

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.139 of 1995

(Against the Judgment of conviction dated 08.05.1995 and order of sentence dated 09.05.1995 passed by the learned Additional Sessions Judge-I, Siwan in Sessions Trial No. 40 of 1989)

1. Gurucharan Singh, son of Rambiraj Singh, Resident of village – Jaijori, Police Station- Ander, District-Siwan.
2. Mahabir Singh, Son of Rambrikh Singh, Resident of village – Phulwaria Tola Dudho, P.S. Raghunathpur, District- Siwan.
3. Sheonath Sharma, Son of Ramsakal Lohar, Resident of village- Phulwaria Tola Dudho, P.S. Raghunathpur, District- Siwan.

... .. Appellants

Versus

The State of Bihar

.. .. Respondent

Appearance :

For the Appellants	:	Mr. Anjani Kumar Sinha No.1, Advocate Mr. Kaushal Kumar, Advocate
For the State	:	Mr. Dilip Kumar Sinha, 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 : 08-05-2018

All the three appellants have been convicted for the offences punishable under Sections 302/34, 307/34 of the Indian Penal Code and, accordingly, they have been sentenced to undergo Rigorous Imprisonment for life for the offence punishable under Section 302/34 of I.P.C. and to undergo Rigorous Imprisonment for four years for the offence punishable under Section 307/34 of I.P.C. However, both the sentences were ordered to run concurrently. The appellants were not convicted for the offences punishable under Section 27 of the Arms Act and Section 3 / 4 of the Explosive Substance Act.



2. The Raghunathpur P.S. Case No. 68 of 1987, for the offences punishable under Sections 302, 307 and 326 of the I.P.C, Section 3/4 of Explosive Substance Act and Section 27 of the Arms Act, was registered against unknown on 18.11.1987 on the fardbeyan of P.W.4 Ramesh Choudhary, who was Chowkidar of Halka No.3. P.W.4 stated in his fardbeyan that in previous night, he along with Chowkidar Paras Choudhary (P.W.5) was at Amwari village and heard the sound of blast at about 11.30 P.M. and having heard the aforesaid sound of explosion, he along with P.W.5 went to Phulwariya tola, where he saw that several villagers of village Dudhaha had assembled there. The P.W.4 further stated that he came to know that Ramlal Singh and his wife were killed by some unknown and his maternal grandson, namely, Rajesh Kumar Singh (P.W.8) sustained injury in the aforesaid occurrence. He went to the house of Ramlal Singh and found that the dead body of Ramlal Singh was lying on a cot at Palani, whereas the dead body of his wife was lying on cot inside the house. He also noticed that both the hands of injured Rajesh Kumar Singh was badly injured. He stated that deceased Ramlal Singh as well as his wife were killed by explosion of bomb and firing and, similarly, injured Rajesh Kumar Singh sustained injury due to explosion of bomb. The injured Rajesh Kumar Singh was in semi conscious state



and he was taken to Raghunathpur hospital. The P.W.4 stated that some unknown persons committed the aforesaid occurrence due to previous enmity.

3. P.W.13 Sagar Das, who recorded the statement of P.W.4 Ramesh Choudhary, instituted the case and took the charge of investigation. He inspected the place of occurrence, seized splinters of bombs etc., prepared seizure-list, prepared inquest report, seized cloths of the deceased and other articles, received Postmortem report as well as injury report, recorded the statements of prosecution witnesses, but before completion of investigation, he handed over the charge of investigation to P.W.11 Mithilesh Kumar Pandey, who got copy of gift deed from registry office and sent the same to F.S.L. Patna for examination and after completion of the investigation submitted Chargesheet against the appellants for the offences punishable under Sections 302, 307, 326/34 of the I.P.C., Section 3/4 of Explosive Substance Act and Section 27 of the Arms Act.

4. The cognizance of the offence was taken and the case was committed to the Court of Session. Accordingly, the appellants were put on trial before the Court below. The appellants stood charged for the offences punishable under Sections 307/34, 302/34 of the I.P.C., Section 3 and 4 of Explosive Substance Act and Section 27 of the Arms Act.



5. In course of trial, prosecution examined, altogether, 15 witnesses and also got exhibited some documents. The statements of appellants were recorded under Section 313 of the Cr.P.C. in which they denied the prosecution story and claimed their false implication. The learned trial Court, after scrutinizing the evidences available on the record, convicted the appellants in the manner as stated above on the basis of testimony of P.W.8 as well as other relevant circumstances such as execution of forged gift deed in favour of Appellant No.2 and his full brother.

6. Learned counsel appearing for appellants assailed the impugned Judgment of conviction and sentence order arguing that the learned trial court based his Judgment on sole testimony of P.W.8 Rajesh Kumar Singh, who is said to be injured of the present case, but as a matter of fact, the statement of P.W.8 was recorded after five weeks of the alleged occurrence. He further submitted that, admittedly, at the time of alleged occurrence, P.W.8 was aged about only 11 years old and he disclosed the name of appellants for the first time when he came in touch of P.W.12 Gorakh Singh, who happens to be the father of P.W.8. He has further submitted that as a matter of fact deceased was own uncle of appellant No.2 and he wanted to transfer some lands in favour of appellant No.2 as well as his brothers, which had caused annoyance to P.W.12 and it was



P.W.12, who was instrumental in implicating the appellants in the present case and, as a matter of fact, the deceased was chronic litigant and he was killed by some unknown persons and that is why when Police recorded the statement of P.W.8, just after the alleged occurrence, P.W.8 disclosed the name of one Chandrika Harijan and stated that the deceased was killed by dacoits. Learned counsel referred decision of **Kanu @ Sanjay Behera versus State of Orisa reported in 2018 (1) PLJR, SC page 5** as well as decision of **Rampukar Thakur and others versus State of Bihar reported in 1947 BBCJ SC page 155** and on the strength of the aforesaid decisions, he submitted that no doubt the Judgment of conviction can be passed on the sole testimony of eye-witness, but before passing the Judgment of conviction on testimony of sole eye-witness, the Court is bound to check the veracity and trustworthiness of the aforesaid witness and if a slightest doubt is created, then in that circumstance, the Court cannot convict the appellant on testimony of sole eye-witness and the accused shall be entitled to get benefit of doubt. He has further submitted that no doubt P.W.14 Md. Salim Alam stated that the signature of deceased on the gift deed as well as another admitted documents are not same, but even if it is assumed that the appellant No.2 got prepared forged gift deed, then also the preparation of forged



document does not constitute the motive of commission of murder of the deceased.

7. On the other hand, learned Addl. Public Prosecutor supported the impugned Judgment submitting that P.W.8 is maternal grandson of deceased and it has come in evidence that P.W.8 was brought up at the house of the deceased, who had very much love and affection to P.W.8 and deceased wanted to give his property to P.W.8, but the appellant No.2 had greedy eyes over the property of the deceased and, firstly, he got prepared forged gift deed and, subsequently, when the aforesaid fact came to the notice of deceased, the appellant No.2 with the help of remaining appellants committed the murder of deceased Ramlal Singh as well as his wife and in the said occurrence P.W.8 sustained injuries and later on disclosed the name of assailants and, therefore, the testimony of P.W.8 cannot be doubted.

8. Having heard the contentions of both parties, we went through the lower court record.

9. P.W.1 Shiv Bachan Singh and P.W.2 Ramdas Singh claimed that just after the alleged occurrence, they went near the place of occurrence and saw P.W.8 Rajesh Kumar Singh in injured condition, but P.W.8 did not disclose the name of appellants, rather, injured Rajesh Kumar Singh (P.W.8) stated



that some unknown persons had killed the deceased Ramlal Singh and his wife. Furthermore, P.W.2 Ramdas Singh stated that deceased Ramlal Singh was a chronic litigant and the local goons used to come to his house.

10. Similar statement has been made by P.W.6 Rama Shankar Singh. He stated that he was sleeping in his house and at about 11 – 11.30 P.M. his wife got awake him and informed that dacoity was going on in the house of P.W.8 and having got the aforesaid information, he went to the house of P.W.8 and saw P.W.8 having sustained injury on his hand and he also found dead bodies of Ramlal Singh and his wife. P.W.6 stated that deceased Ramlal Singh had told him that he would transfer the lands, which had been won by him in litigation, to P.W.8 and shall transfer his remaining properties to his nephews. P.W.6 further stated that the injured Rajesh Kumar Singh had not disclosed the name of any assailants. This witness further stated that the relation between the deceased Ram Lal Singh and appellants was cordial though, deceased Ramlal Singh had inimical term with several other persons of different communities.

11. P.W.7 Shri Bhagwan Singh is witness of seizure-list and this witness stated that Darogajee had seized blood stained soil, empty cartridge in his presence and had prepared seizure-



list on which he put his signature. However, in cross-examination, this witness admitted that the deceased Ramlal Singh had cordial relation with the appellants though deceased Ramlal Singh was a litigant. This witness further stated that he had reached at the place of occurrence in the night and had talked with injured Rajesh Kumar Singh, but injured did not disclosed the name of any person.

12. P.W.3 Ramjee Singh has been declared hostile and nothing is important in his deposition.

13. P.W.4 Ramesh Choudhary is the informant of this case. This witness stated that while he was at patrolling duty on the road of Raghunathpur-Siwan, he heard sound of bomb explosion and thereafter he along with P.W.5 reached at Phulwariya, where he came to know that Ramlal Singh and his wife were killed and P.W.8 sustained injury. This witness further stated that dead body of Ramlal Singh was lying on a cot, whereas the dead body of his wife was lying inside the house. This witness further stated that P.W.8 sustained injury of bomb, similarly, deceased Ramlal Singh had also sustained injury of bomb, whereas his wife sustained injury of fire arm. On being cross-examined, this witness stated that the deceased Ramlal Singh and his wife were killed by unknown person. This witness further stated that he could not talk with the injured Rajesh



Kumar Singh as he was in unconscious state. Almost similar statement has been made by P.W.5 Paras Choudhary.

14. P.W.9 Dr. Bibhesh Kumar Singh did Postmortem examination on the dead bodies of deceased Ramlal Singh as well as his wife and found that both the aforesaid deceased died due to injuries sustained by them. Moreover, the death of Ramlal Singh as well as his wife is not in dispute and it is also not in dispute that Ramlal Singh and his wife died of injuries sustained by them by bomb and fire arm.

15. P.W.10 Dr. Mukti Nath Singh examined injured P.W.8 Rajesh Kumar Singh on 18.11.87 at 6.00 A.M. and found the following injuries:

- (1) Badly lacerated and charred wound on the left hand starting from wrist joint up to finger nails.
- (2) Lacerated wound on the Thenar-eminance 4”X1/2”X2” deep on right hand.
- (3) Swelling, bony tenderness and crepitation on terminal phalanx on right index finger with lacerated wound and charred margins, and
- (4) Lacerated wound on the web space of right index and middle finger of size 1”X1/2”X1/2”.

This witness opined that all the above injuries were caused by explosive substance such as bomb and the aforesaid



injuries were within 12 hours.

16. P.W.12 Gorakh Singh is father of P.W.1 and son-in-law of deceased Ramlal Singh. This witness stated that P.W.8 was brought up by deceased Ramlal Singh, as deceased Ramlal Singh had no male issue. This witness further stated that Ramlal Singh wanted to get P.W.8 married and also wanted to give him his property, but his nephew, namely, Mahabir Singh (Appellant No.2) and Foujdar Singh did not like the aforesaid wish of deceased Ramlal Singh. This witness further stated that appellant No.2 and his brother Foujdar Singh got prepared gift deed in their favour in respect of lands of Ramlal Singh, who, later on, filed case against the appellant No.2 and Foujdar Singh for preparation of above stated forged gift deed. This witness further stated that at the time of occurrence, he was working at Ankleshwar (Gujrat) and got a registered letter and then came to know about the occurrence. This witness further stated that he came to village Dudhwa and then P.W.8, his son, disclosed that on the alleged date of occurrence, he along with deceased Ramlal Singh was sleeping at Palani, whereas his maternal grandmother was sleeping inside the house and at that time lantern was burning at Palani. P.W.8 further disclosed to him that he as well as deceased Ramlal Singh woke up on the cry of his maternal grandmother and saw the appellant No.2 coming



out from inside the house having katta in his hand, whereas Foujdar Singh was carrying bomb. P.W.8 also disclosed to P.W.12 that he had seen Guru Charan Singh, Shivnath Lohar, Shivjee Singh and Shankar Singh standing near the cot of deceased Ramlal Singh and P.W.1 Gurucharan Singh caught the hands of Rajesh and tried to drag him, but he could not succeed and thereafter, appellant No.1 threw bomb, which caused death of Ramlal Singh and injury to P.W.8. P.W.12 claimed that the appellants committed the alleged occurrence with intent to grab the lands and property of deceased Ramlal Singh.

17. P.W.13 Sagar Das is the first Investigating Officer. This witness, on being cross-examined, admitted at para-16 that on 18.11.87, he had gone to Sadar hospital, where he inquired from injured Rajesh Singh, who was in semi conscious state and at that time injured Rajesh Kumar Singh (P.W.8) had disclosed the name of Chandrika Harijan. This witness further admitted at para-17 of his cross-examination that on 27.11.87 he tried to take statement of injured Rajesh Kumar Singh (P.W.8), but P.W.8 refused to give his statement saying that he would give his statement in presence of his father (P.W.12). P.W.13 further stated that again on 05.12.87, he made attempt to record the statement of injured Rajesh Kumar Singh, but he refused to make his statement and, subsequently, on 24.12.87, injured



P.W.8 Rajesh Kumar Singh gave his statement before him. It is pertinent to note here that P.W.12 at para 5 of his cross-examination has admitted that he got registered letter in respect of killings of deceased Ramlal Singh and his wife after 3-4 days of the alleged occurrence and after 08 days of receipt of the aforesaid registered letter, he met injured Rajesh Kumar Singh (P.W.8) and, therefore, it is obvious from conjoin reading of para 5 of P.W.12 and para 19 of P.W.13 that before recording the statement of Rajesh Kumar Singh (P.W.8) by P.W.13, the P.W.12 had already met with P.W.8. P.W.13 further admitted that in course of investigation, no document regarding the lands was produced before him. Furthermore, P.W.13 stated that P.W.12 had not stated before him that a lantern was burning in Palani.

18. P.W.14 Md. Salim Alam is handwriting and finger print expert and this witness compared the signature of the deceased Ramlal Singh on disputed document and came to conclusion that both the signatures are different.

19. P.W.15 Bipin Bihari Srivastava is a formal witness, who proved the handwritings and signature of one Ramdarash Lal of registry office and there is nothing important in the deposition of this witness.

20. Now, the most important witness is P.W.8, who sustained injury in the alleged occurrence. This witness was



aged about 11 to 13 years at the time of alleged occurrence as it would appear from perusal of the deposition of this witness, because age of this witness was assessed by the trial court as 15 years, whereas he himself disclosed his age as 13 years. The statement of this witness was recorded by the trial Court on 06.04.91 and, admittedly, the alleged occurrence took place on 18.11.87 i.e. about four years from the date of recording the statement of this witness by the trial Court. This witness stated that he was brought up by his maternal grand father deceased Ramlal Singh, who wanted to give some part of his property to him. This witness further stated that his marriage was going to be solemnized, but his would be father-in-law asked his maternal grand father to transfer his land to P.W.8 and his maternal grand father agreed to transfer his land in his favour, which caused annoyance to the appellants and on the alleged date of occurrence, while he was sleeping by the side of his maternal grand father and a lantern was burning at his Palani, he woke up on the cry of his maternal grandmother, who was sleeping inside the house and, thereafter, he noticed the appellant No.2 having country made pistol in his hand and his brother Foujdar Singh, who was empty hand, coming out from inside the house. This witness further stated that he also noticed that appellant No.1 Guru Charan Singh, appellant No.3



Sheonath Sharma and two others had surrounded his maternal grandfather. This witness stated that appellant No.2 uttered that the old lady had been killed and, thereafter, Foujdar Singh asked others to kill P.W.8 and deceased Ramlal Singh and thereafter, appellant No.1 tried to drag him, but his maternal grandfather caught him and then appellant No.1 and appellant No.3 came out of Palani and appellant No.1 threw bomb, which hit on the abdomen of his maternal grandfather as well as his hand as a result whereof he sustained severe injury on both hands whereas his maternal grandfather died then and there. This witness stated that the appellant No.1 is cousin brother of appellant No.2. This witness further stated that appellant No.2 and Foujdar Singh got executed forged gift deed in respect of lands of his maternal grandfather by impersonating him through Durga Singh. On being cross-examined by defence, this witness has admitted that his statement was recorded on 18.11.87 and again his statement was recorded at Police Station. This witness further stated that Police came at hospital twice or thrice and the Darogajee had inquired from him. He gave reply when a specific question was asked from him about the disclosure by him on 18.11.87 in respect of name of Chandrika Harijan and this witness stated that he could not remember as to whether he had disclosed the name of only Chandrika Harijan before the Police on 18.11.87.



This witness, again, stated that he could not remember as to whether the Darogajee came on 26.11.87 to take his statement and he did not disclose the name of any person. This witness further admitted that after 15/16 days of the alleged occurrence his father came. This witness frankly admitted at para 6 of his cross-examination that he had made statement before the Police after meeting with his father P.W.12 and Fufa, namely, Sabhapati Singh and then he had disclosed the name of the appellants. This witness further stated that he had met with his Fufa and father after one month of the alleged occurrence. This witness further stated that after the alleged occurrence 10 to 15 co-villagers came at place of occurrence and he talked with the aforesaid co-villagers. This witness further stated that he had met with P.W.5 at hospital. This witness further stated that appellant No.2 and Foujdar Singh are neighbours of his maternal grandfather. Though, subsequently, he admitted that appellant No.2 and Foujdar Singh are nephews of deceased Ramlal Singh. This witness at para 11 of his cross-examination stated that appellants and other accused committed dacoity in his house and all the belongings of the house were taken away by the appellants and their associates. This witness also denied the suggestion that he had named the appellants after being tutored by his father and Fufa.



21. On perusal of the entire evidences available on the record, it is obvious that only P.W.8 claimed himself to be eye-witness of the alleged occurrence and moreover his presence over the place of occurrence is not disputed by the defence, but the defence only claimed that P.W.8 made tutored statement in course of trial on the instigation of P.W.12.

22. Certain facts are admitted in the present case. It is admitted position that the present case was lodged on 18.11.87 on the fardbeyan of Chowkidar (P.W.4) and at the time of recording the fardbeyan of P.W.4, P.W. 4 did not disclose the name of any person as a result whereof the present case was lodged against unknown person. Therefore, it is obvious that at the time of recording the fardbeyan of P.W.4, none had disclosed the name of appellants nor till that time any person claimed to have seen the appellants committing the alleged crime. Furthermore, it is admitted case of P.W.8 that Police had recorded his statement on 18.11.87 at Sadar Hospital, Siwan and P.W.13 has, specifically, stated at para-16 of his cross-examination that on 18.11.87, he went Sadar Hospital and made inquiry from P.W.8, who had disclosed only the name of Chandrika Harijan. The statement of P.W.8 and P.W.13 goes to show that till 18.11.87, the P.W.8 had not disclosed the name of appellants. Furthermore, P.W.13 claimed that he made attempt to



record the statement of P.W.8 on 27.11.87 as well as 05.12.87, but failed to record the statement of P.W.8, as P.W.8 refused to give his statement on the pretext that he would make statement before his father P.W.12 and lastly, the statement of P.W.8 could be recorded on 24.12.87. Admittedly, P.W.12, the father of P.W.8 was not in his village on the alleged date of occurrence and he came at P.O village after more than five weeks of the alleged occurrence but prior to recording the statement of P.W.8. P.W.12 stated that when he came at his village, he met P.W.8 and talked him and asked about alleged occurrence and then P.W.8 disclosed the name of appellants and the manner in which the presence occurrence took place. Therefore, it is obvious from the aforesaid statement that the name of appellants, for the first time, came in the present case after more than five weeks of the alleged occurrence which creates doubt about genuineness of the prosecution case, especially, in the circumstance, when P.W.8 had several opportunities to disclose the name of appellants before the Police as well as co-villagers. Admittedly, co-villagers had assembled near the place of occurrence just after the alleged occurrence and on the very next morning Police reached at the hospital to record the statement of P.W.8, but P.W.8 did not disclose the name of appellants.

23. P.W.14 has stated that he had compared the



admitted signature of deceased Ramlal Singh with his disputed signature on gift deed and found both the signatures were different, but even if it assumed that appellant No.2 and his brother got executed forged gift deed in respect of properties of deceased Ramlal Singh, then also, the aforesaid circumstance is not sufficient to connect the appellants in the murder of deceased Ramlal Singh and his wife, because, admittedly, by execution of aforesaid so called gift deed, the appellant No.2 and his brother had already got transferred the lands of deceased Ramlal Singh in their favour and, therefore, there was no motive to commit murder of deceased Ramlal Singh and his wife.

24. After analyzing the evidences available on the record, we find that prosecution could not succeed to prove its case beyond all shadow of reasonable doubt and the appellants are entitled to get benefit of doubt.

25. Accordingly, on the basis of the aforesaid discussions, this Criminal Appeal is allowed and the impugned Judgment of conviction and sentence order dated 08.05.1995 and 09.05.1995, respectively, passed by the Addl. Sessions Judge-I, Siwan in Sessions Trial No. 40 of 1989 are, hereby, set aside. The appellants are acquitted of the charges giving benefit of doubt. The appellants are on bail, therefore, they are discharged from the liabilities of their bail bonds and,



accordingly, they are set at liberty, if not wanted in any other case.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Manish/-

AFR/NAFR	A.F.R.
CAV DATE	N.A
Uploading Date	23.06.2018
Transmission Date	23.06.2018

