

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.505 of 2019

Arising Out of PS. Case No.-174 Year-2010 Thana- PUPRI District- Sitamarhi

GANGA PRASAD RAUT S/O Late Sonelal Raut R/O Village- Choraut Purvi
Tola, P.S.- Pupari, District- Sitamarhi

... .. Appellant

Versus

1. The State of Bihar
2. Jhari Lal Mahto Son of Rambilash Mahto Resident of Village- Parigama Tole Jogia, P.S.- Pupari, District- Sitamarhi
3. Shashi Mahto S/O Late Hira Lal Mahto Resident of Village- Parigama Tole Jogia, P.S.- Pupari, District- Sitamarhi
4. Munna Mahto S/O Batahu Mahto Resident of Village- Parigama Tole Jogia, P.S.- Pupari, District- Sitamarhi
5. Rajesh Mahto S/O Munna Mahto Resident of Village- Parigama Tole Jogia, P.S.- Pupari, District- Sitamarhi
6. Ram Kumar Mahto S/O Mishri Lal Mahto Resident of Village- Parigama Tole Jogia, P.S.- Pupari, District- Sitamarhi
7. Mithilesh Mahto S/O Late Siya Mahto Resident of Village- Parigama Tole Jogia, P.S.- Pupari, District- Sitamarhi
8. Umesh Mahto S/O Late Siya Mahto Resident of Village- Parigama Tole Jogia, P.S.- Pupari, District- Sitamarhi

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. S.N. Yadav, Advocate Mr. Saroj Kumar, Advocate
For the Respondent/s	:	Km. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 14-07-2022

This appeal has been filed under Section 372 of the
Code of Criminal Procedure putting to challenge the judgment and
order dated 16.03.2019 passed in Sessions Trial No. 327 of



2016/146 of 2018, arising out of Pupari P.S. Case No. 174 of 2010 whereby the learned Additional Sessions Judge, Fast Track Court No. II, Sitamarhi has recorded acquittal of respondents No. 2 to 8 of charge of the offence punishable under Section 302/34 of the Indian Penal Code. The said Pupari P.S. Case No. 174 of 2010, was registered at the instance of the informant (P.W-2). The police, upon investigation, had submitted its final report since no evidence could be collected during the course of investigation by the police. The police report under Section 173 of the Code of Criminal Procedure was submitted with the remark that though the case was true, there was no clue. Apparently, on the basis of a protest-cum-complaint petition filed by the informant, the charge against the respondents was framed and they were put on trial. During the course of trial, altogether eight witnesses were examined including the appellant, who was the informant, as P.W-2. The P.Ws-1, 4 and 5 claimed to be the eye witnesses of the occurrence.

2. Briefly narrated, it was the prosecution's case, as disclosed in the protest-cum-complaint petition, that on 12.10.2010, when the deceased was resting after having taken meal, he received the call from one of his relatives Kuldeep Hathi of village Yadupatti, whereafter he had proceeded to Yadupatti in a cycle. The complainant further disclosed in the protest cum



complaint petition that he learnt from Mahesh Kapar (P.W-5), Hardeo Kapar (P.W-4) and Sadhu Mahto (P.W-1), that they had also met the deceased in the midway, and while they were proceeding in the same direction with the deceased, all the seven persons, named in the First Information Report, came riding in motorcycle, intercepted the deceased and killed him by firing gunshots.

3. It is evident from the impugned judgment of the trial court and the evidence of the witnesses, copies of which have been brought on record by the appellant that the prosecution witnesses 1, 4 and 5 claimed themselves to be the eye witnesses. The court below, however, noticed manifest inconsistency in the evidence of the said eye witnesses, which has been noted in the impugned judgment, which reads as under:-

“From the evidence of these three prosecution witnesses (P.Ws-1, 4 and 5) it is obvious that their evidence is contradictory to each other. P.W-1 Sadhu Mahto has stated in his evidence that on the date of occurrence he had gone to village Choraut when Luchai Panjiyar (deceased) came to him and on his request he along with Mahesh Kapar (P.W-5), Hardeo Kapar (P.W-4) and the deceased proceeded for village Yadupatti and in the way the occurrence took place, whereas P.W-5 Mahesh Kapar has stated in his evidence that on the date of



occurrence when he was going from Choraut to Yadupati in the way he saw the deceased going ahead and P.W-4 Hardeo Kapar has stated in his evidence that at the time of occurrence he was in Choraut Bazar and when he was going to village Yadupatti in the way the occurrence took place. Their evidence is not consistent if these three witnesses were accompanying the deceased together from Choraut to village Yadupatti and saw the occurrence allegedly committed by the accused persons in the way or they were going from village Choraut to Yadupatti separately and met the deceased in the way and saw the occurrence”.

4. The trial court has also noticed previous animosity, which could be the reason for false implication of the persons put on trial in paragraph 13, which reads as under:-

“13. From the evidence of these three so called eye witnesses (P.Ws-1,4 and 5) themselves it is manifest that they were on inimical term with the accused persons since before the alleged occurrence of this case. It has come in cross-examination of P W 1 Sadhu Mahto that murder of one Siya Mahto was committed in the year 1996 for which Pupri P.S. case no.44/96 was registered in which he and P W 4 Hardeo Kapar were accused and two sons of Siya Mahto, namely, Mithilesh Mahto and Umesh Mahto are accused in this case and deceased Luchai Mahto was also accused in that murder case and that case was



lodged by grand father of accused Mithilesh Mahto and Umesh Mahto of this case. He has further stated that he had not given his statement before police in the present murder case of deceased Luchai. He has further stated that after death of deceased Luchai his two sons Baleshwar Panjiyar and Aseshar Panjiyar had come and he had not met wife of Luchai on the date of occurrence.

PW 4 Hardeo Kapar has also stated in his cross-examination that before this case murder of Harilal Mahto was committed in which he, Mahesh Kapar (P W 5) and brother of Sadhu Mahto (P W 1), namely, Batohi Mahto were accused and they were convicted and sentenced to imprisonment for life in the said case lodged by accused Jharilal Mahto (accused of this case) and he and Mahesh Kapar (P W 5) are in Jail in that connection. He has further stated that in the case of murder of Harilal Mahto accused of the present case, namely, Jharilal Mahto, mother of accused Shashi Mahto, namely, Sumitra Devi and uncle of accused Mithilesh , namely, Suresh Mahto had deposed against them and in that case aforesaid witnesses have falsely implicated them (the witness and others). He has stated that Luchai Panjiyar is his brother in relation and he has denied the suggestion of the defence that he has not seen the occurrence and he has falsely implicated the accused persons due to previous enmity.

PW 5 Mahesh Kapar has also stated in his cross-examination that accused Jharilal Mahto had



lodged case against him, Hardeo Kapar (P W 4) and others in connection with murder of his brother Harilal Mahto in which he has been convicted and sentenced to imprisonment for life and in that connection he is in jail custody for the last two years. He has stated that the deceased was his grand father in relation. He has denied the suggestion of defence that accused Jharilal had lodged case against him for murder in which accused persons of this case and their relatives were witness and for that annoyance he has deposed false evidence against the accused persons and that he has not seen any occurrence.”

5. Mr. S.N. Yadav, learned counsel appearing on behalf of the appellant has submitted that the trial court was swayed away by the factum of animosity between the parties because of killing of one Harilal Mahto in respect of which brother of P.W-1 and P.Ws-4 and 5 were convicted. He has submitted that the deceased was also one of the accused in the case of killing of said Harilal Mahto. He has further submitted that minor contradictions in the evidence of prosecution witnesses 1, 4 and 5 ought not to have been the basis for the trial court to acquit the respondents No. 2 to 8.

6. We have perused the impugned judgment and order of the trial court as well as the evidence of prosecutions witnesses 1, 4 and 5 noted in judgment. The inconsistencies in the evidence of



P.Ws- 1,4 and 5 cannot be said to be of such minor nature as would have required the court below to believe them beyond all reasonable doubts. The trial court, in our opinion, has rightly discarded the evidence of P.Ws- 1, 4 and 5, there being apparent inconsistency as has been noticed in paragraph 12 of the judgment of the trial court, quoted hereinabove.

7. We do not find any merit in this appeal, which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

Pawan/-

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