

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.432 of 1996

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Iliyas, Son of Md. Rafique, resident of village Bhutahi, Police Station
Sonbarsa, District Sitamarhi

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Prasoona Sinha, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 22-07-2022

The present appeal has been preferred against the judgment of conviction dated 23.07.1996 and order of sentence dated 25.07.1996 passed by the 1st Additional Sessions Judge, Sitamarhi in Sessions Trial No.56 of 1995/ 13 of 1995 arising out of Sonbarsa P.S. case No.94 of 1994, whereby and whereunder appellant Iliyas has been convicted under Section 302 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code.

2. Prosecution case, in brief, is that on 10.10.1994 at about 7:00 P.M., the informant (P.W.8) returned to his house after closing the shop from Bhutahi Bazar and he saw his son, namely, Rahul Mahto (deceased), aged about 4 years, eating something and he made an inquiry, on which his son told that he was eating Gur



and on further inquiry, the boy replied that Iliyas Bhaiya (appellant) had given him the same. Thereafter, he saw that the condition of the boy started deteriorating and the boy started vomiting. Then, the informant (P.W.8) along with his son went to the house of appellant to make inquiry. Seeing them, Iliyas (appellant) and his brothers namely Abbas, Jabbar and Taslim along with his two younger brothers, whose names are not known to informant (P.W.8) and the father of Informant namely Md. Rafique ran inside the house. They did not return even on call. Further case of the prosecution is that in the meantime, the elder brother of the informant namely Yogendra Mahto reached there and the informant (P.W.8) brought his son to Government Hospital, Bhutahi for treatment, where the doctor Ramesh Prasad told him that someone has given poison to him and treatment is beyond his control and he referred the boy to Sadar Hospital, Sitamarhi, where the boy was admitted at about 9:10 P.M. and in spite of treatment the boy died at about 10.:30 P.M. The reason behind the occurrence is stated by the informant (P.W.8) in his fardbeyan to be previous enmity between the appellant and informant, regarding dispute related to passage. The appellant had threatened the informant earlier that he would make the informant issueless.



3. The fard-beyan of informant Ram Chandra Mahto (P.W.8) was recorded on 10.10.1994 by S.I. Shri S. Sharma. On the basis of which, Sonbarsa P.S. case No.94 of 1994 was registered against the appellant along with his brothers and father under Sections 328 and 302 read with Section 34 of the Indian Penal Code. The investigation proceeded and the police submitted charge-sheet under Sections 328, 302, 120B read with Section 34 of the Indian Penal Code against all the F.I.R. named accused persons including the appellant. The learned Chief Judicial Magistrate, Sitamarhi took cognizance of the offence and transferred the case to the court of S.D.J.M. Sadar, Sitamarhi, who after supplying police papers to the accused persons committed the case to the Court of Sessions. The Trial Court discharged all the accused persons except this appellant and proceeded to frame charge against the accused-appellant under Section 302 of the Indian Penal Code. The appellant pleaded not guilty and claimed to be tried.

4. During trial, the prosecution examined altogether eleven witnesses. Yogendra Mahto (P.W.1) is full brother of informant. Laxman Mahto (P.W.2) is son of P.W.1 Yogendra Mahto. Ramrati Devi is P.W.3. Bholaram Dabgar (P.W.4) is the Investigating Officer of the case. Sheo Kumari Devi is P.W.5.



Sansariya Devi (P.W.6) is the wife of the informant. Naga Chaudhary alias Yogendra Chaudhary (P.W.7) is said to be one of the Panch members who adjudicated the earlier dispute between the informant and the appellant. Ram Chandra Mahto (P.W.8) is the informant of the case. Alok Kumar Singh (P.W.9) is the Medical Officer, who conducted the post-mortem on the body of the deceased. Pramod Kumar Jha (P.W.10) is Assistant Director, F.S.L., Patna. Shailesh Sharma (P.W.11) is the S.I. of police who recorded the fardbeyan of the informant. The prosecution has also brought on record documents like the Inquest Report which has been marked as Ext.5 and Post-mortem Report marked as Ext.3. Forensic Science Laboratory Report has been marked as Ext.6. Neither oral nor documentary evidence has been adduced on behalf of the defence.

5. Learned Counsel Mr. Prasoon Sinha, appearing for the appellant has argued that the judgment of conviction passed by the learned trial court is untenable in the eyes of law and the learned trial court has not appreciated the evidence properly. He has submitted that the prosecution has neither examined Ramesh Singh, doctor who had attended the boy prior to his death and had referred him to Sadar Hospital, nor has the prosecution examined the doctor who had attended the deceased at Sadar Hospital. The



prosecution has also not assigned any reason for withholding them from adducing evidence. This has prejudiced the trial. Further, it has been argued that the motive behind the occurrence has also not been proved by the prosecution. It has been submitted that there is material contradiction and inconsistency in the deposition of P.W.1 and P.W.8. Lastly, it has been argued on behalf of the appellant that the prosecution has tried to develop its case during trial and has brought on record, by way of depositions, facts which were initially not stated either in the fard-beyan or during the investigation before the police.

6. On the other hand, learned A.P.P. appearing for the State has submitted that the court below has rightly convicted the appellant after appreciating the evidence in accordance of law. The judgment of conviction and order of sentence requires no interference for the reason that the prosecution has been able to prove its case beyond all reasonable doubts.

7. After hearing the arguments advanced by learned counsel appearing for the parties and perusing the material available on record, following issues arise consideration: -

- (i) Whether the prosecution has been able to establish and prove the motive behind the occurrence by adducing reliable evidence on record?
- (ii) Whether the non-examination of both the doctors, who had examined the



deceased prior to his death, has prejudiced the trial of the appellant?

(iii) Whether the prosecution has developed its case by making material improvement during the trial?

(iv) Whether the statements made by P.W.1 and P.W.8 are inconsistent and contradictory to each other?

(v) Whether the trial court, at the stage of recording of the statement under Section 313 of Cr.P.C., has failed to put the entire material which has come against the appellant before him?

8. In order to deal with the first issue, we have given our anxious consideration over the deposition of P.W.7. From perusal of the deposition of P.W.7, it is evident that in his entire evidence he has not whispered even a single word regarding any dispute between the appellant and the informant (P.W.8). It is the case of the prosecution that P.W.7 was one of the Panch, who had adjudicated the dispute, relating to passage, between the informant and the appellant. The said dispute relating to passage has been claimed by the prosecution to be the motive behind the occurrence. In the fard-beyan the informant has categorically stated that on account of dispute relating to passage the appellant had threatened him that he would make the informant issueless and as a consequence thereof the appellant had poisoned the son of the informant. However, the evidence adduced by P.W.7 is completely silent regarding any previous dispute relating to passage between



the parties. Further there is no evidence available on record to suggest that there was enmity between the parties. In the said backdrop, the prosecution has completely failed to establish and prove the motive behind the occurrence as alleged in the F.I.R.

9. So far the second issue is concerned, from perusal of the record, it appears that the prosecution has chosen not to examine Ramesh Singh, the doctor, who had initially examined the deceased at Government Hospital, Bhutahi nor the doctor, who had attended the deceased at Sadar Hospital, Sitamarhi prior to his death. It is apparent from the record that it was Ramesh Singh, who had, after examining the deceased, opined that the boy has been poisoned. Had Ramesh Singh been examined as a prosecution witness, the appellant would have got an opportunity to cross-examine him on the point of the medical condition of the boy. There is no explanation whatsoever supplied by the prosecution for withholding the doctors, who had examined the deceased prior to his death, from giving evidence in the trial. The appellant in the trial had got no opportunity to elicit anything regarding the seriousness of the medical condition of the deceased. Therefore, it is apparent that the non-examination of both the treating doctors has caused grave prejudice to the appellant.



10. As far as third issue is concerned, from perusal of the fard-beyan of informant (P.W.8), it appears that when the informant returned to his house in the evening at about 7:00 P.M. he saw his son eating something. Upon enquiry, his son told him that he was eating Gur. Upon further enquiry, the boy revealed that it was given to him by the appellant. When the condition of the boy deteriorated and he started vomiting, the informant took him to the house of the appellant. However, in his deposition, the informant has materially improved his case by stating that his wife (P.W.5) and his son (deceased) came alongwith him from market to his house. Thereafter his son went outside the house. When the informant searched for his son and called him, his son came running from the doorstep of the appellant. He was eating Gur. When the condition of the son of the informant deteriorated, upon enquiry the boy caught the hand of the informant and his wife and took them to verandah of the appellant. Thereafter the boy caught the hand of the appellant and told them that the appellant had given him Gur to eat. The presence of P.W.6 at the house of the appellant has also not been acknowledged in the deposition of P.W.1. On comparison of the fard-beyan of the informant and his deposition given during the trial, it is apparent that the informant



had tried to develop his case by making material improvement regarding the identification of the appellant.

11. The fourth issue relates to the inconsistency and contradiction in the statements of P.W.1 and P.W.8. P.W.8 (informant) in his fard-beyan has stated that when he took his son to the house of the appellant, his brother Yogendra Mahto (P.W.1) has also arrived there. However, P.W.1 in his deposition has categorically stated that when he was purchasing *Beedi* from a shop, at that time the informant came and told him that the appellant has given poisonous Gur to his son. The informant has nowhere stated that he had gone to call his brother. This is material contradiction in the statements made by P.W.1 and P.W.8. Yogendra Mahto (P.W.8) in his cross-examination has stated that when he reached at the house of the informant, by that time, the boy had become unconscious. Therefore, P.W.8 cannot be said to be a competent witness, so far the identification of the appellant is concerned.

12. In order to deal with the fifth issue as formulated above, from perusal of the statement of the appellant recorded under Section 313 of Cr.P.C., it appears that no suggestion was made to the appellant regarding his identification by the deceased.



In our opinion, such an omission by the learned trial court has not given the appellant a fair opportunity to defend his case.

13. On the basis of the findings arrived at on the issues formulated above, we are of the considered opinion that there is no conclusive evidence to prove the guilt of the appellant and, therefore, conviction of the appellant is not sustainable in the eye of law. The prosecution has failed to prove its case beyond all reasonable doubts.

14. Accordingly, the present appeal is allowed. The judgment of conviction dated 23.07.1996 and order of sentence dated 25.07.1996, passed by the 1st Additional Sessions Judge, Sitamarhi in Sessions Trial No.56 of 1995/ 13 of 1995 arising out of Sonbarsa P.S. case No.94 of 1994, is set aside. Since the appellant is on bail, he is discharged from the liabilities of his bail bonds.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/-

AFR/NAFR	NAFR
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