

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.270 of 1995

1. Sri Kishun Thakur son of Sita Ram Thakur
2. Ram Lal Mahto son of Butan Mahto, both resident of village Narhi, Police Station Kailwar, District Bhojpur

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 301 of 1995

Hariman Ahir @ Hariman Yadav son Chandraman Ahir, resident of village Narhi, Police Station Koilwar, District Bhojpur

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 307 of 1995

Lallan Mahato son of late Jatul Mahato, resident of village Narhi, Police Station Narhi Chandi (Koilwar), District Bhojpur

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 337 of 1995

1. Bishundhari Dusadh son of Late Mangaru Dusada
2. Yogendra Dusadh son of Aganu Dusada, both are residents of village Narhi, P.S. Koilwar, District Bhojpur

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :
(In CRIMINAL APPEAL (DB) No. 270 of 1995, 301 of 1995, 307 of 1995 and 337 of 1995)

For the Appellants	:	Mr. Ajay Kumar Thakur, Advocate Mr. Rakesh Kumar Sinha, Advocate Mr. Surjbansh Roy, Advocate
For the Respondent	:	Mr. Abhimanyu Sharma, APP



CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 05-07-2023

Heard the learned counsel for the appellants and learned counsel for the State.

2. These criminal appeals arise out of same judgment of conviction and order of sentence, hence they have been heard together and are being disposed of by this common judgment.

3. The criminal appeals have been preferred against the judgment of conviction and the order of sentence dated 28.08.1995 passed by Shri Damodar Prasad, learned 1st Additional Sessions Judge, Arrah in Sessions Trial No.297 of 1980 arising out of Koilwar (Chandi) P.S. case No.3(1) of 1979, whereby and whereunder the appellants Sri Kishun Thakur and Ram Lal Mahto of Criminal Appeal (DB) No.270 of 1995 have been convicted under Sections 147 and 302/149 of the Indian Penal Code (referred to 'I.P.C.') and sentenced to undergo rigorous imprisonment for one year under Section 147 of I.P.C. and rigorous imprisonment for life under Sections 302/149 of I.P.C. The Trial Court also convicted the appellant Hariman Ahir @ Hariman Yadav of Criminal Appeal (DB) No.301 of 1995, appellant Lallan Mahato of



Criminal Appeal (DB) No.307 of 1995 and appellants Bishundhari Dusadh and Yogendra Dusadh of Criminal Appeal (DB) No.337 of 1995 under Sections 148 and 302/149 of I.P.C. and sentenced to undergo rigorous imprisonment for two years under Section 148 of I.P.C. and undergo rigorous imprisonment for life under Sections 302/149 of I.P.C. All the sentences have been directed to run concurrently.

4. The prosecution case, as per the fard beyan of informant Chandeshwar Singh recorded on 04.01.1979 at 5:00 a.m. before the Officer Incharge of Koilwar Police Station in front of the house of Ram Kareshan Singh (deceased) is that, in the preceding evening i.e. on 03.01.1979 at about 6:30 p.m., while he was sitting at the darwaja of Sripati Singh, his co-villager Kathari Ahir armed with pistol, Sukhal Ahir armed with garasa, Hariman Ahir armed with bhala, Ramakant Dusadh armed with katta, Ramautar Dusadh armed with pistol, Bishundhari Dusadh armed with katta, Yogendra Dusadh armed with bhala, Chandrika Dusadh armed with pistol, Ram Lal Mahto armed with lathi, Srikishun Thakur armed with lathi, Jarishri Kahar armed with garasa, Lallan Mahto armed with farsa and other accused persons armed with deadly weapons were raising slogans “Enclab Naxalbari Jindabad” and were moving towards north. The informant identified all the



accused persons in the light of torch flashed by the accused. The informant alongwith Sripati Singh, Gupteshwar Singh, Bharat Singh and others also followed them. The accused persons reached the house of Ramdeo Singh. It has been further stated that Kathari Ahir and Sukhal Ahir climbed on the roof of the house of Ramdeo Singh and they were dismantling tiles. They also set fire in the southern side of the house of Ramdeo Singh. All the accused persons surrounded the house of Ram Kareshan Singh from all sides and they were raising hulla and abusing Ramdeo Singh. They were saying Ramdeo Singh to come out from the house, otherwise his whole family would be eliminated. The informant and others forbade the accused persons, who were Naxalites, from doing such act. Thereupon, the accused persons also chased them with a view to kill and opened four rounds of fire. The informant and others left the place out of fear and reached near his house and raised hulla to assemble, as the Naxalites had surrounded the house of Ram Kareshan Singh and they have set fire in the house and were also killing the inmates of the house. The informant alongwith others again went near the house of Ram Kareshan Singh, but because of indiscriminate firing made by Naxalites, none of them reached the house of Ram Karesan Singh. Thereafter, the informant saw the accused persons



and 50-60 other criminals running away from the house of Ram Kareshan Singh towards north. The informant and others went inside the house of Ram Kareshan Singh, but they did not find anyone inside the house. They also found blood stains on the wall of the house. All the articles of the house were disturbed. Thereafter, the informant alongwith other villagers searched Ram Kareshan Singh and his family members in nearby places, but no trace was found. The informant and others wanted to inform the police, but they heard noise of firing from all sides and hence, the matter was reported to the police in the next morning at about 5:00 a.m. on 04.01.1979. The reason of the occurrence is old enmity between Ramdeo Singh and Srikishun Mahto and there was also litigation between the parties.

5. On the basis of aforesaid fardbeyan of informant Chandeshwar Singh, an F.I.R. bearing Koilwar (Chandi) P.S. case No.3(1) of 1979 was registered and investigation was taken up. After investigation, charge sheet was submitted whereafter cognizance was taken by the jurisdictional Magistrate and thereafter, the case was committed to the Court of Sessions. Charges were framed against the appellants to which the appellants pleaded not guilty and claimed to be tried.



6. During trial, the prosecution examined altogether nine witnesses, namely, Chandeshwar Singh-informant (P.W.1), Bharat Singh (P.W.2), Gupteshwar Singh (P.W.3), Ramdatt Singh (P.W.4), Dr. K.B. Sahay (P.W.5), Hari Shankar Singh (P.W.6), Uma Pati Singh (P.W.7), Dipa Singh (P.W.8) and Kailash Prasad-Investigating Officer (P.W.9). In support of its case, the prosecution has also produced exhibits as Ext.1 (fardbeyan), Exts.2, 2/1 (signature of Gupteshwar Singh on inquest report), Exts.3 to 3/2 (postmortem reports), Exts.4 to 4/2 (inquest reports) and Ext.5 (F.I.R.). The defence has not produced any oral or documentary evidence in support of its case. After conclusion of the trial, the learned Trial Court convicted and sentenced the appellants in the manner as indicated above.

7. Learned counsel for the appellants has submitted that the judgment of conviction and order of sentence suffers from several infirmities that have been overlooked by the learned trial Court and, therefore, the impugned judgment is not sustainable in the eyes of law. It has been argued that the prosecution has miserably failed to prove the place of occurrence beyond reasonable doubts. Furthermore, there is absence of any material on the record to suggest the manner in which the deceased persons were done to death. In order to buttress this contention, the attention of this



Court has been drawn towards the deposition of the prosecution witnesses to assert that none of the prosecution witnesses are eyewitnesses to the alleged occurrence. The learned counsel for the appellants has further contended that the prosecution has also failed to prove the presence of any luminous object that would serve as a source of identification of the appellants. It has further been pointed out that as per the fardbeyan, the incident had taken place on 03.01.1979 at 06:30 p.m. when there would be complete absence of any source of light at any of the disputed place of occurrences. As such, under the facts and circumstances of the given case, it would be very difficult to state with certainty that it were the appellants herein that were involved in the said incident and no one else. Hence, it has been contended that there are severe lacunae in case of the prosecution and the chain of circumstances do not unerringly point towards the guilt of the appellants. Therefore, it is argued that the findings of the learned trial Court are bad in law, wrong on facts, bereft of legal reasoning, devoid of merit and the judgment of conviction is fit to be set aside.

8. Learned APP for the State, on the other hand, has submitted that the judgment of conviction and order of sentence under challenge require no interference as the prosecution has



been able to prove the case beyond all reasonable doubts. It has been contended that the prosecution witnesses have remained consistent in the testimony during the course of trial. Moreover, minor contradictions in the testimony of the witnesses cannot be a ground to reject the testimony as a whole. It has been argued that P.W. 3 had made a specific deposition that he saw deceased persons being beaten, cut and thrown. As such, there does not remain any hiatus in the chain of circumstances and that guilt of the appellants has been satisfactorily proved by the evidence adduced during the course of trial and there is no infirmity in the judgment of conviction of the learned trial Court.

9. After hearing the arguments advanced by the learned counsels appearing for the parties and upon thorough examination of the entire material available on the record, the following issues arise for consideration in the present appeal:

- (I) Whether the prosecution has been able to establish the place of occurrence beyond all reasonable doubts?
- (II) Whether the prosecution has successfully proved the manner of occurrence in which the deceased was done to death?
- (III) Whether the non-production as an exhibit material of the torch has caused prejudice to the appellants?



(IV) Whether the sufficient evidence has been adduced by the prosecution to prove the connecting chain of circumstances which unerringly point towards the guilt of the appellants?

10. With reference to issue no. I, it is found that there are material inconsistencies and uncertainties regarding the place of occurrence in the present case. It has been stated in the fardbeyan that the miscreants entered the house (hereinafter referred as 'P.O. 1'), and came out in a short while later blood stains were found on the wall of the said house. In this regard, it is noteworthy that it has been deposed by P.W. 9 (Investigating Officer) that he found blood stains on the wall of verandah and sign of fire arm in the eastern room. It has also been deposed by the Investigating Officer that he found blood stain in the courtyard, a portion of which was found to be daubed. We have taken note of the fact that the said stains or marks were neither seized nor sent for examination by the Forensic Science Laboratory so as to establish whether the blood was of an human being and particularly of the deceased persons. Also, there is no evidence on record to suggest the seizure of any bullet shell from the said P.O. 1. Moreover, the P.O. 1 also becomes doubtful in light of the fact that the informant in the fardbeyan specifically states that when he entered the house soon after the incident, he found no one inside the said house. As



such, the prosecution has failed to adduce any evidence to prove that the deceased persons were done to death at P.O. 1. It is furthermore apparent from perusal of the material available on the record that on the same day at 11:30 a.m., the dead bodies of deceased Ram Karehsan Singh, his son (Ramdeo Singh), and his wife were found near Railway Line (hereinafter referred as 'P.O. 2'). It is noteworthy that P.W. 9 (Investigating Officer) has specifically deposed in para no. 3 that he found the dead body of Ram Kareshan Singh between poll no. 583/14 and 583/15 and the dead body of his son (Ramdeo Singh) on the same railway line between poll no. 584/3 and 584/4. The dead body of the wife of Ram Kareshan Singh was found in the sugarcane field of one Indradeo Singh, (hereinafter referred as 'P.O. 3'). At this juncture, it is worth consideration that no witness (save and except PW 3) has deposed during the course of trial that he saw the offence being committed at any of the above disputed place of occurrences. There is complete failure on part of the prosecution to adduce any evidence so as to prove the place at which the deceased persons were done to death. The assertion of the informant that the incident took place at P.O. 1 becomes doubtful in light of the fact that the dead bodies were found at P.O. 2 and P.O. 3, and no witness (save and except PW 3) has made any



statement to the effect that he saw three dead bodies being carried away from the house. Moreover, no trail of blood has been found in the path between P.O. 1, P.O. 2 and P.O. 3. It is furthermore noteworthy that P.W. 9 has stated that he found a huge quantity of blood at P.O. 3. We have also taken into consideration that though P.W. 3 has deposed that he saw the deceased persons being beaten, cut and thrown at the P.O. 2, but such statement of PW 3 becomes doubtful in light of the fact that the incident has been stated to have taken place on 03.01.1979 at 06:30 p.m., when there would be absence of any natural light that would facilitate the identification in the present case. Thus, we are of the considered opinion that there exists reasonable doubts as to the place of occurrence in the present case. In the case of *Syed Ibrahim versus State of Andhra Pradesh*, reported in (2008) 10 SCC 601, it has been held by the Hon'ble Supreme Court that where the place of occurrence itself has not been established, it would not be proper to accept the version of the prosecution.

In light of the discussions made above, the issue no. I is decided in the negative.

11. With reference to issue no. II, it is found that no eye witness has been brought on record by the prosecution to testify regarding the manner in which three deceased persons were done



to death. In the instant case, though the P.W. 3 has made a specific deposition in para no. 2 that he saw that the body of deceased persons were being cut, killed and thrown near railway line. But such testimony becomes doubtful in light of the fact that the P.W. 3 has further deposed in para no. 2 and 5 that he cannot say as to which of the accused has committed the alleged offence and the night was dark. In light of the facts and circumstances of the case, the contention of PW 3 becomes highly doubtful and cannot be relied upon as a gospel truth. In criminal law, loose, contradictory, and uncorroborated statements cannot be relied upon, much less than forming the basis of conviction. The statement of witnesses must be free from blemish and devoid of any ambiguity, uncertainty, and loopholes. However, in the present case, the prosecution has failed to adduce cogent and reliable evidence to prove the manner in which the deceased persons were done to death.

Accordingly, the issue no. II is decided in the negative.

12. With reference to issue no. III, it is found that the incident is said to have taken place on 03.01.1979 at 06:30 p.m. where there would be complete absence of any source of light. Also, it is quite manifest that no prosecution witness has made any statement about the presence of any source of light at any of



disputed places of occurrence. Moreover, the Investigating Officer has also not found any torch during the course of investigation. Though the PW 4 contends to have seen the incident in torch light, but the said torch has not been produced during the course of investigation or during trial. In light of the factual matrix as discussed above, the non-production of the torch as exhibit material casts severe doubts regarding the contention of the prosecution witnesses of having seen the incident.

Accordingly, the issue no. III is decided in the affirmative.

13. With reference to issue no IV, it is apparent from perusal of entire material available on the record that the prosecution has not adduced any direct or circumstantial evidence to prove the involvement of appellants in the said incident. Also, time elapsed since death, as estimated by the doctor in the post mortem report goes to show that the deceased died much earlier than the alleged time of occurrence as per the fardbeyan. Furthermore, the incident is alleged to have taken place on 03.01.1979 at about 06:30 p.m. and the F.I.R. in connection with the said incident was lodged on 04.01.1979 at 05:00 a.m. Thus, evidently there is substantial delay of 10 to 11 hours in lodging the F.I.R. when the distance between the place of occurrence and police station was only of 9 km. With delay, F.I.R. not only gets bereft of the advantage of



spontaneity, but danger of the introduction of a colored version or exaggerated story also weeps in. Such conduct on part of the prosecution is completely in teeth of the established jurisprudence of criminal procedure which requires that F.I.R. should be lodged without undue and unreasonable delay. Moreover, this Court has also taken note of the fact that the informant of this case has turned hostile. Though the informant in the fardbeyan contends that the said incident took place in his presence, nonetheless, he deposed during the course of trial that on the concerned date, he was not present at village Narhi. Rather he went to his Sasural at village Jaganpur and on 05.01.1979 he came to know about the murder of the deceased persons. Furthermore, this Court has also taken note of the fact that as per the fardbeyan, specific allegation for setting the house on fire was made upon Jaishri Kahar and Kathari Ahir while other prosecution witnesses deposed that they saw Jaishri Ahir and Ramakant Dusadh were setting the house on fire. No material whatsoever has been adduced by the prosecution so as to establish the causative link between the actus reus and the conduct of the appellants herein. The prosecution has failed to adduce sufficient evidence to prove the connecting chain of circumstances as to form inference about the guilt of the appellants. At this juncture, it would be relevant to take note of



the decision passed in the case of ***Santosh @ Bhure versus State (G.N.C.T) of Delhi, Criminal Appeal No. 575 of 2011***, where in para no. 86, the three judges Bench of the Hon'ble Supreme Court has observed that:

“We have no hesitation in holding that the prosecution has failed to prove a chain of incriminating circumstances as to conclusively point out that in all human probability it was the two accused or any one of them, and no one else, who had committed the murder... .. In a nutshell, it is a case where the prosecution failed to elevate its case from the realm of "may be true" to the plane of "must be true" as is indispensably required for conviction on a criminal charge.”

Accordingly, the issue no. IV is decided in the negative.

14. The truth is the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. We at all levels must seriously engage ourselves in the journey of discovering the truth. It is the duty of the prosecution to prove the case beyond reasonable doubts by establishing that the chain of evidence unerringly point towards the guilt of the appellants and no other hypothesis is possible. However, in the present case, there are several latches on part of the prosecution and there is absence of concrete material to make out a foolproof case against



the appellants. The prosecution has failed to hold the evidentiary strings sufficiently tight, so as to sustain the conviction of the appellants. As such, in our considered opinion, the dark clouds of suspicion looming large on the story of the prosecution have poured down heavily to wash all the dust ridden allegations.

15. Therefore, we are of the considered opinion that the conviction of the appellants is not sustainable in the eyes of law. The criminal appeals stand allowed and the judgment of conviction and the order of sentence dated 28.08.1995 passed by Shri Damodar Prasad, learned 1st Additional Sessions Judge, Arrah in Sessions Trial No.297 of 1980 arising out of Koilwar (Chandi) P.S. case No.3(1) of 1979 are set aside.

16. Since the appellants of all the criminal appeals are on bail, they are discharged from the liabilities of their respective bail bonds.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/-

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