

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.218 of 1995

- 1. Ram Babu Rai, son of Ram Pukar Rai
- 2. Lal Babu Rai, son of Late Baturi Rai
- 3. Jagat Rai, son of Sheodayal Rai
- 4. Jadu Rai, son of Late Srigovind Rai
- 5. Bhikhan Rai, son of Ram Prit Rai
- 6. Nawal Rai, son of Late Paras Rai
- 7. Jai Narain Rai, son of Late Jagdish Rai
- 8. Bidya Rai, son of Late Ramdut Rai
- 9. Suhawan Rai, son of Late Ramanand Rai
- 10. Parma Rai, son of Sheonand Rai

All residents of Village Nakta Diara, Police Station Digha, District- Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 222 of 1995

Raghubar Rai, son of Ramgati Rai, resident of Village Nakta Diara, Police Station Digha, District Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 299 of 1995

- 1. Shambhu Rai
- 2. Bishwanath Rai

Both residents of Village Nakta Diara, Police Station Digha, District- Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In Criminal Appeal (DB) No. 218 of 1995)
For the Appellant/s : Mrs. Rina Sinha, Amicus Curiae



For the Respondent/s : Mr. Abhimanyu Sharma, APP
(In Criminal Appeal (DB) No. 222 of 1995)
For the Appellant/s : Mrs. Rina Sinha, Amicus Curiae
For the Respondent/s : Mr. Abhimanyu Sharma, APP
(In Criminal Appeal (DB) No. 299 of 1995)
For the Appellant/s : Mrs. Rina Sinha, Amicus Curiae
For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-04-2018

Challenging their conviction ordered by the court of 5th Additional Sessions Judge, Patna in Sessions Trial No. 525/85/26/88 vide judgment dated 18th of July, 1995 and convicting them to undergo life imprisonment for offences under Section 302 read with Section 437 of I.P.C. to various terms of imprisonment and fine, these appeals have been filed by the appellants. As the facts and circumstances of the case and the issue involved are identical in nature, all the three appeals are being disposed of by this common judgment.

It is the case of the prosecution that Choukidar of the village in question, i.e. Nakta Diara, one Shri Ram Parikshan Rai, recorded the fardbeyan before the Officer-in-Charge of Digha Police Station Shri S. Jha on 27.3.1979 at 13:30 hours at Digha Hat to the effect that at 12:00 noon on the same day, an accident took place involving a truck bearing Regn. No.BR Q 1666 when a



person named Harendra Rai succumbed to the injury caused the accident. It is said that when the Choukidar was engaged in managing relief work with regard to the accident, a crowd of about 500 collected near Digha Hat, they tried to assault the driver of the truck and, in the meanwhile, certain persons from the crowd took out Diesel from the tank of the truck and put the truck to fire and did not permit the driver to come out of the driver's cabin. As a result, the truck driver sustained burn injuries and died. The statement was recorded, investigation undertaken and statement of various witnesses were recorded. Finally, the 13 appellants herein were charged for offences under Sections 437 read with 149 and 302 read with 149 of I.P.C. and they have been convicted for the same, these appeals have been filed.

In Criminal Appeal No.218 of 1995 the ten appellants have been convicted for various offences. Appellants Shambhu Rai, Vishwanath Rai and Raghubir Rai have been convicted under Section 302/47 of I.P.C. for life imprisonment and a fine of Rs.5000/- each and the remaining appellants for offences under Section 437 of I.P.C. to 10 years' rigorous imprisonment and a fine of Rs.3000. Similarly, in Criminal Appeal No. 222/95, the sole appellant Raghubir has been convicted under Sections 302 and 437 of I.P.C. to life imprisonment and a fine of Rs.5000 and in



Criminal Appeal No.299/95, the two appellants Shambhu Rai and Vishwanath Rai are convicted to undergo life imprisonment for offences under Sections 320 and 437 of I.P.C.

Learned counsel for the appellants Mrs. Rina Sinha, who appears Amicus Curiae to assist us, points out that in this case only two eye-witnesses have been examined. They are: P.W.1 Hareram Rai and P.W.2 Nakal Rai. P.W. 1 is the Khalasi of the truck and is also the brother of the deceased Hari Kishun Rai. P.W.2 is the Kuli of the truck in question. The entire conviction is based on the statement of these two witnesses. She argues that the informant in this case is the Choukidar Ram Parikshan Rai, who is also an independent eye-witness, has not been examined. She led us through the statement of both the prosecution witnesses and pointed out various discrepancies in the matter to show that both these witnesses ran away when the crowd had gathered, they had not witnessed the occurrence and the appellants have been falsely implicated. She further points out that the incident in question is said to have taken place in Digha Hat near Digha Ghat, Digha and the victim who succumbed to the injury because of the accident and the appellants are all residents of village Nakta Diara which is more than two and a half kilometres away from the place of incident. She argues that if the appellants were residents of the



village, it is surprising that they would have gone to the place of accident immediately after the accident and put the truck to fire. It is argued that the distance between the village and Danapur where the incident took place being two and a half kilometres, the entire story is unbelievable. She thereafter argues that in the charge-sheet filed by the police authorities various witnesses, more than 10 in number, were cited, but except for two witnesses, P.W. 1 and P.W.2, none of the witnesses have been examined. The Sub-Inspector of Police Shri Jha, who had recorded the fardbeyan and who initiated the prosecution has not been examined. The Choukidar has not been examined. Important documents like the fardbeyan, the post mortem report, the inquest report have not been exhibited. The Investigating Officer has not been examined. The case diary was not exhibited and the statement of witnesses recorded under Section 161 of Cr.P.C. not proved. The doctor who conducted the post mortem has not been examined and the nature of injuries sustained by the deceased have not been proved. She further points out that there are various contradictions in the statements of witnesses and, therefore, based on the said set of evidence, the conviction is unsustainable. It is argued that the implication of the appellants herein is a result of the election rivalry between the parties and it is a case of false implication.



Learned Counsel for the prosecution refuted the aforesaid contention and took us through the statement of P.W.1 Hare Ram Rai and argued that he has falsely implicated Vishwanath Rai, Raghubar Rai and Shambhu Rai as the persons who had taken out Diesel from the tank of the truck and burnt it and there being specific evidence in this regard, the conviction is sustainable. He argues that the statement of P.W.1 is supported by the statement of P.W.2 and there is no reason to disbelieve them. We have heard learned counsel for the parties at length and have gone through the record.

We find from the record that the entire prosecution was initiated on the basis of the fardbeyan recorded by the Choukidar Shri Ram Parikshan Rai. The same was recorded on 27.3.1979 at 1:30 p.m. by Sub-Inspector of Police Shri S. Jha, Officer-in-Charge, Digha Police Station and according to this fardbeyan the incident took place at 12:00 noon on the same day. However, surprisingly, neither the informant Choukidar nor the witnesses to the fardbeyan nor the Sub-Inspector was examined. More than 13 witnesses are shown in the charge-sheet, but only two of them P.W.1 Hare Ram Rai, brother of the deceased and Khalasi of the truck, and P.W.2 Nakal Rai, Kuli of the truck, have been examined. There is no explanation given by the prosecution as to



why the fardbeyan has not been proved, why the Choukidar who had witnesses the entire incident and the informant, has not been examined and why this witness Choukidar, who is shown to have seen the incident happen, did not identify the accused persons and there is no explanation as to why the Test Identification Parade of the accused persons was not conducted. These are some inherent lacunae from the very beginning of the case. This apart, if we scan the statement of P.W.1, we find that he speaks about Shambhu Rai, Vishwanath Rai and Raghubar Rai taking out Diesel from the tank of the truck and setting the truck on fire resulting in death of the driver. He further speaks about his being assaulted by the persons present there, but he has not sustained any injury because of the assault. He further speaks about five police persons and the fire brigade trying to extinguish the fire immediately. None of these persons have been examined. In para 7 of his statement, he admits that he did not disclose the name of any of the persons, including the appellants, to the police at that point of time. He went to the house of the owner of the truck one Ali Hussain on a scooter and it is to Ali Hussain that he disclosed the name of the appellants. However, he further states that the police came to the hospital in the night, but his statement was not recorded. He further indicated that the village is about 2 k.m's. away from the place of



occurrence. These vital lacunae in his evidence have been totally overlooked by the learned trial court. It is surprising that the appellants are all residents of the village Nakta Diara which is said to be more than 2 k.m's. away from place of incident and they have all been implicated as persons who put the truck on fire, but their names are not disclosed by P.W.1 immediately after the occurrence to the police authorities. He explains this by contending that he ran away, was scared because of his brother's death and was under shock. However, he goes to the house of the truck owner and discloses the name. The conduct of this witness seems to be very suspicious. Similarly, if we analyze the statement of P.W.2 Nakul Rai, he has stated that about 500 people surrounded the truck which included the appellants Shambhu Rai, Vishwanath Rai, Raghubar, Jai Narayan Rai and others, but the truck was put to fire by Shambhu Rai, Raghubar Rai and Vishwanath Rai. If the statement of P.W.1 and P.W.2 are even accepted, their only allegation is against three of the appellants namely Shambhu Rai, Vishwanath Rai and Raghubar Rai. They do not say anything against any of the other seven appellants. P.W.2 further in para 6 of his statement says that he was along with one Ashok when the incident took place. However, this person has not been examined. That apart, in para 8 of his statement, this witness



further says that he was not present at the time of setting on fire of the truck, rather he speaks about having fled away from the area when the crowd gathered, went and hid in the garden and then came to his residence. He further says that he did not tell anybody about this incident. He went to the Mukhiya who noted down his statement and took him to the police station after 2, 3 days of the alleged occurrence and his statement was recorded by the police authorities. From the aforesaid narration of fact, we have no hesitation in holding that reliance cannot be placed on the statement of this witness for prosecuting or holding the appellants guilty for the allegation levelled against them. That apart, as canvassed by the learned Amicus Curiae, no independent witness, who have been indicated in the charge-sheet, have been examined. The Investigating Officer, the Sub-inspector of Police Mr. Jha, The Choukidar, who are important witnesses to the incident, have not been examined. Important documents like the fardbeyan, the post mortem report, the inquest report, seizure memo. have not been exhibited or proved. Even the Doctor has not been examined. The statement of P.W.1 and P.W.2, which is the sole material for convicting the appellants, is not creditworthy and cannot be relied upon for convicting the appellants. In sum and substance, we have no hesitation in holding that based on the evidence that has come



on record, the guilt of the appellants is not proved beyond reasonable doubt. The prosecution has failed to establish the case against them in a manner as is permissible or required under law and, therefore, it is a fit case where the appellants named above have to be acquitted and are accordingly acquitted of the charges levelled against them.

Impugned judgment dated 18th of July, 1995 passed by the court of 5th Additional Sessions Judge, Patna in Sessions Trial No. 525/85/26/88 is set aside. The appellants are acquitted of the charges levelled against them. They are on bail. They are discharged from the liabilities of bail-bonds.

We acknowledge the assistance granted to us by the learned Amicus Curiae namely Mrs. Rina Sinha and direct the office to make payment to her through the competent authority in accordance with law.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

K.C.Jha/-

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