

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.279 of 1995

Arising Out of PS.Case No. -57 Year- 1983 Thana -Gopalpur District- West Champaran(Bettiah)

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1. Parma Singh, son of Lalbabu Singh
 2. Ramji Singh, son of Nakchand Singh
 3. Jagat Singh, son of Radha Singh
 4. Radha Singh, son of Badam Singh
 5. Triveni Singh @ Triveni Ram, son of Sadai Ram
 6. Bacha Lal Rai @ Bacha Lal Ram, son of Shivnandan Ram
 7. Nathuni Singh, son of Brahmdeo Singh
 8. Lalbabu Singh, son of Saryug Singh
 9. Awdhesh Singh, son of Paras Singh
 10. Tekman Pandey, son of Sheopujan Pandey
 11. Nand Kishore Singh, son of Radha Singh

All are residents of village-Ghogha Babu Tola, P.S.-Gopalpur, District-West Champaran.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Kaushal Kr.Jha, Advocate

For the Respondent/s : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 15-05-2018

This criminal appeal has been preferred by and on behalf of altogether 11 appellants for setting aside the judgment dated 9th August, 1995 passed by the 1st Additional Sessions Judge, West Champaran, Bettiah (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 84 of 1985/106 of 1995. By the impugned judgment all the accused persons who were facing trial have been convicted for making unlawful assembly and committing murder of deceased Sri Dusadh. Upon their conviction, they have been



sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- each and the accumulated amount of fine have been ordered to be paid to the widow of the deceased and children of the deceased and in default of payment of fine they have to undergo rigorous imprisonment of one year.

2. During the pendency of the appeal, as it appears from the I.A. No.921 of 2018, the appellant no.1 Parma Singh, appellant no.4 Radha Singh, appellant no.7 Nathuni Singh and appellant no.8 Lal Babu Singh have died and, therefore, it is submitted that in terms of Section 394(2) of the Code of Criminal Procedure and in the light of the law laid down by the Hon'ble Apex Court in the case of **Harnam Singh vs. The State of Himachal Pradesh** reported in **1975(3) SCC 343**; the appeal preferred by them stands abated. Upon going through the averments made in I.A. No. 921 of 2018, we find that the statement regarding death of the accused persons has been supported by death certificates and the certificate of Mukhiya of the concerned gram panchayat.

3. Hence, we allow the Interlocutory Application No.921 of 2018. The present appeal in so far as it relates to the appellant nos.1, 4, 7 and 8 stands abated.

4. The prosecution case is based on the written report of one Mukurdhuj Manjhi (P.W.6) dated 11.12.1993. He claimed that he



was an ex-Military man and had been working at the Kanta (weighment place) of Chanpatiya Sugar Mill situated at Tarabagh Road Centre, Chhawani Bettiah, he stated that he was a poor Harizan and belonged to weaker section. In the previous night of Saturday at about 2.00 a.m. approximately Sudama Manjhi, son of Dashrath Manjhi a co-villager of the informant came to him and informed that people of Ghoga Babu Tola namely (1) Jagat Singh son of Radha Singh -(2) Nand Kishor Singh son of Radha Singh (3) Awadhesh Singh son of Paras Singh and others had at about 8-9 p.m. come to the house and on the pretext of taking liquor they had called Sri Dusadh (since deceased) and took him towards the western side of the village. It was further alleged that Sri Dusadh had not returned home till 12.00 O' Clock in the night. The informant claimed that on getting this information he came to his house in the morning with Sudama Manjhi and enquired about his son Sri Manjhi (at some places called Sri Dusadh) from his daughter-in-law. It is alleged that daughter-in-law of the informant told him that Sri Manjhi was called by one Jagat Singh, Nand Kishor Singh, Awadhesh Singh, Bideshi Ram and Bachha Lal Rai. They had allured and taken Sri Manjhi towards eastern side on the pretext of taking liquor. His daughter-in-law also told him that his son Sri Manjhi had very good relationship with them earlier but when Sri Manjhi did not return till 12 O' Clock at night, his wife, daughter-in-law and Mahesh Manjhi went in search of Sri



Manjhi with a torch and in the torch light they identified Jagat Singh, Nand Kishor Singh, Awadhesh Singh, Radha Singh, Bideshi Ram and Bachha Lal Rai who were taking away Sri Manjhi to Babu Tola. Some other people were there with them but they were not identified. It is alleged that his son was crying '*Bachao jaan mar diya*'. Informant alleged that his son Sri Manjhi was earning his livelihood by selling country made liquor and for this business of country made liquor Jagat Singh had given some cash to the son of the informant. It is alleged that seven months back when his son had gone with the gas light to village Babu Tola on the occasion of marriage, he was beaten there. The informant claimed that when he reached his house in the morning he came to know from the people that his son was assaulted by Bhala and Lathi by the accused persons. He claimed that dead body of his son had been concealed in the field of Radha Singh (now deceased) and in order to conceal his offence with a conspiracy after keeping the dead body at some distance he had lodged one case. Fardbeyan of the informant (P.W.6) has been marked as Exhibit-2 in course of trial.

5. The trial court examined the prosecution evidences. P.W.2 Sudama Manjhi happened to be nephew of the deceased. He has stated that initially the deceased was hesitant in going with the accused persons but later on he accepted their invitation to share chicken and wine. He went with them but thereafter he did not return.



He has stated that the accused persons-appellants were carrying away the deceased and the deceased was crying saying “*Jaan gail re dada*”. He has stated that after arrival of the police they went to Babu tola where they found the dead body of the deceased in the kitchen garden of Radha Singh. This witness has stated about illicit relationship between the daughter of Radha Singh and the deceased. In his cross examination, this witness was suggested in paragraph 23 of the evidence that the deceased was a thief and had gone for said purpose where he was caught red handed and assaulted by villagers. This witness has further stated in his cross examination that his house is next to the house of the deceased and he was sleeping in his house.

6. The trial court found that P.W.5 Jasho Devi who is wife of the informant and mother of the deceased has supported the prosecution case and her version about illicit relationship between the daughter of Radha Singh and the deceased cannot be thrown out. About P.W.6 who is the informant himself the learned trial court has held that he has in his examination in chief narrated the story mentioned in Exhibit-2 with little bit exaggeration but since he is in to-to hearsay witness except seeing the dead body, that part of his exaggeration may be overlooked. This witness has stated in paragraph 3 that in the case filed by the accused persons against his son he police has submitted final form. P.W.8 Hiramati Devi is the widow of the deceased who has stated almost the same facts which have been



stated by P.W.5 in her cross evidence. She has stated that 'Ghura' (a kind of wood fire arranged during winter season to get reprieve from cold) is adjacent to the Bungalow and further in paragraph 4 she says that no villagers had come to 'Ghura' and the deceased was carried by the accused persons and in paragraph 10 she says that the accused persons had come to her door for taking toddy. This witness has stated that she had seen Taramati (daughter of Radha Singh) coming to her house even in the night. In paragraph 12 she says that Taramati was married.

7. The learned trial court recorded that no doubt five witnesses produced on behalf of the prosecution are closely related to each other and there is no independent witness examined in this case but only because they are family members related to the deceased and each other their testimony cannot be discarded especially when there was no material inconsistency in their evidence. In this case the Investigating Officer (in short the 'I.O.') was not examined but the learned trial court says that even non examination of the I.O. does not cause any prejudice to the defence as there was absolutely nothing on record to show that special attention of the I.O. was required to be drawn. On the point of identification also no source of light was produced in course of investigation but the learned trial court says that non production of torch is also immaterial.



8. At one stage the learned trial court assumed for argument sake that prosecution had failed to prove that the accused persons called the deceased from his house and kept him in the cane field for sometime where the witnesses had seen them carrying the deceased towards Babu Tola. In spite of that according to learned trial court it is admitted in Exhibit-A that Radha Singh and two accused persons along with few more named had assaulted the deceased who died by the injuries. On the defence version that at about 2.00 a.m. in the night the accused Jagat Singh after getting hold of alleged thief raised alarm and accused Radha Singh arrived there, both of them succeeded in getting hold of him and in unsuccessful bid to escape the deceased along with these two arrived in the kitchen garden of Radha Singh where these two kept him and continued raising alarm then the accused Nathuni Singh, Lalbabu Singh, Parma Singh, Ramjee Singh, Tekman Pandey, Awadhesh Singh and Badri Raut besides others came there and all assaulted him, the learned trial court held that once the deceased was caught, he was not in a position to inflict any injury to the defence, therefore, there was no necessity to cause any injury upon him.

9. The records of the trial court also show that in this case after recording of their statements under Section 313 Cr.P.C, they were further subjected to recording of statement, according to defence the further recording of statement under Section 313 Cr.P.C by asking



them specific questions had only prejudiced their defence. The learned trial court recorded that further recording of the statement of the accused persons has not caused any prejudice to them. According to learned trial court Exhibit-A i.e. F.I.R. of Gopalpur P.S. Case No. 57/83 was instituted on the basis of the statement of one of the accused Radha Singh but in defence it has been produced by all the accused persons. The learned trial court thought it proper to give them an opportunity to get themselves exonerated from the facts of the statement of the Radha Singh if they so like, but they did not avail this opportunity rather all of them fully endorsed exhibit-A in spite of knowing the fact that the police had found this case false. According to learned trial court this fact had been stated by the informant P.W.6 in paragraph 3 also and I.O. had recommended for a proceeding under Section 182/211 I.P.C. The trial court says that the accused persons were not put to any cross examination rather they were asked whether they have produced exhibit-A in their favour and those named in Exhibit-A have been asked whether the police found the case untrue and recommended for initiation of case against the informant Radha Singh. They were also asked whether they had also assaulted the deceased or not. The learned trial court held that the prosecution had proved the case against all the accused beyond all reasonable doubts.

10. Learned counsel for the appellants has argued that admittedly in the present case there is no eye witness at all. The trial



court has accepted this fact that all the prosecution witnesses are related to each other and there is no independent witness on the point of identification of the accused. It is also submitted that from the prosecution evidences it is clear that the deceased was involved in business of selling country made wine and according to the prosecution case he was invited by the accused persons for taking wine and meat, said invitation was accepted by the deceased which shows that he had been enjoying good relationship with the accused persons. It is further submission of the learned counsel representing the appellants that once the statement of the accused had been recorded under Section 313 Cr.P.C. in which the attention of the accused was not drawn towards the incriminating materials brought by the prosecution in course of evidence, the trial court was not justified in once again calling the accused persons for their statement under Section 313 Cr.P.C. by pointing out Exhibit-A and then putting question as if the trial court was cross examining the accused persons.

11. The learned A.P.P. representing the State has supported the impugned judgment and submits that the learned trial court having found that all the witnesses have stated about the accused coming to the house of the informant and had seen them taking away the deceased, it has rightly been concluded by the learned trial court that only because the prosecution witnesses are related to each other their evidences cannot be thrown out. Learned APP has also supported



the decision of the learned trial court saying that calling the accused for making statement under Section 313 Cr.P.C. once again by pointing out Ext.-A to them was only with an intention to provide them opportunity to make their statement to explain the facts and circumstances stated in Ext.-A.

12. Having heard learned counsel representing the appellants and learned APP for the State, we find that according to prosecution case, the wife, daughter-in-law and Mahesh Manjhi, son of Dasrath Manjhi had gone to Sareh with a torch and in the said torch light they had identified the accused Jagat Singh, Nand Kishore Singh, Awadesh Singh, Radha Singh, Babu Lal Singh, Triveni Ram and Bachha Lal, however, in course of evidence the prosecution has not produced the torch which was source of light and identification of the accused.

13. The prosecution witnesses have stated that they had come back to their house and on the next day Sudama Manjhi had gone to the informant with message, thereafter they had gone to the village Babu Tola where dead body was found in the field of Radha Singh. So far as source of identification is concerned, the prosecution has failed to prove source of identification. The only circumstance shown by the prosecution is recovery of dead body in the field of Radha Singh. We, however, find that Radha Singh has already died



and this appeal has abated against him.

14. The evidence of PW-2 (Sudama Manjhi) is based on the information supplied to him by his Mausi Jasho Devi. In his cross-examination this witness has stated that when the accused persons came on the door of the informant they stopped there about ten minutes and during this period four persons including this witness had got woke up. He has stated that no villager had come during this period. He has stated that after the deceased went with the accused persons this witness had gone for sleeping. At about 1.00 pm his Mausi had awaken her and told her about the accused persons taking the deceased with them. This witness has stated that he was not aware as to who other villagers were told by his Mausi about the alleged occurrence. He has stated that after this he had gone to Tarabagh and returned only on Sunday in the morning. He had returned alone. To us, it appears from a reading of the statement of this witness that he had not seen the accused persons at the door of the informant and he was only told by his Mausi about the accused persons coming to the door of the informant and taking away the deceased by alluring him to share wine and meat. This witness has not even claimed that he had gone in search of the deceased. PW-3 Balram Thakur has been tendered when he says that the Daroga had not taken his statement and he was not aware of the occurrence. PW-4 is also son of the sister of the deceased's mother. He had also not seen the accused persons at



the door of the informant. From his statement also it appears that he was told about the accused persons coming to the door of the informant to invite the deceased only through his Mausi Jaso Devi. This witness has claimed that when the deceased did not return till 12.00 O'clock in the night, his Mausi had come to request him to go in search of the deceased. This witness has claimed that he had accompanied the mother and wife of the deceased with torch and when he reached near the Canal, he had heard some sound and when he moved towards sugar cane field in the torch light he identified the accused persons who were lashed with Lathi, Bhala and Garasa. This witness has alleged that the accused persons had also run towards the witnesses with an intention to assault but this witness ran away towards canal and thereafter the accused persons went away. This witness has also stated that thereafter all the three of them returned home. On the next day, Sudama Manjhi had gone to call the informant. The conduct of the witnesses give rise to a doubt on the veracity of their statement. All the three witnesses are saying that they had gone in search of the deceased after 12 O' Clock in the night. According to Jaso Devi (PW-5) the accused persons had come to call the deceased at about 9.00 PM. It means the witnesses had gone in search of the deceased after more than three hours. One of the witnesses has claimed that it was about 1 O' Clock in the night. These three to four hours were more than sufficient time for the accused



persons to carry away the deceased to their village. It cannot be believed that after 3-4 hours these three witnesses were able to see the accused persons only on the way to Babu Tola. This is also not a natural conduct of a witness that having seen the accused persons forcibly taking away the deceased and assaulting him they would return back to home and will not inform this occurrence to the other co-villagers. It is also not natural conduct of the witnesses that they would not inform this occurrence to the nearest police station and shall wait for arrival of the informant from Tarabagh to narrate him the entire manner of occurrence. The natural conduct would have been that such an occurrence should have been reported to the co-villagers and in order to save the life of the deceased, if he was alive, at about 1.00 am (night hour) as stated by the three witnesses, the matter was required to be reported at the earliest to the police station, but the conduct of the three witnesses who claimed themselves eye witnesses are unnatural and beyond the comprehension of a prudent person.

15. The evidence of PW-5 shows that the deceased was sleeping in the bungalow where Sudama Manjhi (PW-2) was also sleeping. In her cross-examination this witness has stated that her son was involved in the business of selling wine. At the time of occurrence he was aged about 12-13 years. She had denied the suggestion that at the time of occurrence the age of her son was of 30 years. This part of her evidence is highly contradictory as it will



appear that the deceased was married and with his wife he had two daughters also which was not possible at the age of 12-13 years. This witness has further stated in paragraph 8 of her cross examination that her son was engaged in the business of selling wine for about 5-6 years, she was trying to stop her son from doing this business but he was not agreeing. In paragraph 9 and 13 this witness has stated that her son was going to house of Jagat Singh whenever called by him. She has stated that prior to the alleged occurrence also the accused persons used to call her son for lighting through mental batti. In paragraph 17 of her cross examination she has stated that she had seen the accused persons fleeing away for about 5 minutes. She has stated that during this period several co-villagers, about 20 – 25 people including ladies and children had assembled. In paragraph 18 she says that she had not gone to Babu Tola during night hours and had gone there in the morning with Daroga and other persons whose name she did not remember. Here we also find that not only these prosecution witnesses are closely related to each other but even their statements are consistent to the effect that the deceased used to go to the house of the accused persons. P.W.2 has stated that they had good relationship. In these circumstances it become highly doubtful that why the accused persons will come themselves at the door of the informant to call the deceased in order to identify themselves in the killing. P.W.5 says that several co-villagers numbering about 20 to 25 had assembled



but all other prosecution witnesses have stated that only three of them had gone in search of the deceased and later on they had returned home, there was no co-villagers at that time.

16. In our opinion, the statement of the prosecution witnesses who are closely related to each other were required to be examined with more circumspection and care. While it is true that the evidence of the related witnesses cannot be outrightly thrown out only because they happened to be related with the deceased but at the same time if there is no independent witness or material to corroborate the evidence of the related witnesses, in our opinion, before convicting the accused on the basis of the evidence of the related witnesses their statements were required to be examined with due care and caution. When we look into the evidence of Hiramati Devi (P.W.8) who happened to be the wife of the deceased it again appears that this witness has narrated the story in somehow different manner. According to this witness she was near Ghura (a kind of fire during the winter season) along with her mother-in-law when the accused persons came there. In paragraph 7 of her cross examination this witness has stated that when accused persons were carrying away the deceased nobody from the village had come. The statements of P.W.5 & P.W.8 on the point of presence of the co-villagers are highly contradictory to each other. The trial court seems to have committed grave error in appreciating the evidence of the witnesses that Taramati



Devi (daughter of Radha Singh) was coming to the house of the informant. In fact, we find that save and except bald statement of P.W.8 in her cross examination there is no material muchless any independent evidence on the record to take a view that Taramati had any illicit relationship with the deceased and for that reason the deceased was killed. P.W.8 has stated in her cross examination that torch was given to police. In these circumstances, in order to prove the means of identification it was all more necessary to examine the I.O. in this case. The I.O. has not been examined and in absence of his examination and in absence of exhibit the statement recorded by I.O. of any independent witness and on the point of identification, the prosecution case is liable to suffer. In the nature of highly contradictory statement of the prosecution witnesses and the fact that after recording the statement of the accused under section 313 Cr.P.C. the trial court could not have called the accused persons once again to make statement as regards Exhibit-A, we are of the considered opinion that it would not be safe to convict the accused persons-appellants who are alive in this case for the charges framed against them. There is no independent witness or any other material to corroborate the evidence of these witnesses and hence we are of the opinion that the appellants are required to be given the benefit of doubt. We, therefore, set aside the impugned judgment of the learned trial court, acquit the appellant nos. 2, 3, 5, 6, 9, 10 and 11 from the



charges and discharge them from the liability of their respective bail bonds.

17. The appeal stands allowed accordingly.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	NAFR
CA V DATE	N/A
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