

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.590 of 1998

(Appeal against the Judgment of conviction and sentence order dated 28-11-1998 and 30-11-1998, respectively, passed by the 1st Additional Sessions Judge, Munger, in Sessions Case No. 546 of 1995).

1. Brajnandan Ram, son of late Banwari Ram.
2. Ful Kumari Devi, wife of late Rajeshwar Ram (substituted vide order dated 02-05-2014 in place of Rajeshwar Ram).
3. Rajendra Ram, son of late Dev Ram.
4. Balmiki Ram, son of late Dev Ram.
All residents of village Sarwa, P.S. Barbigaha, District Sheikhpura.

... .. Appellants.

Versus

The State of Bihar

... .. Respondent.

with
Criminal Appeal (DB) No. 33 of 1999

Anil Kumar, son of Rajendra Ram, resident of village Sarwa, P.S. Barbigaha, District Sheikhpura.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

Appearance :

(In Criminal Appeal (DB) No. 590 of 1998)

For the Appellant/s : Mr. Md. Fazal Rahman, Advocate.
Mr. Anishur Rahman, Advocate.

For the State : Mr. Dilip Kumar Sinha, APP.

(In Criminal Appeal (DB) No. 33 of 1999)

For the Appellant/s : Mr. Ranbir Singh, Advocate.

For the State : Mr. Shevesh Chandra Mishra, 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 : 30-11-2018



1. Both the above stated criminal appeals have been preferred against the Judgment of conviction and sentence order dated 28.11.1998 and 30.11.2018, respectively, passed by the learned Ist Additional Sessions Judge, Munger, in Sessions Case No. 546 of 1995, by which and whereunder, he convicted the appellant, Anil Kumar, in Criminal Appeal (DB) No. 33 of 1999 for the offences punishable under Section 302, Section 302 read with Section 149 of the Indian Penal Code and Section 27 of the Arms Act and sentenced him to undergo rigorous imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code, to undergo rigorous imprisonment for life for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code and to undergo rigorous imprisonment for three years for the offence punishable under Section 27 of the Arms Act whereas the court below convicted the appellants in Criminal Appeal (DB) No. 590 of 1998 for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code. The learned trial court ordered that the sentences of appellant, Anil Kumar, will run concurrently.



2. It is pertinent to note here that during pendency of Criminal Appeal (DB) No. 590 of 1998, the original appellant, namely, Rajeshwar Ram, died and in his place his wife, namely, Ful Kumari Devi was permitted to pursue as appellant on behalf of the deceased, appellant no. 2 in Criminal Appeal (DB) No. 590 of 1998 vide order dated 02.05.2014.

3. On 01.05.1995, Barbigha P.S. Case No. 57 of 1995 was lodged for the offences punishable under Sections 147, 148, 149 and 302 of the Indian Penal Code and Section 27 of the Arms Act on the basis of *Fradbeyan* of P.W.4, whose statement was recorded by P.W.6, on same day, at about 10 P.M., at village Sarwa. P.W.4, claimed in his Fardbeyan which has been marked as Ext.4 that on the same day, at about 8 P.M., the *Barat* of son of Rajendra Ram of his village was going and he along with his wife Sehanta Devi (deceased) was standing at the door of his house for watching the *Barat*, but in the meantime, F.I.R. named accused (appellants) having formed unlawful assembly came there and appellant no.4, namely, Balmiki Ram in Criminal Appeal (DB) No. 590 of 1998 ordered to kill him and upon which, appellant Anil Kumar in Criminal Appeal (DB) No. 33 of 1999 opened fired, which hit Sehanta Devi (deceased) on her chest and having sustained firearm injury, she fell down on the ground and died then



and there. The remaining appellants, too, opened fire from their respective pistols and fled away from there. The reason behind the occurrence is said to be old enmity. P.W.4 claimed that the above stated offence was witnessed by Suresh Prasad Singh (P.W.1), Janardan Prasad (P.W.2), Mahesh Prasad (P.W.3), Awadhesh Prasad Singh (P.W.9), Halendra Prasad Singh (P.W.8) and others.

4. The formal F.I.R. was drawn on 01.05.1995, at about 11:45 P.M., and the formal F.I.R. as well as Fardbeyan were dispatched to the concerned court on 02.05.1995 but admittedly, formal F.I.R. and Fradbeyan put up before concerned Magistrate on 04.05.1995, i.e., after two days of sending of the aforesaid formal F.I.R. and Fradbeyan. However, P.W.6 took charge of investigation, he inspected the place of occurrence, recorded the statements of prosecution witnesses and in course of investigation, seized blood stained soil from the place of occurrence and after completion of investigation, he submitted charge sheet against the appellants.

5. After cognizance and commitment, the appellants were put on trial and they stood charged for the offences punishable under Section 302 read with Section 149 of the Indian Penal Code and Section 27 of the Arms Act, whereas appellant Anil Kumar was separately charged for the offence punishable



under Section 302 of the Indian Penal Code. The appellants denied the charges and claimed to be tried.

6. In course of trial, prosecution examined, altogether, 12 prosecution witnesses and also got exhibited postmortem report, inquest report and seizure list etc. The statements of appellants were recorded under Section 313 of the Code of Criminal Procedure, in which they denied the prosecution case and claimed there false implication.

The appellants also got examined two defence witnesses and by examined the defence witnesses, the appellant tried to prove their innocence.

Learned trial court after analyzing and scrutinizing the evidences available on record having relied upon the testimonies of prosecution witnesses convicted and sentenced the appellants in the manner as stated above.

7. Mr. Md. Fazal Rahman, learned counsel appearing for deceased appellant no. 2, Rajeshwar Ram in Criminal Appeal (DB) No. 590 of 1998 challenged the impugned Judgment of conviction and sentence order submitting that the deceased-appellant no.2, namely, Rajeshwar Ram in Criminal Appeal (DB) No. 590 of 1998 was found guilty for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code, but as



a matter of fact, there was nothing before the trial court to form an opinion regarding common object because it was admitted case of the prosecution that at the time of alleged occurrence, procession of *Barat* was going on and the deceased appellant Rajeshwar Ram was in the aforesaid *Barat* party and therefore, it cannot be said that the deceased-appellant Rajeshwar Ram had common object to commit the murder of deceased. He further submitted that, moreover, deceased-appellant Rajeshwar Ram has not been found guilty for the offence punishable under Section 27 of the Arms Act, as the learned trial court observed that the deceased appellant Rajeshwar Ram had not used the firearm and also disbelieved the claim of the prosecution that the deceased appellant Rajeshwar Ram and others had opened fired while they were fleeing from the place of occurrence. He submitted that the aforesaid circumstance goes to show that neither prior to alleged occurrence nor at the time of alleged occurrence deceased-appellant Rajeshwar Ram had common object to commit the murder of deceased and, therefore, learned trial court committed error in convicting the deceased-appellant Rajeshwar Ram for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code.

Learned counsel, in support of his contention, referred the decision of **Inder Singh and others Vs. State of Rajasthan,**



reported in 2015 (1) PLJR 357 (SC), wherein the Hon'ble Apex Court, while discussing the scope of applicability of Section 149, clearly held that the applicability of Section 149 of the Indian Penal Code shall be decided on the basis of facts and circumstances of each and every case and furthermore, the Apex Court held in the aforesaid decision that unless any overt act is attributed against an accused, the said accused cannot be held guilty for the offence punishable under Section 149 of the Indian Penal Code only because of that he was found present on the place of occurrence at the time alleged occurrence.

8. Mr. Ranbir Singh, learned amicus curiae, appearing for the remaining appellants seconded the submissions advanced on behalf of Mr. Rahman, Advocate, but he added that the prosecution failed to prove the place of occurrence as well as manner of occurrence. He further submitted that the delay in sending the F.I.R. to the concerned court is also creates doubt about the genuineness of the prosecution story. He further submitted that, no doubt in his Fardbeyan P.W.4 claimed that the alleged occurrence took place on account of old enmity, but subsequently, in course of trial, the prosecution witnesses developed the story of land dispute. He submitted that as a matter of fact, P.W.4, is the husband of the deceased, whereas remaining



so-called eye witnesses are agnates of deceased. He submitted that the deceased was only daughter of her parents and she had to inherent more than ten bighas land from her parents, but her agnates had greedily eyes over the land and that was the reason the agnates of deceased eliminated her and implicated the appellants with whom the agnates of the deceased had enmity. He, further, submitted that no doubt, the direct evidence of a witness carries some weightage but it does not mean that the statement of a witness should be accepted as gospel truth, because statement of witnesses should be judged on the basis of probabilities and circumstances. He submitted that in the present case, admittedly, the *Barat* of brother of appellant Anil Kumar was going at the time of alleged occurrence and it is claimed by the prosecution that the appellants committed the murder of deceased while she was standing to watch the *Barat* but the aforesaid claim of the prosecution does not appear probable and believable because no persons would choose to commit the murder of other person at the time while a *Barat* for marriage of his family members was going. He, further, submitted that after analyzing the statements of prosecution witnesses in totality, there appears some doubt in the prosecution case and it appears that the prosecution has not come before the court with clean hand and something has been



suppressed by the prosecution and, therefore, in the aforesaid circumstance, the appellants are entitled to get the benefit of doubt.

Learned amicus curiae, too, referred a Judgment dated 14.12.2017 passed by Apex Court of this Country in **Criminal Appeal No. 413 of 2012, Joseph vs. State, represented by Inspector of Police and analogous cases** to show that Section 149 of the Indian Penal Code is not applicable in the present case in the light of observations made by Hon'ble Apex Court in the above stated referred Judgment.

9. On the other hand, learned Additional Public Prosecutor, supported the impugned Judgment of conviction and sentence order arguing that all the material prosecution witnesses have consistently supported the prosecution case and very clearly stated that it was appellant Anil Kumar in Criminal Appeal (DB) No. 33 of 1999 who opened fire on deceased when she along with P.W.4 was standing to watch *Barat* Party. He, further, submitted that P.W.5, Doctor, has found firearm injury on the chest of the deceased and opined that the deceased died of the aforesaid injury. He submitted that the Investigating Officer has proved the place of occurrence and there is nothing on the record to disbelieve the claim of prosecution witnesses. He, further, submitted that no doubt, the First Information Report and *Fradbeyan* of P.W.4 were



put up before the concerned court after two days of sending of the aforesaid F.I.R. and *Fardbeyan* but the defence could not succeed to show that due to aforesaid delay any prejudice had been caused to the appellants and moreover, the Investigating Officer was examined as P.W.6, but the appellants did not put any question to him regarding the aforesaid delay in sending the F.I.R. and *Fardbeyan* and, therefore, the appellants cannot say that due to aforesaid delay prejudice has been caused to them.

10. Having heard the above stated contentions of the parties, we went through the record along with the Lower Court Records. As we have already stated that in course of trial prosecution examined, altogether, 12 prosecution witnesses, out of them P.W.8, P.W.9, P.W.10 and P.W.11 have been declared hostile and they have stated nothing in respect of alleged occurrence.

11. P.W.1, P.W.2, P.W.3, P.W.4, P.W.7 and P.W.12 are the witnesses on fact and claimed to have seen the alleged occurrence.

12. Admittedly, P.W.4, Satya Narayan Singh, is the husband of the deceased and claimed that he was standing with deceased when alleged occurrence took place. This witness claims that he was standing at the door of his house along with his wife at the time of alleged occurrence and his wife sustained firearm



injury fired by appellant Anil Kumar. P.W.1, claimed that at the time of alleged occurrence, he was at his house and saw that the *Barat* of Rajendra Ram was coming. This witness, further, claimed that appellant Balmiki Ram ordered the others to shoot and, thereafter, appellant Anil Kumar opened fire, which hit on the chest of deceased Sehanta Devi.

13. P.W.2, Janardan Prasad, claimed that the place of occurrence was by the side of his house and the alleged occurrence took place on road. This witness claimed that on the order of the appellant Balmiki Ram, Anil Kumar opened fire, which hit on the chest of the deceased Sehanta Devi.

14. P.W.3, Mahesh Prasad, also claimed that at the time of alleged occurrence, he was on the place of occurrence and saw that *Barat* came out of the house of Rajendra Ram and reached on the main village road. This witness claimed that he, too, came out of his house to see the *Barat* Party and saw that the appellants were carrying pistols in their hands whereas deceased Sehanta Devi was standing by the side of the road. This witness, further, claimed that he was also standing by the side of deceased Sehanta Devi. He, further, claimed that on the order of Balmiki Ram, Anil Kumar opened fire which hit on the chest of the deceased who fell down and died then and there.



15. P.W.3, Mahesh Prasad, has, nowhere, stated in his examination-in-chief that P.W.4, Satya Narayan Singh, was also standing with the deceased at the time of alleged occurrence. Similarly, P.W.1 has also not stated about the presence of P.W.4 at the time of alleged occurrence and P.W.2, Janardan Prasad, has also not stated about the presence of P.W.4 on the place of occurrence at the time of alleged occurrence.

16. P.W.7, Vayash Prasad Singh, stated that *Barat* of son of appellant, Rajendra Ram was going through road and at that time, he was present over the place of occurrence. He claimed that on the order of Balmiki Ram, appellant Anil Kumar shot fire on deceased Sehanta Devi, who was standing in front of her house, the deceased Sehanta Devi sustained firearm injury and died then and there. P.W.7 has also not stated that at the time of alleged occurrence, P.W.4 was also standing with deceased Sehanta Devi. Moreover, one important fact is also noticeable in the statement of P.W.7 that at the time of alleged occurrence, the deceased Sehanta Devi was standing in front of her house.

17. P.W.4, has also admitted in his Fradbeyan as well as his deposition that at the time of alleged occurrence, he along with deceased Sehanta Devi was standing at the door of his house, so according to P.W.4 and P.W.7, at the time of alleged occurrence,



deceased Sehanta Devi was standing in front of her house when the occurrence had taken place but from perusal of deposition of P.W.6, the Investigating Officer, we find that the Investigating Officer claimed that the place of occurrence was on road, which was situated in the back of the house of deceased Sehanta Devi and, almost, all the other remaining prosecution witnesses claimed that the alleged occurrence took place in the back of house of deceased Sehanta Devi. P.W.6, the Investigating Officer, has admitted at paragraph 11 of his deposition that he had found the dead body of deceased Sehanta Devi at back side of her house but he did not find any blood beneath the dead body of deceased Sehanta Devi though, this witness claimed to have seized blood stained earth from the place of occurrence and also claimed that he had prepared seizure list about the seizure of blood stained earth from the place of occurrence. This witness admitted that he had not sent the blood stained earth to Forensic Science Laboratory for chemical examination. P.W.6 has proved the seizure list as Ext.6, which goes to show that the place of seizure was filled up by different pen and, therefore, the aforesaid fact suggests that the place of seizure was filled up later on after preparation of seizure list. The above stated fact creates doubt about the place of occurrence, because P.W.4 has admitted in his deposition that



house of his door opens towards north side of his house whereas P.W.6 found the place of occurrence towards south side of the house of the deceased.

18. It is an admitted position that P.W.4 is not permanent resident of village Sarwa rather he started residing at his Sasural as his wife was only daughter of her parents. The aforesaid fact has been admitted by P.W.4. P.W.4 has claimed in his deposition that the appellants had inimical term with him on account of land dispute. P.W.4 and some other witnesses, further, claimed that the appellants were pressurizing P.W.4 to sell the land, which was situated by the side of his house but P.W.4 refused to transfer the lands in favour of the appellants which caused annoyance to the appellants and that is the reason, the appellants committed the alleged crime. Admittedly, P.W.4 had not disclosed the story of land dispute when his Fradbeyan was recorded and subsequently, he disclosed the story of land dispute in course of trial. No doubt, the F.I.R. is not an encyclopedia and it is not necessary that the informant should disclose each and every fact in the F.I.R. but in the present case, P.W.4 has admitted that the land dispute was going on between him and the appellants since last 7 to 8 years but even then he did not disclose the fact of land dispute in his *Fardbeyan* and simply stated that the occurrence



took place due to enmity. Therefore, it appears that the story of land dispute is a subsequent development in course of trial. However, he did not give any information to any officials regarding the aforesaid land dispute nor any case was instituted in respect of the aforesaid land dispute. It is surprising enough that the appellants chose to commit the murder of deceased on the day when the *Barat* of their family member was going on, particularly, in the circumstances, when the land dispute was going between the appellants and P.W.4 since last 7 to 8 years and, therefore, the above stated circumstance creates doubt about the claim of prosecution witnesses.

The prosecution claimed that the alleged occurrence took place at about 8 P.M. and no source of identification has been mentioned either in the *Fradbeyan* or in the deposition of prosecution witnesses but in our view the appellants and the witnesses are co-villagers and, therefore, on the ground of identification of the appellants the prosecution case cannot be doubted.

19. It is an admitted position that except appellant Anil Kumar all the appellants have been convicted for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code, but they have been acquitted for the charge framed



under Section 27 of the Arms Act. It is also evident from perusal of the testimonies of the prosecution witnesses that except appellant Balmiki Ram, Brajnandan Ram and Anil Kumar, no specific overt act has been attributed against the remaining appellants.

20. So far as appellant Balmiki Ram is concerned, the prosecution witnesses, except P.W.4, claimed that on the order of Balmiki Ram, appellant Anil Ram opened fire on the deceased but P.W.4 who happens to be the informant of the present case claimed that on the order of Brajnandan Ram, appellant Anil Kumar fired upon the deceased and, therefore, the aforesaid contradiction goes to show that prosecution could not succeed to prove this fact beyond all shadow of reasonable doubt as to who had given order to kill the deceased and, in our view, the aforesaid contradiction was fatal to the prosecution case. Therefore, in our considered opinion, the learned trial court committed error in convicting the above stated appellants for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code.

21. No doubt, almost, all the material prosecution witnesses claimed that it was the appellant Anil Kumar, who opened fire on the deceased and having believed upon the testimonies of prosecution witnesses, the learned court below convicted the appellant Anil Kumar for the offence punishable



under Section 302 of the Indian Penal Code but in our view, looking into the above stated infirmities in the prosecution case, particularly, contradictions in respect of place of occurrence as well as taking note of the earlier discussed improbabilities, appellant Anil Kumar is also entitled to get the benefit of doubt and, accordingly, we are of the view that the prosecution could not succeed to prove its case beyond all shadow of reasonable doubt and, therefore, both the above stated criminal appeals are allowed and the impugned Judgment of conviction and sentence order dated 28.11.1998 and 30.11.2018, respectively, passed in Sessions Case No. 546 of 1995 are, hereby set aside. The appellants are acquitted of the charges. The appellants are on bail, therefore, they are discharged from liabilities of their bail bonds.

22. Let a copy of first and last page of Judgment be handed over to Mr. Ranbir Singh, learned Amicus Curiae, for needful.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	AFR
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