

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 90 of 2013

Arising Out of PS. Case No.-72 Year-2002 Thana- RAMGARH District- Kaimur (Bhabua)
=====

- 1. Akadashi Ram son of late Lalbihari Ram
- 2. Ramesh Ram son of Akadashi Ram, Both resident of Village- Balua, P.S.- Ramgarh, District- Kaimur at Bhabua.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

=====

Appearance :

For the Appellant/s : Mr. Vivekanand Singh, Advocate
For the Respondent/s : Mr. Ajay Mishra, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 17-08-2019

Two appellants had filed the present appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") against the judgment of their conviction and sentence passed in Sessions Trial No. 45/228 of 2003/2012 (arising out of Ramgarh P.S. Case No. 72 of 2002).

2. Both the appellants by judgment dated 13-12-2012 have been convicted for offence under Section 302/34 of the Indian Penal Code, 1860 (hereinafter referred to as "I.P.C."). By



order dated 17-12-2012 under Section 302/34 of the I.P.C., both were sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/- (five thousand) each. In case of default in payment of fine, they were directed to further undergo simple imprisonment for two months. The judgment of conviction and sentence has been passed by Sri Harindra Nath, learned Adhoc Additional Sessions Judge – V, Kaimur, Bhabua (hereinafter referred to as the "Trial Judge") in Sessions Trial No. 45/228 of 2003/2012 (arising out of Ramgarh P.S. Case No. 72 of 2002).

3. The case has been initiated on the basis of *fardbeyan* of Naulakhi Kunwar (P.W.10). The *fardbeyan* was recorded by Sub-Inspector of Police Sheo Muni Sah (not examined) of Ramgarh Police Station. It was recorded on 11-07-2002 at 22.15 hrs. (10:15 PM) near the door of the informant. In the *fardbeyan*, the informant disclosed that her son Rajeshwar Ram at about 16.30 hrs. (4:30 PM) had gone to his field near Upri Balua Siwana for irrigation purpose. At about 19.30 hrs. (7:30 PM), she heard the sound of जान बचाओ जान बचाओ (*Jan Bacho Jan Bacho*), which was coming from the Upri Balua Siwana field. Thereafter, the informant and villagers ran towards the place of occurrence and saw that the neck of her son was slitted. She got the said



information, then she alongwith her daughter-in-law Rita Devi (P.W.7) rushed to the place of occurrence and saw that bicycle of her son was lying and dead body of her son Rajeshwar was lying on the chart land near the canal. She claimed that the neck of her son was cut by sharp-edge weapon. Her son had already died and dead body was lying in the mud. The informant further disclosed in the *fardbeyan* that in the village itself, there was one "tyre puncture shop" of her son. In respect of the said shop, there was dispute with villager Akadashi Ram (appellant no. 1), his sons Girja Ram (not sent up for trial), Ramesh Ram (appellant no. 2) & Umesh Ram (not sent up for trial) and his brother Tengari Ram (not sent up for trial). The dispute was continuing since long and due to this dispute, they were quarreling with the son of the informant. She further stated that in the said dispute, one Mahendra Ram (not sent-up for trial) was also taking side of accused persons. The informant claimed that the accused persons, due to said animosity, had murdered her son by slitting his neck. The said *fardbeyan* was read over to the informant and after finding it correct, she put her R.T.I. (Right Thumb Impression) on the bottom of the *fardbeyan*. As a witness to the *fardbeyan*, one Satya Narain Ram (P.W.3) also put his signature.



4. On the basis of said *fardebayan*, on 12-07-2002 at 02.00 hrs. (2:00 AM), a formal F.I.R., vide Ramgarh P.S. Case No. 72 of 2002, was registered for offence under Section 302/34 of the I.P.C. against following accused persons:

- 1. Akadashi Ram (appellant no. 1),**
- 2. Girja Ram (not sent up for trial),**
- 3. Ramesh Ram (appellant no. 2),**
- 4. Umesh Ram (not sent up for trial),**
Accused No. 2 to 4 were sons of accused no. 1 Akadashi Ram
- 5. Mahendra Ram (not sent up for trial), and**
- 6. Tengari Rai (not sent up for trial).**

5. After registering the case, the investigating officer investigated the case, inquest report was prepared and dead body was sent for *post-mortem* examination. During investigation, initially accusation against both the appellants was found true and as such, on 08-10-2002 police submitted chargesheet against both the appellants keeping investigation pending against others. Thereafter, on 30-11-2002 the police submitted final report exonerating all remaining accused persons from the charges. However, before submitting final report, on 08-10-2002, learned Chief Judicial Magistrate, Kaimur at Bhabhua took cognizance of the offence and after completion of formality under Section 207 of the Cr.P.C., the case was committed to the court of sessions on 19-02-2003 and it was numbered as Sessions Trial No. 45 of



2003. After commitment, on 24-04-2003 charge under Section 302/34 of the I.P.C. was framed against both the appellants, which was denied by them and they claimed to be tried.

6. During the trial, to establish its case on behalf of the prosecution, altogether 11 (eleven) witnesses were examined. Out of 11 witnesses, P.W.1 Kashi Ram (step-brother of the deceased), P.W.7 Rita Devi (wife of the deceased) and P.W.10 Naulakhi Kunwar (mother of the deceased as well as informant of the case) were examined as eye-witnesses to the occurrence. P.W.8 Istiyak Khan is a formal witness, who proved the formal F.I.R., which was marked as Ext.1 and he also proved *fardbeyan*, which was marked as Ext.2. P.W.9 Mangaru Prasad is another formal witness, who has proved inquest report, which was marked as Ext.3 and also *post-mortem* report, which was marked as Ext.4. P.W.11 Dr. Kaushal Kishore Pd. Srivastava had conducted *post-mortem* examination on the dead body of the deceased. However, P.W.2 Parsuram Ram (own brother of the deceased), P.W.3 Satya Narain Ram (grand-son of P.W.10), P.W.4 Bhagelu Ram (co-villager), P.W.5 Baban Paswan (co-villager) and P.W.6 Modi Ram (another step-brother of the deceased), since did not support the prosecution case, were declared hostile. During the trial, without



any plausible explanation, the investigating officer was not examined.

7. After completion of the prosecution evidence, on 04-05-2012 statement of appellants under Section 313 of the Cr.P.C. was recorded, in which, appellant no. 2 Ramesh Ram had claimed himself to be innocent and appellant no. 1 Akadashi Ram had claimed to adduce defence evidence. Ofcourse from the defence side, no oral evidence was brought on record, but documentary evidences have been brought on record i.e. Ext.A certified copy of chargesheet in Ramgarh P.S. Case No. 151/1998, in which, the deceased was charge-sheeted as one of the accused under Sections 25(1-b) and 27 of the Arms Act, 1959 (hereinafter referred to as 'Arms Act') and Ext.B i.e. certified copy of chargesheet in Bhagwanpur P.S. Case No. 44/2000, in which, the deceased was charge-sheeted as accused for offence under Section 302 of the I.P.C.

8. Sri Vivekanand Singh, learned counsel for the appellants, after placing entire evidence, has argued that prosecution had miserably failed to establish its case beyond all reasonable doubt, however; the learned Trial Judge has erroneously passed the judgment of conviction and sentence,



which is liable to be set aside. He submits that ofcourse, during the trial, P.W.1, P.W.7 and P.W.10 had claimed to be eye-witnesses to the occurrence, on close examination of their evidence, it is established that they had not seen the occurrence, but they arrived at the place of occurrence, where dead body of son of P.W.10 was lying having cut injury on neck. He further submits that aforesaid three so called eye-witnesses though during the evidence had given a picture, as if, they had seen the accused persons committing the crime, but in their statement recorded under Section 161 of the Cr.P.C., those facts were never disclosed by such witnesses before the investigating officer.

9. As per Sri Vivekanand Singh, learned counsel for the appellants, false implication of both the appellants is evident from the fact that even own-brother of the deceased i.e. P.W.2 Parsuram Ram had not supported the prosecution case and he was declared hostile. Besides Parsuram Ram (P.W.2), P.W.3 Satya Narain Ram (grand son of informant) and P.W.6 Modi Ram (step-brother of the deceased) too had not supported the prosecution case and they too were declared hostile. Besides two relatives, who were declared hostile, other co-villagers namely



Bhagelu Ram (P.W.4) and Baban Paswan (P.W.5) had also not supported the case and they were declared hostile.

10. It has further been argued by learned counsel for the appellants that prosecution has not been able to establish even place of occurrence. Neither any material exhibit has been brought on record nor the investigating officer, without any plausible explanation, was examined. Due to non-examination of the investigating officer, the defence case has seriously been prejudiced and they were prevented from drawing attention to at least three so-called eye-witnesses to their previous statement. Sri Vivekanand Singh, learned counsel for the appellants submits that since the investigating officer was not examined, this Court while hearing the appeal is well-competent to peruse certain paragraphs of the case diary to ascertain whether P.Ws. 1, 7 and 10 had stated the fact during investigation, which they deposed during the trial. On persuasion of learned counsel for the appellants, the Court had also perused some paragraphs of the case diary, particularly paragraph 29, 30 & 31 and after examining the same, we are in agreement with the submission of learned counsel for the appellants that those three so-called eye-



witnesses had not stated the fact during the trial, which they stated during investigation under Section 161 of the Cr.P.C.

11. Sri Vivekanand Singh, learned counsel for the appellants has further argued that it appears that deceased, since was having criminal antecedent and he was having animosity with number of persons, he might had been killed in a lonely place, which was not seen by any of the eye-witnesses and subsequently, after finding the dead body at the place of occurrence, which was about $\frac{1}{2}$ km. from the house of the informant, a case was made out, as if, both the appellants with other four accused persons were involved. He further submits that falsity of the case is evident from the fact that though in the F.I.R., these persons were arrayed as accused, during investigation, the police found four accused persons as innocent and final report was submitted in their favour, which was subsequently accepted by the court also. On aforesaid ground, it has been argued that the learned Trial Judge, in a case in which prosecution had miserably failed to establish its case beyond all reasonable doubt, has passed the judgment of conviction and sentence, which is required to be interfered with.



12. Sri Ajay Mishra, learned Addl. Public Prosecutor has tried to justify the impugned judgment of conviction and sentence. He submits that P.W.10 is none else but mother of the deceased. Sri Mishra submits that mother of the deceased, while was in her house, heard the cry of her son and thereafter, she immediately rushed to the place of occurrence, who was followed by the wife of deceased (P.W.7). While the mother reached the place of occurrence, she saw the accused persons fleeing away, however; Sri Mishra has not disputed the fact that the witness i.e. P.W.10 has exaggerated that while she reached the place of occurrence, she saw that accused persons were sitting on the chest of the deceased and in her presence, the neck of her son was cut by the accused persons.

13. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record and after going through the same, *prima facie*, we are of the opinion that the prosecution has not been able to establish its case beyond all reasonable doubt, but before proceeding, it would be necessary to discuss the evidences, which have been brought on record.

14. P.W.10 Naulakhi Kunwar is the informant of the case. On going through the *fardbeyan*, it is evident that she had



not claimed to be eye-witness to the occurrence, however; during the trial, while she was examined as P.W.10, she has come out with a specific case, as if, she had witnessed the entire occurrence. In her evidence, she stated that occurrence had taken place at the time of sunset. At this juncture, it is necessary to be noticed that in the *fardbeyan*, the time of occurrence was explained as 7:30 PM, however, at the time of evidence, she stated, as if, occurrence had taken place during the time of sunset. She further stated that at the time of occurrence, she was at her house. Her son had gone to eastern side of the house in his field for irrigation purpose. Deceased had gone on bicycle. P.W.10 further stated that she heard *hulla*, thereafter, she proceeded towards the place of occurrence. She was followed by her daughter-in-law and wife of the deceased Rita Devi (P.W.7). While she reached in the chart land near the canal, she saw that Ramesh Ram (appellant no. 2), Umesh Ram (not sent up for trial), Akadashi Ram (appellant no. 1), Girija Ram (not sent up for trial), Tengari Ram (not sent up for trial) and Mahendra Ram (not sent up for trial), after cutting the neck of her son, were fleeing away. In paragraph 2, she further stated that her deceased son and accused Akadashi Ram (appellant no. 1) were running tyre



puncture shop and there was dispute regarding the same and accused persons were threatening and asking her son to remove his shop. She further stated that on the date of occurrence itself, police arrived and recorded her *fardebayan*, on which, she put her thumb impression. In paragraph 5 of her cross-examination, she disclosed that she was second wife of her husband and her elder son was Parsuram Ram (P.W.2). In paragraph 6 of her cross-examination, on being asked, she explained that the field was at much distance and this was the reason that deceased had gone on bicycle. On examination of the statement of this witness, it is evident that the place of occurrence was far away from the house of the informant and as such, the claim of P.W.10 that while she was at her residence, she heard the cry of her son appears to be not believable. She further stated that she heard *hulla* that neck of her son Rajeshwar was cut. She further in the same paragraph stated that after hearing the news she started crying and she alongwith her daughter-in-law moved towards canal side, however; on way, she did not find anyone and at the place of occurrence, she noticed the dead body of her son lying there. In paragraph 7 of her evidence, she further stated that she explained everything to Darogaji, who noted down the same.



However, at the time of recording *fardbeyan*, Satya Narain Ram (P.W.3) grand son of informant was not present. On perusal of *fardbeyan* i.e. Ext.2, it is evident that as a witness Satya Narain Ram (P.W.3) had put his signature, however; P.W.3 at the time of evidence was declared hostile, since he did not support the prosecution case. In paragraph 7 (at page 47 of the paper book) attention of P.W.10 to her previous statement was drawn and specifically it was asked as to whether before the police she had disclosed the name of all the accused persons, who had committed crime. It is admitted that during the trial, the investigating officer was not examined and as such, to verify the truthfulness, we examined the case diary and in paragraph 9 of the case diary, re-statement of this witness i.e. P.W.10 was recorded by the investigating officer. On examining the statement of P.W.10 recorded before the police, we are of the considered opinion that the fact, which she stated during the trial that she had seen the occurrence, appears to be incorrect and as such, there is difficulty in accepting the evidence of P.W.10, as credible.

15. Similarly, P.W.7 Rita Devi (wife of the deceased), who was shown, as if, she had followed P.W.10 to the place of occurrence, in her evidence, has come out with a case, as if, she



had seen entire occurrence of participation by all the F.I.R. named accused persons. In her evidence, she stated that at the time of occurrence, she was at the house with her mother-in-law (P.W.10). Her husband at that very time had gone to the field for irrigation. He had left the house at 4.00 in the evening. She stated that she heard *hulla*, thereafter her mother-in-law (P.W.10) proceeded ahead and this witness followed her towards eastern side of canal and she saw that her husband was killed at the chart land. In paragraph 3 she stated that she saw Ramesh Ram (appellant no. 2), Girija Ram (not sent up for trial), Umesh Ram (not sent up for trial), Akadashi Ram (appellant no. 1) and Tengari Ram (not sent up for trial) were fleeing away. She further stated that Ramesh Ram (appellant no. 2) by a *chhuri* used for the purpose of repairing tyre was cutting the neck and she saw that Umesh (not sent for trial) and Akadhashi (appellant no. 1) had caught leg of the deceased. Tengari Ram (not sent up for trial) was also holding leg of the deceased. After seeing them, accused persons fled away. She further stated that occurrence was seen by villagers also. The reason for the occurrence was explained by her regarding dispute of tyre puncture shop. In paragraph 7 of her cross-examination, she stated that in



Mundeshwari, for about one year, her husband was running a shop. During the said period, her husband was made accused in a murder case and he remained in jail for about three months. Again in paragraph – 8 of her cross-examination, P.W.7 admitted that her husband was sent to jail on an allegation of recovery of one कद्दा (country-made pistol) and for this, he remained in jail for three months. In paragraph 12, she further stated that on hearing *hulla*, Kashi Ram (P.W.1), Satya Narain Ram (P.W.3) and Parsuram Ram (P.W.2) came there and her mother-in-law, disclosing the fact regarding *hulla*, ran towards the eastern side. This witness followed her mother-in-law and other aforesaid three persons and this witness also ran towards the place of occurrence. At this juncture, it is necessary to notice that P.W.10 Naulakhi Kunwar in her evidence has specifically stated that after hearing *hulla*, she only alongwith P.W.7 went towards the place of occurrence and only two persons had reached the place of occurrence and saw the dead body, however; P.W.7 has developed a story, as if, alongwith P.W.7 and P.W.10, other three persons including P.W.1 had also rushed to the place of occurrence. In paragraph 14 of her cross-examination, attention to her previous statement was drawn. In absence of investigating



officer, we examined paragraph 30 of the case diary, in which, statement of this witness was recorded under Section 161 of the Cr.P.C. and after going through the same, there is no difficulty in coming to the conclusion that the fact, disclosed by this witness regarding witnessing the accused persons, is simply exaggeration, not in consonance with her previous statement and as such, there is difficulty to accept the evidence of P.W.7, as credible.

16. So far as 3rd so called eye-witness i.e. P.W.1 Kashi Ram is concerned, though in his evidence, he too has claimed to witness the occurrence, considering the evidence of P.W.7 and P.W.10, there is no reason to place any reliance on P.W.1. Moreover, his attention was also drawn to his previous statement recorded under Section 161 of the Cr.P.C. and in paragraph 31 of the case diary, his statement under Section 161 of the Cr.P.C. was recorded. On examining his previous statement during investigation and statement during the trial, it is evident that there is serious exaggeration and this witness has incorrectly come out with a case that he had also witnessed the occurrence. Moreover, his evidence may not be relied upon, keeping in view the evidence of P.W.7 and P.W.10.



17. Besides this, neither in the evidence of P.W.7 nor P.W.10, it has come that while they reached the place of occurrence, they saw any movement or trembling in the dead body of the deceased. In their evidence, they had not at all indicated as to whether in the dead body, there was any movement or trembling. If for the time being it is assumed that those witnesses after arrival had noticed accused persons fleeing away, in that event, there was every possibility to notice some movement or trembling in the dead body, however; in their evidence, it has come that deceased was lying complete dead and accordingly, the claim of those witnesses, though it was not stated during investigation, also do not appear to be reliable.

18. P.W.11 Dr. Kaushal Kishore Prasad Srivastava on 12-07-2002 was posted as Medical Officer in Sadar Hospital, Bhabhua and on the same date at 9:00 AM, he conducted *post-mortem* on the dead body of the deceased and noticed following facts:-

"On general physical examination medium frame man, rigor mortis present all over the body. 2/3 anterior neck cut and partially attached to the posterior portion, hair black, whole body seen with dried mud.

External injury:

An incised wound on the anterior of neck at the level of Adam's apple from right to left, whole measuring of 24.5 cm X 8.5 cm x 2/3rd thickness of depth with cut.



Trachea, oesophay, great vessel nerves and tissues. Only ratebra of neck intact. Blood and blood clot seen.

On dissection:

Skull bone - intact, membrane and brain tissue look pale, chest wall - intact, pleasure and lungs looks pale. Trachea and oesophay contain blood. Pericardium and heart look pale. All the chambers of the heart were empty. Abdomen - abdominal wall intact, peritoneum look pale and intact. Stomach pale and contained 450 cc. partially digested food. Intestine looks pale and contains gas and fecal matter. All the viscera including liver spleen, kidney look pale. Urinary bladder look pale and contain 200 cc. urine.

Opinion: The above-noted injuries are ante-mortem and caused by sharp weapon as written above. The very nature is grievous and fatal. The death is instantaneous due to haemorrhage and shock due to above noted injury.

Time elapsed since death till *post-mortem* examination: Within 12 to 18 hours approx."

19. On examination of the evidence of P.W.11 as well as *post-mortem* report, it is evident that on the person of the deceased, there was only one injury i.e. almost $\frac{1}{4}^{\text{th}}$ portion of neck was cut, otherwise on the person of the deceased, there was no other injury. Even for the time being, if it is assumed that the deceased was thrashed by number of accused persons and thereafter, his neck was slitted, even in that event, there was possibility of noticing some scratches on the person of the deceased, which is lacking in the *post-mortem* report.

20. Surprisingly, during the trial, P.W.8 Istiyak Khan and P.W.9 Mangaru Prasad, who were only formal witness, had



come out in the case to prove some relevant documents. P.W.8 Istiyak Khan has proved formal F.I.R. and *fardbeyan*, which were marked as Ext.1 and 2 respectively. Similarly, P.W.9 Mangaru Prasad has proved inquest report and *post-mortem* report, which were marked as Ext.3 and 4 respectively.

21. Column no. 3 of the inquest report i.e. Ext.3 depicts that inquest report was prepared on 11-07-2002 at 23 hrs. (11:00 PM). As per the informant, occurrence had taken place at 7:30 PM. Meaning thereby that after sunset the occurrence had taken place, however; none of the so-called witnesses have disclosed the source of identification.

22. From the defence side also, two documents were got exhibited i.e. certified copy of chargesheet submitted in Ramgarh P.S. Case No. 151/1998 (Ext.A), in which, the deceased was charge-sheeted for offence under Sections 25(1-b) and 27 of the Arms Act and another document, which has been brought on record, is certified copy of chargesheet in Bhagwanpur P.S. Case No. 44/2000 (Ext.B). On perusal of Ext.B, it is evident that in the said case, the deceased was beheaded and his head remained traceless and the deceased of the present case was charge-sheeted as accused.



23. In view of facts disclosed in Ext.A and B, we find some force in the submission of learned counsel for the appellants that there is possibility that deceased of the present case might had been killed by unknown persons, which was not seen by anyone, and subsequently after finding the dead body, a case was made out, as if, the appellants were involved.

24. On examination of entire evidence, it is evident that none of the independent witnesses have come forward to support the prosecution case. Even own brother of the deceased and step brother of the deceased were declared hostile. Besides them, at least, two co-villagers too were declared hostile.

25. Considering the facts and circumstances, particularly the unreliable evidence of P.W.1 Kashi Ram (step-brother of the deceased), P.W.7 Rita Devi (wife of the deceased) and P.W.10 Naulakhi Kunwar (mother of the deceased), it is difficult for this Court to approve the judgment of conviction and sentence.

26. Accordingly, the impugned judgment of conviction dated 13-12-2012 and order of sentence dated 17-12-2012 passed by Sri Harindra Nath, learned Adhoc Additional Sessions Judge, 5th, Kaimur at Bhabhua in Sessions Trial No. 45/228 of



2003/2012 (arising out of Ramgarh P.S. Case No. 72 of 2002)
is hereby set aside, both the appellants are acquitted from all the
charges and appeal is allowed.

27. Since the impugned judgment of conviction and
sentence has been set aside and both the appellants namely
Akadashi Ram and Ramesh Ram are in custody, it is, hereby,
directed to release them forthwith, if not wanted in any other
case.

(Rakesh Kumar, J.)

(Anjani Kumar Sharan, J.)

Anay

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.08.2019
Transmission Date	27.08.2019

