

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.853 of 2013

Arising Out of PS. Case No.-220 Year-2009 Thana- GOPALGANJ TOWN District-
Gopalganj

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Mukesh Singh, son of Late Bindeshwari Singh, resident village- Hajiapur,
Ward No. 10 P.O. and P.S.- Gopalganj, District- Gopalganj.

... .. Appellant.

Versus

The State of Bihar.

... .. Respondent.

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WITH
CRIMINAL APPEAL (DB) No. 962 of 2013

Arising Out of PS. Case No.-220 Year-2009 Thana- GOPALGANJ TOWN District-
Gopalganj

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Harendra Prasad, son of Late Shanker Prasad, resident of village- Haziyaapur,
Ward No. 26, P.S.- Gopalganj, District- Gopalganj.

... .. Appellant.

Versus

The State of Bihar.

... .. Respondent.

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Appearance :

(In CRIMINAL APPEAL (DB) No. 853 of 2013)

For the Appellant : Mr. Bindhyachal Singh, Advocate.
Mr. Vipin Kumar Singh, Advocate.
Ms. Smriti Singh, Advocate.

For the Respondent : Mr. Ajay Mishra, APP

(In CRIMINAL APPEAL (DB) No. 962 of 2013)

For the Appellant : Mr. Ranjeet Kumar Pandey, Advocate.

For the Respondent : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
AND
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 28-02-2019

As both the aforesaid criminal appeals have cropped up from the same judgment and order of conviction and sentence, hence they are taken up together for consideration and disposed of by this common judgment.

2. Heard Mr. Bindhyachal Singh assisted by Mr.



Vipin Kumar Singh and Ms. Smriti Singh, learned counsels for the appellant in Cr. Appeal (DB) No. 853 of 2013, Mr. Ranjeet Kumar Pandey, learned counsel for the appellant in Cr. Appeal (DB) No. 962 of 2013 and Mr. Ajay Mishra learned Additional Public Prosecutor in both these appeals.

3. The aforesaid two criminal appeals have been preferred against the judgment and order of conviction dated 26.07.2013 and order of sentence dated 29.07.2013 passed by the learned 1st Additional Sessions Judge-cum-Special Judge SC/ST Act, Gopalganj in Sessions Trial no. 101 of 2010, arising out of Gopalganj P.S. Case No. 220 of 2009, whereby the learned Trial Court convicted the accused Mukesh Singh and Harendra Prasad for the offence punishable under Section 302/34 of the Indian Penal Code (hereinafter in short referred to as the 'I.P.C.') and Section 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter in short referred to as the 'SC/ST Act') and sentenced them to undergo imprisonment for life and also slapped them with a fine of Rs. 10,000/- each and in default of payment of fine to further undergo S.I. for one year under Section 302/34 I.P.C. and further sentenced them to undergo imprisonment for life and also slapped them with a fine of Rs.



10,000/- each and in default of payment of fine to further undergo S.I. for one year under Section 3 (2) (v) of the SC/ST Act. Both the sentences were directed to run concurrently.

4. The factual matrix of the case is that Gopalganj P.S. Case No. 220 of 2009 was instituted under Section 302/34 I.P.C. and Section 3 (1) (x) of the SC/ST Act against the accused Mukesh Singh, Bittu Singh and Harendra Prasad on the basis of fardbeyan of Sanjay Manjhi, son of Anirudh Manjhi recorded by S.I. Ramayan Ram S.H.O. P.S. Gopalganj on 28.09.2009 at 8 PM with the allegation, in succinct that ten days preceding to the occurrence Mukesh Singh was taking smack and emitting smoke at the teashop of Ganesh Halwai. His brother was also taking tea there. His brother protested against emitting smoke by Mukesh Singh, which was followed by scuffling between them. After the said occurrence, Mukesh Singh arriving at his door extended threatening. Thereafter, on 27.09.2009 at 5 PM Bittu Singh and Mukesh Singh arriving at his door slated in the name of his caste and extended threatening of dire consequence to Awadhesh Manjhi. Further allegation is that on 28.09.2009 at around 6 PM, his brother, namely, Awadhesh Manjhi stepped out of the house to watch Durga Puja fair along with Arun Ram, Ravi Yadav and Situ Yadav. He also followed them. In course



of watching fair, when they arrived at the bridge road located in front of the Krishna Talkies Hajiapur at round 7 PM he spotted Mukesh Singh, Bittu Singh and Harendra Prasad standing along with the motorcycle near the bridge. Witnessing them Bittu Singh and Harendra Prasad caught hold Awadhesh Manjhi, while Mukesh Singh stabbed on his abdomen and chest and made him badly injured. Sustaining injury his brother fell down. Then they made alarm whereupon the aforesaid three accused persons left the scene on motorcycle. Then they rushed his brother to Sadar Hospital, Gopalganj but he succumbed to injuries during the course of treatment. The bone of contention is said to be the previous dispute between the parties.

5. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against the aforesaid accused persons keeping the investigation pending against the accused Bittu Singh.

6. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions, and after commitment and on transfer finally the case came in seisin of the learned 1st Additional Sessions Judge-cum-Special Judge SC/ST Act, Gopalganj for trial.



7. Charge against the accused Mukesh Singh and Harendra Prasad was framed under Sections 302/34 of the Indian Penal Code and Section 3(2)(v) of the SC/ST Act. Charge was read over and explained to them by the Court to which they pleaded not guilty and claimed to be tried.

8. To substantiate its case, in ocular evidence, the prosecution has examined altogether five prosecution witnesses namely, Bipul Kumar as PW-1, Anirudh Manjhi as PW-2, informant Sanjay Manjhi as PW-3, Dr. Shameem Parwez, who conducted the autopsy of the cadaver of the deceased, as PW-4 and the I.O. Ramayan Ram as PW-5. The prosecution has also filed and proved several documents by way of documentary evidence in buttress its case.

9. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent. The accused persons have also examined one witness, namely, Surendra Shukla as D.W.1. They have also filed and proved some documents by way of documentary evidence in buttress of their case.

10. After hearing the parties and perusing the record, the learned Trial Court passed the impugned judgment



and order of conviction and sentence as detailed in the earlier paragraph.

11. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict Mukesh Singh has preferred Cr. Appeal (DB) No. 853 of 2013 and convict Harendra Prasad has preferred Cr. Appeal (DB) No. 962 of 2013.

12. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellants beyond all reasonable doubts or not.

13. It is submitted by learned counsel for the appellants that as per the account of informant Sanjay Manjhi (PW-3) his statement was recorded 5-10 minutes later to the inquest report indicating that after preparation of the inquest report and witnessing the injury on the person of the victim the police recorded the fardbeyan in consonance to the inquest report and the aforesaid aspect of the case rules out witnessing of the occurrence by the informant and other witnesses as well. It is further submitted that Bipul Kumar (PW-1), Anirudh Manjhi (PW-2) and informant Sanjay Manjhi (PW-3) do not happen to be eye witnesses of the occurrence as PW-1 in his



statement under Section 161 Cr.P.C. has stated himself to be hearsay witness of the case and the contradiction taken by the defence regarding the aforesaid aspect of the case between his statement given before the Court and before the I.O. also stand corroborated by the I.O. Anirudh Manjhi (PW-2), who happens to be father of the deceased, and informant Sanjay Manjhi (PW-3), who happens to be brother of the deceased, have not stated about presence of each other at the place of occurrence at the time of occurrence in their respective evidence. Had the aforesaid two persons present at the place of occurrence at the time of occurrence they would have taken their name in their deposition but they did not do so. Moreover, PW-3 has stated in his cross-examination that when he arrived at the place of occurrence he found the victim lying on the ground senseless which rules out witnessing of the occurrence by PW-3. It is further submitted that as per the fardbeyan itself the deceased was being accompanied by Arun Ram, Ravi Yadav and Situ Yadav at the time of occurrence. The aforesaid witnesses were competent witnesses of the occurrence, but the said witnesses have not been examined by the prosecution and no plausible and convincing reason has been assigned by the prosecution for their non-examination, hence adverse inference shall be drawn



against the prosecution. It is also submitted that I.O. had examined several persons as witnesses of the occurrence, but the aforesaid persons have not been examined by the prosecution. It is further submitted that as per the account of I.O. itself accused Harendra Prasad is handicapped. He could not move without the help of crutch so it was not possible for accused Harendra Prasad to catch hold the deceased preceding to assault by Mukesh Singh and thereafter escaping on the motorcycle swiftly after the occurrence which also rules out the complicity of Harendra Prasad in the occurrence and belies the prosecution case and the testimony of P.Ws.2 & 3. It is further submitted that there is animosity between the parties as mother of the appellant Mukesh Singh had lodged case of theft against the deceased vide Gopalganj P.S. Case No.217 of 2009 on 27.09.2009 i.e. a day preceding to the occurrence and due to the aforesaid animosity the prosecution has falsely implicated the appellants in this case. It is also submitted that the prosecution has not brought any objective evidence on record in corroboration of the prosecution case. It is also submitted that after witnessing the injury on the person of the victim and preparation of the inquest report, the police recorded the fardbeyan of the informant in consonance to the inquest report



and the informant and witnesses have deposed before the Court accordingly. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellants beyond all reasonable doubt by adducing trustworthy, convincing and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellants by the learned Trial Court is liable to be set aside and the appellants are entitled to be acquitted.

14. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that the informant Sanjay Manjhi (PW-3) and Anirudh Manjhi (PW-2) happens to be eye witness of the occurrence and their testimony is wholly reliable and nothing has been elicited in their cross-examination having potential to rule out their testimony. The ocular evidence of the prosecution also stands corroborated by the medical evidence and the learned Trial Court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and these appeals are shorn of merit and are liable to be dismissed.

15. From perusal of record, it appears that to



substantiate its case the prosecution has examined three material witnesses in the case. Out of them Bipul Kumar (PW-1), who happens to be cousin brother of the deceased albeit has made an abortive bid to support the prosecution case by deposing in consonance to the prosecution case. But from perusal of the testimony of the said witness, it appears that his attention was drawn by the defence towards contradiction between his statement given before the I.O. under Section 161 Cr.P.C. and that given before the Court in para-10 of his cross-examination regarding witnessing of occurrence by him and I.O. has also been confronted with the aforesaid contradiction at page 23 of his cross-examination and referring to para-27 of the case diary the I.O. has stated that the said witness has given his statement as hearsay witness of the case. Thus, the said witness appears to have taken altogether different stand before the Court regarding aforesaid material aspect of the case. Moreover as per the account of PW-1 he was proceeding to the fair along with the informant, deceased and others but informant has not corroborated the factum of giving company by PW-1 to them at the relevant time in his testimony. Thus, the said witness is not worth credence and reliable.

16. From perusal of the testimony of Anirudh



Manjhi (PW-2), who happens to be father of the deceased, and informant Sanjay Manjhi (PW-3), who happens to be brother of the deceased, it appears that they have also made an abortive bid to support the prosecution case by giving statement in their respective examination-in-chief as adumbrated in the fardbeyan that on the date of occurrence at around 7 PM informant and victim had stepped out of the house to watch the Durga Puja fair. PW-3 was 20 steps behind Awadhesh Manjhi. They witnessed Mukesh Singh, Bittu Singh and Harendra Prasad standing near the Hajiapur Krishna Talkies bridge with the motorcycle. All the three accused persons caught hold Awadhesh Manjhi. Mukesh Singh, gave knife blow on the chest and the abdomen of Awadhesh Manjhi and then all the three accused persons made good their escape on the motorcycle. Sustaining injury victim fell down. They rushed him to the hospital but he succumbed to injury in course of treatment. P.W.2 has further stated that at the time of occurrence at 7 PM, while he was regressing from the market and arrived near the Krishna Talkies bridge, he witnessed the aforesaid occurrence committed by the accused persons. But from perusal of the testimony of the aforesaid two witnesses, it appears that neither PW-2 has taken the name of PW-3 as the person present at the



place of occurrence nor PW-2 has taken the name of PW-3 about his presence at the place of occurrence at the time of occurrence though they happen to be father and son of the deceased. Had both PWs-2 & 3 been present at the place of occurrence at the time of occurrence, both would have taken the name of each other showing their presence there. The aforesaid aspect of the case happen to be against the natural course of conduct and creates serious doubt about presence of both the persons at the place of occurrence at the time of occurrence and witnessing the occurrence by them. Moreover from perusal of deposition of the I.O., it appears that he had recorded the statement of several persons as witnesses of the occurrence but he has not taken the names of Anirudh Manjhi (PW-2) as witness, which creates serious doubt about the credibility and sanctity of testimony of the aforesaid witness. As had PW-2 witnessed the occurrence the I.O. would have also recorded his statement. PW-3 has stated in his cross-examination that his house is located at one mile from the Krishna Talkies bridge. There are thousands of houses and shops in between the aforesaid two places and when he arrived at the place of occurrence his deceased brother was lying near the shop of Thakur Sah and there were huge crowd and number of people



were passing through the aforesaid place. His brother was senseless by that time. The aforesaid statement of PW-3 eloquently indicates that when the informant had arrived at the place of occurrence he had found the deceased Awadhesh Manjhi lying on the ground senseless sustaining injury, which means that the said witness had arrived at the place of occurrence after culmination of the occurrence and had not witnessed the occurrence. Moreover, in his aforesaid statement he has not stated about presence of accused persons at the place of occurrence.

17. As per the fardbeyan of the informant Sanjay Manjhi (PW-3), the deceased Awadhesh Manjhi was being accompanied to fair by Arun Ram, Ravi Yadav and Situ Yadav at the time of occurrence but in his examination-in-chief the informant has stated that the deceased alone was going towards the fair. He has not taken the name of the aforesaid companions of the deceased in his examination-in-chief. Thus, the aforesaid statement of the informant happens to be in quite contradiction to the prosecution case and creates serious doubt about witnessing of the occurrence by the informant.

18. As per the fardbeyan of informant Sanjay Manjhi (PW-3) the deceased Awadhesh Manjhi was being



accompanied by Arun Ram, Ravi Yadav and Situ Yadav at the time of occurrence. Bipul Kumar (PW-1) has stated in para-1 of his examination-in-chief that he, Kanhaiya Saw, Ravi Yadav and Arun Ram were present along with the deceased and the informant at the place of occurrence but the aforesaid persons, who happen to be natural and competent witnesses of the occurrence, have not been examined by the prosecution and no plausible and convincing explanation has been given by the prosecution for their non-examination, hence adverse inference is drawn against the prosecution.

19. Though from perusal of the record, it appears that the inquest report was prepared by the I.O. on 28.09.2009 at 8:15 PM and the fardbeyan of the informant was recorded by the police on 28.09.2009 at 8 PM i.e. preceding to the inquest report but informant Sanjay Manjhi (PW-3) has stated in his cross-examination that police had recorded his statement 5-10 minutes later to the preparation of the inquest report. The aforesaid statement and the aspect of the case goes to strengthen the submission of the defence that after witnessing the injury on the person of the victim and preparation of the inquest report, the police recorded the fardbeyan of the informant in consonance to the inquest report and the informant and



witnesses have deposed before the Court accordingly.

20. As per the account of the I.O. (P.W.5), as given by him in his cross-examination, accused Harendra Prasad is handicapped and walk with the help of crutch. The handicapped certificate filed by the defence, marked as Ext.D, also goes to corroborate that the accused Harendra Prasad is handicapped. The aforesaid aspect of the case creates serious doubt about the prosecution case of catching hold the victim by the accused Harendra Prasad preceding to stabbing by accused Mukesh Singh as he happens to be handicapped and cannot walk freely rather with the help of crutch. The aforesaid aspect also creates serious doubt about the complicity of the accused Harendra Prasad in commission of the occurrence.

21. From perusal of the testimony of the I.O., it appears that though the I.O. has stated in his examination-in-chief that he had found blood at the place of occurrence but in his cross-examination he has stated that he had not seized the blood from the place of occurrence. Thus, no objective evidence has been brought on record by the prosecution in corroboration of the prosecution case.

22. From perusal of record, it appears that Bipul Kumar (PW-1), who happens to be cousin brother of the



deceased, Anirudh Manjhi (PW-2), father of the deceased and informant Sanjay Manjhi (PW-3), brother of the deceased, are interested witnesses of the case. It is settled principle of law that testimony of the interested witnesses should not be discarded outrightly rather should be scanned and scrutinized carefully and cautiously. On careful and cautious scrutiny of the aforesaid three witnesses, we find that their testimony is not worth credence and reliable.

23. Though as per fardbeyan and witnesses account the place of occurrence is near the Krishna Talkies, which is a picture hall and number of shops and houses are located there and there was huge crowd of people at the place of occurrence and as per fardbeyan and account of PW-1 some persons were also accompanying the deceased at the time of occurrence but they have not been examined by the prosecution. Thus, the aforesaid unreliable testimonies of interested witnesses does not stand corroborated by any independent witness of the occurrence.

24. As per the fardbeyan itself there is previous dispute between both the parties. From perusal of the testimony of Surendra Shukla (DW-1) and the documents filed by the appellants marked as Exts.A, B & C, it appears that Gopalganj



P.S. Case No.217 of 2009 has been lodged by the mother of the appellant Mukesh Singh against the deceased and others regarding theft and assaulting Mukesh Singh and said informant a day preceding to the occurrence which indicates that there is animosity between the parties. Animosity cuts both the edges but in view of non-corroboration of unreliable testimonies of interested witnesses by any independent witness of the occurrence and not bringing on record any objective evidence in the case by the prosecution, false implication of the appellants at the hands of the prosecution party, due to aforesaid animosity, cannot be ruled out.

25. In the aforesaid facts and circumstances of the case, we find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case and complicity of the appellants in the occurrence beyond all reasonable doubts by adducing convincing, cogent, consistent and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned Trial Court against the appellants is set aside and the appellants are acquitted of all the charges levelled against them giving them benefit of doubt. As the appellant Harendra Prasad of Criminal Appeal (DB) No. 962 of 2013 is on bail, he is discharged from



the liability of the bail bonds, while the appellant Mukesh Singh of Criminal Appeal (DB) No. 853 of 2013 is in custody, he is directed to be released forthwith from the custody, if not wanted in any other case. Accordingly, the aforesaid two Criminal Appeals are allowed.

(Rakesh Kumar, J.)

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
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