

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (DB) No.40 of 1994**

Sessions trial no. 153/22 of 1991 arising Out of Bhagwanpur P.S. case no.
63/1990 District- BHABUA

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Ram Bachan Roy son of Chandrika Rai resident of village Bichchi Bandh P.S.
Bhagwanpur (Karamchat) District Bhabua

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar Agarwal
Mr. Amrit Anunay

For the State : Mr. Shiwesh Chandra Mishra, APP

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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: 19-03-2018

1. The above stated appellant challenged the impugned judgment of conviction and sentence order dated 12.01.1994 passed by the Addl. Sessions Judge I, Bhabua in Sessions trial no. 153/22 of 1991 by which and whereunder he convicted the sole appellant for the offences punishable under sections 302 and 201 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life for the offence punishable under section 302 of the Indian Penal Code. No separate sentence was passed under section 201 of the Indian Penal Code. However, by the same judgment, learned



trial court acquitted three accused persons, namely, Chhote Ray, Moti Ray and Nand Lal Ray of the charges framed against them for the offences punishable under sections 302/34 and 201 of the Indian Penal Code.

2. PW 7, Ram Murat Ray, who happens to be brother of the deceased Radhika Kuar gave his fardbeyan to ASI, B.N. Singh, Karamchat police station (PW8) on 24.5.1990 at about 9.00 A.M to this effect that in the morning of 24.5.1990, he along with his father (PW3) had come to the house of his sister Radhika Kuar but he found missing his sister Radhika Kuar and maternal nephew Ramji Singh aged about 15 years. Thereafter, he enquired from villagers and agnates of his sister and then it came to light that in previous night, his sister and nephew were killed by the appellant- Ram Bachan Roy and other acquitted accused as well as Laloo Singh and others and had concealed their dead bodies. He also learnt that the deceased Ramji Singh was sleeping on a cot in front of his **Dalan** and at the same place, his throat was cut by sharp cutting weapon by the above stated persons. He also found blood present on the bed sheet. He, further, stated that Nagina Ray (PW1), who happens to be agnate



of his sister, disclosed that he was sleeping in the same house in which deceased Radhika Kuar was sleeping and PW1 disclosed that 5 to 10 persons having broken the door, entered into the court-yard and thereafter, he heard sound of Radhika Kuar and woke up and he made protest but one of the culprits chided him and threatened to shoot him. PW7 further stated that PW1 disclosed that he had identified the one person by his voice and the aforesaid person was the appellant. PW1 further disclosed to PW7 that out of fear, he entered into his house and locked the room from inside and in the morning at about 4 a.m., when he came out of the room, he found Radhika Kuar missing from the house and thereafter, he came out of the house and raised alarm. Villagers came there and made hectic search but they could not trace out Radhika Kuar. PW1 further claimed before PW7 that when he went near Dalan, he found Ramji Singh missing and blood was fallen on his cot. PW1 further claimed before PW7 that he came to know from the villagers that one Laloo Singh had been seen at the house of the appellant. PW7 further claimed in his fardbeyan that the appellant- Ram Bachan Roy is elder brother-in-law of the deceased and had



partition dispute with the deceased since long and that was the reason, the appellant along with others, having entered into conspiracy, committed murder of the deceased Radhika Kuar and Ramji Singh and disposed of their dead bodies.

3. On the basis of the aforesaid fardbeyan, Bhagwanpur P.S. case no. 63/1990 was registered and accordingly, formal FIR was drawn up on the same day for the offences punishable under sections 302 and 201/34 of the Indian Penal Code against the appellant and others. PW9 took charge of investigation and after completion of investigation, he submitted charge sheet against the appellant and three others whereas Laloo Singh was not sent up for trial. The cognizance of the offences was taken and the case was committed to the court of sessions and accordingly, appellant along with three others was put on trial before the trial court.

4. The appellant along with others stood charged for the offence punishable under sections 302/34 and 201 of the Indian Penal Code to which he as well as others denied and claimed to be tried.

5. In course of trial, prosecution examined,



altogether, 11 witnesses and also got exhibited some documents in support of its case. The statements of the appellant and others were recorded under section 313 of the Code of Criminal Procedure in which they reiterated their innocence and denied the prosecution story. No evidence was adduced either by the appellant or other accused in support of their defence but from perusal of the cross-examination of the prosecution witnesses as well as statements recorded under section 313 of the Code of Criminal Procedure, we find that the defence of the appellant as well as other accused was total denial of the prosecution story. The learned court below, having considered the evidences available on record, convicted and sentenced the appellant relying upon the testimonies of PW1 as well as previous land dispute whereas acquitted other accused in the manner as we have already stated.

6. Learned counsel appearing for the appellant assailed the impugned judgment of conviction and sentence order arguing that learned court below completely failed to appreciate the evidences in right perspective and committed error while convicting and



sentencing the appellant, particularly, in the circumstance, when the learned trial court disbelieved the testimonies of PW1 and PW 2. He, further, submitted that the learned trial court based his finding on circumstantial evidence of voice whereas Apex Court of this country in the case of **Nilesh Dinkar Paradkar vs. State of Maharashtra reported in (2011) 4 Supreme Court Cases 143** has held that evidence of voice identification is, at best, suspect, if not, wholly unreliable. Continuing his submissions, he submitted that evidence of voice identification is very weak type of evidence and in the present case, PW1 disclosed before PW7 that he had identified the appellant by his voice but when he was tested before trial court, he developed a different story and claimed himself to be eye-witness of the alleged occurrence and, therefore, in the aforesaid circumstances, learned trial court committed gross illegality in replying upon the evidence of voice identification. He, further, submitted that, no doubt, appellant happens to be elder brother-in-law of the deceased Radhika Kuar but it is admitted case of the prosecution that he was not sleeping in the house in which deceased is said to have been killed



rather it were PW1 and PW2 who themselves claimed that they were sleeping in the house at the time of alleged occurrence and moreover, they were arrested by the police after the occurrence but subsequently, they were released reasons best known to the police.

7. On the other hand, learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction and sentence order arguing that witnesses claimed that the appellant had grudge and annoyance against Radhika Kuar and Ramji Singh due to partition dispute and in course of trial, PW7 very clearly stated that PW1 had disclosed that he had identified the appellant by his voice and, therefore, there was sufficient material before the trial court to convict the appellant.

8. Having heard the rival contentions of both parties, we went through the record. We find that PW1 Nagina Ray claimed that he had seen the appellant and three others pressing the neck of the deceased sitting on her chest and when he went there, appellant threatened to kill him and thereafter, he went to his home. This witness also claimed that PW2, Rup Narayan Ray had also come



there and left the place of occurrence along with him. Almost similar statement has been made by PW2, Rup Narayan Ray but the learned trial court disbelieved the testimonies of PW1 and PW2 because they developed their statements in course of trial. We also find that PW1 and PW2 are not reliable witnesses. PW3, Bhathari Ray is father of the deceased. Admittedly, this witness is not an eye- witness of the alleged occurrence. This witness claimed that one boy of Bichchi Bandh came and informed him about the alleged occurrence and thereafter, he along with PW7 went to Bichchi Bandh where he reached in the village between 8 a.m. to 9 a.m. and then came to know that his daughter and grand son were missing. This witness claimed that when they went to court-yard of his daughter, PW1 and PW2 disclosed that his daughter and grand son were killed by the appellant and three others. This witness further stated that police reached there and recorded the statement of his son (PW7). At para 3 of his cross-examination, this witness claimed that there was some land dispute between his daughter and the appellant- Ram Bachan Roy who happens to be elder brother-in-law of his daughter. This



witness admitted at para 6 of his cross-examination that after his statement, PW1 and PW2 were arrested. Perusal of the entire deposition of this witness goes to show that this witness disclosed the factum of land dispute between the deceased and the appellant.

9. PW5, Vikrama Singh, stated that after four to five days of the alleged occurrence, dead bodies of Radhika Kuar and Ramji Singh were recovered in his presence and he put his signature on the inquest report and other documents. Similar statement has been made by PW6, Rajendra Singh who stated that dead bodies of Radhika Kuar and Ramji Singh were recovered near bank of river. This witness further stated that dead bodies had been packed in bag.

10. PW7 is the informant of the present case. This witness stated that having got information regarding killing of his sister and nephew, he along with his father went to village of his sister and reached there at 8 a.m., but he did not find his sister in the house and when he enquired from villagers, PW1 disclosed that the appellant and three others had killed his sister by throttling her neck and similar statement has been given by PW2 before



him. This witness also stated that he found blood on the bed of his nephew but dead bodies of his sister and nephew could not be traced out. This witness further stated that the appellant- Ram Bachan Roy is full brother of his brother-in-law and the appellant and others committed murder of his sister and nephew with an object to grab the land. This witness also stated that after five days of the alleged occurrence, dead bodies of Radhika Kuar and Ramji Singh were recovered and he identified dead bodies of his sister and nephew. This witness in his cross-examination admitted that no litigation was going on between the appellant and his sister in respect of any land. Moreover, from perusal of entire evidence of this witness, it goes to show that this witness learnt about the manner of the occurrence from PW1 and PW2 and he is not an eye-witness of the alleged occurrence. This witness only stated that there was some land dispute between the deceased and appellant.

11. PW8 is a police officer who recorded fardbeyan and nothing is important in his deposition. PW9 is the Investigating officer. This witness described the place of occurrence and also claimed to have seized



bloodstained quilt etc. This witness further stated that in presence of Block Development Officer, Bhagwanpur, he exhumed dead bodies of Radhika Kuar and Ramji Singh and recovered both dead bodies and prepared inquest report etc. This witness stated that PW1 and PW2 were not arrested either by him or by PW8. This witness at para 20 of his cross-examination stated that PW1 had disclosed before him that the appellant and others were assaulting the deceased Radhika Kuar and having heard noise, he along with PW2 had gone there. The deposition of this witness does not disclose as to how this witness got information regarding the dead bodies of the deceased of the present case and this witness simply stated that dead bodies were exhumed by him in presence of witnesses. PW10 is the doctor who did post mortem examination on the dead bodies and this witness stated that dead bodies were fully decomposed. However, this witness stated that some injuries were found on the persons of the deceased of the present case. PW11 is the Block Development Officer. This witness stated that on 28.5.1990 officer-in-charge of Karamchat police station had given information to him regarding two dead bodies



and thereafter, dead bodies were exhumed in his presence.

12. As we have already noticed that learned trial court disbelieved the testimonies of PW1 and PW2 because they improved and developed their depositions in course of trial and moreover, we also find unsafe to rely upon the depositions of PW1 and PW2 because admittedly, PW7 gave his fardbeyan on the basis of information gathered by him from PW1 and PW2 and at the first instance, PW1 and PW2 narrated different story before PW7. Moreover, we find that PW1 has, nowhere, stated in his deposition that he had identified the appellant by his voice but learned trial court, having relied upon the statement of PW7, came to the conclusion that the appellant was identified by PW1 by his voice.

13. No doubt, PW3 and PW7 have stated that the appellant had grudge and annoyance with the deceased due to partition and land dispute but, in our view, mere on the basis of suspicion, no one can be convicted because it is well settled principle of law that suspicion, however, may be strong, can not take the place of evidence. Similarly, we are of the view that identification by voice



is a very weak evidence and moreover, in the present case, PW7 claimed that PW1 had identified the appellant by his voice but PW1 in course of trial disclosed a different story and his testimony had been disbelieved by the trial court and, therefore, in our view, learned counsel appearing for the appellant rightly submitted that the learned court below committed error in relying upon the above stated circumstances.

14. In view of the aforesaid discussions, we have no option except to set aside the impugned judgment of conviction and sentence order. Accordingly, this criminal appeal stands allowed and the impugned judgment of conviction and sentence order are set aside. Appellant is on bail. He is discharged from the liability of bail bonds.

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

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