

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 350 of 1993

1. Deo Nandan Yadav
2. Deokrit @ Ramkrit Yadav, both sons of late Bachchu Yadav, residents of village-Gayabigha, P.S. Shakurabad (Kurtha), District-Jehanabad.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants : Shaheen Begum, Adv. (Amicus Curiae)
For the State : Mr. Shiwesh Chandra Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 08-08-2019

1. We heard learned Amicus Curiae M/s Shaheen Begum appearing for the appellants as well as learned Additional Public Prosecutor for the State and perused the record along with lower court's record.

2. This criminal appeal has been preferred by the appellants against the judgment of conviction and sentence order dated 22.06.1993 passed by learned Additional Sessions Judge, Jehanabad (hereinafter referred to as "trial court") in Sessions Trial Case No. 31 of 1993 arising out of Kurtha P.S. Case No. 49 of 1983 by which and whereunder, he convicted both the appellants for the offence punishable under Section 396 of the I.P.C. and



sentenced them to undergo rigorous imprisonment for life thereunder.

3. Briefly stated prosecution case is that PW-1, namely, Saryug Yadav gave his fard-e-bayan to S.I. of Shakurabad police station at his village on 18.05.1983 at 8:45 A.M. to this effect that in previous night (17/18.5.1983) at about 11:30 P.M. he and his brother were sleeping at his khalihan whereas his other family members were sleeping in the house. He, further, claimed that he woke up on the barking of dogs and saw in the light of torch some dacoits at his door and seeing them he as well as his brother tried to proceed towards his house but dacoits made firing as a result of which he as well as his brother sustained pillet injury. However, he, further, claimed that some dacoits entered into his house and committed dacoity whereas some dacoits climbed on his KHAPRA and got down in the courtyard of his house. He, further, claimed that in the meantime, he heard sound of firing and one dacoit uttered that one person was killed. The dacoits remained in his house for near about half an hour and looted the belongings of the house. He, further, claimed that after committing dacoity, dacoits returned from there along with looted booty and after that he went inside his house and found his son lying dead on his KHAPRA. The dead body of his son was got down and he made



enquiry from the inmates of the house who disclosed that dacoits were 15 to 20 in numbers and they looted ornaments, utensils etc. The inmates of the house claimed that they had seen dacoits in the light of torch. PW-1 also disclosed the description of dacoits. He, further, claimed that dacoits had also committed dacoity in the house of one Suga Yadav.

4. On the basis of fard-e-bayan of PW-1, Kurtha P.S. Case No. 49 of 1983 was registered and on the same day, formal FIR for the offence punishable under Section 396 of the I.P.C. was drawn up against unknown dacoits.

5. The case was investigated by the police and after completion of investigation, charge sheet under Section 396 of the I.P.C. was submitted against the appellants. The cognizance of the offence was taken and the case was committed to the court of sessions, in usual way and accordingly, the appellants were put on trial before the trial court in Sessions Trial Case No. 31 of 1993.

6. The appellants stood charged for the offence punishable under Section 396 of the I.P.C. but they denied the charge and claimed to be tried.

7. In course of trial, prosecution examined, altogether, five prosecution witnesses and also got exhibited fard-e-bayan as Ext. 1 and postmortem report of the deceased Siya



Sharan Yadav as Ext. 2. No oral evidence was adduced by the appellants in support of their defence but they got exhibited protest complaint petition as Ext. A.

8. The statements of appellants were recorded under Section 313 of the Cr.P.C. in which they reiterated their innocence and claimed their false implication on account of enmity.

9. The learned trial court after analyzing the prosecution evidence passed the impugned judgment of conviction and sentence order having relied upon testimonies of PW-1, PW-2, PW-3 and PW-4.

10. Learned Amicus Curiae M/s. Shaheen Begum appearing for the appellants challenged the impugned judgment of conviction and sentence order arguing that the appellants are close agnates of PW-1 and as a matter of fact, unknown dacoits had committed dacoity and in course of dacoity, deceased was killed by unknown dacoits but due to enmity, PW-1 and other prosecution witnesses implicated the appellants in the case. Learned Amicus Curiae submitted that there are so many infirmities as well as improvements in the statements of prosecution witnesses but the learned trial court completely ignored the improvements as well as infirmities of the prosecution



case. She, further, submitted that in course of trial, the attention of prosecution witnesses was drawn towards their statements recorded under Section 161 of the Cr.P.C. but due to non-examination of the investigating officer, defence could not succeed to prove the contradictions as well as improvements made by the prosecution witnesses in course of trial. She, further, submitted that prosecution witnesses admitted that the appellants are next door neighbours of PW-1 and the prosecution witnesses claimed that appellants had not covered their faces whereas other dacoits had covered their faces at the time of alleged occurrence. Learned Amicus Curiae submitted that the aforesaid claim of the prosecution witnesses appears to be absurd because it is unbelievable that a known person shall commit dacoity without covering his face whereas unknown person will commit dacoity by covering his face. She, further, submitted that as a matter of fact, there was no reliable evidence against the appellants but in spite of that the learned trial court convicted and sentenced the appellants only on the basis of surmises and conjectures.

11. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that PW-2, PW-3 and PW-4 were present inside the house when dacoity was committed and all the above



stated prosecution witnesses claimed that they had identified the appellants committing the dacoity. Learned Additional Public Prosecutor, further, submitted that the above stated prosecution witnesses also claimed that it was appellant no. 1 Deo Nandan Yadav, who shot fire on the deceased and, therefore, there was sufficient material available against the appellants to show that they had not only committed dacoity but in course of dacoity, they committed the murder of informant's son also and, therefore, the learned trial court rightly convicted and sentenced the appellants.

12. Having heard the above stated contentions of both the parties, we went through the record along with lower court's record. As we have already stated that prosecution, in course of trial, examined five prosecution witnesses. Out of them, PW-5 Dr. Ram Padarath Singh claimed that he did postmortem examination on the person of deceased Siya Sharan Yadav. This witness claimed that he found firearm injury on the person of deceased.

13. PW-2, PW-3 and PW-4 claimed that they were inside the house when the alleged dacoity took place. The aforesaid witnesses are family members of PW-1.

14. PW-1 Saryug Yadav is informant of the present case and admittedly, his fard-e-bayan was recorded on 18.05.1983



at 8:45 A.M. It is also an admitted position that PW-1 did not disclose the name of any dacoit when his fard-e-bayan was recorded. PW-1 claims before the trial court that when deceased climbed on the KHAPRA, he, too, climbed on the said KHAPRA and saw the appellants having armed with firearms in his courtyard. This witness, further, claims that at the time of occurrence, a LALTEN was burning in his courtyard. This witness also claims that Deo Nandan Yadav and Deokrit fired as a result of which, his son sustained injury. He, further, claims that Ashok Kumar Dafadar informed the police about the occurrence and having got information police came at his village and recorded his fard-e-bayan. This witness, further, claims that appellant Deo Nandan Yadav was pressurizing him to settle the marriage of his grandson with his sister in law but when he did not buckle upon the above stated pressure, the appellants along with others committed the alleged crime. This witness admitted in his cross examination that his ferd beyan was recorded on the road but he denied that he had not named the appellants in his fard-e-bayan. This witness also denied this fact that he had not named the appellants in his statement recorded by the police. This witness also denied this fact that he had not claimed before the police that LALTEN was burning in his courtyard and he, too, had climbed on



his CHHAPPAR. This witness suo motu claimed before the trial court that LALTEN was taken away by the police. This witness also denied this fact that he had not claimed before the police to have seen the appellants having armed with firearms in his courtyard. This witness admitted that appellants are his agnates. Furthermore, this witness stated that when his fard-e-bayan was recorded, his daughter in law was in unconscious state in his house. This witness also claimed that statement of his daughter in law was taken by the Superintendent of Police when his daughter in law returned from hospital. This witness admitted that statement of his daughter in law was not taken either by DAROGA or by the Inspector. This witness also admitted that he had not given any sanha when appellant Deo Nandan Yadav had given threatening of dire consequences to him when he refused to settle the marriage of his grandson with sister in law of appellant Deo Nandan Yadav.

15. PW-2 Nageshwari Yadav is wife of deceased Siya Sharan Yadav. This witness claims that at the time of alleged occurrence, she was sleeping in her courtyard and she woke up hearing the barking of dogs. This witness claims that she noticed that one person was standing on KHAPRA of her house and the said person got down and opened the main door of her house and thereafter, 10 to 15 persons entered into her house. She, further,



claimed that in the meantime, her husband also came there and went on the CHHAPPAR of the house but appellant Deo Nandan Yadav shot fire which hit to her husband who fell down there. She, further, claims that she had also identified Deokrit Yadav who was having a gun in his hand. This witness claims that she had identified the appellants in the light of LALTEN. This witness, further, claims that having seen the dead body of her husband, she became unconscious and she regained her consciousness at hospital after 2 to 3 days of the alleged occurrence. She admits in her cross examination that both the appellants are her cousin brothers in law. This witness, further, admits that after three days of the alleged occurrence, police came at her village and recorded her statement. This witness claims that she had made statement before the police to this effect that at the time of alleged occurrence, she was sleeping in the courtyard of her house and had also claimed to have identified the appellants in the light of LALTEN. This witness denied the suggestion of the defence that she had not disclosed the name of the appellants before the police. She, further, claims that at the time of alleged occurrence, she along with her GOTINI and one minor girl were sleeping in the courtyard and when dacoits came in her courtyard, she as well as her GOTINI and minor girl woke up. She, further, claims that



dacoits made four to five rounds of firing. She admits that she did not see the wounds of her husband and when people told her about the death of her husband, she came to know about the said fact.

16. PW-3 Manmati Devi is GOTINI of PW-2. She also claims that at the time of alleged occurrence she was in courtyard of her house and she had identified the appellants in the light of LALTEN. She, further, claims that appellant Deo Nandan Yadav shot fire which hit to deceased Siya Sharan Yadav as a result whereof, Siya Sharan Yadav died on the spot. She, further, claims that her GOTINI (PW-2) became unconscious and after the occurrence she was taken to Paibigha hospital for treatment. She also claims that her father in law (PW-1) as well as her cousin father in law, namely, Rupan Yadav also sustained firearm injury. This witness, further, claims that after two days of the alleged occurrence, police came at her village and recorded her statement. She, further, claims that when police came at her village, police made enquiry from her all family members including PW-2. This witness denied this fact that she had not claimed before the police to have identified the dacoits and she had also not claimed before the police that at the time of alleged occurrence, she was sleeping in the courtyard along with PW-2 and furthermore, she had not claimed to have identified the appellants at the time of alleged



occurrence. This witness, further, claims that at the time of alleged occurrence, a LALTEN was kept at the courtyard. She, further, claims that she had made statement before the police that at the time of alleged occurrence a LALTEN was burning in her courtyard. However, she stated that she had not handed over the said LALTEN to police. Although, this witness at para 3 of her cross examination stated that police had come to his village after two days of the alleged occurrence but at para 10 of her cross examination she admitted that on the very next day of the alleged occurrence police came at her village.

17. PW-4 Batuna Devi is aunt of deceased Siya Sharan Yadav and she claims that she had come to her MAIKE on the occasion of marriage of her nephew. She, further, claims that at the time of alleged occurrence, she was sleeping in the house of deceased Siya Sharan Yadav and when dacoits came in the house, she woke up and saw the appellant Deo Nandan Yadav as well as his brother, namely, Deokrit. This witness also claims that a LALTEN was burning in the courtyard and in the light of aforesaid LALTEN, she had identified Deo Nandan Yadav and Deokrit Yadav. This witness also claims that Deo Nandan Yadav shot fire which hit to Siya Sharan Yadav as a result of which Siya Sharan Yadav died then and there. This witness also claims that dacoits



committed dacoity in the house of deceased Siya Sharan Yadav. She also claims that wife of Siya Sharan Yadav (PW-2) became unconscious and after the occurrence she was taken to Paibigha hospital. She, further, claims that in the next morning of the alleged occurrence, she saw the injuries on the person of PW-1 as well as Rupan. This witness admitted that on the very next morning of the alleged occurrence police reached at the village and recorded her statement. She also admitted that PW-3 also gave her statement before the police along with her. She, further, claims that at the time of alleged occurrence she along with two others was sleeping in the courtyard whereas others were sleeping in the room. She, further, admits that dacoits looted the belongings of the house but she could not identify the aforesaid dacoits as all the dacoits were unknown but in the light of LALTEN she identified only two persons. This witness, further, states that police took the said LALTEN. The learned trial court noted the demeanor of this witness when defence asked from her as to who brought her for evidence and subsequently, she admitted that her nephew, brother of Siya Sharan brought her for evidence.

18. On perusal of entire prosecution evidence, we find that fard-e-bayan of informant (PW-1) was recorded on 18.05.1983 at 8:45 A.M. and at the time of recording of his fard-e-



bayan, PW-3 and PW-4 were present in the house. Furthermore, PW-1 has admitted in his evidence that after dacoity he went inside the house and enquired from the female members of his house about the occurrence and the women members of his family disclosed that dacoits looted ornaments, utensils etc. As we have noticed that PW-3 and PW-4 were present in their house on the very next morning of the alleged occurrence and, therefore, had PW-3 and PW-4 seen the appellants committing the alleged dacoity, they would have certainly disclosed the name of appellants before the PW-1 and PW-1 would have certainly named the appellants in his fard-e-bayan but non-finding of name of appellants in fard-e-bayan of PW-1 creates doubt about the claim of PW-3 and PW-4. Admittedly, the fard-e-bayan of PW-1 does not contain the name of appellants but in course of trial, PW-1 claimed that in course of dacoity he had identified the appellants. The defence drew his attention towards this fact that before the police he had not claimed to have identified the appellants in the light of LALTEN. Although, PW-1 denied the aforesaid suggestion of the defence but admittedly, the investigating officer was not examined by the prosecution and, therefore, non examination of the investigating officer prevented the defence to bring the above stated important improvement on record and to show that PW-1



improved his statement in course of trial. Furthermore, PW-1 claimed that he identified the appellants in the light of LALTEN which was burning in the courtyard of his house but in his fard-e-bayan, he claimed that he had seen the dacoits in the light of torch. However, when PW-1 was examined before the court, he, nowhere, stated that he had seen the dacoits in the light of torch. PW-1 and PW-4 claimed that aforesaid LALTEN was taken away by the police. PW-3 expressed her ignorance about the above stated LALTEN. Non-examination of investigating officer prevented the defence to ask from the investigating officer what happened to aforesaid LALTEN. Moreover, no seizure of aforesaid LALTEN has been brought on record.

19. PW-2, wife of deceased claims that she has also identified the appellants but she admitted that her statement was recorded after three days of the alleged occurrence. Although, she claimed that after the alleged occurrence she became unconscious and she was taken to hospital where she remained for near about three days but no medical report or prescription of medicines have been brought on record to show that PW-2 was admitted in the hospital after the alleged occurrence. Moreover, her statement was recorded by the police after three days of the alleged occurrence



and, therefore, it would be unsafe to place reliance upon the testimony of PW-2.

20. As we have already stated that PW-3 and PW-4 also claimed to have identified the appellants in course of dacoity. The attention of PW-3 and PW-4 was drawn towards their respective previous statements and both the aforesaid witnesses stated that they had claimed before the police to have identified the appellants but admittedly, the investigating officer was not examined and, therefore, a serious prejudice was caused to the appellants as they could not succeed to prove this fact that PW-3 and PW-4 had improved their statements in course of trial.

21. After careful examination of prosecution evidence, we find that there are several infirmities and improvements in the prosecution case and in our view, no reliance can safely be placed upon the testimonies of PW-1, PW-2, PW-3 and PW-4 and, therefore, in the aforesaid circumstance, we have no option except to acquit the appellants after setting aside the impugned judgment of conviction and sentence order.

22. Accordingly, on the basis of aforesaid discussions, this criminal appeal is allowed and the impugned judgment of conviction and sentence order is, hereby, set aside. The appellants are acquitted of the charge framed against them.



They are on bail. They are discharged from the liabilities of their bail bonds.

23. Copy of first and last page of this judgment be handed over to learned Amicus Curiae M/s. Shaheen Begum so that she could make claim for her remuneration before the competent authority.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

shahzad/-

AFR/NAFR	A.F.R.
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