

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.494 of 1996

1. Devpati Devi, wife of Ramashrey Ram
2. Sitaram Ram, son of Late Dukhan Ram (**appeal has got abated against this appellant vide order dated 26.07.2022**)
Both resident of village Kazi Mohammadpur, P.S.- Paroo, P.O.- Kazi Mohammadpur, District- Muzaffarpur.
3. Ganesh Ram, son of Nagina Ram, resident of village Malikan P.S. Saraiya Jaintpur, P.O.- Parsauni Pagahia, District- Muzaffarpur.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 515 of 1996

Ramashrey Ram, son of Late Dukhan Ram, resident of village Kazi Mohammadpur, P.O.- Kazi Mohammadpur, District- Muzaffarpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 494 of 1996)

For the Appellant/s : Mr. Aaruni Singh, Advocate
Mr. Sandip Kumar Gautam, Advocate
For the Respondent/s : Mr. Bipin Kumar APP

(In CRIMINAL APPEAL (DB) No. 515 of 1996)

For the Appellant/s : Mr. Aaruni Singh, Advocate
Mr. Sandip Kumar Gautam, Advocate
For the Respondent/s : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH

SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 02-09-2022

The aforesaid criminal appeals have been filed in the year 1996 i.e., 26 years ago. They arise out of common judgment of



conviction dated 28.09.1996 and order of sentence dated 30.09.1996. Therefore, after being heard together, they are being disposed of by a common judgment.

2. When both the appeals were taken up on 28.06.2022, a report was called for from the Senior Superintendent of Police, Muzaffarpur in order to find out whether the appellants were alive or dead. Pursuant to that order, a report was received in which the concerned authority has reported that one of the appellants namely, Sitaram Ram (in Cr. Appeal (D.B.) No. 494 of 1996) is dead and, remaining appellants are alive. Therefore, by order dated 26.07.2022, the appeal against Sitaram Ram (appellant No. 2 in Cr. Appeal (D.B.) No. 494 of 1996) got abated and now Cr. Appeal (D.B.) No. 494 of 1996 is confined to appellants namely appellant No. 1 Devpati Devi and appellant No. 3 Ganesh Ram.

3. By judgment of conviction dated 28.09.1996 and order of sentence dated 30.09.1996, passed by Sri Paras Nath, 3rd Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 351 of 1995 arising out of Paroo P.S. Case No. 42/1995, G.R. Case No. 353/1995, the present appellants namely Devpati Devi, Ganesh Ram (appellants in Cr. Appeal (D.B.) No. 494 of 1996) and Ramashrey Ram (appellant in Cr. Appeal (D.B.) No. 515 of 1996) have been convicted under Sections 302, 452 and 323 of the Indian Penal Code



and have been sentenced to undergo imprisonment for life under Section 302 of the Indian Penal Code, rigorous imprisonment for one year under Section 452 of the Indian Penal Code and rigorous imprisonment for six months under Section 323 of the Indian Penal Code and the sentences which were to be served by the appellants have been directed to run concurrently.

4. The prosecution case is that the informant Akli Devi recorded her fardbeyan before the S.I. of Paroo Police Station on 25.04.1995 at 9 A.M. wherein she stated that on the last day of Chaiti Chhatha, at about 8 a.m., the accused Devpati Devi (wife of accused Ramashrey Ram) was beating her mother-in-law for some house-hold affairs. In the meantime, the informant, who was going for cutting the wheat, saw the incident and forbade her not to do so. Thereafter, the accused Devpati Devi threatened informant by stating that she would call her husband to commit assault on her. Thereafter, the informant stated that it is due to said incident that on the previous day at 8 p.m., the accused Sitaram Ram, Ramashrey Ram, wife of Ramashrey Ram and Ganesh Ram entered into the house of the informant and thereafter accused Ramashrey Ram assaulted on the right eye of the informant by the leg of wooden cot and the three remaining accused persons assaulted her by means of fists and slaps. In order to save her, the deceased came to that place after which the



appellant Ramashrey Ram assaulted with leg of wooden cot (khatiya ka pati) on the left side of the chest of the deceased due to which the deceased fell down. Thereafter, Satya Narayan Ram came into the house and after seeing him, the accused persons chased him with intention of assault and on seeing that Satya Narayan Ram fled away. At that time, Jai Narayan Ram, Dhari Charan Ram, Anil Ram and several other persons came there and pacified the matter. After two hours of the said incident, the deceased is said to have died.

5. The police after registration of the case carried investigation. After completion of investigation, the police submitted charge-sheet against the accused persons under Sections 302/34, 323 and 452 of Indian Penal Code. The cognizance of the offence was taken by the learned jurisdictional Magistrate and thereafter the case was committed to the Court of Sessions. Charges were framed under the aforesaid sections against the accused persons who pleaded not guilty and claimed to be tried.

6. During the trial, to substantiate the charges against the accused persons, the prosecution examined as many as twelve witnesses, namely, P.W.-1 Md. Sharif (formal witness to seizure list), P.W.2 Kailash Paswan, (tendered witness) P.W.-3 Sukan Ram (eye witness), P.W.4 Satya Narain Ram (son of the informant) (eye witness) P.W.5 Akli Devi (informant of the case) (eye witness), P.W.6



Jaga Ram (eye witness), P.W.7 Jai Narain Ram (eye witness), P.W.8 Anil Kumar (eye witness), P.W.9 Bhagnarain Paswan (formal witness to inquest report), P.W.10 Sunaina Devi (hearsay witness), P.W.11 Dr. Mumtaz Ahmad (doctor who conducted post-mortem of the deceased) and P.W.12 A.H. Khan (Investigating Officer of the case). Prosecution has also produced exhibits namely Ext. 1 signature of S.I. on seizure list, Ext.-2 signature of Jai Narayan Ram on statement under Section 164 of Cr.P.C., Ext.2/1 signature of Bhag Narain Paswan on carbon copy of inquest report, Ext. 3 is post-mortem report, Ext. 4 fardbeyan, Ext. 5 F.I.R., Ext.6 carbon copy of inquest report. The defence has neither produced any exhibits nor examined any witness in support of its case.

7. Heard learned counsel for the appellants and learned A.P.P. for the State.

8. Learned counsel Mr. Aaruni Singh appearing for the appellants vehemently submits that the prosecution has miserably failed to prove the manner of occurrence beyond the pale of reasonable doubt. There are material contradictions in the deposition of prosecution witnesses namely P.W.4 and P.W.5, who are considered to be eye witness, so far the manner of occurrence is concerned. Learned counsel further submits that the prosecution has not been able to prove the place of occurrence beyond reasonable



doubt. In order to support his contention he has drawn attention of this court towards the deposition of P.W.4 before the Trial Court, the fardbeyan of the Informant and the deposition of P.W.5 (informant). It has been further submitted that, P.W.3, P.W.6, P.W.7 and P.W.8 are not eyewitness to the present case. Furthermore, the accused persons have not been given a fair opportunity to defend their case, with respect to their examination under 313 of Cr.P.C. Moreover, in the view of the evidence of P.W.4 and P.W.5, it appears that in the examination-in-chief of both the witnesses, there has been a general and omnibus allegation against the accused without any specific allegation regarding the individual role played by them in the commission of offence. However, all the appellants have been convicted under Section 302 of the Indian Penal Code and not under Section 302/34 of the Indian Penal Code. Therefore, the finding of the Trial Court is perverse and the judgment of conviction is fit to be set aside.

9. Learned A.P.P. for the State, on the other hand, has submitted that the judgment of conviction and order of sentence under challenge requires no interference as the prosecution has been able to prove its case beyond all reasonable doubts. From the evidence, which has been adduced by the prosecution, the guilt of the appellants is satisfactorily proved and there is no infirmity in the



judgment of conviction and order of sentence rendered by the Trial Court.

10. After hearing the arguments advanced by the learned counsels appearing for the parties and perusing the material available on record, following issues arise for consideration in this appeal:-

(i) Whether the prosecution witnesses namely, P.W.3, P.W.6, P.W.7 and P.W.8 can be considered as eye witnesses to the manner of commission of offence?

(ii) Whether the prosecution, in light of the evidence produced and submitted before the Court, has been able to prove the manner of occurrence beyond reasonable doubt?

(iii) Whether the prosecution has revealed any source of identification, in order to prove the identification of the accused persons, beyond reasonable doubt?

(iv) Whether the Court, at the stage of recording the statement under Section 313 of Cr.P.C., has put the entire incriminating material which has come against the appellants in course of trial, in order to give fair opportunity to the accused persons?

(v) Whether, in light of the evidence adduced before the learned Trial Court, has the prosecution been able to bring home the guilt under Section 323 of Indian Penal Code beyond reasonable doubt?

11. Now adverting to the first issue, from perusal of the fardbeyan of Informant it is clear that the informant stated that when the deceased fell down by the blow of leg of wooden cot caused by the Ramashrey Ram , on the person of the deceased, thereafter, at the



same time, the witnesses viz. P.W.3, P.W.6, P.W.7 and P.W.8 arrived at the place of occurrence. Further, we have also perused the deposition of the informant wherein she has not stated anything about the presence of the aforesaid prosecution witnesses at the time of occurrence of the offence. Therefore, we are of the opinion that the prosecution witnesses viz., P.W.3, P.W.6, P.W.7 and P.W.8 cannot be regarded as an eyewitness to the manner of occurrence and their deposition before the Trial Court with respect to the manner of offence cannot be relied upon.

12. Now, we advert ourselves to the second issue, that whether the prosecution has been able to prove the manner of occurrence beyond reasonable doubt. In light of the first issue, as discussed above, the deposition of P.W.3, P.W.6, P.W.7 and P.W.8 cannot be relied upon to prove the manner of occurrence, therefore, we now proceed to examine the remaining prosecution witnesses namely, P.W.4 and P.W.5, in order to find that whether on relying upon the evidence of the said witnesses, the prosecution is able to prove the manner of occurrence beyond reasonable doubt. P.W.4, in his examination-in-chief, has made a general and omnibus allegation, against all the accused persons, wherein he has categorically stated in paragraph No. 1 of his deposition, that the accused persons namely Ramashrey Ram, Sitaram, Ganesh Ram, the wife of Ganesh Ram,



altogether assaulted the deceased as a result of which the deceased succumbed to death. Therefore, a general and omnibus allegation of assault has been made by this prosecution witness. Further the witness, in his deposition, has not specifically stated as to which appellant assaulted the deceased and nor there is any disclosure regarding the parts of the body of deceased, upon which appellants assaulted. Furthermore, in paragraph 3 of his deposition, he has totally changed the narration regarding the manner of occurrence, as he states that before the happening of the incident, he was within the house and his mother was cooking whereas his father was outside the house. Thereafter, the accused persons came to the house silently and accused called him out. Then his father and mother were subjected to assault. This deposition varies with respect to manner of occurrence in light of what has been stated in the fardbeyan of the informant (P.W.5) and in her deposition. In paragraph 1 of her deposition, the informant states that she was coming after earning wages and Ramashrey Ram was sitting there and after sometime during the talk between the accused Ramashrey Ram and the informant, the accused slapped on her face and thereafter she fell down. Further in paragraph 3 of his deposition, she has shifted the place of occurrence from within the house of the deceased, as stated in the fardbeyan, to the varandah of the house. Therefore, the evidence of P.W.4 does not



support the manner of occurrence as well as the place of occurrence in light of fardbeyan and the deposition of the informant. Further, P.W.4 in paragraph 4 of his examination-in-chief states that he has stated before the police, that he mentioned the names of the appellants namely Devpati Devi, Sita Ram and Ganesh Ram but from paragraph 4 of deposition of P.W.12, who is the investigating officer of this case, it is evident that Satya Narayan Ram (P.W.4) has not mentioned before him, the names of appellants namely, Sita Ram, Ganesh Ram and wife of Ramashrey Ram, in his statement recorded before him. Hence, the deposition of P.W.4 suffers from material contradictions and several infirmities and, thus, it cannot be relied upon to sustain the conviction of the appellants. Now, we would proceed to examine the evidence of P.W.5 (Informant). In respect to the manner of occurrence, the informant in her fardbeyan states that the appellant Ramashrey Ram came to her house and assaulted her on the right side of the eye by the leg of wooden cot and other appellants assaulted her with fists and slaps. Thereafter, the appellant Ramashrey Ram, by the same leg of wooden cot, assaulted her on the left side of the chest of the deceased whereafter the deceased succumbed to death. Further, in paragraph 1 of her examination-in-chief, the informant (P.W.5) stated that all the appellants jointly assaulted on the person of the deceased due to which he died. Thus,



she makes a general and omnibus allegation in her examination-in-chief. Thereafter, in her cross-examination, she materially contradicts, varies and improves her deposition as compared to her *fardbeyan*, as she states in paragraph 2 of her cross-examination that Ganesh Ram assaulted Parikshan Rai (deceased) on the chest of the deceased by the leg of the wooden cot. The appellant Sita Ram assaulted on the head of the deceased, Devpati Devi also assaulted with the leg of the wooden cot on the deceased and thereafter the deceased fell down on the ground and in furtherance to this, the appellant Ramashrey Ram assaulted the deceased. Therefore, the evidence as deposed by the informant suffers from material contradictions, variations and improvements with respect to manner of occurrence as the same is in variance to the *fardbeyan* of the informant. Further, in paragraph 4 of her cross-examination, the informant states that she mentioned the names of the appellants, namely, Sita Ram, Devpati and Ganesh Ram before the Police, who have caused the death of the deceased. But P.W.12, the Investigating Officer of this case, in paragraph 5 of his deposition has stated that the informant has not mentioned the names of the appellants, namely, Sita Ram, Ganesh Ram and Devpati Devi, in her re-statement recorded before him. Therefore, contradictions in the evidence of the informant are not mere explanations or elaborations but



tantamount to material contradictions and vital omissions. The Hon'ble Supreme Court has given serious consideration on the law relating to material contradictions in evidence put before the Court. The Hon'ble Court in ***Sunil Kumar Sambhudayal Gupta and Ors. vs. State of Maharashtra (2010)13SCC657*** in paragraph 16 has observed the following:

“The discrepancies in the evidence of eye-witnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that prosecution proved its case beyond reasonable doubt.”

Therefore, in view of the law settled by the Hon'ble Supreme Court and in regard to the facts and circumstances of the case as also after the appreciation of evidence, this Court has come to the conclusion that the evidence of P.W.4 and P.W.5 cannot be relied upon to sustain the conviction of the appellants in light of the material contradictions, variations and improvements made in their deposition with regard to the manner of occurrence is concerned. Hence, the prosecution has not been able to prove the case beyond the shadow of reasonable doubt.



13. Now, adverting ourselves to the third issue, after minute appreciation of the entire evidence viz, fardbeyan of the informant and deposition of prosecution witnesses, namely, P.W.4 and P.W.5, there is no revelation in the entire gamut of evidence produced by the prosecution either in examination-in-chief or in cross-examination, relating to the source of identification of the accused persons, through which the informant is said to have identified the accused persons, involved in assaulting on the person of the informant as well as on the deceased. The Hon'ble Supreme Court in ***Kapildeo Mandal & Ors versus State of Bihar*** reported in ***A.I.R. 2008 SC 533*** in paragraph No. 9, in light of the appreciation of evidences of witnesses and investigating officer in regard to the source of identification has observed that:

“It has come in evidence of the witnesses as well as the investigating officer that neither the torch or the lantern was seized by the I.O. during the course of investigation nor it was produced before the Court. In the circumstances, it is difficult to believe that the appellants have been identified in the torch light or in the lantern light”.

Therefore, in the light of the settled judgment of Hon'ble Supreme Court referred to above and on consideration of the deposition of the Investigating Officer (P.W.12) wherein he has not stated anything about the source of identification on the place of occurrence and in absence of any evidence regarding source of identification in the



deposition of prosecution witnesses, the prosecution has not been able to reveal any source of identification in order to prove the commission of offence by accused persons beyond reasonable doubt.

14. Now, in order to deal with the fourth issue as formulated above, after perusal of the evidence on record in respect of examination of the accused persons under Section 313 of Cr.P.C., it appears that the suggestions which have been put forth show a general and omnibus allegation on the appellants in regard to the commission of offence and no suggestions have been put to the appellants with respect to their individual act in the commission of offence for which they have been charged and convicted. The Hon'ble Supreme Court in the case of ***Makan Jivan and Ors. Versus The State of Gujarat*** reported in ***A.I.R. 1971 SC 1797*** in paragraph 15 has observed that :

“.....It is the duty of the Trial Court to put each of the accused to various circumstances appearing against them and further put the prosecution case generally for the purposes of affording the accused an opportunity to explain the circumstances appearing against them.....”

In the light of law laid down by the Hon'ble Supreme Court and from appreciation of evidence on record, this Court has come to the conclusion that the appellants have been denied a fair opportunity to



defend their case and the learned Trial Court has failed to discharge its duty.

15. Now coming to the fifth issue, the informant in her fardbeyan states that the appellant Ramashrey Ram had assaulted her on right side of the eye with the leg of wooden cot and further in cross-examination of her deposition, she stated in paragraph 3 that she was treated by the doctor with respect to the injury caused on her person by the assault of the appellants and she further stated that she went to hospital along with Police. But no injury report has been marked as exhibit and produced before the Court by the prosecution, with respect to the said injury on the person of the informant. Further, the doctor, whom the informant claims to have treated her, has not been examined by the prosecution and P.W.12 in his deposition does not state about the injury sustained by the informant, her medical treatment by the doctor and his assistance in taking her to the hospital for treatment. Therefore, the prosecution has not been able to bring home the charge under Section 323 of I.P.C. beyond reasonable doubt.

16. On the basis of findings arrived at on the issues formulated above, we are of the considered opinion that the conviction of the appellant is not sustainable in the eyes of law and



the prosecution has failed to prove its case beyond all reasonable doubt.

17. Therefore, the present appeals stand allowed and judgment of conviction dated 28.09.1996 and order of sentence dated 30.09.1996 passed by Sri Paras Nath, 3rd Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 351 of 1995, arising out Paroo P.S. Case No. 42/1995, G.R. Case No. 353/1995, are set aside. Since the appellants are on bail, they are discharged from the liabilities of their bail bonds.

18. We record our word of appreciation for Mr. Aaruni Singh, learned counsel for the appellants, who was well prepared and has argued his case in a proficient manner.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Pankaj/-

AFR/NAFR	NAFR
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