

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.97 of 2020

Arising Out of PS. Case No.-222 Year-2014 Thana- SHEKHPURA District- Sheikhpura

=====

Avinash Kumar @ Avinash Singh, S/o Sita Ram Singh, R/o village- Chitaura,
P.S.- Mehush, District- Sheikhpura

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with
CRIMINAL APPEAL (DB) No. 114 of 2020

Arising Out of PS. Case No.-222 Year-2014 Thana- SHEKHPURA District- Sheikhpura

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Mukesh Singh @ Mukesh Kumar, Son of Panduk Singh, Resident of Village-
Kamta, P.S.-Sheikhpura, District-Sheikhpura.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with
CRIMINAL APPEAL (DB) No. 234 of 2020

Arising Out of PS. Case No.-222 Year-2014 Thana- SHEKHPURA District- Sheikhpura

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Kallu Kumar @ Kallu Singh, Son of Bhaso Singh, Resident of Village and
P.S.- Mehus, Distt - Sheikhpura.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

(In CRIMINAL APPEAL (DB) No. 97 of 2020)

For the Appellant/s :

Mr. Ansul, Advocate

Mr. Ram Vinay Prasad Singh, Advocate

Mrs. Sagrika, Advocate

Mr. Aditya Pandey, Advocate

Mr. Abhishek Kumar, Advocate



For the Respondent/s : Mr. Ajay Mishra, APP
For the Informant : Mr. Satish Kumar, Advocate
(In CRIMINAL APPEAL (DB) No. 114 of 2020)
For the Appellant/s : Mr. Ansul, Advocate
Mr. Ram Vinay Prasad Singh, Advocate
Mrs. Sagrika, Advocate
Mr. Aditya Pandey, Advocate
Mr. Abhishek Kumar, Advocate
For the Respondent/s : Mr. Ajay Mishra, APP
For the Informant : Mr. Satish Kumar, Advocate
(In CRIMINAL APPEAL (DB) No. 234 of 2020)
For the Appellant/s : Mr. Ansul, Advocate
Mr. Ram Vinay Prasad Singh, Advocate
Mrs. Sagrika, Advocate
Mr. Aditya Pandey, Advocate
Mr. Abhishek Kumar, Advocate
For the Respondent/s : Mr. Ajay Mishra, APP
For the Informant : Mr. Satish Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 23-11-2023

All the three appeals by three appellants have been heard together and are being disposed off by this common judgment.

2. We have heard Sri Ansul, learned Advocate for the appellants, Mr. Satish Kumar for the informant and Mr. Ajay Mishra, learned APP for the State.

3. This appeal is against judgment and order of conviction and sentence dated 18.12.2019/19.12.2019 passed by the learned Additional Sessions Judge- IInd,



Sheikhpura in connection with Sessions Case No. 123 of 2016, arising out of Sheikhpura P.S. Case No. 222 of 2014, whereby the appellants have been convicted and sentenced to R.I. for life, to pay a fine of Rs. 1,00,000/- each and in default of payment of fine to further suffer R.I. for two years for the offence under Section 302 of the IPC and R.I. for life, to pay a fine of Rs. 1,00,000/- each and in default of payment of fine to further suffer R.I. for two years for the offence under Section 364 IPC.

4. The FIR has been lodged by Pratima Devi (P.W. 9), who is the mother of the deceased. On 23.06.2014, regarding the occurrence of the previous night i.e. on 22.06.2014, P.W. 9 has asserted that while she and her sister Simmi Kumari (not examined) were in her house, Rajnish and Champak came and called her son/Bir Kumar (the deceased). Outside the house, the appellants and others were waiting. The son of the informant was taken towards the field. When the daughter of P.W. 9 tried to stop the accused persons



from taking away her brother, appellant/Mukesh is said to have stopped her from holding back her brother. Nonetheless, Simpi Kumari followed the accused persons and saw that about 10-12 persons, who were present in the field, divested the deceased of his belongings and thereafter fired at him. The dead body was recovered on the next day. The police was not informed in the night of the occurrence. P.W. 9 claims to have gone to the police station on the next morning i.e. on 23.06.2014 to report about the occurrence. According to her, the deceased had suffered gun-shot injuries in his head and both the arms. The accused persons kept on firing till about 11:00 P.M. in the night of 22.06.2014. According to P.W. 9, the deceased had only recently come out of jail and had been residing in the house for the last 15 days. The reason attributed for the occurrence is the dispute during the time of election. For the reason of the deceased not having supported one Rajnish, there was enmity and at the instance of Rajnish, the appellants



were asked to murder the deceased.

5. Hence, the occurrence.

6. On the basis of the aforementioned *fardbeyan* statement of P.W. 9, Sheikhpura P.S. Case No. 222 of 2014 dated 23.06.2014 was registered for investigation under Sections 364, 302, 379, 201 and 120B of the Indian Penal Code and under Section 27 of the Arms Act.

7. The police after investigation submitted chargesheet against the appellants, whereafter they were put on trial. The Trial Court after having examined 14 witnesses on behalf of the prosecution and equal number of witnesses on behalf of the defence, convicted and sentenced the appellants as aforesaid.

8. Mr. Ansul, learned Advocate has pointed out that apart from P.W. 9 and P.W. 14, nobody has supported the occurrence. Usha Devi (P.W. 1), a neighbour, knew about the killing of the deceased but had no personal information. She has made statement



before the police during the course of investigation and had stated that the appellants were responsible for the murder of the deceased. However, at the time of deposing, she did not identify the appellant/Avinash Kumar @ Avinash Singh in the dock.

9. P.Ws. 2 to 7 viz. Gopal Singh, Dinesh Singh, Jaya Singh, Bhim Singh, Maheshwar Singh @ Bhaso Singh and Shambhu Sharan have not supported the prosecution case and have been declared hostile.

10. The father of the deceased viz. Karyanand Singh has been examined as P.W. 8. He does not claim to have any idea about the occurrence except for what was told to him. In his examination-in-chief, he has stated that he came back from Delhi, where he works for his livelihood on 23.06.2014, when he was informed by his family members about the occurrence. His daughter Simmi Kumari and P.W. 9 followed the accused persons towards the village and saw the deceased being killed at the hands of the accused persons. He was also informed



that the dead body of the deceased was found in a ditch on the next day.

11. P.W. 9, however, has supported the prosecution case in its entirety but it has been pointed out that her statements are replete with inconsistencies. She did not remember the date on which her son (the deceased) was dragged out of the house and killed. She had not informed the police about the occurrence. She had learnt only on the next day that the dead body of her son was lying in a ditch outside the village.

12. Though three I.Os. have been examined at the trial as P.Ws. 10, 12 and 13, but for the purposes of assessing the merits of the prosecution case, the deposition of P.W. 12 viz. Bhagwan Pal who had recorded the *fardbeyan* would be relevant. In his examination-in-chief, he has specifically stated that he had taken over the investigation of the case on 23.06.2014 and had prepared the inquest report of the dead body at the place where the dead body was found



thrown.

13. Be it noted that the inquest report has not been brought on record. Thereafter, he took the statement of some of the witnesses who supported the allegation but during trial, they have turned hostile. However, what is relevant to note is that he did not examine Simmi Kumari who had actually witnessed the occurrence.

14. On the contrary, P.W. 12 has stated that Maheshwar Singh @ Bhaso Singh (P.W. 6), Dinesh Singh (P.W. 3), Tuntun Kumar (P.W. 14), Usha Devi (P.W. 1), Bhim Singh (P.W. 5) and Jaya Singh (P.W. 4) were interrogated, but none of them supported the factum of kidnapping and murder of the deceased.

15. It may be noted that Tuntun Kumar is the brother of the deceased about whom nothing has been said in the *fardbeyan* but he has claimed to be an eye witness of the occurrence at the Trial.

16. It has also been pointed out by Mr. Ansul



that the entire village of the deceased was divided into two groups and the deceased did not have support in the village because of his criminal proclivity. He had received the information about the occurrence on 23.06.2014 only by the informant/P.W. 9. Nothing incriminating was recovered from the place of occurrence.

17. It has therefore been argued on behalf of the appellants that they have been falsely implicated in the case. The deceased was a veteran criminal who may have been killed in some other transaction but after the recovery of his dead body, the appellants and others have been named. It is precisely for this reason that the police did not find substance in the allegation of P.W. 9 about the participation of other accused persons and they were never put on trial.

18. It has further been urged that from the deposition of P.W. 9, it would appear that she herself had not seen the occurrence nor was correctly informed by her daughter Simmi Kumari. The entire narration of



P.W. 9 appears to be imaginary for the reason that P.W. 9 and her daughter would not have been allowed by the miscreants to witness the occurrence and that the dead body did not have any gun-shot injury. Thus, the entire story of firing at the deceased and the accused persons firing continuously till 11:00 P.M. in the night of the occurrence is incorrect and imaginary.

19. Mr. Ajay Mishra, the learned APP, justifying the conclusion of the Trial Court has submitted that in view of the categorical statement of P.W. 9 about the participation of the appellants in the crime, there is no requirement of any interference with the judgment and order of conviction and sentence.

20. Assuming but not admitting the fact that neither P.W. 9 nor her daughter who had narrated to her about the occurrence had seen it happen, P.W. 9 cannot be doubted especially with respect to her allegation that the appellants were waiting outside the house to take away the deceased. In that case, the appellants were



required to explain as to when did they leave the company of the deceased and what happened thereafter. In which transaction was the deceased killed, therefore, is presumed because of the appellants being last seen, forcibly taking away the deceased along with them.

21. After having examined the entire records rather carefully, we find certain incongruous facts in the story. If P.W. 9 is to be believed, the deceased was forcibly taken away from the house towards the garden. In the FIR, P.W. 9 has not talked about the presence of anybody else in the house except her and her daughter Simmi Kumari.

22. Simmi Kumari was never examined by the police nor did she come up on the witness-stand to support the prosecution case. If the narration of P.W. 9 is scrutinized carefully, it would appear that her source of information about the occurrence is her daughter Simmi Kumari. This, therefore, leads to the only inference that perhaps P.W. 9 had never followed her



son in the garden. Simmi Kumari also had not made correct statement, which can easily be inferred from the facts that she never chose to give any statement before the police or before the Trial Court regarding the occurrence and that her story of the deceased having been killed by gun shot had been completely debunked by the post-mortem report and the evidence of the Doctor.

23. The deceased had received several incised injuries and one lacerated injury on the occipital region. The laceration was opined to have been caused by hard and blunt substance whereas the incised injuries were stated to have been caused by sharp and penetrating weapons. These facts clearly reveal that neither P.W. 9 nor her daughter had seen the occurrence. Rest others are only hearsay and hostile witnesses. Even the story of the deceased having been taken away from his house and then killed, is doubtful.

24. Had the deceased been dragged away from



the house and the mother and the sister of the deceased had heard the sound of firing, there was no reason for them to have waited for the whole night. The only thing they could have done was to report to the police to rescue their son.

25. The dead body was recovered in a ditch on the next day. Who gave such information to P.W. 9 also does not appear from the prosecution version. However, from the deposition of P.W. 12, the Police Officer who recorded the *fardbeyan*, inquest report was prepared at the place where the dead body was found, namely, a ditch outside the village. That the non-production of the inquest report, as part of record, assumes significance in the present set of facts. There remains no evidence, thus, about the deceased having been thrown in a ditch. It would therefore be permissible for the appellants to argue that the deceased was killed somewhere else and only on the dead body having been recovered somewhere, the entire yarn has been spun by P.W. 9



with imaginary details.

26. The post-mortem report further puts a kibosh on the attempt of the prosecution to take the case to any logical conclusion against the appellants.

27. Usha Devi/P.W. 1 though has stated before the Trial Court that she had learnt about the occurrence and the involvement of the appellants but as has been noticed by us, P.W. 12 (I.O.) has stated that she did not support the prosecution allegation during the course of investigation.

28. P.Ws. 2 to 7 have shown their complete ignorance about the occurrence and, therefore, they have been declared hostile.

29. P.W. 8 was not present in the village when the occurrence had taken place and had come only the next day when he was informed by his wife and daughter.

30. P.W. 14/one of the brothers of the deceased had, during the course of investigation,



expressed his ignorance before the I.O. about the occurrence or the involvement of the appellants. He was not even referred to in the *fardbeyan* statement of P.W. 9. And otherwise also, had he seen the occurrence, there was every possibility of his having lodged the FIR or having signed the FIR in token of his being present in the night of the occurrence in his house. These facts, therefore, make the prosecution story completely doubtful.

31. The entire girdle on which the prosecution rests is the eyewitness account of P.W. 9, who cannot be believed because of her discrepant statements, which strike at the root of the prosecution case. If at all, her source of information was her daughter/Simmi Kumari, in the absence of her examination as a witness, the case becomes highly unreliable.

32. With such sketchy evidence on record and especially in the background of the deceased having a very tainted background, there cannot be a total



negation of a possibility of the deceased having been killed in some other transaction about which P.W. 9 or other witnesses had no idea.

33. With such deficient evidence, we are of the view that it would be highly unsafe to affirm the judgment and order of conviction by the Trial Court.

34. For the reasons aforementioned, the judgment is set aside and the appellants are acquitted of all the charges levelled against them.

35. The appeals stand allowed.

36. It is informed by the learned Advocates that all the appellants are in jail.

37. They are directed to be released forthwith from jail, if not detained or wanted in any other case.

38. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

39. The records of this case be returned to the Trial Court forthwith.



40. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nani Tagia, J)

krishna/saurav-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.11.2023
Transmission Date	29.11.2023

