

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1101 of 2009

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Reyajuddin Mian @ Md. Reyajuddeen, son of Late Khalil Mian, Resident of
village - Jaimangalapur, P.S.- Shikarpur, District- West Champaran

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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with
Criminal Appeal (DB) No. 192 of 2010

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Shyamakant Pandey, son of Late Devi Pandey, resident of Village- Malda,
At Present resident of Village/Mohalla- Pokhara Chowk Narkatiyaganj,
Police Station - Sikarpur, District - West Champaran, Bettiah

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

(In Criminal Appeal (DB) No. 1101 of 2009)

For the Appellant/s : Shri S.N.P. Sinha, Sr. Advocate
Shri Jitendra Narain Sinha, Advocate
Miss Rashmi Bharti, Advocate
Shri Ujjwal Kumar Singh, Advocate

For the Respondent/s : Shri Ajay Mishra, A.P.P.

(In Criminal Appeal (DB) No. 192 of 2010)

For the Appellant/s : Shri S.N.P. Sinha, Sr. Advocate
Shri Jitendra Narain Sinha, Advocate
Miss Rashmi Bharti, Advocate
Shri Ujjwal Kumar Singh, Advocate

For the Respondent/s : Shri 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 : 06-02-2018

Since the appellants in both the Appeals were convicted and sentenced in Sessions Trial No. 61 of 1991 by a common judgment, both the Appeals were heard together and are being disposed of by this common judgment. Both the appellants on 21.10.2009 were held guilty and convicted for the offence under Section 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as the "I.P.C.") and by order of sentence dated 27.10.2009 they were directed to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each and in default of payment of fine they were further directed to undergo one year simple imprisonment.

2. Short fact of the prosecution case is that the informant namely Raja Ram Tiwari gave his fardbeyan on 3.10.1981 at 1.30 Hours in the Narkatiyaganj Hospital to the Officer-in –Charge of Shikarpur Police Station alleging therein that he and his uncle Jata Shankar Tiwari (deceased) were sleeping on two different Chauki (cots) and a lantern was burning in the hut. At about 12.30 P.M. (night) all the F.I.R. named accused persons namely (1) Ramayan Sharan (2) Sipahi of Ramayan Sharan (Reyajuddin) and (3)



Shyamakant Pandey arrived there. Ramayan Sharan ordered to sprinkle acid on the body of the deceased and thereafter Shyamakant Pandey and Reyajuddin Mian (who is sipahi of Ramayan Sharan) poured acid on the body of the deceased and fled away. Witnesses namely Upendra Tiwari and Bigan Raut have seen the alleged occurrence. The motive of the occurrence has been stated admitted land dispute between Shyamakant Pandey and deceased. On the basis of the said fardbyan on the same date a formal FIR vide Shikarpur P.S. Case No. 139 of 1981 was registered against three accused persons which includes the two appellants for commission of offence under Sections 326, 307/34 of the I.P.C. and subsequently since the injured died, Section 302 of the I.P.C. was added in the FIR. The FIR was lodged against (1) Ramayan Sharan (2) Sipahi of Ramayan Sharan [Reyajuddin Mian {appellant in CR. APP (DB) No. 1101 of 2009}] and Shyamakant Pandey [appellant in CR. APP (DB) No. 192 of 2010].

3. After investigation and finding the case true firstly on 11.05.1982 charge- sheet was submitted against Shyamakant Pandey [appellant in CR. APP (DB) No. 192 of 2010] and Ramayan Sharan. Subsequently, on 08.11.1982 supplementary charge- sheet was submitted against Reyajuddin [appellant in CR. APP (DB) No. 1101 of 2009]. After submission of both charge-



sheets on 13.07.1989 learned Chief Judicial Magistrate, Bettiah took cognizance of offence and the case was committed to the Court of Sessions on 17.01.1991 and thereafter it was numbered as Sessions Trial No. 61 of 1991. On 28.07.1994 charge under Section 302/34 of the I.P.C. was framed against all the three accused persons and further charge under Section 302 of the I.P.C. was framed against both the appellants. However, during pendency of the trial one of the accused namely Ramayan Sharan died, and as such, by order dated: 13.07.2002 his case was dropped. To prove its case on behalf of the prosecution altogether five witnesses were examined. Out of them, P.W. 1 (Bigan Raut); P.W. 2 (Upendra Tiwari) and P.W. 3 [Raja Ram Tiwari (informant)] were examined as eye witnesses to the occurrence, whereas one Shri Ragho Sharan Choubey (P.W. 4) was examined as formal witness and Dr. Sarvesh Prasad Verma, who conducted post- mortem examination on the dead body of the deceased was examined as P.W. 5 and he proved the post- mortem examination report as Exhibit -2. At much belated stage one witness namely Shambhu Nath Tiwari was examined as Court witness only for the purpose of proving inquest report, which was prepared in Bettiah hospital and same was marked as Exhibit – 3. After the closure of prosecution evidence, circumstances and evidences brought on



record against the accused was explained to them and their statement under Section 313 of the Cr.P.C. was recorded in which they claimed to be innocent and denied their involvement. Thereafter, to disprove the prosecution case from the defence side also three witnesses were examined who are: D.W. 1 (Nand Kishore Mishra); D.W. 2 (Rajendra Pal Singh) and D.W. 3 (Umesh Prasad).

4. After placing entire evidences, Shri S.N.P. Sinha, learned senior counsel, assisted by Shri Jitendra Narain Sinha, learned counsel for the appellants has argued that despite the fact that prosecution has miserably failed to prove its case, the learned trial judge incorrectly held both the appellants guilty and passed judgment of conviction and sentence, which is liable to be interfered with. At the very outset, it was argued by learned senior counsel for the appellants that it was admitted case of the prosecution that occurrence had taken place at about 12.30 Hours (night) in between 2-3rd October, 1981, however the prosecution has not established the source of identification, though a plea was taken that at the time of occurrence on a bamboo one lantern was burning and some light was also coming from the near by saw mill, during trial the prosecution has not been able to establish the source of identification. Neither lantern was seized during



investigation nor it was produced during trial and even the so-called light coming from the nearby saw mill is concerned, the owner of the saw mill has come forward to depose in support of the defence and he was examined as D.W. 2. In his evidence he has made categorical statement that his saw mill was running with the aid of 'Generator' and there was no street light and 'Generator', after closure of the Saw Mill, was being closed at about 5-5.30 P.M. every day. Shri S.N.P. Sinha, learned senior counsel has argued that since there was no light and occurrence had taken place in the night it was heavy onus on the prosecution to establish the source of identification, which has not been done by the prosecution. According to him only on this very ground the entire prosecution case is liable to be disbelieved. He has further argued that in the case place of occurrence itself has not been established. He submits, by way of referring to the evidences, that witnesses have said that while deceased was sleeping on cot acid was poured on him and bed-sheet and wearings of the deceased (clothes) had also burnt but during trial neither any seizure list was produced nor any burnt clothes or bed-sheet was brought on record. It has also been argued that prosecution has taken a plea that deceased was sleeping on cot covered with mosquito net and from outside the mosquito net acid was poured.



Meaning thereby that mosquito net was also burnt, but neither mosquito net nor any clothes were either seized or brought on record during trial by the prosecution. He further submits that during evidence witnesses have stated that at the place of occurrence neither there was any bottle or any container, whereas P.W. 1 and P.W. 2 in their evidence had stated that they had seen three accused persons fleeing away and while fleeing away appellant [Reyajuddin in CR. APP (DB) No. 1101 of 2009] was carrying lathi in his hand and in the hand of other two accused persons there was nothing. He submits that if it was a case of pouring acid without carrying acid in either bottle or container, it was not possible to come to the place of occurrence and murder the deceased by pouring acid, since no bottle or container was found at the place of occurrence. It has further been argued that during trial neither fardbeyan nor formal FIR which is the basis of the investigation has been brought on record nor those things have been exhibited. In the case except post-mortem examination report and inquest report there is no other documentary or material evidence. It has also been argued that during trial the prosecution has not produced the investigating officer or any Police official, which has seriously prejudiced the case of defence. In absence of investigating officer they were



deprived from drawing attention of witnesses to their previous statement made under Section 161 of the Cr.P.C. So far evidence of P.W. 1 and P.W. 2 is concerned, it has been argued that they were chance witnesses and it appears that only with a view to substantiate the story concocted by the informant (P.W. 3) they were introduced as witnesses, whereas, in their evidences there are serious contradictions. Primarily, all the witnesses who have claimed to be eye witnesses i.e. P.W. 1, P.W. 2 and P.W. 3 have stated that they had gathered in the hut of the deceased who was known as “Doctor Saheb” and in their examination- in- chief all the three witnesses have said that they had prepared meal in the hut of the deceased and taken the same whereas, P.W. 2 in his cross -examination has categorically stated that he had taken meal outside in hotel and thereafter he stayed with informant, deceased and one another witness. According to Shri S.N.P. Sinha, learned senior counsel for the appellants the prosecution case is further doubted on the ground that during trial none of independent witnesses or co- villagers have come forward to support the prosecution case either claiming to be eye witness or to corroborate the occurrence. Accordingly, it has been argued that prosecution has not proved its case beyond all reasonable doubt and the judgment of conviction and sentence is liable to be set



aside. Shri S.N.P. Sinha, learned senior counsel for the appellants has also argued that both the appellants are old aged persons and they have remained in custody for more than eight years.

5. Shri Ajay Mishra, learned Additional Public Prosecutor though has opposed the Appeal, he was not in a position to seriously support the prosecution case particularly in absence of evidence of the Investigating Officer.

6. Besides hearing learned counsel for the parties, we have also minutely examined the evidences on record and after going through the same, *prima facie* we are of the opinion that prosecution has not proved its case beyond all reasonable doubt. Before proceeding, it is necessary to indicate as to what the informant has stated in his evidence. The informant (Raja Ram Tiwari) was examined as P.W. 3. The informant was the nephew of the deceased and in his evidence he has accepted that his father was having a built -up house in the same village, however, in the present case the informant deposed as if he was sleeping on a cot without bed in almost open area near a hut. He claimed that his uncle Jata Shankar Tiwari (deceased) was also sleeping by his side on an another cot. In his evidence he stated that in the night he saw the three accused persons. Among them one of the accused namely Ramayan Sharan (died during trial) in his presence



directed Reyajuddin to pour acid and thereafter his uncle was given burn injury due to pouring of acid and immediately thereafter his uncle fell down from the cot. However, in paragraph no. 48 of his cross -examination he has stated that he woke up only after hearing the sound of screaming of his uncle. Meaning thereby that his uncle started screaming only after getting burn injury due to pouring of acid and thereafter the informant (P.W. 3) himself admitted that he woke up. Accordingly the story built up by him that he had seen ordering Ramayan Sharan to pour acid on the deceased is apparently false and concocted and no reliance on such witness can be placed. Similarly, in his evidence there are several major contradictions which creates serious doubt on the evidence of P.W. 3 (informant) of the case. P.W. 1 (Bigan Raut) in his evidence has stated as if he had come to the medicine shop of the deceased for purchasing medicine and on the advice of the deceased himself he decided to stay at the place of deceased itself and inside hut he along with P.W. 2 (Upendra Tiwari) after taking meal slept on the floor on *chachari*. In his examination- in -chief he also deposed like P.W. 3 as if he had seen the occurrence and he also identified the three accused persons while fleeing away after the occurrence. He claimed that in the light of lantern he had identified the accused. This witness made categorical statement



that at the time of fleeing away one of the appellant (Reyajuddin) was carrying 'lathi' in his hand whereas other two accused persons were having nothing in their hand. It is the case of the prosecution that at the place of occurrence neither any bottle or container was found. This witness in paragraph no. 8 of his cross-examination has stated that he was resident of different village. In paragraph no. 17 of his cross -examination he has stated that on the date of occurrence "Doctor Saheb" asked him to stay and said that since it is night and atmosphere is not proper, it would be necessary that he may stay in the hut itself. In paragraph no. 19 of his cross – examination he further stated that Upendra Tiwari (P.W. 2) was a resident of Malda and he was in relation nephew of the deceased and he randomly arrived there. He stated that no meal was prepared. He took meal in the market. He clarified that Jata Shankar Tiwari (deceased) had not taken meal with him and he along with other two witnesses i.e. Upendra Tiwari (P.W.2) and P.W.3 (Raja Ram Tiwari) had gone for taking meal, whereas, in his examination –in- chief he has stated that all the three persons had prepared meal in the hut of the deceased and taken meal. This creates serious doubt on the evidence of P.W. 1. Similar is the evidence of P.W. 2 (Upendra Tiwari) who has also claimed to be eye witness to the occurrence. However, in paragraph no. 22 of



his cross –examination he stated that at the place of occurrence he had not seen any bottle or container. In paragraph no. 24 of his cross -examination he states that at the time while accused persons were fleeing away Reyajuddin was carrying “lathi” in his hand and other two persons were having nothing in their hand. This fact itself is sufficient to draw an inference that none had seen the occurrence. P.W. 4 (Ragho Sharan Choubey) was an Advocate. He has not said anything and he deposed that his statement was not recorded by the Police. He was simply a formal witness. The evidence of P.W. 5 (Dr. Sarvesh Prasad Verma) has also got some relevance which leads to draw an inference that prosecution case is not true as has been adduced . This witness on 03.10.1981 was posted at M.J.K. Hospital, Bettiah and he conducted post-mortem examination on the dead body of the deceased and found the following anti-mortem injuries:-

“Externally- burn injury extensive on the front of face, both eyes, front and back of neck, front of chest and back of chest. The skin in the above area of burn was soft and moisted.

On dissection- both the eye balls were eroded and lung was pale and heart chamber contains full of blood.”

He also proved the post-mortem examination report, which was marked as Exhibit- 2. On examination of the evidence of P.W. 5 it is evident that burn injury was found on chest as well as back of the chest also besides injuries on face and neck of the deceased.



If the case of prosecution is treated as true that while deceased was sleeping the accused persons had poured acid over him, burn injury found on the back side of the deceased creates some doubt on the prosecution case. In the case before recording statement under Section 313 of the Cr.P.C. of the accused, as per the order of the Court one Shambhu Nath Tiwari was examined as Court Witness No. 1 however he has only proved the inquest report to suggest that inquest report was prepared in hospital. After conclusion of the prosecution evidence, evidences collected during investigation were explained to the accused persons and their statement under Section 313 of the Cr.P.C. was recorded on 11.09.2008. Thereafter, from the defence side also three witnesses were examined. D.W. 1 (Nand Kishore Mishra) had proved a petition, which was marked as Exhibit – ‘A’ to substantiate that at the place of occurrence there was no street light. Similar is the evidence of D.W. 3 (Umesh Prasad), whereas D.W. 2 (Rajendra Pal Singh) has come forward as if he was the owner of the Saw Mill situated near the place of occurrence. He stated that his Saw Mill was running with the help of ‘Generator’. Meaning thereby, that the Saw Mill was not having facility of electric supply. This witness has further stated that his generator was being closed at the time of closure of the Saw Mill at about 5-5.30 every day. It is



true that prosecution witnesses had tried to claim identification in the light of lantern as well as light coming from the Saw Mill side, on examination of those material conclusively it is difficult to rely on such claim. Besides this, the prosecution has miserably failed to establish the place of occurrence nor the investigating officer or any Police Officer has come forward to support the prosecution case. Certainly non-examination of the Investigating Officer has seriously prejudiced the defence. In the case there is no seizure list either regarding finding burn on wearings of the deceased or bed-sheet (burnt bed-sheet). No positive evidence has come to establish the place of occurrence.

7. In view of the aforesaid facts and circumstances as well as vital contradictions in the evidence of the so-called three eye witnesses it would be difficult to place reliance on such evidences for holding the appellants guilty, and as such, we are of the considered opinion that prosecution has not proved its case beyond all reasonable doubt, and as such, by way extending benefit of doubt the judgment impugned is required to be set aside. Accordingly, judgment of conviction dated 21.10.2009 and order of sentence dated: 27.10.2009 passed in Sessions Trial No. 61 of 1991 (arising out of Shikarpur P.S. Case No. 139 of 1981) by Shri Umesh Chand Srivastava, 2nd Additional District and Sessions



Judge, Bettiah (West -Champaran) is hereby set aside and both the Appeals are allowed . Since both the appellants are in custody and their conviction and sentence has been set aside, it is hereby directed to release both the appellants namely: Reyajuddin Mian @ Md. Reyajuddeen and Shyamakant Pandey forthwith, if not wanted in any other case.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
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