

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 474 of 2013

Arising Out of PS. Case No.-159 Year-2011 Thana- Riga District- Sitamarhi

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Khedan Thakur, son of Shiv Nandan Thakur, resident of Village – Basantpur,
Police Station – Riga, District – Sitamarhi.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s : Mr. Pushpendra Kumar Singh, Adv.
For the Respondent/s : Mr. Ajay Mishra (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 18-09-2018

The present appeal was preferred by sole appellant under Section 374(2) r/w Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) against judgment of conviction and sentence passed in Sessions Trial No. 180 of 2012/25 of 2012 by Sri Ram Shankar Singh, learned Adhoc Additional Sessions Judge 3rd, Sitamarhi (hereinafter referred to as ‘Trial Judge’). By judgment dated 20-03-2013, the learned Trial Judge has convicted the appellant for commission of offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as ‘I.P.C.’) and by order dated 22-03-2013 for commission of offence under



Section 302 of the I.P.C., the appellant was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- (ten thousand). In default of payment of fine, he was directed to further undergo rigorous imprisonment for one year.

2. Short fact of the case is that on 29-09-2011 at 00.30 hrs., one Sub-Inspector of Riga Police Station namely Sri Dhiraj Kumar Singh (not examined) recorded *fardbeyan* of Chulhai Ray (P.W.3) aged about 20 years son of Ram Bharos Ray (deceased) of village – Basantpur Pakdi, P.S. - Riga, District – Sitamarhi. In the *fardbeyan*, the informant disclosed that on 28-09-2011 at about 9.00 in the night, he was returning back to his home from chowk and while he reached near the house of one Chandra Kishore Thakur, one street dog chased his, however; by using *danda*, he saved himself. In the meanwhile, Ram Jivan Sahni (P.W.4) of village Basantpur Pakdi, who sitting near the door of Khedan Thakur (appellant) and was taking drink, called the informant. Then he went there. Following him, his father namely Ram Bharos Ray (deceased) also arrived there, then wife of Khedan Thakur (appellant) namely Munni Devi started abusing them as to how they had arrived on her door. In the meanwhile, Khedan Thakur (appellant) came out from his house with a knife and on the



back of his father Ram Bharos Ray, he gave a blow by the knife, whereafter, his father fell down and died. He stated that with Khedan Thakur (appellant) dispute was continuing and this was the reason for committing the crime. The said *fardbeyan* was read over to him and after finding the same correct, he put his signature on the *fardbeyan*. One Kishori Ray (not examined) put his L.T.I. on the *fardbeyan* as witness to the *fardbeyan*.

3. On the basis of said *fardbeyan*, on 29-09-2011 at 5.15 hrs. (5:15 AM), a formal F.I.R., vide Riga P.S. Case No. 159 of 2011, was registered for offence under Sections 302, 504, 34 of the I.P.C. against Khedan Thakur (appellant) and his wife Munni Devi. After investigation, on 25-02-2012 chargesheet was submitted against both the F.I.R. named accused persons and on 14-03-2012 learned Chief Judicial Magistrate, Sitamarhi took cognizance of the offence. Subsequently, after completing all the formalities under Section 207 of the Cr.P.C., on 17-04-2012 the case was committed to the court of sessions and finally, on 21-06-2012 charge was jointly framed against appellant and his wife for offence under Sections 302/34 of the I.P.C.

4. During the trial, to prove its case, from the prosecution side, altogether six witnesses were examined. Out



of six witnesses, P.W.1 Chandan Kumar @ Viraj Bhatt, P.W.2 Shivjee Rai and P.W.3 Chulhai Rai (informant) were examined as eye-witnesses to the occurrence. P.W.4 Ram Jivan Sahni, regarding whom in the *fardbeyan* it was stated that he, near the door of the appellant, was taking drink at the time of occurrence, has not supported the prosecution case and as such, he was declared as hostile witness. P.W.6 Dr. Amit Kumar on 29-09-2011 was posted as Civil Assistant Surgeon, Sadar Hospital, Sitamarhi and he conducted *post-mortem* examination on the dead body of the deceased (father of the informant namely Ram Bharos Ray). P.W.5 Bhudeo Chandra Nayak on 29-09-2011 was Sub-Inspector of Police of Riga Police Station and he was authorised by the officer incharge of the police station to conduct investigation of the case. He investigated the case and with the order of the superior officer, after completion of the investigation, submitted chargesheet. After completion of the prosecution evidence, on 07-01-2013, circumstances and evidences collected during the trial were explained to the appellant and his statement under Section 313 of the Cr.P.C. was recorded.

5. Sri Pushpendra Kumar Singh, learned counsel for the appellant, after placing entire evidence, has argued that



prosecution has completely failed to establish its case beyond all reasonable doubt and as such, it was a fit case for acquittal, however; learned Trial Judge, contrary to the material fact, has passed the judgment of conviction and sentence, which requires interference. It has been argued that it appears that father of the informant was done to death by someone else and dead body was thrown somewhere else, but since the informant was having old animosity with the appellant, the appellant was fabricated as accused by the informant. He submits that besides informant Chulhai Rai, who was examined as P.W. 3, two other witnesses namely Chandan Kumar @ Viraj Bhatt (P.W. 1) and Shiyjee Rai (P.W. 2) had come forward to depose, as if, they had seen the occurrence. However, on examination of their evidence, it is evident that they were not actually witness to the occurrence. It has been argued that P.W.1 Chandan Kumar @ Viraj Bhatt during the trial had developed a case, as if, at the time of occurrence, besides appellant and his wife, two other persons were also there, who exhorted the appellant to kill the father of the informant. He further submits that both the witnesses during the trial tried to justify identification of the appellant on the ground, as if, at the time of occurrence on the *verandah* of the appellant, one लालटेन (lantern) was already burning. During the



trial, neither story of identification has been brought on record nor the investigating officer, who was examined as P.W. 5, has supported the said version of P.W. 1 and P.W. 2. He submits that attention of P.W. 1 and P.W. 2 was drawn to their previous statement recorded under Section 161 of the Cr.P.C. to the extent as to whether during investigation, they had stated regarding the लालटेन (lantern) or not, which was contradicted by the evidence of P.W.5/investigating officer. P.W. 5 the investigating officer in paragraph-6 of his cross-examination has stated that P.W. 1 Chandan Kumar @ Viraj Bhatt had not stated in his previous statement regarding the *lalten*. Similarly, in paragraph-7 of his cross-examination, P.W. 5 has stated that during investigation, P.W. 2 Shivjee Rai had not stated regarding the fact of *lalten*. According the learned counsel for the appellant, the only witness thereafter remains i.e. P.W. 3 Chulhai Rai, who was having old animosity with the appellant. By way of referring to evidence of P.W. 5/investigating officer, Sri Pushpendra Kumar Singh, learned counsel for the appellant highlights that ofcourse, the informant (P.W.3) in his evidence had made categorical statement that in the occurrence, profuse bleeding had come and huge blood was found on earth i.e. place of occurrence, the investigating officer in paragraph-11 of his



cross-examination has clarified that at the place of occurrence, he has not found any blood mark or any mark relating to the occurrence. Learned counsel for the appellant, taking aid of inquest report i.e. Ext. 4 submits that inquest report suggests that the dead body was found on the road opposite the house of one Lal Babu Mandal.

6. Learned counsel for the appellant has alternatively argued that even, there is no accusation of repetition of knife blow on the deceased. In sum and substance, it has been argued that prosecution in the present case has not been able to establish the place of occurrence also and as such, the prosecution has completely failed to establish its case beyond all reasonable doubt.

7. Sri Ajay Mishra, learned Addl. Public Prosecutor submits that in the present case, evidence of informant/P.W.3 is itself sufficient for rejection of the appeal against conviction of the appellant. He submits that the evidence of P.W.3 appears to be natural and the fact, which he had stated in the *fardbeyan*, has been reiterated during the trial also. According to Sri Mishra, the ocular evidence has also been supported by medical evidence. He submits that it is a specific case of the prosecution that appellant gave one blow from knife on the backside of the



father of the informant, which injury was noticed at the time of *post-mortem* by P.W. 6. Accordingly, he submits that the appeal is fit to be rejected.

8. Besides hearing learned counsel for the parties, we have examined entire evidences on record and after going through the same, *prima facie*, we are of the opinion that prosecution has not been able to establish its case beyond all reasonable doubt. However, before proceeding, it would be necessary to firstly refer the evidence of informant, who has been examined as P.W.3. He identified his signature on the *fardbeyan*, which was marked as Ext. 1. In his evidence, reiterating his stand, which was taken in the *fardbeyan*, has further stated that after the occurrence, he telephonically informed Darogaji regarding the occurrence, then police arrived. However, in paragraph - 10 of his cross-examination, he stated that *chaukidar* had given telephonic information to the police station. In his cross-examination, in paragraph - 4, he disclosed the name of persons, whose houses were near the place of occurrence, namely Birendra Thakur, Chandra Kishore Thakur, Shyam Mandal, Mahadev Mandal etc., but to the reasons best known to the prosecution, none of such persons were cited as witness to support the prosecution case. Besides



this, in paragraph - 7 of his cross-examination, he has categorically stated that while his father was given blow by knife, blood started oozing out and his cloths were completely soaked with the blood, on floor also blood fell down and was found within the radius of one hand. The said blood had also fallen on the cloth of the informant, whereas the investigation officer/P.W.5 in paragraph - 11 has stated that near the door of Khedan Thakur (appellant), he did not notice blood nor any mark he could found regarding the murder at the same place. According to evidence of PW.5, the case, made out by the informant that profuse bleeding had occurred and at the place of occurrence blood had also fallen, appears to be not believable and as such, only on the evidence of P.W.3/informant, it would not be safe to approve the judgment of conviction and sentence.

9. So far as evidence of P.W.1 Chandan Kumar @ Viraj Bhatt and P.W.2 Shivjee Rai is concerned, both the witnesses had come out with a case that in the light of *lalten*, which was burning, they had seen the occurrence also appears to be suspicious, since during investigation, in their statement recorded under Section 161 of the Cr.P.C. they had not stated such fact. Same stand has been controverted by the investigating officer/P.W.5 in his evidence in paragraph 6 & 7.



Besides this, the prosecution has not brought on record the source of evidence, whereas P.W.2 in paragraph - 5 of his cross-examination had stated that it was dark night. This witness (P.W.2) was also given suggestion that no occurrence had taken place near the door of the appellant, however this suggestion was denied by him. In the evidence of P.W.1, one new fact has also come, as if, at the time of occurrence, two other persons were also there, who exhorted and instigated the appellant to kill father of the informant, however right from the very beginning, it was not a case of the informant, as per F.I.R as well as evidence of P.W.3. At the time of occurrence, there were only five persons, who were Ramjivan Sahni (P.W.4), Khedan Thakur (appellant), his wife Munni Devi, informant and his father. In such circumstances, it would be difficult to place reliance on the evidence of P.W.1 and P.W.2.

10. As per evidence of the informant, Ramjivan Sahni (P.W.4) was the best person to disclose the entire fact, however Ramjivan Sahni, though was examined as P.W.4, had not at all supported any story of the prosecution and this was the reason that he was declared as hostile witness.

11. P.W.6 Dr. Amit Kumar on 29-09-2011 was posted as Civil Assistant Surgeon, Sadar Hospital, Sitamarhi and on the



same date in the morning at 9:10 AM, he conducted *post-mortem* examination on the dead body of the deceased and noticed following facts:-

“On external examination:-

Both eye closed, mouth partially open.

Incised wound over back left side about 7mm to 8mm rib sized approximately 1½” about lateral to the mid spine.

Size about 1½” x cavity deep with blood and blood clot.

Internal finding:-

On opening of skull approximately cradial intact grey matter pale on opening of next- NAD

On opening of thyrox:- Left thyrox cavity filled with blood and blood clot and left lung punctured. Right lung intact and pale.

Heart intact and chamber empty.

On opening of abdominal cavity- All organs including liver intact and pale.

Stomach contained semi-digested food particles.

Urinary bladder partially filled with urine.

Time elapsed since death and PM held within 24 hrs.

Opinion:-

The cause of death was due to hemorrhage and shock leading to cardio respiratory failure as a result of above written injury caused by penetrating weapon.”

He further stated that *post-mortem* report was in his writing and signature, which was marked as Ext.5.

12. P.W.5 Bhudeo Chandra Nayak on 29-09-2011 was posted as Sub-inspector of Police, Riga Police Station and he was authorized by the officer incharge of Riga Police Station to take up investigation of the case and he took the investigation and finally submitted chargesheet. During the evidence, he



proved the *fardbeyan*, which was written by one S.I. of Police Dhiraj Kumar Singh and it was marked as Ext.2. He also proved the endorsement made by the then officer incharge of Riga Police Station on the *fardbeyan*, which was marked as Ext.3, formal F.I.R. as Ext. 1/1 and he also proved inquest report, which was marked as Ext.4. In his evidence, in paragraph - 4 has described about place of occurrence. As per paragraph - 4 of his evidence, the place of occurrence was in the village Basantpur Pakdi courtyard of the appellant, where it was alleged that father of the informant was murdered. He described the boundaries of the place of occurrence in the same paragraph, however nothing has been indicated regarding finding of any mark at the place of occurrence, rather in cross-examination in paragraph-11 he categorically stated that he did not notice any blood fallen near the door of the appellant (Khedan Thakur) nor he could notice any evidence of murder at the place of occurrence. He further stated in the same paragraph that he has not noticed any blood mark on the cloth, which was on the person of the deceased. He further stated that he had not found the dead body near the door of the appellant.

13. On examination of entire aforesaid evidence, we are of the considered opinion that prosecution has not been able to



establish its case beyond all reasonable doubt. Moreover, even in the evidence of P.W.3, there was no assertion that the appellant tried to repeat knife blow, rather it was a specific case that only one blow of knife was given by the appellant on the back of the father of the informant.

14. In view of the fact that evidence of P.W.1 and P.W.2 is completely doubtful as well as the evidence of the investigating officer, who did not find any blood mark or any mark at the place of occurrence, it would not be appropriate to approve the judgment of conviction and sentence.

15. Be that as it may, considering the entire evidence on record, we are of the opinion that prosecution has not been able to prove its case beyond all reasonable doubt and as such, by way of extending benefit of doubt, it is necessary to interfere with the judgment of conviction and sentence.

16. Accordingly, the judgment of conviction dated 20-03-2013 and order of sentence dated 22-03-2013 passed in Sessions Trial No. 180 of 2012/25 of 2012 (arising out of Riga P.S. Case No. 159 of 2011) by Sri Ram Shankar Singh, learned Adhoc Additional Sessions Judge -III, Sitamarhi is, hereby, set aside and appeal is allowed.



17. The appellant is in custody and since the judgment of conviction and sentence has been set aside, it is necessary to direct for his release. Accordingly, it is, hereby, directed to release the appellant forthwith, if not wanted in any other case.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
CAV DATE	N/A
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