

IN THE HIGH COURT OF JUDICATURE AT PATNA
GOVT. APPEAL (DB) No.18 of 1998

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The State Of Bihar

... .. Appellant/s

Versus

1. Bishundhari Singh S/o Parasnath Yadava
2. Munilal Yadav S/o Ramchandra Yadava
3. Babulal Yadava S/o Ramchandra Yadava
4. Parasnath Yadav S/o Prasad Yadava

All residents of Village – Andhari, P.S. Kochhila, District – Bhabua.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Mishra, APP
For the Respondent/s : Mr. Ramakant Mishra, Sr. Advocate
Mr. Pratik Mishra, Amicus Curaie

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 01-10-2020

Heard Mr. Ajay Mishra, learned APP appearing for the appellant and Mr. Ramakant Sharma, learned Senior counsel assisted by Mr. Pratik Mishra, learned counsel on 16.09.2019, when the case was called out, none represented on behalf of respondent nos. 1 to 4 and hence, Mr. Pratik Mishra was appointed as Amicus Curiae to assist the Court on behalf of



respondent nos. 1 to 4. However, subsequently, Mr. Ramakant Sharma, learned Senior counsel appeared on behalf of respondent nos. 1 to 4, but this Court declined to disengage Mr. Pratik Mishra, since after obtaining the paper book from the Court, he has prepared himself for making submission on the merits of the case.

The State of Bihar has preferred the present appeal against the judgment of acquittal dated 18.12.1997 passed by learned Additional Sessions Judge-I, Rohtas, Sasaram in Sessions Trial No. 518/135 of 1995/95, arising out of Dinara P.S. Case No. 31 of 1995, whereby the respondent nos. 1 to 4 have been acquitted of the charges under Sections 302/34 of the Indian Penal Code.

The prosecution case got initiated with recording of fardbeyan of Rajesh Kumar (P.W.5) by Sub-Inspector of Police Ramanuj Rai (not examined) on 16.04.1995 at 7.40 P.M. at Bhagirath High School. According to the informant on 16.04.1995, the informant and his father, who was posted as Overseer in P.H.E.D. at Ara travelled together and got down at Kochas and from Kochas they proceeded in another bus to their village along with uncles Uma Shankar Singh (P.W. 4) and Rama Shankar Singh (P.W.1) and alighted near Bhagirath High



Court, from there they proceeded to their house but, on the way, co-villager Bishundhari Yadav, Kishundhari Yadav, Munnilal Yadav armed with rifle, Babulal Yadav armed with gun, Parasnath Yadav armed with Dab came and Kishundhari Yadav fired from the rifle which hit on the right elbow of the father of the informant. Thereafter, the father of the informant tried to run away, but he was chased by the accused persons. The accused persons chased the father of the informant for about 150 yards and thereafter, Parasnath Yadav caught hold of the father of the informant whereupon, Munnilal Yadav and Bishundhari Yadav dragged the father of the informant and Kishundhari Yadav fired from his rifle causing injury on the chest. Thereafter, on the exhortation of Babulal Yadav to the effect that the father of the informant is still alive then Bishundhari Yadav caused injury with rifle on his head and thereafter, Babulal Yadav fired. Ultimately, Bishundhari Yadav, Kishundhari Yadav, Munilal Yadav and Babulal Yadav caught the hands and legs of Ramgopal Singh, the father of the informant whereupon Parasnath Yadav cut the face of Ramgopal Singh with repeated blow by chopper. Thereafter, the accused persons disappeared from the scene. On the disappearance of the accused persons from the place of occurrence, the informant Rajesh Kumar along



with Umashankar Singh and Rama Shankar Singh came near Ramgopal Singh, but found him dead, leading to registration of Dinara P.S. Case No. 31 of 1995.

On conclusion of investigation, police submitted charge sheet whereupon learned SDJM, Bikramganj passed the order of cognizance vide order dated 28.08.1995 and committed the case to the Court of Sessions vide order dated 23.09.19095.

The prosecution has examined altogether 7 witnesses and has also adduced documentary evidence but the defence has not examined any witness. However, defence has adduced certain documentary evidence to suggest that series of civil and criminal cases is going on between the parties.

The learned trial Court after scrutinizing the evidence on record has come a finding that only interested witnesses have come forward to support the prosecution case. The medical evidence creates serious doubt about the ocular evidence and ultimately recorded the judgment of acquittal which is under appeal in the present Govt. Appeal.

Learned counsel for the appellant submits that by virtue of evidence of P.W. 1 Ramashankar Singh, P.W. 4 Umashankar Singh and P.W. 5 Rajesh Kumar, the prosecution has been able to prove its case beyond reasonable doubt. In the evidence of



P.Ws. 1, 4 and 5 there is no vital contradiction and they all claimed to be eye witnesses. P.W. 7, the I.O. has found the dead body at the place of occurrence and the blood stained earth but owing to lapses on the part of the investigating agency, the benefit of doubt ignoring the ocular evidence has wrongly been given to the accused persons. The informant was traumatized hence, it is very difficult for him to suggest the accurate manner of assault in the evidence. The eye witnesses account cannot be brushed aside as has been done by the learned trial Court in the present case. It is well settled law that the medical evidence is opinionative in nature hence, it cannot override the ocular evidence.

Learned Senior counsel appearing for the respondents submits that very presence of P.Ws. 1, 4 and 5 at the place of occurrence becomes doubtful only because the manner of assault and the nature of injuries as suggested by the eye witnesses has substantially been negated by the medical evidence. The place of occurrence has not been proved. The conduct of informant appears unreasonable to the extent that he neither raised alarm nor went to the police station. The police reached at the place of occurrence on information of an outsider which suggests that P.Ws. 1, 4 and 5 were not present at the



place of occurrence. The presumption of innocence gets further confirmed with the judgment of acquittal recorded in favour of the respondents.

From bare perusal of the materials on record, it appears from the fardbeyan and the evidence of P.W. 5, the informant that the first firing was made by Kishundhari Yadav with rifle which hit on the right elbow of Ramgopal Singh. Thereafter, he tried to flee away but he was caught on chase by Parasnath Yadav and thereafter, Munnilal Yadav and Bishundhari Yadav dragged the Ramgopal Singh and thereafter, second firing was resorted to by Kishundhari Yadav causing injury on the chest of Ramgopal Singh. Thereafter, on the instigation of Babulal Yadav, Bishundhari Yadav fired causing 3rd injury on the head of Ramgopal Singh and Babulal Yadav also resorted to fire. Thereafter, Parasnath Yadav caused cut injury by repeating blow with chopper on the face of Ramgopal Singh. Hence, as per the evidence of P.Ws. 1, 4 and 5, Ramgopal Singh received three injuries. The first injury on the right elbow with rifle, second injury on the chest and third injury on the head by firearm weapon and apart from that, other injury was cut injury on the face by the chopper, whereas from the evidence of doctor, who conducted autopsy on the dead body of Ramgopal Singh, it



appears that he has found (i) incised wound on left site of lower jaw, (ii) incised wound on the right side of the face, (iii) incised wound obliquely placed across the mouth, (iv) incised wound over the clavicular region of right side of chest, (v) incised wound on back of right left forearm (vi) incised wound on ulnar side of left forearm (vii) incised wound on left side of chest wall and (viii) incised wound on left parietal region. One lacerated wound with inverted margin scratched blacken margin of the left side of threaco lumber region of the back of trunk, i.e., the wound of entry and the other is wound of exit near 4th and 5th ribs of the right side. Other lacerated wound on the back of left thigh which is wound of entry. The doctor has not found any firearm injury on the head or the chest or the right elbow of Ramgopal Singh as suggested by P.Ws. 1, 4 and 5 in their evidence. Hence, the medical report clearly suggests the so called eye witnesses have not seen the occurrence or they have not unfolded the true prosecution case.

It is trite law that medical evidence cannot override the ocular evidence but when it completely negates the ocular evidence, then it changes its character from opinionative to direct evidence. Ordinarily the value of medical evidence only corroborative as has been held by the Hon'ble Supreme Court in



the case of *Solanki Chimanbhai Ukabhai Vs. State of Gujrat*,
reported in (1983) 2 SCC 174. Paragraph 13 of the judgement
reads as follows:

“13. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.”

Further, it has been held by the Supreme Court in the case of *State of U.P. Vs. Hari Chand (2009) 13 SCC 542* that unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy. Part of paragraph 13 of the judgement reads as follows:

“13..... In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy.”

When the ocular evidence is totally inconsistent with



the medical evidence then it amounts to fundamental defects in the prosecution case as has been held in the case of ***Ram Narain Singh Vs. State of Punjab, reported in (1975) 4 SCC 497***. Paragraph 14 reads as follows:

“14. Where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistic expert, this is a most fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit the entire case. In *Mohinder Singh v. State* [AIR 1953 SC 415 : 1950 SCR 821] this Court observed in similar circumstances as follows:

“In a case where death is due to injuries or wounds caused by a lethal weapon, it has always been considered to be the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. It is elementary that where the prosecution has a definite or positive case, it is doubtful whether the injuries which are attributed to the appellant were caused by a gun or by a rifle.”

It is obvious that where the direct evidence is not supported by the expert evidence, then the evidence is wanting in the most material part of the prosecution case and it would be difficult to convict the accused on the basis of such evidence. While appreciating the evidence of the witnesses, the High Court does not appear to have considered this important aspect, but readily accepted the prosecution



case without noticing that the evidence of the eyewitnesses in the Court was a belated attempt to improve their testimony and bring the same in line with the doctor's evidence with a view to support an incorrect case.”

It is true that the medical evidence cannot override the ocular evidence but it is settled principle of law that when the medical evidence substantially negates the ocular evidence then it becomes a direct evidence from an opinionative evidence. Moreover, the consistent case of P.Ws. 1, 4 and 5 is that they saw the occurrence from the distance of 50 yards and as per their evidence, the only cut injury was caused on the face whereas sharp cut injuries (incised wound) have been found all over the body of the body. The unreasonable conduct of the informant and other eye witnesses, of not raising any alarm or going to the police station, creates further doubt on the prosecution version. P.W. 7, the I.O., has admitted in his cross-examination that on the basis of wireless message received from Kochas, Sanha Entry was made, but when he arrived near Bhagirath High School, he found Ramanuj Rai, S.I. of Police -cum- SHO, Dinara P.S. recording the fardbeyan of Rajesh Kumar but he has neither mentioned about Sanha Entry in the case diary nor has be mentioned anything with regard to Ramanuj Rai transmitting the fardbeyan of the informant to



Dinara Police Station for registration of the FIR. There is no mention about seizure of blood stained earth and hence, learned trial Court has inferred that no blood was found at the place of occurrence which creates doubt about the credibility of the evidence of P.W. 1 Ramashankar Singh, P.W. 4 Umashankar Singh and P.W. 5 Rajesh Kumar. The very credibility of the prosecution version has further been doubted by the learned trial Court since P.Ws. 1, 4 and 5 claimed to be eye witnesses are interested witnesses, as P.W. 1 has admitted in his evidence that his younger sister has been married to Ram Bharat Singh, the own brother of deceased Ramgopal Singh. P.W. 4 has also admitted in his evidence that he is cousin brother (maternal brother) of deceased Ramgopal Singh. P.W. 5 Rajesh Kumar is the son of the deceased Ramgopal Singh. Admittedly, the occurrence took place in open area but no independent witness, has either witnessed the manner of assault or has seen the accused fleeing away from the place of occurrence.

In the circumstances, the learned trial Court has rightly come to a conclusion that the prosecution has failed to prove its case beyond shadow of reasonable doubt.

The cardinal principle of criminal jurisprudence pertaining to burden of proof is that the same is on the prosecution. The



guilt of accused must be proved beyond reasonable doubt. However, the burden on the prosecution is only to establish his case beyond reasonable doubt and not all doubts. The reasonable doubt has been defined by the Hon'ble Supreme Court in the case of *State of U.P. Vs. Krishna Gopal and Anr., reported in (1988) 4 SCC 302*. Paragraph 25 of the judgment reads as follows:

“25. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to “proof” is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another a learned Author says [See: “The Mathematics of Proof-II” : Glanville Williams: Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)] :

“The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away,



the two doubts are not to be multiplied together. The one piece of evidence may confirm the other.”

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice.”

It is trite view that the judgment of acquittal further re-enforces the innocence of the accused.

In view of the discussions made above, we do not find any infirmity in the judgment impugned.



Accordingly, this appeal is dismissed.

We appreciate the assistance given by learned counsel Mr. Pratik Mishra as Amicus Curiae and Registry is expected to take steps for payment of prescribed fee to the learned Amicus Curiae appearing in this case on behalf of the respondents.

(Dinesh Kumar Singh, J)

(Arvind Srivastava, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

