

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.286 of 1995

(Against the Judgment of conviction dated 12.09.1995 and order of sentence dated 15.09.1995 passed by the learned Additional Sessions Judge-II, Khagaria in Sessions Trial No. 267 of 1988)

1. Prabhat Kumar Singh, son of Late Barelal Singh, resident of village-Bishanpur, P.S. Beldaur, District-Khagaria.
2. Prithvi Chand Singh @ Prithvi Chandra Singh, Son of Shri Mishri Lal Singh, resident of village-Bishanpur, P.S. Beldaur, District-Khagaria
3. Ganesh Pandit, son of Late Anup Pandit, resident of village-Bishanpur, P.S. Beldaur, District-Khagaria.

... .. Appellants

Versus

State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 345 of 1995

Achhelal Singh, son of Shri Rangi Singh, resident of village -Bishanpur, P.S. Beldaur, District-Khagaria

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In Criminal Appeal (DB) No. 286 of 1995)

For the Appellants : Mr. Bharat Lal, Advocate,
Mr. Rabindra Kumar, Advocate,

For the State : Ms. S.B. Verma, APP

(In Criminal Appeal (DB) No. 345 of 1995)

For the Appellant : Mr. Bharat Lal, Advocate,
Mr. Rabindra Kumar, Advocate,

For the State : Mr. M.N. Jha, APP

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

And

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 06-07-2018

Both the above stated Criminal Appeals have arisen



out of impugned Judgment of conviction and sentence order dated 12.09.1995 and 15.09.1995, respectively, passed by learned 2nd Addl. Sessions Judge, Khagaria in Sessions Case No. 267 of 1988 arising out of Beldaur P.S. Case No. 44 of 1987 by which and whereunder, he convicted the appellant in Criminal Appeal No. 345 of 1995 for the offence punishable under Section 302 of the Indian Penal Code and the appellants in Criminal Appeal No. 286 of 1995 for the offences punishable under Section 302/34 of the I.P.C. and furthermore, the above stated appellants further convicted under Section 201 of the I.P.C. The appellants were sentenced for life for the offence punishable under Section 302 as well as 302/34 of the I.P.C., respectively, and to undergo rigorous imprisonment for five years for the offence punishable under Section 201 of the I.P.C. The learned Court below directed that the sentences shall run concurrently and the period of detention undergone by the appellants shall be set off against the sentence as imposed by the Court.

2. P.W.8 Ranjit Kumar Singh gave his fardbeyan on 17.09.1987 at 2.00 P.M. at Beldaur Police Station to this effect that on 16.09.1987, he had gone Sonbarsa to purchase household articles and while he was returning to his house after purchasing the household articles and waiting for boat near house of Uchit Ram of village Maligram, he noticed a boat coming to Maligram. He noticed that his parents



along with some unknown persons were sitting on the aforesaid boat. He called his father, who got accommodated him on the same boat. The aforesaid boat proceeded to its destination and at about 5.00 P.M., the aforesaid boat reached near Basairia Mushahari tola. As soon as the above stated boat reached near Basairia Mushahari tola, the appellants and other F.I.R. named accused persons having armed with lethal weapons came running there and appellant No.1 in Criminal Appeal (DB) No. 286 of 1995, namely, Prabhat Kumar Singh pointed gun at Damodar Singh, who was boatman, and asked him to stop the boat and also ordered him to left the boat otherwise, he would be killed. The boatman left the boat and jumped into the water. The appellants and other F.I.R. named accused came on the boat and asked Mukhlal Singh, wife of Bishundeo Singh as well as informant to left the boat. The above stated Mukhlal Singh, wife of Bishundeo Singh and informant got down from the boat and, thereafter, appellants Prabhat Kumar Singh, Prithvi Chandra Singh and Ganesh Pandit pulled down the father of the informant and appellant in Criminal Appeal (DB) No. 345 of 1995, namely, Achhelal Singh chopped of the head of the informant's father and seeing this, the mother of informant started crying, but all the above stated persons assaulted his mother seriously as a result whereof she also fell down. After that the above stated accused persons fled away towards western side by th boat. On alarm, Deonarayan Singh,



Jharsu Singh, Indira Devi, Ramawtar Singh, Tuntun Singh, Sitaram Singh etc. of village Bishunpur came there and saw the occurrence.

3. On the basis of the fardbeyan of informant Ranjeet Kumar Singh (P.W.8), Beldaur P.S. Case No. 44 of 1987 was registered on the same day and, accordingly, formal F.I.R. was drawn up for the offences punishable under Section 302 and other minor sections of the I.P.C. as well as Section 25 and 26 of the Arms Act against the appellants and others.

4. The Formal F.I.R. was sent to concerned Court on 18.09.1987 and the same was put up before S.D.J.M. Khagaria on 25.09.1987.

5. P.W.11 Navin Prasad took charge of investigation and after completion of investigation, he submitted Chargesheet. The cognizance of the offence was taken and the case was committed to the Court of Session.

6. The appellants were put on trial before the learned court below and the appellant in Cr. Appeal (DB) No. 345 of 1995, namely Achhelal Singh stood charged separately for the offence punishable under Section 302 of IPC, whereas all the appellants and other accused stood charged for the offence punishable under Section 302 read with Section 149 of I.P.C. and Section 201 of I.P.C. Furthermore, appellants Prabhat Kumar Singh, Prithvi Chand Singh and Ganesh Pandit stood charged

ie offence punishable under Section



302 read with Section 114 of I.P.C. and appellants Acchelal Singh, Ganesh Pandit and Ramcharan Kahar stood charged separately for the offences punishable under Section 302 read with Section 149 of the IPC. The charges were read over and explained to the appellants and other accused to which they denied and claimed to be tried.

7. To prove the charges, prosecution examined, altogether, 12 prosecution witnesses and also got exhibited some documents. The statements of appellants and other were recorded under Section 313 of the Cr.P.C. in which they, again, denied the prosecution story.

8. Learned trial Court after analyzing the evidences available on record passed the impugned judgment of conviction and sentence order, which is under challenge in these two appeals.

9. Learned counsel appearing for appellants submits that there was inordinate delay in lodging the prosecution case, because according to the prosecution case the alleged occurrence took place on 16.09.1987 and the fardbeyan of P.W.-8 was recorded on 17.09.1987. He, further, submitted that the fardbeyan of P.W.8 is an antedated document as the formal F.I.R and other related documents were receipt in the court of SDJM, Khagaria on 25.09.1987 that is after much delay of its institution. He further submitted that the prosecution failed to explain th

ay which creates doubts about the



genuineness of the prosecution story. He further submitted that in course of trial, it came in the evidence of the prosecution witnesses that there was political rivalry between deceased persons as well as appellants and, as a matter of fact, the deceased persons were killed by some unknown persons as the deceased persons had several litigations with other persons and taking advantage of killing of the deceased persons, P.W.8 implicated the appellants in the present case due to previous enmity.

10. He further submitted that, admittedly, after institution of the present case, a headless dead body was recovered and P.W.-8 claimed that the aforesaid headless dead body was of his deceased father. He has further submitted that P.W.-8 claimed that he had identified the dead body of his father on the basis of clothes as well as mark of chicken pocks. He has further submitted that, as a matter of fact, none had seen the actual killing of the deceased persons and the prosecution could not succeed to prove that the recovered dead body was of father of P.W.-8.

11. He further submitted that the prosecution witnesses, who claimed to be eye witness of the alleged occurrence, have inimical terms with the appellants and that is the reason of false implication of the appellants. He further submitted that prosecution also failed to establish motive of the murder. He submitted that the boatman, namely,



Damodar Singh was not examined by the prosecution in course of trial, particularly, in the circumstance when his statement was recorded under Section 164 of Cr.P.C. Learned counsel for the appellants submits that, as a matter of fact, the boatman, namely, Damodar Singh in his statement recorded under Section 164 of Cr.P.C. had claimed to have identified only appellant Achhelal Singh at the time of alleged occurrence and that is the reason of non-examination of boatman, namely, Damodar Singh in course of trial.

12. On the other hand, Learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence Order arguing that P.W.-8 as well as other eye witnesses very clearly stated that parents of P.W.-8 were killed by the appellants. He further submitted that the prosecution succeeded not only to prove place of occurrence but also the manner of occurrence and the recovery of dead body of father of P.W.-8 corroborates the claim of eye witnesses.

13. Learned Additional Public Prosecutor further submitted that it has come in evidence that the place of occurrence as well as other nearby area was inundated into the water at the time of alleged occurrence and it was not possible to reach at the police station just after the alleged occurrence. He further submitted that due to flood, the F.I.R. could not reach in court in time and moreover, the aforesaid delay was not fatal to the pro: cause the prosecution witnesses very



clearly stated that it was very difficult to reach Khagaria at the time of alleged occurrence because the entire area was inundated into water.

14. Having heard the contentions of both the parties, we went through the record. Admittedly, prosecution examined altogether 12 witnesses, out of them P.W.-1 Girija Devi has been declared hostile, P.W.-2 namely Bhupendra Singh has been tendered, P.W.-3 Sitaram Singh and P.W.-4 Natho Das are the witnesses on the point of search and seizure and they have not claimed to be eye witnesses of the alleged occurrence. P.W.-5 Mukhlal Singh claimed himself to be eye witness of the alleged occurrence and also claimed that on the alleged date of occurrence, he was on the boat along with deceased persons and Ramdev, Nandlal Singh and wife of Bisundeo Singh (P.W.-1). This witness supported the prosecution story and stated that P.W.-8 boarded on the aforesaid boat. This witness further stated that Ramdev got down from the boat at his house and, similarly, Nandlal Singh also got down from the boat at his house. This witness further stated that the boat proceeded and reached near Basaria Mushahari and as soon as the boat reached near Basaria Mushahari, 4 to 5 persons came running there and stoped the boat on the point of gun. This witness stated that Prabhat Kumar Singh, Achhelal Singh and Ganesh Pandit came on the boat and at that time Achhelal Singh was armed with Katta, Prithivi Chandari, Prithivi Pandit and Ganesh Pandit armed with



lathi. This witness further claimed that the aforesaid three persons pulled down the deceased Harinandan Singh and Achhelal Singh chopped off his head. The wife of Harinandan Singh raised alarm, but she was assaulted by Ghanshayam Singh, Sajjan Singh, Bhumi Singh, Sharvan Singh, Ramchandar Kahar and Joginder Pandit by means of lathi and bhala. This witness further claimed that there was another boat which was following the boat on which the deceased persons were sitting and on the aforesaid boat Ghanshayam, Sajjan Singh, Bhumi Singh, Jogindar Singh, Sharvan Singh etc. were present. This witness claimed that after the occurrence, the above stated persons fled by the above stated two boats along with dead bodies of Harinandan Singh and Sabya Devi.

15. P.W.-6 Lal Singh is not an eye witness of the alleged occurrence and this witness stated that he came to know about the alleged occurrence from P.W.-8.

16. P.W.-7 Deonarayan Singh claimed that having heard the noise he went running near the place of occurrence and saw the dead bodies of Harinandan Singh and his wife lying on the boat. This witness claimed that appellants Prabhat Kumar Singh, Prithivi Chand Singh, Achhelal Singh and Ganesh Pandit were present on the aforesaid boat, but as soon as he reached near the place of occurrence, the aforesaid boat proceeded ahead. This witness also stated that the remaining persons were present on



17. P.W.-8 Ranjeet Kumar Singh is the informant of this case and he claimed himself to be an eye witness of the alleged occurrence. P.W.-9 Ramotar Singh also claimed himself to be eye witness of the alleged occurrence and supported the prosecution case.

18. P.W.-10 Tejnarayan Singh is not an eye witness of the alleged occurrence and he claimed that on the alleged date of occurrence the deceased persons had come to his village to distribute the relief. This witness also claimed that prior to alleged occurrence deceased Harinandan Singh had contested Panchayat election against the appellant Prabhat Kumar Singh.

19. P.W.-11 Navin Prasad is the investigating officer, whereas P.W.12 is Dr. Ramanand Kuwar had conducted autopsy on the corpse of the deceased Harinandan Singh on 22.09.1987.

20. It is evident from the evidences available on the record that the alleged occurrence, allegedly, took place on 16.09.1987 and the First Information Report was lodged on 17.09.1987, whereas the First Information Report reached to the Court on 25.09.1987 as the First Information Report was signed by S.D.J.M. on 25.09.1987. Learned Additional Public Prosecution pointed out that there is overwriting in the date below the signature of concerned S.D.J.M. and it appears that initially, the date was given as 20.07.1987, but after making overwriting it has been written as 25.09.1987 and, therefore, in the aforesaid s it would be presumed that the First



Information Report was received in the Court of S.D.J.M, Khagaria on 20.09.1987, but we are not, at all, convinced with the aforesaid submission, because the learned Court record goes to show that formal FIR was received in the Court of SDJM on 25.09.1987 and on the same day order-sheet in respect of receipt of formal F.I.R. was drawn up by the concerned Magistrate. It would further appear that formal F.I.R was sent to Court on 18.09.1987, but the aforesaid formal FIR reached to the Court on 25.09.1987. The learned Additional Public Prosecutor tried to explain the delay arguing that there was flood like situation in Khagaria District and the entire area of Khagaria District was inundated into water and it was not possible to reach district head-quarter just after the occurrence as well as registration of F.I.R. and the above delay might have caused due to above stated flood, but in our opinion, the aforesaid argument of the learned Public Prosecutor cannot be accepted, because, admittedly, the Post-mortem of the dead body of deceased Harinandan Singh was conducted at Sadar Hospital Khagaria on 22.09.1987. It is also an admitted position that the dead body was brought by Chowkidar at Sadar Hospital Khagaria on 22.09.1987. Therefore, a question arises what prevented the police officials to send the First Information Report as well as other documents to Court on 22.09.1987 through the same Chowkidar. Therefore, the aforesaid delay of sending the First Informatic

erned Court creates doubts about the



genuineness of fardbeyan and in our opinion the above delay was fatal to the prosecution case, particularly, in the circumstance when defence, specifically, claimed that the appellants and others were implicated on account of political rivalry and previous enmity.

21. No doubt, some eye-witnesses claimed to have seen the alleged occurrence and prosecution claimed that headless dead body of deceased was recovered on 18.09.1987 and the said dead body was identified by P.W.-8 on the basis of cloths and mark of chicken pocks. Admittedly, the cloths of deceased were not seized nor produced before the Trial Court. The evidence of P.W.-12 goes to show that he did not find any mark of chicken pocks on the trunk of so called Harinandan Singh. Therefore, identification of trunk of Harinandan Singh appears to be doubtful.

22. No doubt, the statements of appellants and others were recorded under Section 313 of Cr.C.P. but from perusal of statement of the appellants recorded under Section 313 of the Cr.P.C., we find that the learned Trial court did not record the statements of appellants under Section 313 of Cr.P.C. in proper manner because the evidences which came against the appellants in course of trial, were not put before the appellants at the time of recording their statements under Section 313 of the Cr.P.C. Furthermore, we find that the learned Trial Court recorded

f appellants under Section 313 of



Cr.P.C. in very casual and formal manner and did not mention even the place of occurrence as well as manner of occurrence in the questions formulated by the Trial Court. The recording of statement under Section 313 of Cr.P.C. is not mere a formality, because the legislature has given a valuable right to accused to know what evidence has come against him in course of trial so that he could explain the said evidence which has come against him. The failure of trial Court to record the statement of accused properly violates a valuable right of the accused and if there is any laches in recording the statement under Section 313 of Cr.P.C., the conviction of the accused cannot sustain in the eye of Law.

23. In the present case, as we have already discussed that the learned Trial Court failed to record the statement of appellants in proper manner and, therefore, in our opinion the judgment of conviction and sentence order can not sustain in the eye of law. However, it is an admitted position that the alleged occurrence took place on 16.09.1987 that is more than thirty years ago and there are above stated infirmities in prosecution case. Therefore, it would be needless to remit the matter to the trial Court for recording the statement under Section 313 of Cr.P.C. afresh. In the aforesaid circumstances we have no option except to set aside the judgment of conviction and sentence order.

24.

of the aforesaid discussions, both the



above stated Criminal Appeals are allowed and the impugned Judgment of conviction and sentenced order dated 12.09.1995 and 15.09.1995, respectively, passed by the Addl. Sessions Judge-II, Khagaria in Sessions Trial No. 267 of 1988 are, hereby, set aside. The appellants are acquitted of the charges. The appellants are on bail, therefore, they are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Manish/-

AFR/NAFR	A.F.R.
CAV DATE	N.A
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