

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 850 of 2012

Arising out of P.S. Case No.-105 Year-1992 Thana- OBRA
District- Aurangabad

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Sidheshwar Yadav, S/o Late Chandrika Singh, Resident of Village-
Dhawa, P.S- Jamhore, District- Aurangabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with
Criminal Appeal (DB) No. 827 of 2012

Arising out of PS. Case No.-105 Year-1992 Thana- JAMHORA
District-

- =====
1. Akhileshwar Yadav S/o Late Chandrika Singh Resident of Village- Dhawa, P.S.- Jamhora, District- Aurangabad
 2. Doman Yadav S/o Late Ramkrit Yadav Resident of Village- Dhawa, P.S.- Jamhora, District- Aurangabad
 3. Madheshwar Yadav S/o Late Briksha Yadav Resident Of Village- Gijana, P.S.- Jamhore, District- Aurangabad

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with
Criminal Appeal (DB) No. 831 of 2012

Arising out of P.S. Case No.-105 Year-2012 Thana- OBRA
District- Aurangabad

- =====
1. Binod Dubey S/o Late Kuldeep Yadav R/o Village - Dhawa, P.S. Jamhora, District – Aurangabad.



2. Ram Rekha Rawani @ Ram Rekha Ram S/o Late
Chandramah Ram R/o Village - Dhawa, P.S. Jamhora,
District – Aurangabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

Criminal Appeal (DB) No. 887 of 2012

Arising out of PS. Case No.-105 Year-1992 Thana- OBRA
District- Aurangabad

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1. Rahi Ram Prasad Pandey S/o Late Bhagwan Pandey @
Jhojha Pandey Resident of Village- Kankatpur, P.S.-
Akorhigola, District- Rohtas
2. Sheo Prasad Pandey S/o Late Bhagwan Pandey @ Jhojha
Pandey Resident of Village- Kankatpur, P.S.-
Akorhigola, District- Rohtas

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

(In Criminal Appeal (DB) No. 850 of 2012)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

: Mr. Shailesh Kumar Singh, Advocate

: Mr. Ritwaj Raman, Advocate

For the Respondent/s: Mr. Ashwini Kumar Sinha (APP)

(In Criminal Appeal (DB) No. 827 of 2012)

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Advocate

: Mr. Mithilesh Kumar Singh, Advocate

For the Respondent/s: Mr. Ashwini Kumar Sinha (APP)

(In Criminal Appeal (DB) No. 831 of 2012)

For the Appellant/s :Mr. Krishna Prasad Singh, Sr. Advocate

: Mr. Mithilesh Kumar Singh, Advocate

For the Respondent/s: Mr. Ashwini Kumar Sinha (APP)

(In Criminal Appeal (DB) No. 887 of 2012)



For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
: Mr. Shailesh Kumar Singh, Advocate
: Mr. Ritwaj Raman, Advocate
For the Respondent/s: Mr. A.K.Sinha (App)

**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE JUSTICE SMT. ANJANA
MISHRA
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)**

Date : 09-01-2018

The appellants have filed this appeal assailing the judgment of conviction dated 03.08.2012 and order of sentence dated 07.08.2012 passed by the Ad hoc Additional Sessions Judge-IV, Aurangabad in Sessions Trial No. 25 of 1993 / 178 of 2010 arising out of Obra (Jamhore) P.S. Case No.105/1992 by which the appellants have been convicted for the offences punishable under Sections 147, 148, 302/149 of the Indian Penal Code and they have been sentenced to undergo rigorous imprisonment for life with a fine of Rs.5,000/- each under Sections 302/149 of the I.P.C. and in default of payment of fine, they have further been sentenced to undergo simple imprisonment for six months. They have been further sentenced to undergo rigorous imprisonment for two years under Section 147 I.P.C. and also sentenced to undergo rigorous imprisonment for three years under Section 148 I.P.C. However, all the sentences have been ordered to run concurrently.



The prosecution story, in brief, is that on 9.9.1992 at about 9.30 pm the informant Ramesh Kumar Mishra (PW 2) gave his fardbeyan before the local police at punpun river, Dhawa ghat , alleging therein that on 9.9.1992 at about 8 pm the deceased, who is the maternal uncle of the informant, returned to Jamhore bus stand from Aurangabad where he had gone in the morning to attend some court work. According to the informant, he and the brother of the deceased, Awadhesh Kumar Mishra were accompanying the deceased from the bus stand to their village home but when they reached punpun river, dhawa ghat, all of a sudden around 10 to 15 persons armed with various weapons came behind the bushes and caught hold of the deceased. Out of them, the informant disclosed the names of 10 persons whom he saw and identified in the moonlight. Others were unknown to him. He alleges that the accused gave many blows on the head, face and neck of the deceased with bhujali, katar and pressed his mouth when he tried to raise alarm. The accused chased away the informant and also shot fire upon them. The informant further states that he along with PW 1 somehow managed to save themselves and came home where they narrated the incident to others and when they returned back to the spot with others, they saw that the offenders were going towards west and the dead body



of the deceased was lying there. According to the informant motive behind murder was land dispute between Sidheshwar Yadav and the deceased.

On the basis of the aforesaid fardbeyan the FIR was registered as Obra (Jamhore) P.S Case No. 105/92 under sections 147, 148, 149, 341, 302 I.P.C and 27 Arms Act. The police took up investigation and submitted charge sheet under sections 147, 148, 149, 302 I.P.C and section 27 of Arms Act. Thereafter Chief Judicial Magistrate took cognizance and the case was committed to the court of sessions where charges were framed to which the accused persons pleaded non-guilty. Thereafter, trial started against the appellants.

During trial, the prosecution has examined altogether 7 witnesses in support of the witnesses of the case. P.W. 1 is Awadhesh Kumar Mishra, P.W. 2 is Ramesh Kumar Mishra, P.W. 3 is Sheopujan Pandey, P.W. 4 is Alakhdeo Mishra, P.W. 5 is Dr. Triveni Nath Shukla, P.W.6 is Markandey Mishra and P.W. P.W. 7 is Birja Yadav.

The Defence has also examined 4 witnesses in support of its case. D.W. 1 is Braj Kishore Dubey @ Lala Dubey, D.W. 2 is Rajeshwar Singh, D.W. 3 is Rahi Ram Prasad Pandey and D.W. 4 is Upendra Singh.



The trial court after hearing learned counsels for the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charges against the appellants and, as such, the judgment of conviction and order of sentence have been passed.

In this appeal there is a need to reappraise the prosecution evidence to see as to whether the prosecution has been able to substantiate its case beyond shadow of all reasonable doubts or not?

From perusal of the materials on record, such as, first information report and the deposition of the witnesses, it appears that there is a marked variation in the respective statements which has proved lethal to the prosecution story.

First discrepancy which emanates out of materials available on record is as to whether the First Information Report itself is a first information or not? From the fard-e-beyan which has been registered as FIR appears that the same was recorded at the place of occurrence whereas the informant while being examined as P.W. 2 has stated that he informed the police regarding the occurrence at the police station. His statement was recorded by the police which was read over to him and then he put his signature. In paragraph 31 of his evidence, he has stated that



his statement and restatement was taken by the police. He has signed on that also. He has clarified that when his statement was being recorded subsequently at the place of occurrence, in that statement only, he had disclosed the name of the accused persons. He has categorically stated that in the statement given at the police station at the first instance, he did not disclose the name of any of accused persons.

Now, the question is as to whether the fard-e-beyan which was recorded at the place of occurrence can be said to be the first information. The answer has to be negative as the informant himself has stated that his statement was recorded first time at the police station itself and in that statement he did not disclose the name of the accused persons. His statement which was recorded at the police station is entirely missing.

Secondly, since the informant had knowledge regarding the involvement of the accused persons, as he claims to be an eye-witness of the occurrence, there was no reason for not disclosing the names of the accused persons to the police at the first instance itself. This raises a serious question about his being an eye-witness. He has also stated in paragraph 29 that when he returned to his village from the place of occurrence after the occurrence, he did not disclose anything regarding that to any of the villagers. He



even did not disclose the names of accused to his younger maternal uncle, i.e., “Awadhesh Mama” and also did not disclose the same to the villagers which goes against a natural conduct of the persons in case of such type of untoward incidence having taken place.

The second lacuna appears from perusal of the evidence of P.W. 1, Awadhesh Kuamr Mishra, i.e., the younger maternal uncle to which the informant has referred in his deposition as stated above. He is an FIR witness. He has supported the occurrence but, contrary to the version of the informant that it was a moonlit night and everything was clear, therefore, he could identify the culprits very clearly, he has stated that it was rainy season and a cloudy night. He has also stated that he was chased by the accused persons and returned to home. He claims that he was present along with P.W. 2, Ramesh Kumar Mishra, i.e., the informant at the time of occurrence, thus, obviously he also claims to be an eye-witness. He has stated that he did not inform anything about the occurrence to his wife when he reached home as it appeared that everyone was knowing about the occurrence already.

The question is if the P.W. 1 was the first person to reach from the place of occurrence to the village and before he reached there everybody was knowing about the occurrence then who



actually informed the family members about the occurrence? The answer is obviously Lala Dubey and Fakira Singh as P.W. 1 says that they were also along with them at the place of occurrence and they were also accompanying them from the bus stand. P.W. 2 contradicts that and says that Lala Dubey and Fakira Singh were not with them. The question is who could have informed villagers regarding the occurrence before the P.W. 1 and P.W. 2 could reach their village? It could only be Lala Dubey and Fakira Singh. None of them have been examined as prosecution witnesses but Lala Dubey has examined himself as D.W. 1 and has stated that he with Fakira accompanied Dudheshwar Mishra (deceased) when certain persons attacked them. He also received minor injuries but he could not identify anyone. It has been urged on behalf of the appellant that in fact his statement was recorded by the police which is available at 161 of the case diary itself. Thus, it appears that there is variation in the statement of P.W. 1 and P.W. 2 regarding the accused persons who were accompanying the deceased at the time of occurrence. D.W. 1 says that he could not recognize any of the accused and except him and Fakira Singh nobody was with the deceased, Dudheshwar Mishra. Fakira Singh has not been examined as a witness. P.W. 1 has also stated in paragraph 8 that the closest way from the station to reach his



village is at the distance of 500 yards away from the place of occurrence. The question would be why the deceased did not take a shorter route rather took a longer route which was full of heaps of sand and dense bushes of such a nature that even in the day time if somebody hides himself behind the bushes nobody can identify him. There is no explanation for that.

P.W. 3, Sheo Pujan Pandey is one of the witnesses to the seizure-list. However, he has has stated in his evidence that at the time of occurrence it was rainy season. He further states that he accompanied the informant and P.W. 1 after they came to village and again went to the place of occurrence. In fact he was one of the persons who had brought the dead body to the police station. He says everything was done at the police station. In fact, they remained whole night in the police station and till then nobody had disclosed the name of any accused persons. Identical is the statement of P.W. 4, Alakh Deo Mishra who is witness to the inquest. He has stated that Lala Dubey and Fakira Singh in fact came to the village and raised alarm that Dudheswar Mishra has been killed. He has also stated that he was one of the persons who helped in bringing the dead body to the police station and in that night nobody had disclosed the name of any of the accused persons.



The evidence of P.W. 3 and P.W. 4 raises a serious doubt about recording of fard-e-beyan at the place of occurrence. If the name of accused persons was not recorded at the first instance and if the statement was recorded at police station, it would be vital flaw in the prosecution case and would raise serious doubt about the manner of occurrence and the manner in which the First Information Report has been registered. That apart, inquest report also shows that inquest was done at the place of occurrence itself whereas P.W. 3 and P.W. 4, in their evidence, have stated that everything was done at the police station after they brought the dead body with the help of other persons. Now the question would be as to who could have raised the curtain from the aforesaid hidden facts? The answer obviously would be the Investigating Officer but unfortunately he has not been examined as a witness.

Another question would be as to whether, in fact, the fard-e-beyan was recorded much later and was an afterthought? Suggestion has been made to the prosecution witnesses regarding alleged kidnapping of the deceased by unidentified persons who later on killed him. If this is to be disbelieved then there is no answer to the question as to why the deceased and others took a longer route which crosses a jungle like terrain full of large bushes, in place of taking a shorter route of village. Unless and



until there is some explanation it would not be conceivable to a prudent person that the deceased was not forced to take that route by somebody.

Aforesaid circumstances coupled with the fact that there is admitted land dispute between the parties, raises serious doubt regarding the manner of occurrence which has been portrayed by the prosecution and indicates that there may be a possibility of false implication also. As the great thinker Bentham said that "Witnesses are the eyes and ears of justice", can it be said that the varying statements of the PWs raise a serious question as to their credibility?

That apart, it appears that at the time of examination of the accused persons under Section 313 Cr.P.C., no specific questions were asked regarding the evidence which were on record against them. This is a further fatal blow to the prosecution case. Non-examination of material witnesses also indicates towards a serious lapse on the part of the prosecution especially when the evidence of the informant varies not only from the versions of P.W. 1, P.W. 3 and P.W. 4 but even from his fard-e-beyan also. A reference in this regard is made to a decision rendered by Hon'ble Supreme Court in **Manjit Singh & Anr. vs. State of Punjab [(2013) 12 SCC 746]**.



Having considered the materials available on record, in our view, benefit of doubt has to be given to the appellants.

In the result, these appeals succeed. Judgment of conviction dated 03.08.2012 and order of sentence dated 07.08.2012 are set aside and the appellants, Akhileshwar Yadav, Doman Yadav, Madheshwar Yadav (in Cr. App. (DB) No. 827 of 2012), Binod Dubey and Ram Rekha Rawani @ Ram Rekha Ram (in Cr. App. (DB) No. 831 of 2012), Sheo Prasad Pandey and Rahi Ram Prasad Pandey (in Cr. App. (DB) No. 887 of 2012 being already on bail are discharged from the liability of their respective bail bonds. So far appellant Sidheshwar Yadav (in Cr. App (DB) No.850 of 2012) is concerned, he is in jail custody and, as such, should be released forthwith, if he is not wanted in any other case.

These appeals are allowed.

(Dr. Ravi Ranjan, J)

(Anjana Mishra, J)

Vikash/-

AFR/NAFR	AFR
CAV DATE	NA
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