

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.2 of 1995

.....

{Against the Judgment of conviction and sentence order dated 17.12.1994 passed by the learned 1st Additional Sessions Judge, Darbhanga, in Sessions Trial No.69 of 1985/53 of 1987}.

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Nunu Prasad Singh @ Nunu Singh, son of Ram Autar Singh, resident of village-Sakalpura, P.S. Bakhari, District-Begusarai.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

with

CRIMINAL APPEAL (DB) No. 3 of 1995

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Panna Singh, son of Hira Singh, resident of Lakshmipur, P.S. Balbhadrapur, District-Darbhangha.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

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Appearance :

(In Criminal Appeal (DB No. 2 of 1995):

For the Appellant : Mr. Kanhaiya Prasad Singh, Senior Advocate.

Mr. Pratik Mishra, Advocate.

Mr. Birendra Kumar Singh, Advocate.

For the State : Mr. Dilip Kumar Sinha, A.P.P.

(In Criminal Appeal (DB) No. 3 of 1995):

For the Appellant : Mr. Kanhaiya Prasad Singh, Senior Advocate.

Mr. Pratik Mishra, Advocate.

Mr. Birendra Kumar Singh, Advocate.

For the State : Mr. S.C. Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR

MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 08-03-2019

Both the above stated criminal appeals have arisen out
of the common Judgment of conviction and sentence Order



dated 17.12.1994 passed by the learned 1st Additional Sessions Judge, Darbhanga, in Sessions Trial No.69 of 1985/53 of 1987, by which and whereunder he convicted the appellants for the offence punishable under Sections 302/34 of the Indian Penal Code and sentenced them to undergo imprisonment for life for the aforesaid offence punishable under Sections 302/34 of the Indian Penal Code. However, by the same impugned Judgment, the learned 1st Additional Sessions Judge, Darbhanga, acquitted the co-accused Hira Singh from the charge framed against him under Sections 302/34 of the Indian Penal Code and, similarly, the appellant Nunu Prasad Singh alias Nunu Singh from the offence punishable under Section 302 of the Indian Penal Code. Since both the above stated criminal appeals have arisen out of the common Judgment of conviction and sentence Order, common Judgment in both the aforesaid criminal appeals is being passed.

2. P.W.6 Satish Chandra Mishra gave his fardbeyan to the S.I. of Laheriasarai Police Station at Emergency Ward, D.M.C.H., Darbhanga, on 07.08.1982 to this effect that his elder brother Maheshwar Mishra was running 'Gumti', adjacent to B.K.S. Canteen, and one Wakil Jha (P.W.1) was working as servant with Maheshwar Mishra. The appellant Panna Singh



was the owner of B.K.S. Canteen and he used to take Rs.15/- from Maheshwar Mishra for keeping 'Gumti'. P.W.6 further stated in his fardbeyan that on 07.08.1982 at about 10.00 A.M., the appellant Panna Singh went to the 'Gumti' of Maheshwar Mishra and asked him to give Rs.20/- in place of Rs.15/- for keeping the 'Gumti' but Maheshwar Mishra requested him to take Rs.15/- but the appellant Panna Singh insisted upon him to give Rs.20/- failing which he must remove 'Gumti' from there. Thereafter, Maheshwar Mishra assured him to remove 'Gumti' as soon as possible. P.W.6 further claimed that on the same day at about 03.30 P.M., the appellant Panna Singh along with the appellant Nunu Prasad Singh alias Nunu Singh again came to the 'Gumti' of Maheshwar Mishra and asked as to why he had not removed 'Gumti' from there and, thereafter, a hot exchange of words took place between Maheshwar Mishra and the appellants. P.W.6 further stated that the appellant Panna Singh dragged Maheshwar Mishra from 'Gumti' and threw him on the ground and, thereafter, the appellant Panna Singh took out dagger from the pocket and started stabbing dagger to Maheshwar Mishra. P.W.6 further stated that, in the meantime, his co-villager Lilakant Chaudhary (P.W.5) also came there and he tried to save Maheshwar Mishra but the appellant Panna



Singh threatened to kill him, as a result whereof P.W.5 could not dare to intervene into the matter. After the occurrence, both the appellants fled away from there towards the lane. The injured Maheshwar Mishra was taken to the police station on a Rickshwa by P.W.1 and P.W.5 and, thereafter, the injured was sent to the hospital on a Jeep by the police officials. P.W.5 Lilakant Chaudhary returned to his village and narrated the entire incident to P.W.6 and, thereafter, P.W.5 and P.W.6 and other co-villagers went to the hospital, where P.W.6 found his elder brother Maheshwar Mishra dead. P.W.1 also narrated the entire occurrence to P.W.6 at the hospital.

3. On the basis of the aforesaid fardbeyan of P.W.6, Laheriasarai P.S. Case No.248 of 1982 for the offences under Sections 302/34 of the Indian Penal Code was registered and formal F.I.R. was drawn up against the appellants.

4. The Investigating Officer took the charge of investigation and after completion of the investigation, the charge-sheet for the offences punishable under Sections 302/34 of the Indian Penal Code against the appellants and the co-accused Hira Singh was submitted.

5. The cognizance of the offence was taken and the case was committed to the court of sessions, in usual way.



6. The appellants along with the co-accused Hira Singh stood charged for the offence punishable under Sections 302/34 of the Indian Penal Code, whereas the appellant Nunu Singh was separately charged for the offence punishable under Section 302 of the Indian Penal Code. The appellants and the co-accused Hira Singh denied the charges and claimed to be tried.

7. In course of trial, the prosecution examined, altogether, 12 prosecution witnesses and also got exhibited inquest report, post-mortem report etc.

8. The statement of the appellants and the co-accused Hira Singh was recorded under Section 313 of the Code of Criminal Procedure, in which they reiterated their innocence and claimed their false implication. No evidence was adduced by the appellants and the co-accused Hira Singh in support of their defence but from perusal of the statement recorded under Section 313 of the Code of Criminal Procedure as well as trends of cross-examination of the prosecution witnesses, it appears that the defence of the appellants and co-accused Hira Singh was total denial of the prosecution story.

9. The learned trial court having evaluated the evidences, available on the record, convicted the appellants but



acquitted the co-accused Hira Singh, passing the impugned Judgment in the manner as we have already stated above.

10. Learned counsel appearing for the appellants assailed the impugned Judgment of conviction and sentence Order, arguing that the learned trial court failed to appreciate the evidences in its right perspective and that is why the learned trial court came to wrong conclusion. Learned counsel for the appellants further submitted that P.W.1 admitted in his deposition that when the deceased was taken to the police station, the deceased had disclosed the name of the assailants and had narrated the entire occurrence before the police but the aforesaid statement of the deceased was not brought on the record by the prosecution. He submits that the aforesaid statement of the deceased was concealed by the prosecution for the reasons best known to the prosecution. He further submitted that, similarly, P.W.3 admitted in his deposition that he, too, made the statement before the police, just after the occurrence, but the aforesaid statement of P.W.3 has also not been brought on the record.

11. Learned counsel for the appellants next submitted that there are several contradictions in the statements of the prosecution witnesses but the learned trial court overlooked the



aforesaid contradictions, holding that the aforesaid contradictions were of minor nature, though the contradictions occurred in the depositions of the prosecution witnesses were of serious nature and go to the root of the prosecution case.

12. Learned counsel for the appellants next submitted that the Investigating Officer was not examined by the prosecution, which caused serious prejudice to the appellants as the appellants could not get an opportunity to prove the improvements and embellishments in the depositions of the prosecution witnesses.

13. On the other hand, learned Additional Public Prosecutor supported the impugned Judgment of conviction and sentence Order, arguing that P.W.1, P.W.3, P.W.5 and P.W.12 are the eye witnesses and they have fully supported the prosecution case and stated the manner, in which the appellants gave dagger blows to the deceased with an object to commit the murder of the deceased. He further submitted that P.W.8 has proved the post-mortem report of the deceased and the post-mortem report of the deceased also supports the claim of P.W.1, P.W.3, P.W.5 and P.W.12.

14. Having heard the rival contentions of both the parties, we went through the records along with the Lower



Court Records.

15. Now, it has to be seen as to whether any reliance can be placed upon the testimonies of P.W.1, P.W.3, P.W.5 and P.W.12 or not, and if the Court finds that the testimonies of the aforesaid prosecution witnesses are doubtful, then what would be the impact on the prosecution case.

16. Admittedly, P.W.6 is not an eye witness of the alleged occurrence. He learnt about the alleged occurrence from P.W.1 and P.W.5 but P.W.1 has admitted at paragraph-11 of his cross-examination that he had not talked with P.W.6 in respect of the alleged occurrence.

17. Now, it has to be seen as to whether P.W.5 had seen the occurrence or not, and as to whether having seen the alleged occurrence, he narrated about the entire occurrence to P.W.6 or not.

18. In this regard, we would like to say that in the fardbeyan, P.W.6 claimed that after the occurrence, P.W.1 and P.W.5 took the deceased on a Rickshaw to the police station but P.W.1 at paragraph-8 of his cross-examination stated that P.W.5 was not known to him and he took the deceased alone to the police station, whereas P.W.5 claimed in paragraph-2 of his examination- in- chief that he with the help of P.W.1 took the



deceased on Rickshaw to the concerned police station and the deceased was taken to the hospital in his presence. However, as we have already stated that P.W.1 claimed that he alone took the deceased to the police station, after the alleged occurrence and, therefore, the aforesaid contradictions create doubt about the presence of P.W.5 on the place of the occurrence at the time of the occurrence. In this regard, the testimony of P.W.3 is also important. P.W.3 claimed to be the co-villager of P.W.6. This witness claimed that at the time of the alleged occurrence, he was standing at the 'Gumti' of the deceased but he has, nowhere, stated in his examination-in-chief that P.W.5 was also present there. It can easily be presumed that being the co-villager, P.W.5 was well known to P.W.3 from before and the same position is in respect of P.W.3 because P.W.5 has also not stated in his chief examination about the presence of P.W.3 at the place of the occurrence when the occurrence took place, though both are known to each others being the co-villager. Therefore, the presence of both the aforesaid witnesses on the place of the occurrence appears to be doubtful. Therefore, the claim of P.W.6 that he came to know about the manner of the occurrence from P.W.1 and P.W.5 becomes doubtful.

19. P.W.1 has admitted at paragraph-8 of his cross-



examination that when the deceased was brought to the police station, the deceased was alive and he disclosed the manner of occurrence as well as the name of the assailants but the aforesaid statement of the deceased has not been brought on record by the prosecution. Furthermore, it is pertinent to note here that the Investigating Officer has not been examined in this case and, therefore, the appellants could not get an opportunity to ask from the Investigating Officer what was stated by the deceased before police when he was brought to the police station.

20. P.W.3 claimed that he was also present at ‘Gumti’ of the deceased when the occurrence took place and claimed that after the occurrence, he informed the police and on his information, police came at the place of the occurrence but, admittedly, the aforesaid statement of P.W.3 has not been brought on record by the prosecution and non-examination of the Investigating Officer also caused prejudice to the defence as defence could not get an opportunity to put a question to the Investigating Officer in respect of the above stated claim of P.W.3.

21. P.W.12 also claimed himself to be an eye witness of the alleged occurrence and stated that on the alleged date of



the occurrence at about 03.30 P.M., the appellants along with the co-accused Hira Singh went to the 'Gumti' of the deceased and demanded enhanced rent from him but when the deceased refused to pay the enhanced rent, the appellants and the co-accused Hira Singh assaulted the deceased by the dagger, as a result whereof, the deceased sustained injuries. According to this witness, the occurrence of demand of enhancement of rent and assault took place together but P.W.6 in his fardbeyan as well as in his deposition stated that the appellants had demanded enhanced rent at about 10.00-10.30 A.M. on the alleged date of the occurrence and, subsequently, at about 03.30 P.M., they went to the 'Gumti' of the deceased for removing the 'Gumti' of the deceased and the occurrence took place due to non- removal of 'Gumti' but P.W.12 claimed that both the aforesaid incident took place simultaneously and, therefore, no reliance can safely be placed upon the testimony of P.W.12.

22. P.W.3, P.W.5 and P.W.6 admitted that 'Gumti' of the deceased was on Government land and, therefore, there was no occasion for the appellants to collect the rent from the deceased. No doubt, the 'Gumti' of the deceased was adjacent to the Canteen of the appellant Panna Singh but it is not the case of the prosecution that the appellants used to demand extortion



money from the deceased and, therefore, in the aforesaid circumstance, there was no occasion for the appellants to make demand of enhancement of rent of the 'Gumti' of the deceased. Therefore, in our opinion, the prosecution could not succeed to prove the genesis of the occurrence beyond all shadow of reasonable doubts.

23. So far as P.W.2, P.W.4 and P.W.11 are concerned, they have been declared hostile by the prosecution and there appears to be nothing important in their depositions, except this fact that P.W.2 admitted that some occurrence had taken place in front of the 'Gumti' of the deceased. However, the death of the deceased is not in dispute. Similarly, P.W.7 and P.W.10 are the formal witnesses, whereas P.W.9 has been tendered and P.W.8 is doctor, who proved the post-mortem report of the deceased.

24. One more striking feature of this case is that the learned trial court has not recorded the statement of the appellants under Section 313 of Cr.P.C. properly because no specific question regarding the assault of dagger was put to the appellants and, therefore, non-recording the statement of the appellants under Section 313 of the Code of Criminal Procedure properly is also fatal to the prosecution case as the appellants could not get an opportunity to explain the evidences and the



circumstances, which came against them in course of trial.

25. On the basis of the aforesaid discussions, we are of the opinion that the impugned Judgment of conviction and sentence Order cannot sustain in the eye of law.

26. Accordingly, both the above stated criminal appeals are allowed. The impugned Judgment of conviction and sentence Order are, hereby, set aside. The appellants are acquitted of the charges framed against them. The appellants are on bail. They are discharged from the liabilities of their respective bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	AFR
CAV DATE	NA
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