

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1061 of 2012

Arising Out of PS.Case No. -54 Year- 2008 Thana -MARHAURA District- SARAN

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Bhimal Ram @ Vimal Ram S/O Late Ramprit Ram Resident Of Village
Marhowrah Khas, Police Station Marhowrah, District Saran.

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Abhimanyu Sharma, Advocate
Mr. Sanjay Kumar Singh, Advocate
For the Respondent/s : Mr. A.K. Sinha, APP

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CORAM: HONOURABLE Dr. JUSTICE RAVI RANJAN

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V. JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date: 09.10.2018

The present application has been preferred against the judgment and order dated 25.08.2012 and 29.08.2012 passed in Sessions Trial No. 811 of 2008 and 810 of 2010 (arising out of Marhowrah Police Station Case No. 54 of 2008 corresponding to G.R. No. 783 of 2008) by Sri Akhilanand Dubey, Adhoc Additional Sessions Judge – 5th, Saran at Chapra, whereby and whereunder the learned judge has been pleased to convict the



appellant under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code and also fine of Rs. 5000/-. Further in case of default of payment he will be sentenced to undergo R.I. for one month and further pleased to undergo rigorous Imprisonment for three years under Section 27 of the Arms Act and both the sentence has been directed to run concurrently.

The prosecution case, in brief, as per the First Information Report is that one Sayeedi Devi, aged about 50 years, wife of Mohan Ram, resident of village-Marhowrah Khas, Ward No. 16, Police Statation – Marhowrah, district – Saran gave her fardbeyan before the Sub Inspector, namely, Golden Kumar of Marhowrah police Station, wherein, it was stated, inter alia, that on 22.03.2008 at about 2:00 P.M. the informant was sitting at the Verandah of the neighbour, namely, Bachcha Ram, thereafter, her son, namely, Pankaj Kumar aged about 15 years came there from their sister Began Devi's house. It



has been further alleged that at the relevant point of time Vijendra Ram, son of Bhimal Ram, who was going towards Marhowrah More came there and started abusing her son Pankaj Kumar, upon which her elder son protested, thereafter father and grand father of Vijendra, namely, Bhimal Ram and Ramprit Ram are said to have fired shot and then Vijendra Ram fired on Pankaj Kumar but Pankaj Kumar ran away towards the informant and saved himself. Thereafter, Bhimal Ram armed with Pistol and Ramprit Ram armed with lathi came there and Ramprit Ram told his son Bhimal Ram pointing towards son of informant, namely, Tarkeshwar Ram to kill him whereafter Bhimal Ram fired two shots from his country made pistol which hit the chest of Tarkeshwar Ram and he fell down and when the informant, her husband and other persons ran to save her son, the accused persons fled away. Thereafter, injured Tarkeshwar Ram was brought to Primary Health Centre, Marhowrah for treatment, where the doctor declared him dead and thereafter, the informant brought the dead body of his son at



her door.

It has been further disclosed that the reason behind the occurrence is previous land dispute land and on account of old land dispute Bhimal Ram, Ramprit Ram and Vijendra Ram in order to commit murder, fired shots on Tarkeshwar Ram and Pankaj Kumar in which Tarkeshwar Ram received two injuries on the chest and he died. It is stated, that on the basis of the aforesaid fardbeyan, Morhowrah Police Station drew up the formal First Information Report and registered a case being Marhowrah Police Station Case NO. 54 of 2008 dated 22.03.2008 at 6:00 P.M. under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

The defence of the appellant is a total denial of the charges leveled against him and he has stated that he has been falsely implicated in the present case on account of land dispute. The further defence of the appellant was that Tarkeshwar and Vishwakarma had protested against the second marriage of Bigan Devi, who is sister of Tarkeshwar



and Tarkeshwar was associated with extremist (Maowadi group) and the cause of murder is due to protest of second marriage of Bigan Devi.

During trial, the prosecution examined 11 (eleven) witnesses, out of which P.W.1 Chandradeo Raut, P.W. 2 Sudama Ram, P.W. 3 Bachcha Ram, P.W. 4 Dileep Ram, P.W. 5 Basanti Devi have not supported the prosecution version and have been declared hostile. P.W. 6 Pankaj Ram, brother of the deceased, P.W. 7 Bigan Devi, sister of the deceased, P.W. 8 Maham Ram, father of the deceased, P.W. 9, Sayeedi Devi (informant and mother of the deceased) have been examined as eye witness of the occurrence. P.W. 10 Dr. Shambhu Nath Singh is the doctor had conducted autopsy on the dead body of deceased Tarkeshwar Ram and P.W. 11 Golden Kumar is the Investigating officer.

The defence has also examined two witnesses i.e. Defence Witness no. 1 Gulam Ram and Defence Witness No. 2 Kamarun Khan, who have not supported the prosecution case. So far as P.W. 6, 7, 8 & 9 are concerned they are brother, sister, father



and mother of the deceased Tarkeshwar Ram respectively, who are interested.

The Submissions as advanced by learned counsel for the appellant are that besides the aforementioned legal and factual aspects several contradictions have surfaced in the statement of P.W. 6, 7, 8 and 9 in their oral evidence as stated before the Court which is related to the facts and circumstances of the case, but such contradictions were not noticed by the learned Trial Judge while passing the impugned judgment. It was further argued that P.W. 6, Pankaj Ram, brother of the deceased Tarkeshwar Ram, has said that he was the first man to reach near the dead body of deceased. Thereafter, on alarm raised by this witness, his mother and several other persons also assembled there, but no independent person has been examined in support of this story as narrated in the prosecution case.

P.W. 6, Pankaj Kumar, has further stated that after the occurrence, they brought the injured Tarkeshwar Ram to Marhowrah Hospital, where the



doctor declared him dead, thereafter, they carried the dead body at police station but the other witnesses have stated that the dead body was brought at the house of the informant from the hospital which is yet another contradiction in the prosecution version.

The further submission advanced by learned counsel for the appellant that P.W. 6 Pankaj Kumar has also stated that he has not signed on any paper before the Investigating Officer. This witness also stated that his sister and brother-in-law namely, Sanjay also came on the spot where Tarkeshwar fell down. He further stated that this witness and his brother did not got to the house of Sanjay whereas other witnesses have stated that Pankaj and Tarkeshwar went to their sister's house.

It was further contended on behalf of the appellant that the evidence of doctor, P.W. 10 proves that the deceased sustained all the injury external and internal out of one shot, whereas the eye witnesses, who are close relatives of the deceased in their evidence have stated that the deceased received



two gun shot injuries and the story of assault by the appellant has been cooked up on account of existing land dispute.

Learned counsel for the appellant further submitted that P.W.9 Sayeedi Devi in her cross-examination stated that the occurrence took place near the land under dispute, whereas P.W. 7 Bigan devi said that Tarkeshwar was lying 5-7 steps from her matrimonial house and hence on perusal of evidence of witnesses, there is contradiction on the point of place of occurrence which also falsifies the prosecution story.

It was further pointed out by the learned counsel for the appellant that P.W. 7, Bigan Devi (sister) stated that Tarkeshwar and Pankaj had gone to her matrimonial house and they had taken some solid food (puaa and bazka), whereas the doctor found the stomach to be containing small liquid food. It was thus, submitted that such a finding by the Doctor creates a gross suspicion over the credibility of evidence presented by this witness.

Referring to the evidence of P.W. 11



Golden Kumar (Investigating Officer), it was pointed out by the learned counsel for the appellant that the Investigating Officer stated that he recorded the fardbeyan of Sayeedi Devi at the place of occurrence on which Pankaj Kumar and Bachcha Ram had made their respective signature but Pankaj Ram during course of his evidence stated that he has not signed on any paper and Bachcha Ram (declared hostile) has also not supported the prosecution case which creates cloud of doubt regarding the veracity of occurrence and the testimony of other eye witnesses.

Learned counsel for the appellant after referring to the aforementioned discrepancies in the consideration of the evidences of the prosecution witnesses further submitted that the learned trial Court in the impugned judgment has failed to notice the aforementioned discrepancies and has awarded the judgment of conviction against the appellants on grounds which are wholly baseless and no credence can be attached to the evidence of such witnesses as the prosecution has failed to prove its case beyond



reasonable doubt. It was thus, contended that the impugned judgment and order of conviction fit to be set aside and the appellant should be discharged from all the charges as leveled against him.

We have heard learned counsel for the appellant and learned A.P.P. for the State.

At the very outset, it is necessary to point out that in the depositions which have come before the Trial Court, out of 11 witnesses, who were examined, 5 witnesses which includes the informant, have been declared hostile. They are P.W.1, Chandradeo Raut, P.W. 2, Sudama Ram, P.W. 3, Bachoha Ram, P.W. 4, Dileep Ram and P.W. 6 & 7, Pankaj Ram and Bigan Devi respectively whereas P.W. 1, is father and P.W. 6 & 7 are the brother and the sister of the deceased and thus, their evidence has not been given any credence. Out of these, three are FIR named witnesses, who having been declared hostile, for their varied stories, need not be gone into.

Learned counsel appearing on behalf of the appellant has assailed the judgment firstly, for



the reasons that the place of occurrence of the present crime has not been proved by the prosecution witnesses. It is further submitted that the place of occurrence has been contradicted by the witnesses and their respective depositions inasmuch as while one witness P.W.6 (brother of the deceased) has stated that it was hear the “OSERA” another witness namely P.W.7 (sister of informant) and P.W. 9 in his deposition has stated that the place of occurrence was the road between the house of the informant and the appellant whereas still another witness has goneforth to shift the place of occurrence to the field by the side of the house. This clearly goes to prove that there is a variety in the story carved out by the prosecution witnesses and no credibility can be attached to any of them as the FIR witnesses have not been able to fix the place of occurrence to a particular point, which casts a serious doubt on the prosecution story. In this regard, learned counsel for the appellant has cited a judgement of the Apex Court reported in 1974 (4) SCC page 186 wherein at paragraph – 17.



Paragraph -17

We also find that the Trial Court as well as the High Court had brushed aside the objection that the blood recovered from the place of occurrence was not sent for chemical examination. We think that failure of the police to sent the blood for chemical examination in a serious case of murder, such as the one before us, is to be deprecated. In such cases, the place of occurrence is often disputed. In the instant case, it was actually disputed. However, such an omission need not jeopardize the success of the prosecution case where there is other reliable evidence to fix the scene of occurrence.”

It was thus, urged by learned counsel for the appellant that the Trial Court erred in not fixing the place of occurrence and since there was material difference in the statement of the material witnesses, a serious cloud is casts on the entire prosecution story and the judgement based on uncertainties cannot be sustained.

Learned counsel for the appellant further stated that not only is there a variance in the story



of the informant with regard to the place of occurrence but the story as carved out that the deceased was coming back after taking food also stand belied by the postmortem report. It was pointed out that no wounds were found on the body of the deceased and the stomach also revealed that there was no food therein. There was also no undigested food matter in the stomach to indicate that the deceased had taken "bajka and pua". The doctor has opined that the liquid food is present which casts a serious cloud on the prosecution story.

It was further pointed out by learned counsel for the appellant that the doctor conducting the postmortem examination has categorically stated that the victim, Tarkeshwar Ram had one bullet injury. This also belies the prosecution story as the deceased is said to have been fired at twice. So far as the finding of the doctor in his report regarding digested or undigested food is concerned, it denotes that stomach contains small liquid food which goes to show that the FIR version was not correct but a premeditated document.



In this context, learned counsel for the appellant has placed reliance on the judgment reported in 1974 (4) SCC page 186 at para – 18.

Paragraph-18

***“The High Court had dealt with the contention that there was some conflict between medical evidence and the evidence about the distances from which shooting are said to have taken place. It held that, if correctly interpreted, medical evidence corroborated the account of eye-witnesses. But, the High Court had not similarly discussed or dealt with the infirmities in the statements of prosecution witnesses, which were placed before us, such as the denial by Smt. Brahma, P.W. 2, that she went to the police station to lodge a report in respect of the murder of Hari Singh. It was urged on behalf of the appellants that this deliberately mendacious denial by her was made to conceal the fact that here report was untrue. Matters which may shake the credibility of a witness must be taken into account although they may not be enough to discard the whole statement of a witness.*”**

Further it was pointed out in 1975 (4) SCC page 497



para 9.

Paragraph – 9

“This bring us to the other aspects of the case, namely, whether or not the prosecution had tried to change the time and place of occurrence as contended by the learned counsel for the appellants. There is no direct evidence to show that the occurrence took place at 8-00 p.m. but there are certain strong circumstances which lead to the irresistible inference and an inescapable conclusion that the occurrence must have taken place at about 9 p.m. In the first place, the informant himself has categorically stated in his evidence that he had left for the police station at 8.00 p.m. although the occurrence had taken place at 6-30 p.m. He has not given any explanation why he waited in the village for 1 ½ hours if he eventually decided to go to the police station alone without taking any escort. This clearly shows that the occurrence must have taken place at about 8:00 p.m. and the time has been shifted at 6-30 p.m. only with a view to make it appear that the occurrence took in the house where the accused could be properly identified. Another important circumstances which



supports this inference is that according to the evidence of Surjit Singh who stated at p. 41 of the High Court Paper Book that they had taken their food at village Phaphre Bhaike about an hour before the occurrence. Here he is completely belied by the medical evidence of Dr. Walia which show that undigested food was found in the stomach of the deceased and according to him the deceased must have taken his food only five minutes before his death or at the most within half an hour of his death. Doctor's evidence, there is also the usual time when the villagers take their food. Another important circumstance which shows that the occurrence must have taken place at 8-00 p.m. is the evidence of PW 15 Baggar Singh that after hearing about the occurrence he came out of his house after about four hours of the alleged firing and went to the spot about 1 ½ hours before the police arrived. The witness states that the police arrived at the spot about 1 ½ hours after he had gone to the spot. According to the evidence of the A.S.I. he had proceeded to the village Hassanpur at about 2-30 a.m. on October 3, 1972. This means that the witness must have reached the spot at



about 1-00 a.m. This would put the occurrence at about 9-00 p.m. on October 2, 1972 as the witness stirred out of his house four hours after the occurrence. This version also belies the version of the two witnesses that the occurrence took place in their house at about 6-30 p.m.

A further reference has been made to 1979
(3) SCC page 1, para-1.

Paragraph -1

“The respondents had been convicted by the Additional Sessions Judge, Banda, under Section 302 of Indian Penal Code and sentenced to imprisonment for life. The respondents thereafter filed an appeal to the High Court of Allahabad which after a full and complete consideration of the evidence came to a finding of fact that the prosecution has not proved its case and accordingly acquitted the respondents. The High Court rejected the prosecution case mainly on two grounds. In the first place, it held that having regard to the circumstances and the distance from which the witnesses saw the accused, it was difficult for them to identify the



accused. Secondly, the High Court found that in view of the medical evidence which showed that the large intestines of the stomach were absolutely empty, the evidence of the eye-witnesses could not be believed. Against the order of acquittal passed by the High Court the State came up to this Court by special leave and after obtaining the same the has been placed before us for hearing”.

Thus, the entire story of the prosecution that the deceased had consumed food just prior to the occurrence, stands discredited by the medical evidence, available on record and, on this score also, the judgment under appeal cannot be sustained. On, assessment of the evidences, this Court also finds that the submissions advanced by the learned counsel for the Appellant cannot be brushed aside as no food matter, digested or undigested was found in the stomach of the deceased on the Report of the Doctor in the Post Mortem examination conducted by him.

Another very important aspect pointed out



by learned counsel for the appellant, is that though all the witnesses have stated that there was a pool of blood on the ground where the deceased had been shot, the Investigating Officer failed to seize the bloodstained earth from the place of occurrence. This omission on the part of the Investigating Officer is a serious anomaly which has prejudiced the prosecution case as even the place of occurrence could not be proved on account of such serious lapse on the part of the investigation.

Learned counsel for the appellant has referred to a series of judgment beginning from 1978 Criminal Law Journal page 177 (SC) and 1992 Criminal Law Journal page 2156, para -19.

Paragraph – 19 of 1992 Criminal Law Journal page 2156, is quoted hereunder:-

“The case of the prosecution, is that the dispute originated on account of forcibly cutting Rahar crop from Plot no. 1331 but the murder took place in the field of Sheo Pujan Bhagat situated on the northern boundary of Plot No. 1331. It is alleged that the deceased fell down in the wheat field after sustaining the injuries,



then he was brought near the Sheesham tree. The P.Ws have stated that copious blood had oozed out from his injuries in the wheat field and near the Sheesham tree. But there is no seizure of blood stained earth either from the wheat field or near the Sheesham tree by the investigating Officer, P.W. 12 nor there is any explanation for that. In the case of Laxmi Singh V. State of Bihar, AIR 1976 SC 2263: (1976 Cri LJ 1736) it has been observed that in almost all criminal cases, the blood stained earth found from the place of occurrence is invariably sent to the Chemical examiner and his report along with the earth is produced in the court. If this procedure is departed from for reasons best known to the prosecution it indicates that the defence version may be true. In the present case the omission on the part of the I.O. P.W. 12 to seize blood stained earth from the place of occurrence casts a serious doubt on the place of occurrence of this case.

It was contended by learned counsel for the appellant that had the bloodstained earth been seized by the Investigating Officer, the various stories



regarding the place of occurrence would not have been disputed and non-seizure of blood by the I.O. is a serious omission on the part of the Investigating Officer which casts a serious doubt about the place of the occurrence of the case. Thus, on this score too, the conviction of the appellant cannot be sustained lastly but not least. We also find ourselves in agreement with the aforementioned ground made by the appellant.

Learned counsel for the appellant has also pointed out that the theory of false implication cannot be ruled out in view of the conduct of the Investigating Officer, who has been found to be a close relative of the prosecution side and the story of several witnesses regarding existence of land dispute between the parties, thus, the connection of the present appellant cannot be ruled out in the existing facts and circumstances of the case.

Learned counsel for the State is, however, unable to controvert the aforementioned aspect and discrepancies in the prosecution story though he has made submissions to justify the findings of the trial



Court but on perusal of the evidences, this Court finds that there are such glaring discrepancies and contradictions in the evidences cannot be given a go-bye as has been done by the trial Court.

In the result, the present appeal is allowed. The judgment and order of conviction dated 25.08.2012 and 29.08.2012, passed in Sessions Trial No. 811 of 2008 and 810 of 2010 (arising out of Marhowrah P.S. Case No. 54 of 2008 corresponding to G.R. No. 783 of 2008) by Sri Akhilanand Dubey, Adhoc Additional Sessions Judge- Vth, Saran at Chapra, is set aside. Since the appellant is in custody and judgment of his conviction and sentence has been set aside, it is hereby, directed to release him forthwith, if not wanted in any other case.

(Anjana Mishra, J)

Dr. Ravi Ranjan, J

I agree.

(Dr. Ravi Ranjan, J)

Jagdish/-

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