

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.242 of 2015

Arising Out of PS. Case No.-107 Year-2011 Thana- BIDUPUR District- Vaishali

Shyambabu Rai, son of Chandra Deo Rai, resident of village - Nawangar, P.S.
Bidupur, District - Vaishali

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 247 of 2015

Arising Out of PS. Case No.-107 Year-2011 Thana- BIDUPUR District- Vaishali

Chandra Deo Rai, son of Late Shitab Rai, resident of village - Nawangar, P.S.
Bidupur, District - Vaishali

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 242 of 2015)

For the Appellant/s : Mr. Prakash Chandra Jha, Advocate

For the State : Ms. S.B. Verma, APP

(In CRIMINAL APPEAL (DB) No. 247 of 2015)

For the Appellant/s : Mr. Prakash Chandra Jha, Advocate

For the State : Ms. S.B. 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 : 26-08-2022

Heard Mr. Prakash Chandra Jha, learned counsel
appearing on behalf of the appellants and Ms. S.B. Verma, learned
Additional Public Prosecutor representing the State.



2. By the impugned judgment and order dated 21.01.2015/23.01.2015 passed by learned 1st Additional Sessions Judge, Vaishali, Hajipur in Sessions Trial No. 83 of 2012 the appellants have been convicted and sentenced as under:

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
CRIMINAL APPEAL (DB) No.242 of 2015			
302/34 of the I.P.C.	Imprisonment for life	15,000/-	S.I. for six months
CRIMINAL APPEAL (DB) No. 247 of 2021			
302/34 of the I.P.C.	Imprisonment for life	15,000/-	S.I. for six months

3. The informant (P.W.-5) is the brother of the deceased. The case of the prosecution as unfolded in the First Information Report registered on the basis of *fardbeyan* of the informant (P.W.-5) is that the deceased was an employee in “RBN Para Battalion” and had come to his home village on leave. At 2:00 p.m. in the afternoon on 17.05.2011 the accused persons viz. Chandra Deo Rai (appellant in Criminal Appeal (DB) No. 247 of 2015), Shyambabu Rai (appellant in Criminal Appeal (DB) No.242 of 2015) and Raju Kumar came and invited the deceased to their residence. The deceased went to their residence. Thereafter, these appellants and Raju Kumar overpowered him. Appellant Shyambabu Rai thereafter, hit the deceased with a sword in his chest causing grievous injuries. Appellant Chandra Deo Rai assaulted him with sickle (*hasua*) in his left leg. After having heard



the noise they reached there to find that the deceased was lying in a pool of blood. The deceased was taken to Sadar Hospital, Hajipur. The doctor however, referred the deceased for better treatment to P.M.C.H., but, before the deceased could be taken to P.M.C.H. he died on way at *Gandhi Setu*. From there the dead body of the deceased was brought back to the Sadar Hospital, Hajipur. He also disclosed that there was land dispute going on, which was the reason why the appellants and the said Raju Kumar after taking the deceased into their confidence took him to their residence where they killed him in the manner as mentioned in the F.I.R. The *fardbeyan* (Exhibit-4) of the informant was recorded by a police officer of Town P.S. at Sadar Hospital Hajipur at 7:30 p.m. Upon the said *fardbeyan* having been referred to the concerned police station having territorial jurisdiction, a formal F.I.R. (Exhibit-5) came to be registered as Bidupur P.S. Case No. 107 of 2011 on 18.05.2011 which discloses that the information was received in the police station on 18.05.2011 at 9:45 a.m.

4. It appears that based on the disclosure made in the *fardbeyan* a police officer of Bidupur police station had arrested the appellants who were found present in the same Sadar Hospital. The investigation was however, subsequently entrusted to the said police officer after formal registration of the F.I.R. on 18.05.2011.



5. The police, upon completion of investigation, submitted charge-sheet against these appellants based on which the cognizance was taken and the case was subsequently committed to the Court of Sessions. The charge of commission of offence punishable under Section 302/34 of the I.P.C. against these appellants was framed by the trial court on 25.06.2012.

6. Upon completion of evidence of the prosecution, the Trial Court explained to the appellants the circumstances coming against them based on the prosecution's evidence with an opportunity to them to explain the circumstances. The appellants however, denied the circumstances which were coming against them.

7. During the course of trial altogether seven prosecution witnesses were examined including the Doctor as P.W.-6 and the Investigating Officer as P.W.-7. The mother of the deceased was examined as P.W.-1, his sister as P.W.-2, his daughter as P.W.-3, his one of the cousins as P.W.-4 and the informant as P.W.-5. The *postmortem* report was exhibited as Exhibit-3, the *fardbeyan* and the formal F.I.R. were exhibited as Exhibits-4 and 5 respectively and the inquest report prepared at Sadar Hospital, Hajipur was exhibited as Exhibit-6. The signature of the informant on the



fardbeyan was exhibited as Exhibit-1, whereas, signature of the witness to the *fardbeyan* as Exhibit-1/1.

8. Upon analysis and scrutiny of the evidence adduced at the trial, the Trial Court found the charge of the offence punishable under Section 302/34 of the I.P.C. proved beyond all reasonable doubts against these appellants and accordingly imposed the punishment of sentence to life imprisonment with fine as noted hereinabove.

9. Assailing the impugned judgment and order of the Trial Court, Mr. Prakash Chandra Jha, learned counsel representing the appellants in both the appeals has submitted that the prosecution has failed to establish beyond all reasonable doubt the most crucial aspect of the matter i.e. the place of occurrence. In support of this submission he has drawn the Court's attention to the deposition of P.W.-2, the sister of the deceased, who in paragraph-4 disclosed that the distance between the house of the appellant Chandra Deo Rai, which according to the prosecution's case is the place of occurrence, and that of the deceased is one kilometer. He has further submitted that on the one hand, P.W-2 has deposed that blood was lying on the floor near the house of the appellant Chandra Deo Rai which was shown by her to the police when the Investigating Officer(P.W.-7) had arrived for the



first time at the place of occurrence, on the other hand, the Investigating Officer(P.W.-7) in paragraph-6 of his deposition has clearly stated that he had not found any sign of blood at the place of occurrence. The Investigating Officer further deposed that he did not find any evidence which could suggest that the said place was the place of occurrence. Only the witnesses during the course of investigation had informed him about the place of occurrence. Learned Counsel for the appellants contends that this material contradiction on the point of place of occurrence in the evidence of P.W.-2 and the Investigating Officer (P.W.-7) raises a reasonable doubt as regards the place of occurrence as disclosed in the prosecution's case. He has further submitted that though P.W.-1, the mother of the deceased and P.W.-2, his sister claimed to be the eye-witnesses, the evidence adduced at the trial suggests otherwise, rather indicate that they are not eye-witnesses to the occurrence. He has also submitted that P.W.-5, though during the course of trial in his deposition has claimed to be an eye-witness, the said narration is apparently false in view of the disclosure made by him in his *fardbeyan* that he reached the place of occurrence after hearing the noise before which occurrence had already taken place. He contends that there is no independent witness examined at the trial and no resident of the village was



examined at the trial. It is his submission, thus, that the prosecution failed to establish the motive behind commission of offence by these appellants which is an additional ground why the finding recorded by the Trial Court deserves interference by this Court. P.W.-5, the informant in paragraph-11 of his deposition has stated that the body of the deceased was wrapped by a towel and blood stains were there on the clothes of the informant and other family members who had lifted the body of the deceased. He (P.W.-5) has further deposed that though the police officer had seen the said blood soaked towel and the clothes, he did not obtain the blood soaked towel or other blood stained clothes for the purpose of investigation. Learned counsel for the appellants contends that either the deposition of P.W.-5 to the effect that he had shown the blood soaked/stained cloths to the police officer is false or there is abject failure on the part of the investigation to collect the material evidence. In either of the cases, the case of the prosecution becomes doubtful and it cannot be said that the charge against the appellants stood proved on the basis of such insufficient, inadequate and contradictory evidences. He has further argued that in order to establish the motive the prosecution attempted to prove that there was land dispute which was the reason why the offence was committed. However, the evidence as



regards land dispute is quite vague as mentioned by P.W.-3 in her deposition. He has further argued that surprisingly the wife of the deceased was not examined during the course trial. He contends that the witnesses have disclosed in respect of the wife of the deceased that she had left the house 10-12 days after the occurrence whereafter, there is no clue about her whereabouts. This circumstance, he contends raises a reasonable doubt in respect of the case of the prosecution as disclosed in the F.I.R. and as disclosed in the evidence of the witnesses at the trial. He has placed reliance on a Division Bench decisions of this Court in case of ***Ram Singhashan Singh and Ors. vs. The State of Bihar*** reported in ***2012 (4) PLJR 851*** and ***Guddu Rai and Ors. vs. The State of Bihar*** reported in ***2012 (4) PLJR 1064*** in support of the contention that non-examination of independent witnesses who had come to the place of occurrence after the occurrence is fatal to the case of the prosecution and the exact location of the place of occurrence having not been identified, the entire case of the prosecution comes under the shadow of doubt.

10. Learned Additional Public Prosecutor representing the State of Bihar in reply has submitted that mother of the deceased examined as P.W.-1, an eye-witness, has given a vivid description of the manner of occurrence and the place of



occurrence. It has come in the evidence of P.W.-1, she contends, that his daughter P.W.-3 had accompanied her to the house of the appellant Chandra Deo Rai and both of them had seen with their eyes the occurrence taking place in front of them. Since the evidence of P.W.-1 and P.W.-3 is corroborated by the medical evidence, finding of guilt recorded by the Trial court does not warrant any interference by this Court, she argues. She has further submitted that contradictions in the evidence of the prosecution witnesses if any are of minor and insignificant nature and are immaterial to disbelieve and discard their evidence altogether. She contends that since evidence of the prosecution is based on deposition of the eye-witnesses in whose presence the occurrence had taken place, failure on the part of the police officer to obtain blood stained clothes cannot vitiate the finding of conviction. She has also argued that the place of occurrence has been adequately identified in the evidence of P.W.-4 as the house of appellant Chandra Deo Rai where he had seen the dead body of the deceased lying. He (P.W.-4) had also seen the blood stained sword which the appellant Shyambabu Rai was carrying at the place of occurrence. She accordingly contends that charge against the appellants of commission of offence punishable under Section 302/34 of the I.P.C. has been rightly held to have been proved beyond all



reasonable doubts and submits that these appeals deserve to be dismissed.

11. We have carefully perused the impugned judgment and order of the Trial Court. We have examined and scrutinized the lower court records containing the evidence adduced at the trial by the prosecution to establish the charge of commission of offence punishable under Section 302/34 of the I.P.C. against these appellants. We have given our anxious consideration to the rival submissions made on behalf of the parties. Before proceeding to deal with the rival submissions made on behalf of the parties, we need to take note of certain salient features of the prosecution evidences.

12. P.W.-1 is the mother of the deceased. She has deposed that the appellants and co-accused Raju Kumar had come to her house and had requested the deceased to come to their residence. She has further deposed that “there” (i.e. at the house of the appellant Chandra Deo Rai) these appellants and Raju Kumar, Asarfi and Meena Devi had caught hold of the deceased. It may be noticed at this stage that P.W.-5, the informant who had subsequently in his deposition has claimed to be an eye-witness had not averred in the *fardbeyan* Asarfi and Meena Devi had also caught hold of the deceased. P.W.-1 though deposed that the doctor



at Sadar Hospital Hajipur had referred for better treatment to P.M.C.H., there is no corroborating evidence to support this part that the deceased was taken immediately to the nearest Sadar Hospital after the occurrence had taken place. In her deposition, she further deposed that the house of appellant Chandra Deo Rai was ten steps away from the house of P.W.-1 and she had gone to the place of occurrence after hearing the noise. She has stated that her daughter (P.W.-3) had accompanied her when she reached the residence of appellant Chandra Deo Rai. She further deposed that she stayed at the house of the appellant Chandra Deo Rai for 5-10 minutes during which she did not notice presence of any other person. She denied knowledge of any land dispute with these appellants rather disclosed that before the occurrence, there was no dispute with the appellant Chandra Deo Rai.

13. Deposition of P.W.-2 is almost on the same line as of P.W.-1 except the fact that she described the distance between the house of the appellants and the deceased to be one kilometer. She further deposed, contrary to deposition of P.W.-1 that there was some land dispute with the appellant Chandra Deo Rai. In paragraph-5 of her deposition she deposed that the appellants and Raju Kumar had come to invite the deceased and five minutes thereafter she heard the noise whereafter, they (P.W.1 and P.W.-2)



rushed to the place of occurrence. It is crucial to note that in her deposition P.W.-2 has stated that blood was lying on the floor near the doorstep of the house of Chandra Deo Rai (the appellant) which was shown to the police. It is an admitted case of the prosecution that no blood soil was obtained by the police rather the Investigation Officer (P.W.-7) in his deposition has stated that he did not find any sign of blood at the place of occurrence.

14. P.W.-3 is the daughter of the deceased, who was minor (11 years of age) on the date of her examination before the Court. She also claimed to be an eye-witness of the occurrence in her deposition. According to her, she reached the place of occurrence after hearing the noise. She further deposed that there was some land dispute with appellant Chandra Deo Rai.

15. P.W.-4, a cousin of the deceased, also claims to be one who reached the place of occurrence after hearing noise. He also found appellant Chandra Deo Rai carrying a blood stained sword and the injured deceased lying on the floor. According to him appellant Chandra Deo Rai was carrying a sickle (*hasua*) and appellant Shyambabu Rai, blood stained sword. He deposed that his house from the house of appellant Chandra Deo Rai was fifty steps away. According to him, along with him other villagers also



came to the place of occurrence but expressed his inability to disclose their names.

16. P.W.-5, the informant in his deposition supporting the case of the prosecution has claimed to be an eye-witness of the entire occurrence as according to him, he saw appellant Shyambabu Rai assaulting the deceased with sword in his chest and the appellant Chandra Deo Rai with a sickle(*hasua*) in his left leg. Co-accused Raju Kumar was seen by him pulling the leg of the deceased whereas Meena Devi and Asarfi were seen giving orders to kill the deceased. He has deposed that after the death of the deceased, his wife (wife of the deceased) had left her matrimonial home and thereafter her whereabouts were unknown. He admitted in his cross examination that he had not informed the police station about the occurrence immediately thereafter, which is two kilometers away from his house. According to him, a towel was wrapped around the body of the deceased which was soaked with blood. The wife of the deceased, Parvati Devi was also one among those who had lifted the body of the deceased.

17. The doctor (P.W.-6) proved the *postmortem* report containing following *antemortem* injuries on the body of the deceased:-



“(i) External Injury: incised wound on chest wall 10” long X 2 ½ “ thoracic viscera, lungs, heart seen.

(ii) Incised wound on left foot 5” long X bone cut.

On dissection- head, neck, skull bone intact. Brain matter intact and pale. Neck muscle intact. Trachea intact and pale.

Thorax- incised wound on thoracic wall, sternum along with ribs or thoracic cage fractured. Lungs injured or incised both left and right. Heart intact. Left and right ventricle empty of blood. Abd: Abd cavity intact. Stomach contains small amount of food material. Small and large intestine contains food materials and gases. Liver, spleen, kidney intact and pale. Private part intact.

M.I.: old scar on upper arm (Lt.)

(2) Time elapsed since death within 24 hours of P.M. examination.

Substance used- sharp object.

Opinion: cause of death is due to haemorrhage and shock.”

18. The defence examined the sole witness Jailal Rai as D.W.-1, who has deposed that after having learnt that the deceased was killed in an orchard, he had gone there. Others had also gone there and noticed that blood was lying there. According to the sole defence witness the place of occurrence was not the one as disclosed by the prosecution in the *fardbeyan* and in the evidence adduced at the trial.



19. In our opinion, evidence of P.W.-5 the informant who claimed during the trial to be an eye-witness does not appear to be truthful. This is for more than one reasons. Firstly, he did not claim himself to be an eye-witness of the occurrence and the manner of occurrence in his *fardbeyan*. It is true that a *fardbeyan*/F.I.R. is not expected to be an encyclopedia of the entire case of the prosecution, still whether the informant was an eye-witness or not can be inferred from the disclosure made in the *fardbeyan*, which is the initial version of the prosecution's case. Secondly, P.W.-1 in her deposition has stated that when she went to the place of occurrence she was accompanied by her daughter (P.W.-3). She is further clear in her evidence that no one else had gone to the place of occurrence along with her. Contrary to the evidence of P.W.-1, P.W.-5 the informant has claimed that he too had gone to the place of occurrence whereafter in his presence the occurrence in fact had taken place. The evidence of P.W.-2 and P.W.-7 (Investigating Officer) are contradictory on a very crucial point as regards presence of blood at the place of occurrence. Whereas, P.W.-2 has claimed that she had shown to the police the signs of blood present on the floor, the Investigating Officer has specifically deposed that he had not seen any sign of blood at the place of occurrence nor he had made any attempt to find out as to



whether there could be another place of occurrence. In our view, learned counsel for the appellant is correct in his submission that the evidence of the prosecution witnesses are contradictory to each other which raises a reasonable doubt on the point of place of occurrence. Further, there is no justification on record as to why the blood stained clothes were not seized by the police particularly in the background of the fact that the police have not found any mark of blood at the place of occurrence.

20. It is true that evidence of relatives of the deceased cannot be outrightly discarded on the sole ground that they are highly interested witnesses, failure on the part of the prosecution to examine at least some of the witnesses who had arrived at the place of occurrence according to the case of the prosecution to establish the identity of the place of occurrence cannot be ignored. Non-examination of any independent witness in the present facts and circumstances of the case, in the Court's opinion, raises a reasonable doubt on the prosecution's case as disclosed in the *fardbeyan* and developed at the trial.

21. Further, total absence of the wife of the deceased from the scene is another reason which cannot be overlooked and deserves to be taken into account by this Court in the background of the evidence that she left her matrimonial home 10-12 days



after the deceased was killed. There is no evidence on record to show that any attempt was made by the prosecution to ensure presence of the wife of the deceased as a prosecution witness at the trial. There is no explanation coming forth as to why no effort was made to locate her. She would have been a crucial witness to disclose the truth. Non-examination of the wife of the deceased, who was an important witness also casts a reasonable doubt on the prosecution's case.

22. In view of the above noted discussions, in our opinion, the appellants deserve to be given benefit of doubt considering the material contradictions in the deposition of the witnesses, absence of examination of the independent witnesses and non-examination of the wife of the deceased. We have already observed on analysis and scrutiny of evidence on record that the prosecution failed to establish beyond all reasonable doubt the identity of the place of occurrence.

23. The impugned judgment and order of the trial court, in the facts and circumstances of the case, deserves interference by this Court.

24. Accordingly, the impugned judgment of conviction and order of sentence dated 21.01.2015/23.01.2015, passed by learned 1st Additional Sessions Judge, Vaishali, Hajipur in



Sessions Trial No.83 of 2012, arising out of Bidupur P.S. Case No. 107 of 2011 is set aside.

25. The appeals are allowed. The appellants are acquitted of the charge of commission of offence punishable under Section 302/34 of the Indian Penal Code giving them benefit of doubt.

26. The appellants are in jail. Let them be released forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

Rajesh/anand/-

AFR/NAFR	NAFR
CAV DATE	NA
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