

IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (DB) No.59 of 1994

Arising Out of PS.Case No. -null Year- null Thana -null District-
EASTCHAMPARAN(MOTIHARI)

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The State of Bihar

.... Appellant

Versus

1. Radha Kant Pandey,
2. Sri Kant Pandey,
3. Narad Pandey,
4. Birendra Pandey,
5. Ganesh Pandey,
6. Gauri Pandey,
7. Rama Pandey,
8. Kedar Pandey,
9. Suresh Pandey,
10. Rajendra Pandey,
11. Shasikant Pandey, All resident of village-Radhia, P.S. Govindpur, District-East Champaran.

.... Respondents

with

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Criminal Revision No. 476 of 1994

Arising Out of PS.Case No. -null Year- null Thana -null District-
EASTCHAMPARAN(MOTIHARI)

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Shail Kumari, W/o Bikramaditya Pandey, Resident of village-Radhia, P.S. Govindganj, District-East Champaran.

.... Petitioner

Versus

1. The State of Bihar,
2. Radha Kant Pandey,
3. Sri Kant Pandey,
4. Narad Pandey,
5. Birendra Pandey,
6. Ganesh Pandey,
7. Gauri Pandey,
8. Rama Pandey,
9. Kedar Pandey,
10. Suresh Pandey,
11. Rajendra Pandey,
12. Shasikant Pandey, All resident of village-Radhia, P.S. Govindpur, District-East Champaran.

.... Respondents

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Appearance :

(In G. APP. (DB) No.59 of 1994)

For the Appellant/s : Mr. Shivesh Chandra Mishra, APP

For the Respondent/s : Mr. Rahul Kumar Singh, Advocate



(In CR. REV. No.476 of 1994)

For the Petitioner/s : Mr. Amish Kumar Jha, Advocate
Mr. P.K. Thakur, Advocate

For the Respondent/s : Mr. Shivesh 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: 08-01-2018

The above said Criminal Appeal and Revision have been preferred against the Judgment of acquittal dated 11.04.1994 passed by learned 2nd Addl. Sessions Judge, East Champaran, Motihari in Sessions Trial No. 248/173 of 1985/87 by which and whereunder, he acquitted all the respondents of the charges framed against them. Since, above stated Criminal Appeal and Criminal Revision are arising out of the same Judgment of acquittal so both the above said Criminal Appeal and Criminal Revision are being disposed of by this common Judgment.

2. P.W.4, namely, Shail Kumari (who is petitioner in Criminal Revision No. 476 of 1994) gave her fardbeyan to Police officials of Areraj Police Station on 10.02.1980 at 12.00 Noon at Areraj Hospital to the effect that on the same day her labour Jaggu Mian returned to her home after ploughing the field and she along with her husband, sons and daughter were sitting in the court yard of her own. In the meantime, she noticed some noise outside her house



and out of fear she locked the main door of her house from inside. She further stated that at about 10.00 A.M., Narad Pandey, Suresh Pandey, Radha Kant Pandey, Birendra Pandey and Kedar Pandey came in her courtyard through a ladder fixed on her wall and opened her main door and, thereafter, Sri Kant Pandey, Shashi Kant Pandey, Ganesh Pandey, Gauri Pandey, Rama Pandey, Raghunath Pandey, Rajendra Pandey etc. having armed with Lathi, Bhala, Farsa and gun entered into her courtyard and ordered to kill her husband. Thereafter, Radha Kant Pandey, Narad Pandey and Virendra Pandey started assaulting her husband by their respective weapons such as Farsa, Bhala and gun, whereas the remaining accused-persons started assaulting her husband by means of Lathi. She was too assaulted by lathi and her son, namely, Chandra Bhushan Pandey (P.W.3), too, sustained injuries at the hands of the above stated named accused persons. The accused Birendra Pandey committed theft of ornaments and cash and the aforesaid persons set her house on fire. The aforesaid occurrence was witnessed by Sudama Dubey, Bhushan Tiwari, Madan Tiwari, Harendra Tiwari etc. Her husband died on the spot, but for her satisfaction, she took her husband to the Areraj hospital, but he was declared brought dead. The reason behind the alleged occurrence is said to be previous litigation.

3. On the basis of the aforesaid Fardbeyan (Ext. 4)



Govindganj P.S. Case No. 02 of 1980 was registered on the same day against the named accused persons. The Investigating Officer took the charge of investigation and after completion of the investigation submitted Chargesheet against 14 persons for the offences punishable under sections 147, 148, 149, 302, 380 and 430 of the I.P.C. and Section 27 of the Arms Act. The cognizance of the offences was taken and the case was committed to the Court of Session. All the 11 respondents were put on trial and were charged for the offences punishable under Section 302 read with Section 149 of the Indian Penal Code, whereas respondent Birendra Pandey was charged separately for the offence punishable under Section 324 of I.P.C. and Section 27 of the Arms Act, whereas respondents Narad Pandey, Suresh Pandey, Rama Kant Pandey, Birendra Pandey, Kedar Pandey, Sri Kant Pandey, Shashi kant Pandey, Ganesh Pandey, Rama Pandey and Rajendra Pandey were charged separately for the offence punishable under Section 380 of the Indian Penal Code and similarly, respondent Radha Kant Pandey, Narad Pandey and Birendra Pandey were charged separately for the offence punishable under Section 148 of the I.P.C. and respondent Suresh Pandey was charged, separately, for the offence punishable under Section 436 of the I.P.C. and Kedar Pandey, Suresh Pandey, Sri Kant Pandey, Shashi Kant Pandey, Ganesh Pandey, Rama Pandey, Gauri Pandey and Rajendra Pandey



were charged, separately, for the offences punishable under Section 147 and 323 of the Indian Penal Code. All the above said charges were read over and explained to the accused persons, but they denied the charges and claimed to be tried.

4. In course of trial, prosecution examined, altogether, 9 witnesses and also exhibited Inquest Report, Postmortem Report etc. The statements of the respondents were recorded under Section 313 of the Cr.P.C. in which they again reiterated their innocence.

5. The defence also examined altogether 8 witnesses and got exhibited some documents. The evidence adduced on behalf of the defence as well as trends of cross-examination go to show that the defence of respondents before the trial was to this effect that respondent Radha Kant Pandey had purchased 4 decimals of land of Plot No. 1446 from Raghunath Pandey and on the alleged date of occurrence, the prosecution party having formed an unlawful assembly went on the aforesaid plot and made an attempt to plough the aforesaid field forcibly, which was objected by D.W.2 and others, but the prosecution party assaulted D.W.2 and others and in that course, D.W.2 sustained injury and filed a complaint case against the prosecution party. It is obvious from the perusal of the aforesaid fact that the claim of the respondents is that on the alleged date of



occurrence, prosecution party was aggressor and the occurrence had taken place on Plot No. 1446.

6. Learned Court below having heard the contentions of the parties and having analyzed the evidences available on the record came to the conclusion that prosecution could not succeed to prove the place of occurrence and also there was inconformity between statements of so-called eye-witness as well as Postmortem report. The learned court below also noticed that prosecution failed to prove the genesis of occurrence and also failed to produce any independent witnesses and on the aforesaid basis, learned Court below passed the Judgment of acquittal.

7. The learned Addl. Public Prosecutor Sri Shivesh Chandra Mishra appearing in Government Appeal as well as Sri Amish Kumar Jha appearing in Criminal Revision assailed the impugned Judgment of acquittal arguing that learned court below failed to appreciate the evidences available on the record in its right perspective. They also submitted that learned court below also failed to take note of this fact that one injured P.W.3 sustained pellet injuries, but learned court below doubted the entire prosecution story on the ground that no pellet injury was found on the person of the injured. They also submitted that the learned court below was not correct in acquitting the accused, particularly, in the circumstances



when, altogether, 4 prosecution witnesses claimed to have seen the alleged occurrence and deposed categorically.

8. On the other hand, Sri Rahul Kumar Singh, Amicus Curiae supported the impugned Judgment of acquittal pointing out that there was dispute regarding the place of occurrence as the prosecution party claimed that the alleged occurrence took place in the courtyard of informant, but defence claimed that the occurrence took place at Plot No. 1446. He further submitted that admittedly, the Investigating Officer has not been examined in this case and, therefore, it is obvious that prosecution failed to prove the place of occurrence beyond all shadow of reasonable doubt. He further submitted that the statement of witnesses is not in consonance with Postmortem report of the deceased because the Doctor P.W.6 fairly admitted in his cross-examination that no injury of Bhala or fire arm was found on the person of deceased, whereas it is specific case of the prosecution that not only deceased sustained fire arm injury, but he sustained Bhala injury also and, therefore, the aforesaid contradiction creates doubt about truth of prosecution story and, therefore, the learned court below rightly passed the Judgment of acquittal.

9. Having heard the contentions of both the parties, we went through the record and perused the oral evidences as well as



documentary evidences available on the record. As we have already noticed that, altogether, 11 witnesses were examined before the Court below on behalf of the prosecution and out of them, P.W.1, P.W.2, P.W.3 and P.W.4 are claimed themselves to be eye-witnesses of the alleged occurrence and they have stated that on the alleged date and time of the occurrence, the respondents entered in the courtyard of informant through the ladder and assaulted the deceased by Lathi, Bhala and gun as a result whereof the deceased sustained severe injuries and died then and there. The trial Court scrutinized the testimonies of the aforesaid P.W.1 to P.W.4 and found several contradictions in their depositions. The aforesaid witnesses stated that the deceased sustained fire arm injuries, which is said to have been fired by one Birendra Pandey. The aforesaid fact is evident from perusal of para 16 of P.W.1, who says that the firing made by respondent Birendra Pandey hit the wall of courtyard and turned towards the deceased causing injury to him, but, admittedly, the Postmortem report of deceased does not indicate this fact that deceased had sustained any fire arm injury.

10. P.W.7 is formal witness, who has proved the formal F.I.R. as Ext.3 and Fardbeyan as Ext.4. This witness also proved the Inquest Report as Ext.5 and Seizure-list as Ext.6 as well as two search lists as Ext. 7 and 7/a. He also proved this fact that one



sealed packet and sealed envelop were received, which has been entered at Serial No. 83 of Malkhana Register on 12.03.80 and the same was handed over to one Umesh Singh for sending the same for Forensic Science Laboratory, Patna. This witness proved the aforesaid entry as Ext.8. This witness further proved the serial No. 286 of the aforesaid Malkhana Register and stated that the sealed articles were received from Forensic Science Laboratory, Patna and the receiving of the aforesaid articles were entered at the above stated serial No. 286, dated 26.08.81. The aforesaid entry was proved as Ext. 8/a. This witness stated that the articles, which were received from the Forensic Science Laboratory were soil, Ramdana plant and pieces of lathi etc. This witness proved the sealed envelop as Ext.9. Again, this witness stated that Ramdana Plant, two lathies etc. have been received in Malkhana, which has been entered appropriately at Serial No. 116, dated 24.03.81. This witness produced the lathies before the trial Court which are material exhibits as 1, 1-1 and 1-2. This witness also stated that one Bhala, one bamboo ladder had been received in Malkhana, which has been entered at Serial No. 271, dated 21.10.90, which has been exhibited as 8/b. This witness identified the Bhala and Farsa, which has been marked as material exhibit as II, II-1 and III. This witness also proved the report of Forensic Science Laboratory, Patna as Ext.10.



11. On careful examination of the statements of the prosecution witnesses, it emerges that the Investigating Officer visited the place of occurrence, seized some weapons said to be used in the alleged occurrence and also seized the ladder, which is said to be used in committing the alleged crime, but admittedly, the Investigating Officer has not been examined in this case and the respondents could not get an opportunity to cross-examine the Investigating Officer on the point of so called seizure and search. The prosecution claims that the occurrence took place inside the courtyard of the house of P.W.1 to 4, whereas the respondents denied the aforesaid fact and stated that on the same day, the prosecution party assaulted the D.W.3 at Plot No. 1446 and in that course deceased might have sustained injuries. Therefore, non-examination of the Investigating Officer is fatal to the prosecution case. The prosecution could not establish the place of occurrence beyond reasonable doubt and due to non-examination of the investigating Officer the respondents could not get an opportunity to cross-examine him and asked specific question regarding the exact place of occurrence. The learned court below while pronouncing the judgment of acquittal took the aforesaid fact into consideration and held that prosecution miserably failed to prove the place of occurrence.

12. As we have already stated that so-called eye-



witnesses stated that in the alleged occurrence firing was also made and deceased sustained fire arm injury, but no fire arm injury was found on the person of the deceased in the Postmortem report and the same has been doubted by P.W.6 in his deposition. Although, the Inquest report of deceased marked as Ext.5 shows that the Investigating Officer noticed some injuries said to be caused by fire arm, but the aforesaid Inquest report is not in consonance with the Postmortem report and again, we can say that the non-examination of the I.O was fatal to the prosecution case, because, the respondents could not get an opportunity to cross-examine the Investigating Officer, who had prepared the Inquest Report, on the point of above stated entries made by him in the Inquest Report (Ext.5).

13. The prosecution has come with assertion that the alleged occurrence took place on account of previous litigation, but prosecution did not disclose as to what was the immediate reason of the alleged occurrence, whereas the respondents came with a specific story that on the alleged date of occurrence prosecution party including the deceased had gone to plough forcibly Plot No. 1446 and, thereafter, a litigation took place. Therefore, the failure of the prosecution party to disclose the immediate reason of the alleged occurrence creates doubt about the genuineness of the prosecution story and it appears that prosecution did not come with correct and



true version rather tried to conceal the real fact and, therefore, we are of the opinion that the learned court below rightly doubted the genuineness of prosecution story and passed the Judgment of acquittal.

14. On the basis of aforesaid discussions, we do not find any ground to interfere into the Judgment of acquittal and, therefore, the Government Appeal as well as Criminal Revision stand dismissed and the Judgment of acquittal passed by learned court below is, hereby, affirmed.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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