

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 595 of 2011

Meera Devi Wife of Ram Deo Rajak R/o Village - Amdha, P.S. Rajoun,
District - Banka

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with
Criminal Appeal (DB) No. 745 of 2011

Ram Deo Rajak S/o Late Ayodhi Rajak R/o Village - Amdha, P.S. Rajoun,
District - Banka

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In Criminal Appeal (DB) No. 595 of 2011)

(In Criminal Appeal (DB) No. 745 of 2011)

For the Appellant(s) : Sri Rana Pratap Singh, Advocate
Sri Sanjay Kumar Jha, Advocate
Sri Satyaveer, Advocate
Sri Sanjeev Kumar @ Deepak Sahay, Adv.

For the Resp./State : Sri Satya Narayan Prasad (A.P.P.)
Sri Ajay Mishra (A.P.P.)

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 05-04-2018

In both the appeals, appellants are wife & husband respectively and both were tried together and convicted & sentenced in Sessions Trial No. 1068 of 2009, Tr. No. 110 of 2011 (arising out of Rajaun P.S. Case No. 85 of 2009) and as



such, both appeals were taken up for hearing together and are being disposed of by this common judgment.

2. Both the appellants by judgment dated 30-05-2011 were convicted for commission of offence under Sections 302/34 of the Indian Penal Code, 1860 (for short 'I.P.C.') and by order dated 02-06-2011, both of them were sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- (ten thousand) each under Section 302/34 of the I.P.C. by Sri Abhimanyu Lal Srivastav, learned Additional Sessions Judge, F.T.C. 3rd, Banka (hereinafter referred to as the 'Trial Judge').

3. Short fact of the case is that on 18-06-2009 at 12.00 hrs., *fardbeyan* of Rukmini Devi (P.W.3), wife of deceased was recorded by Sub-Inspector of Police H.N. Singh (not examined) of Rajaun Police Station. The said *fardbeyan* was recorded in Amdha Bahiyar. The informant disclosed that on the same date i.e. 18-06-2009 in the morning after taking meal, she with her husband Sitaram Rajak (deceased) were moving for Banka for attending date in a case. While both of them at about 9:00 AM reached in Amdha Bahiyar near the field of Anandi Marar, Ramdeo Rajak (appellant in Cr.Appeal DB No. 745/11) s/o Ayodhi Rajak and Meera Devi (appellant in Cr.Appeal DB No. 595/11) w/o Ramdeo Rajak (appellant in Cr.Appeal DB No.



745/11) proceeded towards informant and her husband carrying *khanti* and rod in their hands and started to abuse her husband and Ramdeo Rajak gave blow from his *khanti* on Sitaram Rajak, which hit on the head of her husband and blood started oozing out. After receiving said injury, he fell down, then Ramdeo Rajak and Meera Devi started to crush her husband by giving blow of *khanti* and rod. The informant raised an alarm, thereafter villagers arrived there, however; by that time her husband had already died. Both the accused had fled away. The reason for the occurrence was explained that informant after partition was constructing a wall over land of her share, regarding which, on earlier date, altercation had taken place. The *fardbeyan* was read over to her and after finding it correct, the informant put her L.T.I. in presence of her son-in-law Bateshwar Rajak (P.W.2). On the *fardbeyan*, Bateshwar Rajak (P.W.2) also put his L.T.I.

4. On the basis of fardbeyan, on 18-06-2009 at 15.30 hrs. (3:30 PM), a formal F.I.R., vide Rajaon P.S. Case No. 85 of 2009, was registered for offence under Sections 302/34 of the I.P.C. against both the appellants. During investigation, the case was found true and thereafter, on 26-08-2009, chargesheet was submitted against both the appellants and on 12-10-2009,



learned Magistrate took cognizance of the offence. On 09-11-2009, the case was committed to the court of sessions and thereafter, it was numbered as Sessions Trial No. 1068 of 2009. In the case, on 16-12-2009, joint charges were framed against both the appellants under Section 302/34 of the I.P.C. During trial, to prove the case from the prosecution side, altogether four witnesses were examined. Out of four witnesses:-

“P.W.3 Rukmini Devi is the informant of the case and P.W.2 Bateshwar Rajak, son-in-law of the informant & deceased and both have claimed to be eye-witness to the occurrence, whereas, P.W.1 Lakshman Rajak, who was co-villager, had stated that he was informed by the informant Rukmini Devi regarding the occurrence.

Dr. Ashok Kumar, who was posted as Medical Officer in Sadar Hospital, Banka, on 18-06-2009, had conducted *post-mortem* on the dead body of the deceased at about 5:00 PM and he proved the *post-mortem* examination report, which was marked as Ext.2.”

5. In the case, the investigating officer was not examined. Besides oral evidence from the prosecution side, signature of Bateshwar Rajak (P.W.2) was got exhibited and marked as **Ext.1** and *post-mortem* examination report was



marked as **Ext.2**. Except aforesaid two documents, no other document was got exhibited. After conclusion of the prosecution evidence, evidences and circumstances, which were collected against the appellants, were explained to them and on 27-04-2011, statement of both the appellants under Section 313 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) was recorded, however; both the appellants claimed to be innocent and denied the charges. From the defence side, no witness was examined.

6. Sri Rana Pratap Singh, learned counsel for the appellant in both the appeals, after placing entire evidence, has argued that virtually it was a case of ‘No Evidence’. He submits that though none of the witnesses had seen the occurrence, even then, the wife of the deceased Rukmini Devi i.e. P.W.3 claimed to be eye-witness to the occurrence. He further submits that P.W.2, who was virtually a witness to the inquest report, during evidence tried to develop a case, as if, he had also seen the occurrence from a field, which was far away from the place of occurrence. Learned counsel for the appellants has argued that entire prosecution case is demolished from Ext.2 i.e. *post-mortem* examination report as well as evidence of P.W.4. He submits that P.W.4, the doctor, who conducted *post-mortem*



examination, as well as the *post-mortem* examination report categorically suggest that the time since death was assessed between 12-14 hrs. He submits that *post-mortem* was conducted at 5:00 PM on the date of occurrence i.e. 18-06-2009 and as per prosecution case, occurrence had taken place at 9:00 AM. It has been highlighted that if the time of Post Mortem since death was in between 12-14 hours, certainly occurrence had taken place much earlier to the time, as alleged by the prosecution. It has also been argued that the deceased was having criminal antecedent and there was possibility that he might had been killed by someone else in early hours and subsequently, after noticing the dead body, the informant, with an eye to grab the land of the appellants, had fabricated the case, as if, she was witness to the occurrence and both appellants had participated in the occurrence and killed her husband. As per learned counsel for the appellants, the manner of the occurrence was exactly not proved by the prosecution. It was argued that once the informant/P.W.3 had claimed to witness the occurrence, in which, her husband was done to death by giving number of blows by *khanti* and iron rod, there was every possibility that being wife, the informant would have taken care to save her husband, but it was not a case of the prosecution that informant



received any injury on her person nor she deposed as to whether she was also assaulted or not. It has been argued that the place of occurrence in the case has not been established by the prosecution. It is true that the investigating officer was not examined, but even then, none of the witnesses had whispered as to whether they noticed any blood mark at the place of occurrence. It has also been argued by way of highlighting paragraph - 3 of the evidence of P.W.3 Rukmini Devi that land dispute in between both sides was admitted. By way of referring to paragraph 4 of the evidence of P.W.3, learned counsel for the appellants has argued that though it was stand of the P.W.3 that she alongwith her husband was going to Banka for attending a case in Banka court, she had not disclosed the number of case, which was pending in the Banka court. However, in paragraph 5 of her cross-examination, Rukmini Devi P.W.3 admitted that at least there was one criminal case, in which, her husband was only accused. Learned counsel for the appellants has also drawn our attention to evidence in paragraph 7 of the informant to show that on the one hand, the informant had deposed that she alongwith deceased were moving for Banka in the meanwhile, occurrence had taken place at 9:00 AM, however; she had stated in paragraph 7 that at 8:00 AM in the morning she had brought a



cot (खटिया) and bed at the place of occurrence for carrying the dead body. It has been argued by the learned counsel for the appellants that had it been a case that occurrence had taken place at 9:00 AM, there was no occasion to proceed for the place of occurrence carrying a cot and bed for carrying the dead body of her husband. Learned counsel for the appellants has also drawn our attention to paragraph 8 of evidence of P.W.3 to show that there is discrepancy in the prosecution case. He submits that the informant in her evidence had stated that immediately after the occurrence she telephonically sent information by mobile to chowkidar and thereafter, police arrived, however; in the formal F.I.R., though not exhibited, the time of receipt of information in the police station has been mentioned as 15.30 hrs. i.e. 3:30 PM.

7. Regarding evidence of P.W.2 Bateshwar Rajak, it has been argued by learned counsel for the appellants that this witness is none else but son-in-law of informant & deceased and in paragraph 6 of his evidence, he himself has stated that his village was about 7-8 km away from the place of occurrence, however; a plea was taken by him that from his own village, he was coming to do agricultural work in the field of the informant. Learned counsel for the appellants further submits that P.W.2



Bateshwar Rajak himself has admitted that his statement under Section 161 of the Cr.P.C. was not recorded during investigation.

8. Sri Rana Pratap Singh, learned counsel for the appellants submits that since the evidence of informant/P.W.3 is itself doubtful, there is no reason to place any reliance on the evidence of P.W.1 Lakshman Rajak, co-villager who had claimed that he was informed by the informant regarding the occurrence. Accordingly, it has been argued by learned counsel for the appellants that the learned Trial Judge, without any cogent evidence, has incorrectly passed judgment of conviction and sentence, which requires interference.

9. Both learned Addl. Public Prosecutors i.e. Sri Satya Narayan Prasad as well as Sri Ajay Mishra have vehemently opposed the appeals. It was argued that it is true that during trial, the investigating officer was not examined, but in the judgment of trial court, it has been noticed that during trial, the investigating officer had left for heavenly abode and as such, he was not examined. It has also been argued that only on the ground of non-examination of the investigating officer, entire prosecution case may not be brushed aside. It was submitted that in the present case, Rukmini Devi (P.W.3), wife of the deceased



was the natural witness and her evidence may not be seen with doubt.

10. Besides hearing, we have also examined entire evidence i.e. oral and documentary evidences. Fact remains that during trial, neither the prosecution has taken any step to bring on record inquest report nor during entire evidence, this fact has been brought as to which was the exact place of occurrence, save and except vague averment that occurrence had taken place in the Amdha Bahiyar near the field of Anandi Marar. In a criminal trial, the Court is of the opinion that it is prime duty on the part of the prosecution to establish place of occurrence, but in the present case, apparently there is no cogent evidence to show that as to which was the exact place of occurrence. Before proceeding, it would be necessary to cursorily examine the evidence of witnesses.

11. P.W.1 Lakshman Rajak, is co-villager and a hearsay witness and in his evidence, he has stated that on the date and time of the occurrence, he was present in his house and he heard *hullah* (हल्ला) that murder of Sitaram Rajak has been committed. Thereafter, he went to Amdha Bahiyar and saw that Sitaram was lying dead and there was injury on his head, shoulder and chest. He was informed by the deceased's wife that



Ramdeo and his wife had committed the murder. He further deposed that police thereafter reached there and took away all of them to police station. He identified the appellant in dock. However, in cross-examination in paragraph – 3, he deposed that the investigating officer had not recorded his statement. Meaning thereby that without statement recorded under Section 161 of the Cr.P.C., he had appeared directly to give evidence.

12. P.W.2 Bateshwar Rajak is the son-in-law of the informant & deceased. He deposed that on the date and time of occurrence, he was present in his field in Mogala Bahiyar and he saw the murder of Sitaram Rajak (deceased). He stated that both appellants had committed murder of Sitaram after assaulting him with *lathi* and *khanti*. He stated that by the time he arrived the place of occurrence, the injured had already died. In his presence, the Sub-Inspector of Police prepared inquest report in respect of the dead body and he identified his signature on the inquest report, which was marked as **Ext. 1**. He further deposed that on inquest report, one Shankar Jha (not examined) had also put his signature in his presence. In paragraph – 2 of his cross-examination, he stated that his house from the place of occurrence was 7-8 km away and he was residing there itself and in paragraph – 5, he stated that he had seen the occurrence



from a distance of about 2 km. On examination of his evidence, certainly it is difficult to place any reliance on his evidence. He may be witness to the inquest report, but it is difficult to comprehend that he had actually seen the occurrence. Though, informant/P.W.3 had stated that both the appellants were carrying *khanti* and rod, this witness (P.W.2) had stated that appellants were carrying rod and *lathi*.

13. P.W.3 Rukmini Devi, wife of deceased has claimed to be eye-witness to the occurrence and she deposed that on the date and time of the occurrence, she was going to attend the court and when she reached Amdha Bahiyar, then she saw both the appellants, with whom a dispute had already taken place in connection with erecting wall and who had earlier threatened for serious consequences. She further deposed that while they were going to court, both appellants killed her husband after assaulting him with *khanti* and rod. She further deposed that the appellant (Rajdeo) smashed the head of her husband by giving blow from *khanti* and Meera Devi assaulted him. She stated that her husband died instantaneously in the said bahiyar. She in paragraph – 2 deposed that when she raised alarm, the appellant Meera Devi abused her and threatened that she would also be killed if she raises alarm. She further deposed that thereafter



villagers assembled there and accused persons fled away. Information was given to the police station, thereafter, police came and recorded her *fardbeyan*. She claimed that she had put her thumb impression on the *fardbeyan*. In paragraph 3 of her cross-examination, she stated that appellant Ramdeo Rajak was her “देवर” (younger brother of the husband) and Meera Devi was her “गोतनी” (wife of younger brother of the husband). She also accepted that she was having animosity with them in connection with the land dispute, which took place in connection with the erection of wall. However, she accepted that there was no case pending in Banka in connection with the land pertaining to wall. She stated that she was not in a position to say as to which case was pending in Banka on the date of occurrence. She denied the suggestion that her husband was having animosity with many person. In paragraph 4, she deposed that her husband used to attend court, however; she was not in a position to say as to how many cases were pending against her husband. In paragraph - 5 of her cross-examination, she admitted that her husband was only accused in a case, which was going on, on the date of occurrence in Banka.

14. On examination of her entire evidence, it is evident that she had not at all whispered as to whether any assault was



given to her by either of the appellants. In a situation, where husband of the informant was being brutally assaulted by means of rod and *khanti* by only two accused, who were none else but own younger brother of her husband and his wife, there was every possibility that the informant would have taken step to save her husband and in that situation, she would have certainly received some injuries and if she was so frightened, there was possibility that she would have raised serious alarm for calling other persons to save her husband. However, in the evidence, it has not come as to whether she received any injury on her person.

15. P.W.4 Dr. Ashok Kumar on the date i.e. on 18-06-2009 was posted as Medical Officer in Sadar Hospital, Banka and on the same date at 5:00 PM, he had conducted post-mortem on the dead body of the deceased and found following facts:-

“External injuries:

(i) Lac. wound Left side parietal bone of scalp
Dim. 2½” x ½” x skin depth. Direction AP aried blood clot.

(ii) Fracture at Lower jaw (Mandible) one lac.
wound Dim – 1½” x 1” x ½” AP direction.

(iii) Lac. wound on the glottis area Dim. 1” x 1”
transverse.



(iv) Epymosis on the rapt of neck – 3” x 2”
transverse direction.

(v) Fracture of Meta carpal bone II, III Rt. hand.

Internal Injuries

(i) Fracture of hyoid bone.

(ii) Fracture of I and II cervical vertebra.

(iii) Contusion on the back of spinal cord.

(iv) Lung – NAD, Heart – Rt. & Lt. chamber full
of blood.”

He also noticed following facts:-

“Cause of death – Neurogenic shock due to fracture
of cervical vertebra and compression to the spinal cord.

Time since death – 12 to 14 hours.”

He further stated that *post-mortem* report was prepared
by him and it was in his signature and as such, *post-mortem*
report was marked as **Ext. 2**.

16. On examination of the evidence of P.W.4 as well as
on examining Ext. 2 i.e. *post-mortem* report, it is evident that
time since death was assessed in between 12 to 14 hours. It is
case of the prosecution that *post-mortem* was conducted at 5:00
PM on the date of occurrence, whereas alleged occurrence had
taken place at 9:00 AM in the morning. If the time of occurrence
and time of death is assessed, certainly it will indicate that
occurrence had not taken place at the time, as alleged by the
informant or the prosecution side. The Court is in agreement
with the submission of learned counsel for the appellants that



there was possibility that husband of the informant might had been killed in early hours and after noticing the dead body, the informant with her eye on disputed property might had implicated both the appellants in the case. Moreover, in the case, the prosecution has miserably failed to establish the place of occurrence.

17. The Court also considers the evidence of P.W.3/informant with suspicion, due to simple reason that conduct of the informant appears to be not reliable. She had claimed that in her presence, her husband was brutally assaulted by the appellants, that too by means of *khanti* and rod, but she had not bothered to take any step for saving her husband. In normal course, if such situation had arisen, the informant would have certainly tried to save her husband and in that event, she would have also received some injury, but it is not a case of the informant that she received any injury.

18. Considering the time of death, as noticed in the *post-mortem* report, which reflects doubtful alleged time of the informant in the *fardbeyan*, and other circumstances, we are of the considered opinion that prosecution has not proved its case beyond all reasonable doubt.

19. Accordingly, by way of extending benefit of doubt,



it is necessary to interfere with judgment of conviction and sentence of both the appellants and as such, the judgment of conviction dated 30-05-2011 and order of sentence dated 02-06-2011 passed by Sri Abhimanyu Lal Srivastav, learned Additional Sessions Judge, F.T.C. 3rd, Banka in Sessions Trial No. 1068 of 2009/Tr. No. 110 of 2011 (arising out of Rajaun P.S. Case No. 85 of 2009) is, hereby, set aside and both appeals are allowed.

20. The appellant Meera Devi (in Cr.Appeal DB No. 595 of 2011) is already on bail and since the judgment of conviction and sentence has been set aside, she is discharged from the liability of her bail-bond. The appellant Ram Dev Rajak (in Cr. Appeal DB No. 745 of 2011) is in custody and in view of setting aside the judgment of conviction and sentence, he is directed to be released forthwith, if not required in any other case.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
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