

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 295 of 1995

(Against the Judgment of conviction and order of sentence dated 07.08.1995 passed by Additional Sessions Judge-IV, Samastipur in Sessions Trial No. 230 of 1991 / 135 of 1992)

Jai Narain Sahni, Son of Jogi Sahni, Resident of village-Barheta, P.S.
Kalyanpur, District – Samastipur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant : Ms. Surya Nilambari, Advocate (Amicus Curiae)
For the State : Mr. Shivesh Chandra Mishra, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 24-07-2018

This Criminal Appeal (DB) has been preferred against the Judgment of conviction and sentence order dated 07.08.1995 passed by the learned 4th Additional Sessions Judge, Samastipur in Sessions Trial No. 230 of 1991 / 135 of 1992 whereby and whereunder, he convicted the appellant for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

2. P.W.10 Shakunti Devi gave her fardbeyan to S.I. of Chak Maheshi Police Station on 18.02.1990 at about 3.00 P.M. to this effect that on the same day, before sunrise, her husband, namely, Suraj Sahni had gone towards orchard to attend the call



of nature, but when he did not return, she started searching her husband. In the meantime, P.W.7 Shanti Kumari, Biniya Kumari, daughter of Kishori Mahto, perhaps, she has been examined as P.W.8 and Gujia Kumari (P.W.9) informed her that her husband was lying dead in the orchard and having got the aforesaid information, she went to orchard, where she found the dead body of her husband lying in the aforesaid orchard. She further claimed that Chandreshwar Sahni, Vishwanath Pasi and several other co-villagers also came to the orchard along with her and saw the dead body of her husband. She further expressed her doubt against the appellant and four others on the ground of previous enmity.

3. On the basis of aforesaid fardbeyan, Chak Maheshi P.S. Case No. 11 of 1990 for the offence punishable under Section 302/34 of the Indian Penal Code was registered and, subsequently, formal F.I.R. was drawn up against unknown. The Investigating Officer took the charge of investigation and after completion of the investigation, submitted chargesheet against the appellant and four others for the offence punishable under Section 302/34 of the Indian Penal Code. Since, the remaining Chargesheeted accused were shown absconder, the appellant was put on trial after cognizance and commitment, accordingly,



the sole appellant was charged for the offence punishable under Section 302/34 of the I.P.C. to which he denied and claimed to be tried.

4. In course of trial, prosecution examined, altogether, 12 witnesses and also got exhibited Inquest report, Postmortem report as well as other relevant documents. The statement of appellant was recorded under Section 313 of the Cr.P.C. in which he reiterated his innocence.

5. The appellant did not adduce any evidence in support of his defence.

6. Learned Court below, after scrutinizing the evidence available on the record, convicted the appellant having relied upon the evidence of P.W.6 Rajendra Rai, P.W.7 Shanti Kumari, P.W.8 Meena Kumari and P.W.9 Gujia Kumari.

7. Learned Amicus Curiae Miss Surya Nilambari, Advocate, appearing for the appellant assailed the impugned Judgment of conviction and sentence order arguing that the learned trial Court failed to appreciate the evidence available on the record in its right perspective. She, further, submitted that P.W.7, P.W.8 and P.W.9 claimed before the trial Court that they had seen the appellant and other accused carrying the dead body and they also claimed that they gave the above stated



information to P.W.10 Shakunti Devi (Information), but it is surprising enough that the informant (P.W.10) did not mention the aforesaid facts in her fardbeyan and, therefore, the aforesaid fact goes to show that P.W.7, P.W.8 and P.W.9 developed their statements in course of trial. She, further, submitted that admittedly, P.W.7, P.W.8 and P.W.9 were children at the time of alleged occurrence and the Apex Court of this country has held in several decisions that the statement of a child witness should be looked into very cautiously and carefully.

8. She, further, submitted that P.W.6 Rajendra Rai claimed to have seen the appellant and other accused slapping and taking away the deceased at the time of alleged occurrence, but the statement of P.W.6 is not corroborated by the Postmortem report, because the Postmortem report of deceased goes to show that several multiple injuries as well as abrasions were found on the person of the deceased and the aforesaid injuries were not possible only by slapping. She, further, submitted that, no doubt, in course of trial, the defence failed to cross-examine P.W.6 in proper manner, but aforesaid failure does not prevent the Court to examine the evidence in its right perspective and, therefore, even if, the defence failed to cross-examine P.W.6 on the point of assault, it was the incumbent duty



of the learned trial Court to examine and scrutinize the evidence of P.W.6 in its right perspective, but the learned trial Court failed to discharge its judicial duty, which has caused serious injustice to the appellant.

9. She, further, submitted that for the sake of argument, even if, it assumed that P.W.6 had seen the appellant and other accused assaulting and taking away the deceased, then also it can be only a case of last seen, because it cannot be said that it was appellant and other accused, who committed the murder of deceased. She, further, submitted that the learned trial Court at para 15 of the impugned judgment has observed that from the evidence available on the record only a reasonable hypothesis to this effect can be drawn that it were appellant and other accused, who committed the murder of deceased and, therefore, it is obvious that there was nothing before the Court below to come on definite conclusion that it were appellant and others who committed the murder of deceased.

10. On the other hand, learned Additional Public Prosecutor supported the impugned Judgment of conviction and sentence order arguing that P.W.6 claimed to have seen the appellant and other accused assaulting and taking away the deceased on the alleged date of occurrence and, subsequently,



P.W.7, P.W.8 and P.W.9 claimed to have seen the appellant and others carrying the dead body and, furthermore, P.W.10 claimed that appellant and other accused had inimical terms with the deceased and all the aforesaid circumstances go to show that it were appellant and other accused, who committed the murder of deceased and, therefore, there is no justification for this court to interfere into the impugned judgment of conviction and sentence order.

11. Having heard the rival contentions of both the parties, we went through the record. As we have already stated that, altogether, 12 prosecution witnesses were examined and out of the aforesaid prosecution witnesses, P.W.1 Baleshwar Rai, P.W. 2 Prabhu Rai, P.W.3 Rajkumar Singh, P.W.4 Arvind Kumar Yadav and P.W. 5 Shankar Sah are formal witnesses and they have only proved the fardbeyan, formal F.I.R. etc. and also proved that the dead body of informant's husband was found in the orchard. The most important witnesses are P.W.6 Rajendra Rai, P.W.7 Shanti Kumari, P.W.8 Meena Kumari, P.W.9 Gujia Kumari and P.W.10 Shakunti Devi. So far as P.W. 11 Vijay Kumar is concerned, this witness also happens to be the formal witness, who has proved the inquest report and P.W.12 is Doctor, who has proved the Postmortem report of the deceased.



12. P.W.6 Rajendra Rai claims that in the morning of 18.02.1990, he had gone to his Boring and saw the appellant and others slapping and taking away the deceased towards orchard. This witness further claims that appellant and his associates were armed with rifle. He further claims that having seen them, out of fear, he fled away from there and, again, on the same day at about 3.00 P.M. to 4.00 P.M. he went to see his maize field, where he saw the Police personnel. He went there and saw the dead body of deceased Suraj Sahni. This witness claims that the Police prepared documents on which he put his signature. He identified his signature as Ext. 4/1. This witness has been cross-examined only on the point of preparation of documents and making of signature. The defence failed to cross-examine this witness on the point of assault and taking away of the deceased.

13. P.W.7 Shanti Kumari claims that on the alleged date of occurrence at about 8.00 A.M. she along with P.W.8 and P.W.9 had gone to pick up leaves in the orchard, where she saw the appellant and others carrying the dead body of deceased Suraj Sahni and all the aforesaid persons were armed with pistol. The aforesaid persons threw the dead body of Suraj Sahni and, thereafter, she went near the dead body and identified the dead body of Suraj Sahni.



14. Almost, similar statement has been made by P.W.8, namely, Meena Kumari. This witness further claims that at that time appellant and others were carrying gun and pistol in their hands. She, further, claims that she gave the above stated information to family members of deceased Suraj Sahni.

15. P.W.9 Gujia Kumari supported the statement of P.W.7 and P.W.8. This witness also admits that she gave the information to family members of deceased Suraj Sahni.

16. P.W.10 Shakunti Devi is informant and wife of deceased Suraj Sahni. She admits in her Examination-in-Chief that she got information regarding the murder of her husband from P.W.7, P.W.8 and P.W.9. She, further, admits that P.W.7, P.W.8 and P.W.9 told her that it were appellant and others, who committed murder of her husband. She, further, states that the appellant and his associates committed the aforesaid crime due to land dispute and previous enmity.

In her cross-examination, P.W.10 admits that appellant Jai Narain Sahni had inimical terms with his cousin brother, who used to visit her house and helped her in the present case.

17. P.W.12 Dr. Ved Bhanu Uday Prasad did the Postmortem examination on the corpus of deceased and found



multiple abrasions over upper part of the chest and several other abrasions on other parts of the body, but P.W.12 did not find any strangulation mark or injury on the neck of the deceased.

18. It is obvious from perusal of the fardbeyan that P.W.10 claimed before the Police that P.W.7, P.W.8 and P.W.9 had given information to her in respect of dead body of her husband. P.W. 10 has, nowhere, mentioned in her fardbeyan that P.W.7, P.W.8 and P.W.9 had disclosed before her that they had seen the appellant and other accused carrying the dead body of deceased. As we have noticed that in course of trial P.W.7, P.W.8 and P.W.9 claimed that they had seen the appellant and others carrying the dead body of deceased, but they did not disclose the aforesaid fact before P.W.10 prior to recording her fardbeyan, particularly, in the circumstance when P.W.7, P.W.8 and P.W.9 claimed that they had seen the dead body of deceased at about 8.00 A.M. and the fardbeyan of P.W.10 was recorded at 3.00 P.M. Furthermore, had P.W.7, P.W.8 and P.W.9 disclosed the aforesaid fact before P.W.10 prior to recording her fardbeyan, she would have certainly mentioned the aforesaid fact in her fardbeyan and, therefore, non-mentioning of the aforesaid fact in fardbeyan of P.W.10 creates doubt about the claim of P.W.7, P.W.8 and P.W.9 and, at best, it can be said that P.W.7, P.W.8 and



P.W.9 had only seen the dead body of deceased lying in the orchard.

19. P.W.6 claims that he had seen the appellant and others slapping and taking away the deceased on the alleged date of occurrence. This witness is co-villager of P.W.10. This witness claims that having seen the appellant and his associates, he fled away from there, out of fear, and, again, reached at the place of occurrence, when Police came there. P.W.10 has not mentioned the name of P.W.6 in her fardbeyan. Had this witness seen the appellant and others slapping and taking away the deceased on the alleged date of occurrence, he would have certainly informed the P.W.10 about the aforesaid occurrence, because, this witness is nonelse, but co-villager of P.W.10. Moreover, this witness claims that the deceased was being slapped by appellant and others at the time of alleged occurrence, though, the appellant and his associates were carrying rifles in their hands. Moreover, the evidence of this witness is not corroborated by the injuries found on the person of the deceased and, therefore, the statement of this witness does not inspire confidence to this Court and in our view, the appellant cannot be convicted solely on the basis of statement of P.W.6. Therefore, we are of the opinion that the learned trial



Court failed to take notice of this fact that the prosecution could not succeed to prove the complete chain of circumstances to show the guilt of the appellant and, accordingly, the learned trial Court has committed error in convicting and sentencing the appellant.

20. On the basis of the aforesaid discussions, this Criminal Appeal is allowed and impugned Judgment of conviction and sentence order dated 07.08.1995 passed by the Addl. Sessions Judge-IV, Samastipur in Sessions Trial No. 230 of 1991 / 135 of 1992 is, hereby, set aside. The appellant is acquitted of the charges. The appellant is on bail, therefore, he is discharged from the liabilities of his bail bonds.

21. Let a copy of the first and last page of this Judgment be handed over to the learned *Amicus Curiae*, who has given her valuable time to assist this Court, so that she could claim her remuneration from concerned authority.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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AFR/NAFR	N.A.F.R
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