigorous Imprisonment for six months under Section 147 of I.P.C. However, all the sentences were ordered to run concurrently.

2. On 04.07.1977 at about 7/8 A.M. one Mishri Lal (since deceased) gave his fardbeyan to this effect that on the same day at about 7.00 A.M. appellant No.1 along with others was ploughing the field of Bhumi Tanti (P.W.1) and when P.W.1 went there and forbade them to do so, the appellants and other F.I.R. named accused started assaulting them and in that course, appellant No.1 assaulted him by means of *Farsa* causing injury at his right arm. The injured Ayodhi Tanti and Ramdut Tanti (P.W.2) also came there and tried to save him, but appellant No.2 and other F.I.R. named accused Basudeo Tanti assaulted Ramdut Tanti (P.W.2) by means of *Farsa*, whereas F.I.R. named accused Mithu Tanti assaulted injured Ayodhi Tanti by means of sword as a result thereof both sustained injuries. The P.W.1 sustained grievous injury and the appellant No.1 suspected that P.W.1 might be died of the aforesaid injuries and out of fear he



went to his home and snatched a minor girl from the lap of her mother and gave several Bhala blows to her as a result thereof the aforesaid minor girl died then and there. The appellant No.1 did the aforesaid heinous crime with object to save himself and to implicate the prosecution party. The informant claimed that the occurrence took place on account of land dispute and previous enmity.

3. On the basis of the aforesaid fardbeyan, Police case was lodged and after completion of the investigation, Chargesheet was submitted. The cognizance of the offence was taken and the case was committed to the Court of Session. However, it would appear from perusal of the record that the appellants along with Ghoghai Tanti stood trial and, accordingly, charges were framed against them. However, in course of trial, accused Ghoghai Tanti died and, accordingly, the trial against him was abated.

4. In course of trial, prosecution examined, altogether, five witnesses and also got exhibited some documents as documentary evidence. The statement of appellants was recorded under Section 313 of the Cr.P.C. in which they denied the prosecution story and claimed their false implication. No evidence was adduced by the appellants in respect of their defence, but from perusal of trends of cross-examination of prosecution witnesses as well as statements recorded under



Section 313 Cr.P.C., we find that the appellants claimed their false implication as the appellant No.1 had lodged a criminal case against the prosecution party for commission of murder of the above stated minor girl. The learned Trial Court convicted the appellants in the manner as we have already stated.

5. Learned counsel appearing for the appellants assailed the impugned Judgment of conviction and order of sentence arguing that the prosecution miserably failed to prove the charges levelled against the appellants, as prosecution could not succeed to prove the place of occurrence. Further submission is that the prosecution witnesses made contradictory statements and, therefore, no reliance can safely be placed upon the testimonies of the prosecution witnesses.

6. On the other hand, learned Public Prosecutor supported the impugned Judgment of conviction and sentence order arguing that eye-witnesses claimed that it was appellant No.1, who committed murder of minor girl by giving Bhala blow to her. Apart from that this witness, specifically, stated that remaining appellants assaulted the injured persons of this case and, therefore, the trial Court rightly passed the Judgment of conviction and sentence order.

7. We have already stated that prosecution has examined, altogether, five witnesses, out of them P.W.1 Bhumi Tanti and P.W.2 Ramdut Tanti are said to be injured witnesses,



whereas P.W.3 Bhutan Yadav claimed himself to be an eye-witness of the alleged occurrence. P.W.4 and P.W.5 are Doctors.

8. P.W.1 Bhumi Tanti has stated in his deposition that the alleged occurrence took place at his *Marua* field, when the appellant No.1 along with others were ploughing his field. This witness further stated that the appellant No.1 gave thrice *Farsa* blow to him and other injured were also assaulted by appellants and their associate. This witness further stated that when alarm was raised, witnesses came there and, thereafter, appellant No. 1 ran towards his house, where he committed the murder of daughter of Rujhan Tanti by giving *Bhala* blows to her. In cross-examination, this witness admitted at para 5 of his cross-examination that appellant No. 1 had lodged a case of Section 302 of I.P.C. against him and others for committing the murder of daughter of Rujhan Tanti. This witness further admitted that he had not fallen on the ground even after receiving *Farsa* injury. This witness further submitted that blood fallen on the ground and the Police had seized blood stained soil and clothes. He admitted at para 17 of his cross-examination that house of the appellant No.1 was at the distance of 200 yards from his field.

9. P.W.2 Ramdut Tanti has stated a different story. This witness stated that it was P.W.1, who was ploughing the field on the alleged date of occurrence and appellant No.1 went



there to forbade him and, thereafter, the occurrence took place. However, in his evidence, this witness tried to conceal the case lodged by appellant No.1 against him and others for committing the murder of the daughter of Rujhan Tanti.

10. P.W.3 Bhutan Yadav also stated a different story. He stated that appellant No.1 was ploughing the field and when P.W.1 and P.W.2 went there to forbade him, an altercation took place and, thereafter, P.W.1 went to his home and again returned with other accused and, thereafter, they assaulted P.W.1, P.W.2 and others. This witness further stated that P.W.1 having sustained injury fell down on the ground and became unconscious and thereafter, appellant No.1 again went to his house and committed the murder of daughter of Rujhan Tanti by giving Bhala blow to her.

11. P.W.4 is a Doctor, who had examined informant Mishri Lal and this witness stated that he has found small laceration on the outer side of his wrist. Similarly, P.W.5 is also a Doctor, who had examined P.W.1, P.W.2 and other injured. This witness stated that at the time of examination, he found injuries on the person of P.W.1, P.W.2 and other injured.

12. Admittedly, the Investigating Officer has not been examined and similarly, the informant has also not been examined as informant died before giving his statement. The learned trial court placed reliance upon the statement of



informant under Section 32(1) of the Evidence Act, but in our view, the learned trial Court committed error in treating the statement of informant as admissible under Section 32(1) of the Evidence Act, because, P.W.4 found only small laceration on the outer side of right wrist and there is nothing on the record to show that the informant Mishri Lal had made his statement in respect of his death because Section 32(1) of the Evidence Act applies when the statement is made by a person as to the cause of his death or as to any of circumstances of the transaction which resulted in his death. It is admitted case of the parties that the prosecution failed to bring this fact on the record as to how informant Mishri Lal died and, therefore, in our view Section 32(1) of the Evidence Act was not at all applicable in the present case.

13. Furthermore, we find that almost all the material prosecution witnesses tried to conceal the case lodged by appellant No.1 for the murder of daughter of Rujhan Tanti. It is the case of the appellants that the aforesaid Rujhan Tanti also sustained injury in the alleged occurrence, but prosecution tried to conceal the aforesaid fact and, therefore, it is obvious that the prosecution has not come with the clean hand and tried to suppress the real facts.

14. Furthermore, we find that the prosecution witnesses have made contradictory statements in respect of manner of the



occurrence and the aforesaid contradictory statements of the prosecution witnesses do not inspire confidence to us and, therefore, we are of the view that the appellants are entitled to get the privilege of benefit of doubt.

15. On the basis of the aforesaid discussion, this Criminal Appeal is allowed and the impugned Judgment and order of sentence are set aside. The appellants are on bail, they are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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AFR/NAFR	A.F.R
CAV DATE	N.A.
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