

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.221 of 1994

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BINOD SINGH son of Harihar Nath Singh resident of Umdha PS Chapra (M)
District Saran

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Suresh Mishra

For the Respondent/s : 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 : 27-11-2018

1. This appeal has been preferred against the judgment of conviction and sentence order dated 19.03.1994 passed by learned Sessions Judge, Chapra in Sessions trial no. 378/1990 by which and whereunder he convicted the sole appellant and one Shekhar Singh for the offence punishable under section 302/34 IPC and sentenced them to undergo rigorous imprisonment for life and also directed to set out the period undergone by them in jail during the course of investigation against the term of sentence.

2. The sole appellant, namely, Binod Singh has preferred the instant criminal appeal whereas as per report of the office dated 26.10.2018 other co-convict Shekhar Singh did not file any appeal.



3. PW11 Saryug Sah gave his fardbeyan to PW 12 the then officer-in-charge of Chapra Mufassil police station on 17.05.1990 at about 7.00 p.m. to this effect that on the same day at about 2.30 p.m., he was sitting at Gobardhan Asthan. In the meantime, his co-villagers Prameshwar Mahto (PW6) and Bhola Mahto (PW9) came there and informed him that his brother Deka Sah @ Gangadhar Sah was taken away by the appellant and Shekhar Singh towards Malang dera Bagicha. PW 11, having got the aforesaid information, proceeded towards Malang dera Bagicha along with PWs 6 and 9 as he was aware that the appellant Binod Singh and Shekhar Singh were of criminal nature and they might commit any untoward incident with his brother. PW 11 further claims that at about 3.30 p.m. he along with PWs 6 and 9 reached to the orchard of Dhuni Singh of Malang dera Bagicha and saw the appellant and Shekhar Singh who were pressing Deka Sah after putting him on ground. PW 11 and PWs 6 and 9 raised alarm upon which the appellant and Shekhar Singh fled away from there showing Dab and knife to them. PW 11 further claims that PWs 6 and 9 went near a mango tree and found his brother Deka Sah in pool of blood and his neck was half cut. He also found his brother dead. PW 11 raised alarm which attracted Baldev Sah and Ramautar Sah who came there running



and saw the appellant and above stated Shekhar Singh fleeing from there.

4. On the basis of the Fardbeyan of PW 11, Mufassil P.S. case no. 136/1990 under section 302/34 IPC was registered and on the same day, formal FIR was drawn up against the appellant and Shekhar Singh.

5. The case was investigated and after completion of investigation, charge sheet was submitted. Cognizance was taken and the case was committed to the court of sessions in usual course.

6. Appellant along with Shekhar Singh stood charged for the offence punishable under section 302/34 IPC to which they denied and claimed to be tried.

7. In course of trial, prosecution got examined, altogether, 16 witnesses and also got exhibited some documents including post mortem report and inquest report. Statements of the appellant and co- accused Shekhar Singh were recorded under section 313 Cr.P.C. in which they denied the prosecution story and claimed their false implication. No oral evidence was adduced by the appellant as well as co-convict Shekhar Singh but during cross-examination of prosecution witnesses, entry of the case diary was got exhibited on behalf of the defence as exhibit A.



8. Learned trial court, after analyzing the evidences available on record, convicted the appellant and co-convict Shekhar Singh in the manner as stated above, particularly, having relied upon testimonies of Pws 11, 13 and 14.

9. Learned counsel appearing for the appellant challenged the impugned judgment of conviction and sentence order arguing that the learned trial court failed to appreciate the evidences in right perspective and committed error in convicting and sentencing the appellant. He, further, submitted that, as matter of fact, none had seen the actual killing of the deceased and when dead body of the deceased was recovered, PW 11, in collusion with the police, got implicated the appellant and convict Shekhar Singh due to land dispute. He, further, submitted that mother of the deceased admitted in her deposition that prior to his death, deceased ate **Litti** but post mortem of the deceased goes to show that digested food was found into abdomen of the deceased and, therefore, aforesaid fact completely negates the prosecution case. He, further, submitted that the prosecution witnesses made contradictory statements and there were several infirmities in the prosecution evidences but in spite of that learned trial court convicted the appellant and Shekhar Singh.



10. On the other hand, learned Addl. Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that PW 11 claims himself to be eye-witness of the alleged occurrence and there is nothing into the deposition of PW 11 to doubt his credibility and similarly, PW 13 and PW 14 also stated that the deceased had left in the company of the appellant and Shekhar Singh prior to recovery of his dead body and, therefore, aforesaid circumstance also indicates the involvement of the appellant and Shekhar Singh in commission of murder of the deceased and, therefore, there is no ground to interfere into the impugned judgment of conviction and sentence order.

11. Having heard the contentions of both parties, we went through the record. We find that PW 11, informant of the present case, PW 13 Kamli Devi, mother of the deceased and PW 14 Laljhari Devi, Bhabhi of the deceased claim to have seen the deceased in the company of the appellant and Shekhar Singh prior to recovery of his dead body. So far as remaining witnesses are concerned, aforesaid witnesses have, nowhere, claimed to have seen the appellant and Shekhar Singh in the company of the deceased prior to his death.

12. PW 1 Prabhu Nath Prasad is a formal witness. This witness has proved formal FIR as exhibit 1. PW 3 Bachha Manjhi



claims that he had brought dead body of the deceased to Chapra Hospital along with Bhuti Manjhi (PW 4) and Jairam Manjhi (PW 5). PWs 4 and 5 have been tendered as they have stated nothing.

13. PW 6 Parmeshwar Mahto and PW 9 Bhola Mahto are important witnesses because PW 11 claims in his fardbeyan that he got information about the alleged occurrence from PW 6 and PW 9 but PW 6 and PW 9 have been declared hostile as they have not supported the prosecution story.

14. PW 6 Parmeshwar Mahto stated in his examination in chief that at the time of alleged occurrence, he was at his village and heard noise and saw that 30 to 40 persons of his village were running towards orchard. He, too, went there. This witness flatly denied the statement said to have been recorded by the Investigation officer in course of investigation. There is nothing in the statement of this witness in favour of the prosecution. Moreover, this witness appears to be a child witness.

15. PW 9, Bhola Mahto, states that he did not see the occurrence. This witness denied his statement to have been recorded by the IO in course of investigation.

16. PW 10, Kamal Kishor Sinha, is Judicial Magistrate and this witness claimed that on 09.08.1990 he had recorded the statements of PW 9 and PW 11 under section 164 of the Cr. P. C. It



is obvious from the statement of PW 10 that statements of PW 9 and 11 under Section 164 of the Cr.PC were recorded near about after three months of the alleged occurrence.

17. PW 12 Lapat Ram, PW 15 Gopal Ram and PW 16 Brij Bihari Ram are police officers.

18. P.W 12, Lapat Ram, claims that on 14.05.1990 he was posted as ASI at Mufassil Police Station and having entered information of murder into the relevant register, he proceeded towards Malang dera Bagicha where he recorded statement of PW 11. This witness proved fardbeyan of PW 11. This witness also proved formal FIR and further claims that he handed over charge of investigation to PW 15 Gopal Singh.

19. PW 15, Gopal Singh claims that on 17.05.1990 he was posted as ASI at Chapra Mufassil Police Station and he got rumour and having entered Sanha in respect of the aforesaid rumour, he went to Karinga Mushari village along with PW 12 and reached there at about 7.00 Pm. This witness further claims that he got charge of investigation of the case from PW 12 and recorded further statement of PW 11 and also prepared inquest report. This witness further claims that he inspected the place of occurrence. He further says that the place of occurrence was orchard of Dhuni Singh of village- Umdha and said orchard was situated adjacent



South to Khanwa Nala. This witness, further, claims that he found copious blood on the place of occurrence and also recovered one comb from the place of occurrence. This witness claims to have recorded the statement of the witnesses and handed over charge of investigation to PW 16. PW 16 claims that he submitted charge-sheet in the present case.

20. PW 2 is the doctor who had conducted autopsy on the corpus of the deceased and this witness found injuries on the neck and other parts of the body of the deceased. This witness proved post mortem report of the deceased. Moreover, death of the deceased is not in dispute and it is also not in dispute that the deceased died of his injuries. The only controversy is who had caused death of the deceased.

21. Prosecution claims that it were appellant and co-convict Shekhar Singh who committed murder of the deceased whereas appellant claims himself to be innocent. Now, it has to be seen as to whether the prosecution has proved its case beyond all shadow of reasonable doubts and learned trial court has properly appreciated the evidences available on record or not. As we have already stated that only PW 11 claims himself to be eye witness of the alleged occurrence because admittedly, PW 6 Prameshwar Mahto and PW 9 Bholu Mahto have not supported the prosecution



case during the course of the trial. Now, we have to see the veracity and credibility of testimony of PW 11.

22. PW 11 claims that at the time of alleged occurrence, he was at the place of Brahm Asthan and PWs 6 and 9 came there and gave information that his brother Dekha Sah was taken away by the appellant and Shekhar Singh towards orchard of Dhuni Singh. This witness claims that he along with Ramdev Sah, Baldev Sah and Ramadhar Sah went to the aforesaid orchard where he saw the appellant Binod Singh who was pressing his brother after laying down him on ground whereas Shekhar Singh was cutting his neck by means of Dab. This witness claims that he as well as others raised alarm upon which appellant and Shekhar Singh fled away towards north side. This witness further claims that he found his brother dead. This witness admitted in his cross-examination that pond of Govardhan Das and Brahm Asthan are two different places and distance between aforesaid places was one mile and distance between orchard of Dhuni Singh and Brahm Asthan was about one and half mile. This witness further admitted that when he went to the place of occurrence, except him there was no any other co-villager. This witness further admitted that he had made statement before the police that he had seen the appellant and Shekhar Singh at the said orchard while they were fleeing. This



witness admitted at para 22 of his cross-examination that he went to the police station at about 8.00 pm and got his statement recorded at police station. This witness denied this fact that his father had taken land of appellant and Shekhar Singh on rent and furthermore, this witness denied that due to land dispute, he got implicated the appellant and Shekhar Singh. This witness also admitted that distance between pond of Govardhan Das and Malang Dera Bagicha was about one and half mile. This witness further admitted that he reached to orchard at about 4.30 pm and remained there for about ten minutes and thereafter, he as well as others went to the police station. This witness further admitted that police came at the place of occurrence along with him at about 9.00 pm. He again, admitted that his statement was recorded at police station and after that police had never recorded his statement. This witness stated that before going to police station he had sent information to his house regarding the alleged occurrence through his co-villager Kamlesh. This witness also admitted that he had seen the appellant for the first time on the alleged date of occurrence and after that in course of trial.

23. Statement of PW 11 clearly goes to show that he went to the place of occurrence when he got information that his brother was being taken and reached there after covering one and



half mile distance. Furthermore, statement of this witness goes to show that this witness claims before the court that he was sitting at Brahm Asthan when he got information regarding taking away of his brother whereas in his fardbeyan this witness claims that he got information of taking away his brother while he was sitting at pond of Govardhan Das. This witness admits that pond of Govardhan Das and Brahm Asthan are two different places and therefore, aforesaid contradiction creates doubt about the claim of PW 11. Furthermore, it does not appeal to our conscious that appellant and Shekhar Singh waited for commission of murder till arrival of PW 11.

24. PW 13, Kamli Devi, is mother of the deceased. This witness claims that appellant and Shekhar Singh took away her son and after some time, she got information through Kamlesh and PW 9 that deceased was killed by the appellant and Shekhar Singh at Malang dera Bagicha. She claims that she along with her other family members went running to the place of occurrence where she found her son lying dead. This witness admits that when the appellant and Shekhar Singh took away the deceased, she had no talk with the appellant and Shekhar Singh. She further claims that when she reached at the place of occurrence, no person of her



village was present there and when she raised alarm, her co-villager assembled there.

25. PW 14, Laljhari Devi is sister-in-law of the deceased. She also claims that she along with PW 13 and deceased was sweeping in her orchard. She further claims that the appellant and Shekhar Singh came there and took the deceased along with them and she as well as PW 13 returned to their home but this witness admits that police had not recorded her statement. She also admits that she had not made statement before the police that the appellant and Shekhar Singh had taken away the deceased.

26. The combined perusal of the depositions of PW 11, PW 13 and PW 14 creates doubt about claim of PW 11, PW 13 and PW 14. PW 11 claims that when he got information about taking away of the deceased by the appellant and Shekhar Singh, he along with Harihar Sah, Ramdev Sah and others went running at the place of occurrence whereas PW 13 says that when she got information about killing of the deceased, she along with her family members went there and no person of her village was present there.

27. Furthermore, it is obvious that PW 11 claims that he reached at the police station at about 8.00 pm on the same day and gave his statement which was recorded by the police but PW 12



says that having got rumour, he went to Karanga Musherri village and recorded the statement of PW 11. The aforesaid contradiction also creates doubt about the fardbeyan of PW 11 because had PW 11 been given his statement to the police at police station, what happened to aforesaid statement and aforesaid statement has not been brought on record by the prosecution.

28. Therefore, in view of the aforesaid discussions, we are of the opinion that prosecution could not succeed to prove its case beyond all shadow of reasonable doubts and the appellant is entitled to get benefit of doubt.

29. On the basis of aforesaid discussions, this appeal is allowed and the impugned judgment of conviction and sentence order are, hereby, set aside. Appellant is acquitted of the charge giving benefit of doubt to him. Appellant is on bail. He is discharged from the liability of his bail bond.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

s.hassan/-

AFR/NAFR	NAFR
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