

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.596 of 1994

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

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1. Bideshi Sahni s/o Jugeshwar Sahni

2. Jaglal Sahni s/o Jugeshwar Sahni

3. Jharela Sahni s/o Bideshi Sahni

All residents of Village Bania Hasanpur, P.S. Taraiyan, District Saran (Chapra)

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Neeraj Kumar
Mr. Ranjana Sinha
Mr. Niraj Pirali
Mr. Manish Kumar

For the State : Mr. Dilip Kumar Sinha (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: 18-05-2018

1. This Criminal Appeal has been preferred against the judgment of conviction and sentence order dated 12.12.1994 passed by the learned 1st Additional District and Sessions Judge, Saran, Chapra in Sessions trial no. 72 of 90/59/90 by which and whereunder he convicted the appellant Jaglal Sahni and Bideshi Sahni(since deceased) as well as Jharela Sahni (since deceased) for the offence punishable under section 302/34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life.



2. Originally, this criminal appeal was filed by three appellants but during the pendency of this appeal, appellant Bideshi Sahni and Jharela Sahni died and their appeal was ordered to be abated by order dated 04.05.2018.

3. PW-5, Ram Nandan Sahni gave a written report to officer-in-charge of Tarriaya Police Station on 23.11.89 at about 9 pm, stating therein that on the same day at about 7.p.m his brother, namely, Bikarma Sahni was watching his paddy field which was situated at the distance of half kilometer from his house and, in the meantime, appellant Jaglal Sahni and two other appellants (since deceased) went there and threatened him to assault, upon which, he raised alarm which attracted him as well as PW-2, PW-3 and PW-4, who went there running and saw that the aforesaid persons were assaulting his brother Bikarma Sahni by means of *Lathi*. The aforesaid appellants also attempted to assault PW-2, PW-3, PW-4 and PW-5 but they saved themselves. However, the above stated appellants after assaulting Bikarma Sahni fled away from there. PW-5 claimed that he as well as others were carrying torch at the time of alleged occurrence. PW-5 further disclosed that some days prior to the alleged occurrence, the aforesaid appellants had given threatening to kill Bikarma Sahni due to dispute of fishing.

4. On the basis of written report, Tarriya P. S Case no. 151



of 1989 was registered on 23.11.89 for the offences punishable under section 302/34 of the Indian Penal Code and subsequently, formal F.I.R was drawn up against the appellants. The formal F.I.R was put up before the concerned Magistrate on 26.11.89.

5. PW-7, Rajendra Ram, the then officer-in-charge of Tarraiya police station and I.O. of this case, took the charge of investigation and investigated the place of occurrence, recorded the statements of prosecution witnesses and after completion of investigation, he submitted charge sheet against the appellants for the offence punishable under section 302/34 of the Indian Penal Code.

6. Cognizance of the offence was taken and the case was committed to the court of sessions in usual course. The appellants were put on trial and stood charged for the offence punishable under section 302/34 of the Indian Penal Code. In course of trial, prosecution examined, altogether, seven witnesses and also got exhibited inquest report as well as post mortem report. The statements of appellants were recorded under section 313 of the Cr.P.C in which they claimed their false implication.

7. The defence got examined one defence witness, namely, Ravindra Thakur, who claimed that Sanha entries no. 362- 367 had been made in writing of constable but he could not say as to who had made Sanha entry no. 367, though he claimed that Sanha entry no.



368 did not contain the name of any accused. It is pertinent to note here that the aforesaid Sanha entry had not been exhibited in this case either on behalf of the defence or on behalf of the prosecution.

8. Learned Trial court, having scrutinized the evidences on the record, convicted and sentenced the appellants in the manner as we have already stated.

9. Learned counsel appearing for appellant, Jaglal Sahani challenged the impugned judgment of conviction and sentence order arguing that the prosecution could not succeed to move the manner of occurrence as well as place of occurrence because the witnesses made contradictory statements in this regard. He further submitted that although in course of trial, so-called eye witnesses claimed to have seen the actual killing of the deceased but, as a matter of fact, they improved their statements during course of trial and they had not seen the actual killing of the deceased. He further submitted that the prosecution witnesses, particularly, PW-5 (informant) claimed that they had reached to the concerned police station at about 9 p.m. on the same day of the occurrence and gave written report but PW-7 stated that he got written report at 12 p.m. on 24.11.1989 and the prosecution failed to bring the written report which had been given in police station on 23.11.1989 at about 9 p.m. and, therefore, the aforesaid fact creates doubt about the prosecution story.



10. He further submitted that the PW-7, Rajendra Ram admitted that the houses of prosecution witnesses were at the distance of one and half kilometer from the place of occurrence and all the witnesses claimed that they had reached on the place of occurrence having heard the alarm raised by the deceased but it is not believable that the prosecution witnesses could have heard the alarm raised by the deceased from the distance of half kilometer and could cover the aforesaid distance within a short span of time having heard the alarm of deceased and, the aforesaid circumstance goes to show that the witnesses had not seen the actual killing of the deceased. He further submitted that PW-7 has admitted in his deposition that the place of occurrence was surrounded by sugarcane field and admittedly, the alleged occurrence took place at about 7 p.m. and, therefore, it was not possible to the prosecution witnesses to see the actual killing of the deceased. He further submitted that PW-5, in his fardbeyan, leveled general allegation of assault against all the appellants but in course of trial, PW-5 as well as others so-called eye witnesses improved their statements saying that one of the appellants, namely, Jharela Sahni, (since deceased) gave lathi blow on the head of the deceased and having sustained lathi blow, deceased fell down on the earth and, thereafter, the remaining appellants including the appellant Jharela Sahni started assaulting the deceased by means of lathi.



Learned counsel for the appellants submitted that non-mentioning of the fact of assault on the head of the deceased in fardbeyan, goes to show that the so- called eye witnesses had not seen the actual killing of the deceased. He submitted that had the PW-5 seen the actual occurrence, the fact of causing head injury by a particular appellant would have certainly been mentioned in the fardbeyan of PW-5.

11. Learned counsel for the appellant submitted that, no doubt, the first information report is not an encyclopedia of the case but in the case of **Arulvelu & Anr. v/s State & Anr. reported in 2010 Criminal Law Journal 433**, the Apex Court of this country has held that in the F.I.R, it should, at least, mention a broad story of the prosecution and not mentioning of material and vital facts affects the credibility of the F.I.R.

12. On the strength of the aforesaid decision, learned counsel for the appellant submitted that non-mentioning of fact of assault on the head of the deceased the first information report shakes the credibility of so-called eye witnesses. He further submitted that no blood was found either on the place of occurrence nor blood stain earth was produced before the trial court and, similarly, no torch was produced either before the investigating officer or before the court and, therefore, all the aforesaid latches create doubt about the genuineness of the prosecution story. He further submitted that as a



matter of fact, deceased was killed by some unknown person but the appellants were falsely implicated by the informant and others due to village politics and previous enmity.

13. On the other hand, learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction and sentence order arguing that all the prosecution witnesses have supported the prosecution case and the eye witnesses very clearly stated that deceased was killed by the appellants. He further submitted that medical evidence also supports statements of prosecution witnesses. He, further, submitted that the investigating officer proved the place of occurrence and, therefore, there is no scope to interfere into the impugned judgment and sentence order.

14. Having heard the contentions of both the parties, we went through the record along with lower court record.

15. PW-6, Dr. Rajbanshi Singh, conducted post mortem examination on the dead body of the deceased on 25.11.89 and found multiple bruises on the front of chest and back as well as haematoma on mid skull about 1'' in diameter with fracture of the underlying under line bone with laceration of cerebrum (brain) in the mid part and hemorrhagic spots (bleeding sports) around brain substance and opined that the death was caused due to the aforesaid injuries. The testimony of PW-6 as well as exhibit 2 (post mortem report) goes to



show that the deceased Vikram Sahni died of the aforesaid injuries and his death was caused by hard and blunt substance.

16. Moreover, the death of the deceased, Vikram Sahni, is not in dispute and the prosecution, successfully proved this fact that the deceased, Vikram Sahni, died of his injuries. The main controversy between the parties is that the prosecution claimed that it were appellants, who committed the murder of the deceased whereas appellants claimed that they were falsely implicated in this case and, as a matter of fact, some other had killed the deceased and the prosecution party implicated the appellants on account of previous enmity.

17. PW-2, Upendra Sahni, claimed that on the alleged date of occurrence he was going to see his field and having heard the alarm, he went running to the place of occurrence. This witness further claimed that PW-3, PW-4, and PW-5 had also gone to the place of occurrence. This witness claimed that Jharalal Sahani (since deceased) gave lathi blow causing head injury to the deceased, as a result, whereof deceased fell down on earth and after that all the appellants assaulted him by means of lathi. This witness claimed that he as well as other witnesses were carrying torch and they had identified the appellants in the light of torch. This witness stated that his house is situated at the distance of 250 yards in east side from his



field and at Para-23 of cross- examination this witness stated that he heard the noise on his way while he was going to his field. This witness denied this fact that he had made statement before the police to this effect that when he heard the noise, he was at his house.

18. PW-7, at Para-11 of his cross examination, stated that PW-2 had made statement before him that he was at his house when he heard the noise and he went running to the place of occurrence from his house but had not made statement to this effect that Jharela Sahni had given lathi blow on the head of the deceased. The above stated fact goes to show that PW-2 has improved his statement in course of trial because in course of investigation, when his statement was recorded under section 161 of the Cr.P.C, this witness claimed that he was at his home when he heard the noise of deceased. PW-7 has stated that the distance between place of occurrence as well as house of the deceased was about half Kilometer. The deceased was co-villager of PW-2 and it has come in evidence that the village of PW-2 is about half Kilometer from the place of occurrence. Therefore, in our view, no reliance can safely be placed upon testimony of PW-2 because when the deceased raised alarm, he was at his home and, therefore, it is unbelievable that he had seen the actual assault of the deceased.

19. PW-3, Kamal Sahni, also claimed that at the time of



alleged occurrence, he was going to see his field along with PW-2, PW-4 and Hari Nandan Sahni and all the persons were carrying torch in their hands. He further stated that when they heard some noise, they went running to the place of occurrence, where they saw the appellants assaulting the deceased with lathi and appellant Jherela gave lathi blow on the head of deceased, as a result, whereof he fell down on earth and thereafter, all the appellants assaulted him with lathi. He claimed that they identified the appellants and saw the occurrence in the light of torch. This witness further stated that Bikram Sahni was taken at the door of his house, where he died. This witness admits at Para- 6 of his cross-examination that his house is near the house of PW-5 and between his house and the house of PW-5, there is only two houses. This witness further admitted that when he heard the noise, he was at the distance of 50 yards from his house. This witness also admitted that he saw the occurrence at the distance of 2 *laggi* and when he first saw the deceased, he had seen the injury on his body and the blood was oozing out from the head of the deceased. This witness further stated that except the above stated four persons, none had come on the place of occurrence. At Para -16 of his cross-examination, this witness stated that he had not made any statement before the police as he did not meet to the police but PW-7 at Para- 14 of his cross-examination stated that PW-3 had made



statement before him at about 9 p.m. to this effect that having heard the sound , he went to the place of occurrence. The statement of this witness goes to show that this witness for the first time claimed himself to be an eye witness of the occurrence in course of trial.

20. PW-4, Nawab Sahni, claimed that he was going to see his field and while he was on his way, PW-2, PW-3, and PW-5 met him and in the mean time, he heard the noise and having heard the noise he as well as above stated 3 persons went running towards the place of occurrence and at that time all the 4 persons were carrying torch in their hands. This witness, further, claimed that Jharela Bideshi and Jaglal had surrounded the deceased and, appellant Jherela gave one lathi blow on the head of the deceased, as a result whereof deceased fell down on the earth and, thereafter, all the appellants assaulted him by means of lathi. This witness stated that having seen the villagers, the appellants fled away, from the place of occurrence. This witness, further, claimed that the deceased was brought to his home but he died at his home. This witness admitted that he had not seen the blood on the place of occurrence but he saw the blood at the door of the house of the deceased. At Para-15 of the cross-examination, this witness stated that he had made statement before the police that he was going to see his field and on the way, he met PW-2, PW-3 and PW-5. This witness further claimed that he had



made statement that at the time of alleged occurrence, he was carrying torch and in the light of torch, he identified the appellants and saw the alleged occurrence but PW-7 in his cross- examination stated that PW-4 had not made statement to this effect that while he was going to see his field, PW-2, PW-3 and PW-5 met him on his way and furthermore PW-4 had also not claimed to identify the appellants and to have seen the occurrence in the light of torch. The above stated fact goes to show that PW-4 improved his statement in course of trial and claimed himself to be an eye witness of the alleged occurrence.

21. PW-5, Ramnandan Sahni, is informant of the present case. This witness claimed that at the time of alleged occurrence, he was going to his field and on his way, he met PW-2, PW-3 and PW-4. In the meantime, he heard noise and went running to his field. This witness claimed that he as well as others were carrying torch and in the light of torch, they saw the appellants, who had assaulted the deceased by means of lathi. This witness further claimed that the appellant Jheralal Sahni gave lathi blow on the head of the deceased Bikram Sahni and, thereafter, all the appellants assaulted him by lathi as a result whereof he fell down on the earth. This witness claimed that after the occurrence, the deceased was brought at the door of his house but he died and, thereafter, his dead body was taken to the police station. This witness claimed that when he reached at the police



station, no officer was present there except only one constable. This witness further stated that he got prepared his statement by one Mukhiya Ramnandan Sahni and, thereafter, he put his thumb impression on his statement. He further claimed that in the next morning, he handed over the dead body of the deceased to the PW-7. This witness admitted in his cross-examination that the occurrence took place in his field and the height of paddy was about 4 feet. This witness also stated that in the east side of the place of occurrence, there was field of sugarcane and there were paddy in other fields. He also stated that the distance between the aforesaid paddy field as well as his house was about 250 yards. This witness further admitted that he had mentioned in the written report that the distance between the house and the place of occurrence was about half Kilometer. This witness has stated that he knew nothing about the dispute of fishing. He further stated that while he was at *Brahmesthan*, which was at the distance of about 50 yards from the place of occurrence, he having heard the noise and having heard the noise he went running towards the place of occurrence, where he met PW-2, PW-3 and PW-4. This witness admitted at Para-21 of his deposition that the entire occurrence took place within five minutes. This witness stated at Para-23 of his deposition that the place of occurrence was surrounding by sugar cane field from three sides. This



witness, further, stated that he had not made statement before the police to this effect that he was going to his field after taking meal. This witness further admitted that the appellants had not threatened the deceased in his presence. At Para-30 of his cross- examination, this witness stated that he as well as others reached at the police station at about 8.30.P.M on the alleged date of occurrence and subsequently, Mukhiya also reached at the police station at about 11.p.m. This witness further stated that in the next morning, he gave written report to PW-7. This witness further stated that he had disclosed the name of assailants before the police. This witness further admitted that in the next morning at about 8.30.a.m the written report was given to PW-7.

22. From perusal of deposition of PW-5 and PW-7 we find that PW-7 claimed that he got written report of PW-5 at about 2 a.m whereas PW-5 says that the written report was given in next morning at about 8.30.a.m but formal F.I.R goes to show that the F.I.R was lodged on 24.11.89 at 8.30 a.m. The aforesaid contradictions create doubt about timing of registration of the case. Moreover, the first information report was put up before the Magistrate after one day delay that is on 26.11.89 and no explanation of the aforesaid delay has been given in the F.I.R and, therefore, in our opinion, the aforesaid fact creates doubt about the genuineness of the prosecution case.



Admittedly, the alleged occurrence took place at about 7.p.m and at that time there was complete dark and witnesses claimed to have seen the alleged occurrence in the light of torch but no torch was produced either before the I.O or before the Court in course of trial.. Furthermore, the investigating officer did not find any blood stains either at the place of occurrence or at the door of the house of the deceased. All the aforesaid facts create doubt about the genuineness of the prosecution story and all the above stated fact creates doubt about the place of occurrence as well as manner of occurrence. Therefore, in our view, the appellant is entitled to get benefit of doubt.

23. On the basis of aforesaid discussions, this Cr. Appeal is allowed and the impugned judgment of conviction and sentence order are, hereby, set aside and the appellant Jaglal Sahni is acquitted of the charge giving benefit of doubt. The appellant Jaglal Sahni is on bail. He is discharged from the liabilities of his bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	
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