

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.807 of 2013

Arising Out of PS. Case No.-117 Year-2011 Thana- GHOSI District- Jehanabad

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1. Biju @ Bijendra Ram @ Birju Ram S/o Late Sitaram
 2. Baliram Ram S/o Late Narayan Ram,

Both are residents of Village Chhotki Math, P.S. Ghosi, District Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 745 of 2013

Arising Out of PS. Case No.-117 Year-2011 Thana- GHOSI District- Jehanabad

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1. Kishori Chaudhary, Son of Chhotan Chaudhary
 2. Surendra Ram, Son of Late Lakhan Ram, Both are residents of Village- Sahpur Tola, Chhotaki Math, Police Station- Ghoshi, District- Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 718 of 2013

Arising Out of PS. Case No.-117 Year-2011 Thana- GHOSI District- Jehanabad

Savitri Devi, Wife of Munarik Ram @ Mudarika Ram @ Mudarika Ram @ Mudrika Ram @ Mundarik Ram, resident of Village - Shahpur, Chhotki Math, Police Station - Ghoshi, District - Jehanabad

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 765 of 2013

Arising Out of PS. Case No.-117 Year-2011 Thana- GHOSI District- Jehanabad



Gauri Shankar Kumar @ Lalu, S/o Mundrika Ram @ Mundarik Ram @
Mudrika Ram, Resident of Village- Shahpur, Chhotki Math, Police Station-
Ghoshi, District- Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 835 of 2013

Arising Out of PS. Case No.-117 Year-2011 Thana- GHOSI District- Jehanabad

Mundrika Ram @ Munarik Ram S/O Late Bhubneshwar Ram, R/O Vill-
Shahpur, Chhotki Math, P.S- Ghoshi, Distt- Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 807 of 2013)

For the Appellant/s : Mr. Anurag Saurav, Advocate.

For the State : Mr. Ajay Mishra, APP.

(In Criminal Appeal (DB) No. 745 of 2013)

For the Appellant/s : Mr. Anurag Saurav, Advocate.

For the State : Mr. Ajay Mishra, APP

(In Criminal Appeal (DB) No. 718 of 2013)

For the Appellant/s : Mr. Anurag Saurav, Advocate.

For the State : Mr. Ajay Mishra, APP

(In Criminal Appeal (DB) No. 765 of 2013)

For the Appellant/s : Ms. Soni Shrivastava, Advocate.

Ms. Madhuri Kumari, Advocate.

For the State : Mr. Ajay Mishra, APP

(In Criminal Appeal (DB) No. 835 of 2013)

For the Appellant/s : Ms. Soni Shrivastava, Advocate.

Mr. Nilesh Sinha, Advocate.

Ms. Rachana Saraswati, Advocate.

For the State : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

C.A.V. JUDGMENT



(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 01-03-2019

As the aforesaid five criminal appeals have cropped up from the same judgment, hence aforesaid appeals are being heard together and disposed of by this common judgment.

2. Heard Mr. Anurag Saurav and Mrs. Soni Shrivastava, learned counsel for the appellants and Mr. Ajay Mishra learned APP for the State on these criminal appeals.

3. These criminal appeals have been preferred against the Judgment and Order of conviction dated 10.07.2013 and Order of sentence dated 17.07.2013 passed by Shri Parasnath Rai, Adhoc Additional Sessions Judge-III, Jehanabad in S. Tr. No. 342 of 2011 / Tr. No. 61 of 2011, S. Tr. No. 342 of 2011 / Tr. No. 402 of 2012 and S. Tr. No.184 of 2012 / Tr. No. 67 of 2012 arising out of Ghosi P.S. Case No. 117 of 2011 whereby the learned trial court convicted the accused Munarik @ Mudrika Ram, Biju @ Bijendra Ram, Gauri Shankar Ram @ Laloo, Baliram Ram, Savitri Devi, Kishori Chaudhary and Surendra Ram for the offence punishable under Section 302/34 of the Indian Penal Code and further convicted the accused Munarik @ Mudrika Ram, Biju @ Bijendra Ram and Gauri Shankar Ram @ Laloo under Section 27 of the Arms Act and



sentenced accused Munarik Ram @ Mundrika Ram, Biju @ Bijendra Ram, Gauri Shankar @ Laloo, Baliram Ram, Savitri Devi, Kishori Chaudhary and Surendra Ram to undergo R.I. for life and also slapped them with the fine of Rs. 3000/- each and in case of default of payment of fine to further undergo R.I. for one year under Section 302/34 of the Indian Penal Code and further sentenced Munarik Ram @ Mundrika Ram, Biju @ Bijendra Ram and Gauri Shankar @ Laloo to undergo R.I. for three years and also slapped them with the fine of Rs. 2000/- each and in default of payment of fine to further undergo R.I. for six months under Section 27 of the Arms Act. All the sentences were directed to run concurrently.

4. At the very outset, from perusal of the record I find that initially Ghosi P.S. Case No. 117 of 2011 was instituted under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act against eight accused persons namely Munarik Ram @ Mundrika Ram, Savitri Devi, Gauri Shankar @ Lalu, Bijju @ Bijendra Ram, Kishori Chaudhary, Surendra Ram, Arun Bind and Baliram Ram on the basis of the fardbeyan of Chandradeo Ram, S/o Late Baldeo Ram recorded by P.S.I. Dharampal of P.S. Ghoshi at Village – Chhotki Math on 22.04.2011 at 08:00 A.M.



5. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet no. 180 of 2011 dated 29.07.2011 against six accused persons namely Biju @ Bijendra Ram, Gauri Shankar @ Lalu, Kishori Chaudhary, Munarik Ram @ Mundrika Ram, Surendra Ram and Baliram Ram keeping the investigation pending against Savitri Devi and Arun Bind.

6. On receiving the chargesheet, cognizance of the offence was taken against aforesaid six accused persons on 03.08.2011 and the case was committed to the court of sessions on 27.09.2011 which was numbered as S. Tr. No. 342 of 2011 / Tr. No. 61 of 2011. On the same day supplementary chargesheet no. 251 of 2011 was submitted against the accused Savitri Devi showing the accused Arun Bind as not sent up and the case of Savitri Devi was committed to the Court of Sessions which was numbered as S. Tr. No. 184 of 2012 / Trial No. 67 of 2012.

7. In Session Trial No. 342 of 2011 / Trial No. 61 of 2011, charge against the aforesaid six accused persons namely Biju @ Bijendra Ram, Gauri Shankar @ Lalu, Kishori Chaudhary, Munarik Ram @ Mundrika Ram, Surendra Ram and Baliram Ram was framed under Sections 302/34 and 120(B)/34 of the Indian Penal Code and Section 27 of the Arms Act on



25.11.2011. Subsequently, after framing of charge accused Baliram Ram absconded, hence his bail bond was cancelled and his case was split up and non-bailable warrant was issued against him.

8. In Session Trial No. 342 of 3011 / Tr. No. 61 of 2011, witnesses Naresh Prasad was examined as PW-1 on 21.02.2012, Baij Nath Prasad was examined as PW-2 on 15.03.2012, Chandradeo Ram was examined as PW-3 on 02.04.2012, Pinki Devi was examined as PW-4 on 23.04.2012/04.05.2012 and Sheo Bachan Prasad was examined as PW-5 on 21.05.2012/25.05.2012.

9. After commitment of the case, charge against the accused Savitri Devi in S. Tr. No. 184 of 2012 / Tr. No. 67 of 2012 was framed on 02.04.2012 under Sections 302/34 and 120(B)/34 of the Indian Penal Code and Section 27 of the Arms Act and witnesses namely Pinki Devi who was examined as PW-4 in S.Tr. No. 342 of 2011 / Tr. No. 61 of 2011 on 23.04.2012 / 04.05.2012 was examined as PW-1 in S. Tr. No. 184 of 2012 / Tr. No. 67 of 2012 on 23.04.2012 / 04.05.2012, Shiv Bachan Prasad who was examined as PW-5 in S. Tr. No. 342 of 2011 / Tr. No. 61 of 2011 on 21.05.2012 / 25.05.2012 was examined as PW-2 in S.Tr. No. 184 of 2012 / Tr. No. 67 of



2012 on 25.05.2012 / 05.06.2012 as PW-2, Chandradeo Ram who was examined as PW-3 in S. Tr. No. 342 of 2011 / Tr. No. 61 of 2011 on 02.04.2012 was examined as PW-4 in S. Tr. No. 184 of 2012 / Tr. No. 67 of 2012 on 16.08.2012, Baijnath Prasad who was examined as PW-2 in S. Tr. No. 342 of 2011 / Tr. No. 61 of 2011 on 15.03.2012 was examined as PW-5 in S. Tr. No. 184 of 2012 / Tr. No. 67 of 2012 on 05.09.2012. Naresh Prasad who was examined as PW-1 in S. Tr. No. 342 of 2011 / Tr. No. 61 of 2011 on 21.02.2012 was examined as PW-6 in S. Tr. No. 184 of 2012 / Tr. No. 67 of 2012 on 18.09.2012. Thereafter Arbind Choudhary was examined on 27.07.2012 as PW-6 / PW-3 in S. Tr. No. 342 of 2011 / Tr. No. 61 of 2011 and S. Tr. No. 184 of 2012 / Tr. No. 67 of 2012.

10. Subsequently, accused Baliram Ram was apprehended and remanded in case on 08.08.2012 and his case was numbered as S.Tr. No. 342 of 2011 / Tr. No. 402 of 2012 and thereafter witness Naresh Prasad was examined as PW-1 on 10.12.2012 and Pinki Devi was examined as PW-2 on 05.01.2013. Sheo Bachan Prasad was examined as PW-5 on 02.02.2013, Arbind Choudhary as PW-6 on 02.02.2013, Chandradeo Prasad as PW-7 on 26.02.2013 and Baijnath Ram as PW-8 on 26.02.2013 in the aforesaid trial.



11. It is pertinent to mention here that from perusal of the record I do not find any formal order of amalgamation of Sessions Trial No. 342 of 2011, Session Trial No. 184 of 2012 and Session Trial No. 402 of 2012 and without amalgamation of the aforesaid Session Trials, witness Umesh Kumar Singh was examined as PW-7 and Dr. Sudhir Kumar as PW-8 in aforesaid three sessions trials on 24.01.2013. Photo Stat copy of the deposition of aforesaid two witnesses were kept in Session Trial No.184 of 2012 and Session Trial No. 402 of 2012. Likewise without formal order of amalgamation, witness Arbind Choudhary was examined in S. Tr. No. 342 of 2011 / Tr. No. 61 of 2011 and S. Tr. No. 184 of 2012 / Tr. No. 67 of 2012 as PW-6 on 27.07.2012 and photostat copy of the deposition of the said witness was kept in S. Tr. No. 184 of 2012 / Tr. No. 67 of 2012.

12. Even after recording the evidence of PW-6, 7 and 8 jointly S. Tr. No. 342 of 2011 / Tr. No. 61 of 2011 proceeded against five accused persons namely Biju @ Bijendra Ram, Gauri Shankar @ Lalu, Kishori Chaudhary, Munarik Ram @ Mundrika Ram and Surendra Ram, S. Tr. No. 184 of 2012 / Tr. No. 67 of 2012 proceeded only against one accused namely Savitri Devi and S. Tr. No. 342 of 2011 / Tr. No. 402 of 2012 proceeded only against sole accused Baliram Ram, separately as



evident from the order sheets of aforesaid Session Trials, but judgment and order of conviction and sentence was jointly passed against all the aforesaid seven accused persons which has been assailed by the aforesaid seven appellants.

13. Thus, from perusal of the record, it appears that witnesses namely Naresh Prasad, Baijnath Prasad, Chandradeo Ram, Pinki Devi and Sheo Bachan Prasad were examined separately on different dates in the aforesaid three sets of trials while witness Arbind Choudhary was jointly examined in S. Tr. No. 342 of 2011 / Tr. No. 61 of 2011 and S. Tr. No. 184 of 2012 / Tr. No. 67 of 2012 without any formal order of amalgamation and witnesses Umesh Kumar Singh and Dr. Sudhir Kumar were jointly examined in aforesaid three session trials without any order of amalgamation. Aforesaid aspect of the case indicates that aforesaid five witnesses namely Naresh Prasad, Baijnath Prasad, Chandradeo Ram, Pinki Devi and Sheo Bachan Prasad who were examined in S. Tr. No. 342 of 2011 / Tr. No. 61 of 2011 of five accused persons, were not examined before the accused Savitri Devi and Baliram Ram and likewise aforesaid five witnesses examined in Session Tr. No. 184 of 2012 / Tr. No. 67 of 2012 of accused Savitri Devi were not examined before the aforesaid five accused persons and accused



Baliram Ram and said five witnesses examined in S.Tr. No. 342 of 2011 / Tr. No. 402 of 2012 of Baliram Ram were not examined before the rest six accused persons. Moreover, there are differences in the statement of the aforesaid five witnesses recorded separately.

14. As per the provision of Section 273 of the Code of Criminal Procedure, except as otherwise expressly provided, all evidence taken in the course of trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader. The purpose of recording the evidence of the witnesses in presence of the accused or his pleader is obviously for the purpose of a fair trial in as much as the accused has every right of opportunity of hearing of the evidence against him and also know as to which witnesses are deposing in the case and what they are deposing, so that he can give valuable instruction to his pleader to defend him properly and also give effective reply to the questions put to him by the Presiding Officer in the accused statement. Recording the evidence behind the back of the accused and not in his presence and utilizing the same against him would certainly cause serious prejudice to him.

15. As the evidence of aforesaid five witnesses were



recorded separately in the aforesaid three session trials and not before all the accused persons as discussed by me hereinabove, so the evidence of aforesaid five witnesses recorded in absence of aforesaid all the accused persons, in my considered opinion, will not be considered against them. The procedure adopted by the trial court is illegal as the very use of such evidences against the appellants recorded in their absence is by itself a proof of prejudice to them.

16. Hence, in my considered opinion, judgment and order of conviction and sentenced passed by the learned Trial Court on the basis of the aforesaid evidences not recorded before all the appellants stands vitiated. Accordingly, aforesaid judgment and order of conviction and sentence passed against the aforesaid appellants is hereby set aside and the case is remitted back to the learned Trial Court to conduct fresh trial and examine the aforesaid witnesses de novo and the aforesaid appeals stand allowed in the light of the observation made by me hereinabove without entering into merit of the case.

17. As the appellant Biju @ Bijendra Ram is in custody since trial, he shall remain in custody while as rest six appellants are on bail, they shall continue to remain on bail unless modified by the court concerned and they are directed to



appear before the learned Trial Court to face the trial on the date fixed failing which their bail bonds shall automatically stand cancelled.

18. Learned Trial Court is directed to conclude the trial within six months from the date of receipt/production of a copy of this judgment fixing the case on day to day basis in view of Section 309 of the Code of Criminal Procedure and S.P., Jehanabad is directed to ensure the production of the witnesses in the case on each and every date fixed without fail.

19. Let a copy of this judgment be communicated to S.P., Jehanabad by fax for needful.

(Prakash Chandra Jaiswal, J)

Rakesh Kumar, J: I agree.

(Rakesh Kumar, J)

mantreshwar/-

AFR/NAFR	AFR
CAV DATE	25-02-2019
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