

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.279 of 1996

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Ram Charitar Singh @ Charitar Singh, son of Late Jagdish Singh, resident of
Pachhiya Dih, P.S.- Poffasil, District- Nawada.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Choudhary, Sr. Advocate
Mr. Bhola Prasad, Advocate

For the Respondent/s : Mr. Bipin Kumar, 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 : 12-08-2022

The present appeal has been preferred against the judgment of conviction dated 20.6.1996 and order of sentence dated 21.06.1996 passed by 1st Additional Sessions Judge, Nawada in Sessions Trial No. 3 of 1996/36 of 1996, arising out of Mofassil P.S. Case No. 34 of 1992, G.R. Case No. 805/92, whereby the appellant has been convicted under Section 302/34 of the Indian Penal Code and 27 of the Arms Act and has been sentenced to undergo imprisonment for life under section 302/34 of the Indian Penal Code and is further sentenced to undergo rigorous imprisonment for five years under Section 27 of the Arms Act with stipulation that both the sentences shall run concurrently.



2. The prosecution case in brief is that on the basis of fardbeyan of Bachi Devi (P.W.4), wife of the deceased, recorded on 14.6.1992 at 5 A.M. at village Pachhiyadih stating that on the intervening night of 13-14.06.1992 she and her deceased husband were sleeping in open space outside of her house. Her husband was sleeping on the cot whereas she was sleeping on the ground by the side of the cot. In the midnight, she heard a sound of 'dharam' near the cot on which she woke up and started looking for her husband. In the meantime, she saw the accused, Ram Charitar Singh (appellant), Tanik Singh, Bullu Singh, Suresh Singh (nephew of Dani Singh), Suresh Singh (nephew of Kallu Singh) and Sita Ram Singh, fleeing away towards west of the house after the said incident and thereafter she identified them in the moonlight. After the said incident, she tried to wake up her husband but found her husband dead having fire arms injury in the head. The informant further stated that a day prior to fateful day at about 10 p.m., the accused Sitaram Singh had gone to her house in search of her husband and there was a talk between them. The motive behind the said incident was that her husband protested the plantation of trees planted in the gairmajarua land settled to her husband and the appellant Ram Charitar Singh was insisting for the said plantation. Two days ago, the accused persons threatened



her husband that since he had stopped the worked, he would be killed. The informant further stated that she did not see any of the accused firing on her husband but could only identify the accused persons fleeing away. On the basis of said fardbeyan, Mofassil P.S. Case No. 34 of 1992 was registered against the accused persons including the appellant.

3. After investigation, the police submitted charge-sheet and cognizance was taken by the jurisdictional Magistrate and thereafter the case was committed to the Court of Sessions. Charges were framed against the accused persons including the appellant to which they pleaded not guilty and claimed to be tried.

4. During the trial, prosecution examined as many as 07 witnesses namely Badri Manjhi (P.W.-1), Paro Manjhi (P.W.-2), Suraj Manjhi (P.W.-3), Bachi Devi (P.W.-4) (informant), Dr. Bisheshwar Ram (P.W.-5) (doctor who conducted the post-mortem on the dead body of the deceased), Gorakh Nath Sharma (P.W.-6) (2nd investigating Officer) and Sri L.N. Gupta (P.W.-7) (1st investigating officer). P.W.-1, P.W.2 and P.W.-3 are hearsay witnesses who immediately after the occurrence went to the place of occurrence and found the deceased dead. The prosecution has also brought on record exhibits in support of its case. On the other



hand, defence has examined two witnesses, namely, D.W.-1 Raj Kumar Singh and D.W.-2 Chandrika Mishra.

5. Learned Senior Counsel Mr. Ashok Kumar Choudhary appearing for the appellant submits that the judgment of conviction and order of sentence passed by the learned trial court is bad in the eye of law, as the same has been passed without proper appreciation of evidence available on record. It has been argued by learned Senior Counsel that charge against the appellant has been framed under Sections 302/149 of Indian Penal Code and Section 27 of the Arms Act. However, the appellant has been convicted under Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act. It has been contended by learned Senior Counsel that charge was never altered or amended and, therefore, the trial court could not have convicted the appellant under Section 302/34 of the Indian Penal Code. Further, it has been argued that there is no eyewitness to the alleged occurrence. The Informant (P.W.4) has only seen the accused persons including the appellant running away from the place of occurrence. The Informant (P.W.4) in her fardbeyan as well as in her deposition has stated that her husband sustained a bullet injury on his forehead. She has not disclosed anything regarding any other injury on the body of the deceased. However,



the post-mortem report shows that there are four external injuries on the dead body. The prosecution has not explained the other injuries present on the dead body of the deceased. Therefore, it has been argued that reliance cannot be placed on the testimony of Informant (P.W.4). In absence of the evidence adduced by the Informant (P.W.4), there is no substantive evidence to prove the guilt of the appellant. Moreover, the prosecution has not produced the seized articles as material exhibits which has also prejudiced the trial of the appellant.

6. Learned A.P.P. appearing for the State has submitted that the learned trial court has appreciated the evidence in accordance with law and has rightly convicted the appellant. The judgment of conviction and the order of sentence require no interference as the prosecution has established the guilt of the appellant beyond all reasonable doubts.

7. After hearing the arguments from both the sides and perusing the material available on record, following issues arise for our consideration:-

(i) Whether the evidence adduced by the Informant (P.W.4) can be relied upon in the backdrop of the fact that the same is



not corroborated with the medical evidence brought by the prosecution?

(ii) Whether the failure on the part of the prosecution to seize blood stained soil and other articles and produce them as material exhibits would weigh in favour of the appellant?

8. In order to deal with the first issue, from perusal of the material available on record, it appears that the informant is not an eye-witness to the manner of occurrence, however, she has only seen the accused persons, including the appellant, running away from the place of occurrence. In her fardbeyan as well as in her deposition, she has only mentioned that there was gunshot injury on the body of her husband (deceased). However, when we perused the post-mortem report, it shows that there are four external and four internal injuries on the body of the deceased. The doctor, who conducted the post-mortem, has opined that injury no. 1A and injury no.4 has been caused by hard and blunt substance. The prosecution has nowhere explained as to how the deceased sustained the injuries, which were caused by hard and blunt substance. The Informant (P.W.4) has not explained anywhere during the trial as to how the deceased sustained injuries which



were caused by a weapon, other than a fire-arm. This casts doubt on the veracity and truthfulness of the statement of the informant (P.W.4). In such view of the matter, it is not safe to rely upon the evidence adduced by Informant (P.W.4). At this juncture, we would like to rely upon the judgment of the Hon'ble Supreme Court in the case of ***Ram Narain Singh and Ors. Vs State of Punjab*** reported in (1975) 4 SCC 497. In this judgment the Hon'ble Supreme Court in paragraph 14 of the judgment has held 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...”

Therefore, applying the aforesaid proposition of law, in the facts and circumstances of the present case, we are of the opinion that the evidence of the Informant (P.W.4) cannot be relied upon, as the same stands uncorroborated by the post-mortem report of the deceased.

9. While advertng to the second issue, it is apparent from the record that there is no seizure list on record. The prosecution



has also not brought on record any material exhibit in order to support its case. There is no doubt that the investigation has been conducted in a poor manner. There is no seizure of any blood stained soil, bed sheet or mattress. Had the prosecution seized the blood stained soil from the place of occurrence, it would have been sent for FSL examination to ascertain the presence of human blood in the same. The failure of the prosecution to seize the articles from the place of occurrence has caused prejudice to the appellant. It is well settled principle of law that in a criminal case, it is the prosecution, which has to prove its case beyond all reasonable doubt. If the investigation has not been done properly and there are lacunas in the case of the prosecution to prove the guilt of the accused, the benefit has to go to the accused. Therefore, in view of the aforesaid factual matrix, we are of the considered opinion that the failure on the part of the prosecution to seize and bring on record the incriminating articles would go in favour of the appellant.

10. In view of the findings arrived at on the issues formulated above, we are of the opinion that the prosecution has not been able to prove the guilt of the appellant beyond reasonable doubt and the appellant deserves to be given the benefit of doubt. Therefore, we allow the present appeal and set aside the judgment



of conviction and order of sentence dated 20.06.1996 and 21.06.1996 respectively passed by 1st Additional Sessions Judge, Nawada, in Sessions Trial No. 3 of 1995/36 of 1995, arising out of Mofassil P.S. Case No. 34 of 1992. Since, the appellant is on bail, he is discharged from the liabilities of his bail bonds.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Pankaj/-

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