

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.207 of 1996

1. Ram Dhyan Yadav,
2. Parmanand Yadav
Both sons of Late Deo Sharan Yadav,
3. Bindeshwar Yadav, son of Late Bishunpad Yadav
4. Bali Yadav, son of Late Parmeshwar Yadav
(Appeal against appellant Nos. 3 and 4 abated vide order dated 13.02.2023)
All residents of village Manga Bigha, Police Station-Karpi, District-Jehanabad.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Ritwik Thakur, Advocate Mrs. Vaishnavi Singh, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 17-02-2023

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

2. Vide order dated 13.02.2023, on the basis of report
submitted by learned District & Sessions Judge, Jehanabad,
dated 26th November, 2022, the present appeal stands abated
against appellants Nos. 3 and 4 since they have already died.
Hence, the present appeal survives only against appellant Nos.
1 and 2 namely Ram Dhyan Yadav and Parmanand Yadav.



3. The present criminal appeal has been preferred in the year 1996 i.e. 26 years ago against the judgment and order dated 23.05.1996 passed by learned 1st Additional District and Sessions Judge, Jehanabad in Sessions Trial No. 45 of 1994 (arising out of Karpi P.S. Case No. 8 dated 31.5.1980) whereby and whereunder the appellant Nos. 1 and 2 have been convicted under Section 302 of the Indian Penal Code, 1860 (hereinafter 'IPC') and sentenced to undergo rigorous imprisonment for life and further the appellant Nos. 1 and 2 have been acquitted of the charge under sections 131 and 132 of the Representation of Peoples Act.

4. The prosecution case on the basis of fardbeyan of Ram Lakhan Singh of village Batan Bigha recorded by S.I. S.M. .Ram of Karpi Police Station on 31.05.1980 at 10:00 hours at Lower Primary School, Batan Bighat, in brief, is that on the same day at about 09:00 a.m. his son Surendra Prasad Singh, who was working as polling agent of Soshit Dal at election booth set up at Batan Bigha Lower Primary School, some persons of village Manga Bigha wanted to cast bogus vote but his son tried to stop the bogus polling whereupon Laldeo Yadav of village Dani Pala who earlier came at 08:00 a.m., in an abusive language shouted to drag him out from



the booth and kill him. Thereafter, Ram Dhyan Yadav (appellant No. 1), Parmanand Yadav (appellant No. 2), Deo Sharan Yadav, Bali Yadav and Bineshwar Yadav of village Manga Bigha, after searching son of the informant took him to the north of the said school about two bamboos distance away from the school and started assaulting him with bhala, dagger and lathi. Accused Ram Dhyan armed with bhala, Parmanand with dagger, Deo Sharan with lathi, Bali with gun and Bindeshwar with bomb, together assaulted his son and killed him and threw his dead body in a field towards North. There were 8 to 10 other persons who all were unknown. The occurrence was witnessed by his nephew Sakal Deo Singh (P.W.1), Sheo Prasad Singh (P.W.4), Dinesh Singh (P.W.3), Ashok Singh (P.W.7) and others who were present in the queue for casting their votes. The informant further stated that the accused persons also wanted to assault the informant but the informant managed to escape. On the basis of aforesaid fardbeyan, Karpi P.S. Case No. 8 dated 31.05.1980 was instituted under Section 147, 148, 149, 302 and 114 of the IPC and investigation was taken up.

5. After investigation, the police submitted charge-sheet and 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 eleven witnesses, namely, P.W. 1 Sakal Deo Prasad Singh, P.W.2 Ram Lakhan Singh (informant), P.W.3 Ram Binesh Singh, P.W.4 Sheo Prasad Singh, P.W.5 Fahimuddin Khan, P.W.6 Sheo Nandan Singh, P.W.7 Ashok Kumar, P.W.8 Jamal Akhtar Ansari, P.W.9 Ram Kumar Verma, P.W.10 Dr. Chitranjan Sharma and P.W.11 Chandeshwar Prasad. Prosecution in support of the case has also produced exhibits as Ext. 1 Inquest report, Ext. 2 signature of Sakaldeo Singh on inquest report, Ext. 3 signature of Ram Lakhan Singh on fardbeyan, Ext. 4 post-mortem report, Ext. 5 summon of Court to Dr. V.V. Sahay, Ext. 5 letter of Dr. V.V.Sahay written to the Court on his letter pad, Ext. 6 Fardbeyan and Ext. 7 F.I.R. The defence has also examined two witnesses in support of its case namely D.W. 1 Chandradeep Singh and D.W. 2 Ram Briksh Singh. Certain documents were also exhibited on behalf of the defence. After conclusion of the trial, the learned Trial Court convicted and sentenced the appellant Nos. 1 and 2 in the manner indicated above.



7. Learned counsel appearing for appellant no. 1 and 2 submitted that the judgment of conviction 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. Learned counsel submitted before the Court that the prosecution has failed to prove the place of occurrence beyond reasonable doubt due to material contradictions arising from the deposition of witnesses. Learned counsel furthermore submitted that the ocular evidence of assault does not corroborate the medical evidence i.e. the post-mortem report of the deceased which casts reasonable doubt on the manner of occurrence. The counsel lastly submitted that due to non-examination of the Investigating Officer, the case of the appellant Nos. 1 and 2 has been immensely prejudiced.

8. Learned APP for the State has submitted that the judgment and order under challenge requires no interference as the prosecution has been able to prove its case beyond all reasonable doubts. The witnesses have been consistent in their depositions and there are sufficient evidence to prove the guilt of the appellant Nos. 1 and 2.



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

(I) Whether the prosecution has been able to prove the place of occurrence beyond reasonable doubt in order to sustain the conviction of the appellant?

(II) Whether the ocular evidence is inconsistent with the medical evidence so far as manner of occurrence is concerned?

(III) Whether the non-examination of the Investigating Officer has caused prejudice to the appellants?

10. Now adverting to the first issue, from the perusal of the deposition of the prosecution witnesses namely P.W.1, P.W.2, P.W.3 and P.W.4, it appears that when the deceased was trying to prevent the bogus polling of votes, one of the persons namely Laldeo Yadav ordered to kill the deceased by taking him out from the polling station. In pursuance to this, the accused persons namely Ramdhyan Yadav, Parmanand Yadav, Deo Sharan Yadav, Bail Yadav and Bineshwar Yadav dragged the deceased out from the polling station and took



him out to the field where he was killed by the aforementioned persons. But P.W.6, who was an official deputed at the polling station, categorically stated in his deposition that he did not hear any *hulla* at the polling station during the time of conducting election. He further stated in his deposition that he did not remember whether the deceased was present as polling agent at the polling booth. After giving sufficient consideration to the evidence of P.W.6, we believe that P.W.6 is a public servant and an independent witness in the present case and, as such, there lies more credibility and truthfulness to the testimony of such witness. Furthermore, due to non-examination of the investigating officer in the present case, it cannot be proved that there were signs of struggle between the deceased and appellants or there were signs of dragging or presence of blood at the place of occurrence, in order to prove the place of occurrence beyond reasonable doubt.

Therefore, in light of the consideration of the aforesaid fact, we firmly believe that the prosecution has not been able to prove the place of occurrence beyond all shadow of reasonable doubt in order to sustain the conviction of the appellant. The Hon'ble Supreme Court in *Syed Ibrahim*



versus State of Andhra Pradesh, (2008) 10 SCC 601 has held that “*when the place of occurrence itself has not been established, it would not be proper to accept the prosecution version*”.

Therefore, the issue no. 1 is decided in the negative.

11. In order to deal with the second issue, we have given our due consideration to the ocular evidence arising from the deposition of the prosecution witnesses and medical evidence arising from the post-mortem report of the deceased. From the observation of the ocular testimonies of prosecution witnesses, it appears that Ram Dhyan Yadav was armed with dagger, Parmanand with *bhala*, Deo Sharan with *lathi*, Bali with gun and Bindeshwar with bomb. It further appears from perusal of their testimonies that the deceased, after being dragged out from the polling station, was assaulted by the aforesaid persons after which he succumbed to death. But the post-mortem report of the deceased, mentions following injuries:

- “1. Bruise 5” x 2” over the upper part of the abdomen left side.
2. Bruise 5” x 1 1/2” over the upper part of the abdomen rt. side.
3. Multiple small abrasions over the rt. side of the neck.
4. Lacerated wound 1 1/2” x 1/4” x bone deep over the chest.



5. Lacerated wound 1" x 1 1/2" over the forehead left side.

6. Lacerated wound 2" x 1/2" x Bone deep over the back of the head.

7. Bruise - 3" x 1/2" over the rt. temporal region

Echymosis on/or Blood clot found in all the above injuries

On opening the scalp a fissured fractured -4 1/2" long found in the rt temporal bone & extensive sub dural Haematoma also found.

No injuries found in the chest, organs or abdominal organs.

All the injuries are anti mortem in nature and most likely caused by a blunt weapon.

Death has most likely taken place due to Haemorrhage & shock as a result of the above injuries.

Death has taken place between 24 to 36 hours before the time of examination."

The post-mortem report does not state anything about incised wound or penetrating wound which could be caused when a person sustains injury after being assaulted with sharp cutting or pointed weapon like dagger or bhala. The post-mortem report categorically states that the death is caused by hard and blunt substance. Therefore, there arises material contradiction between the ocular evidence and medical evidence with regard to the manner of occurrence. At this juncture, we put reliance upon the case of ***Ram Narain Singh versus State of Punjab and Ama Singh & Ors. versus State of Punjab*** reported in (1975) 4 SCC 497 wherein the Hon'ble Supreme Court has held that



inconsistency between the ocular and medical evidence is a most fundamental defect in the prosecution case and unless reasonably explained, it is sufficient to discredit the entire case. Therefore, in absence of any reasonable explanation by the prosecution with regard to such material inconsistency, there arises fundamental defect in case of prosecution and as such the prosecution has failed to prove manner of occurrence beyond reasonable doubt.

12. With reference to issue no. 3, it is to be taken note of the fact that the prosecution has chosen not to examine the Investigating Officer in this case. From the record, the place of occurrence has not been proved beyond reasonable doubt and there lies material inconsistency between the ocular evidence and medical evidence with regard to manner of occurrence. Due to non-examination, the defence has also been deprived of the opportunity to bring on record the material contradictions and improvement made by the witnesses in their depositions. Therefore, in such circumstances, the examination of the Investigating Officer becomes important as he would have been the most competent witness to throw light on the manner in which the investigation was carried out and to explain the entire gamut



of evidence brought on record. In the case of ***State Of Karnataka versus Bhaskar Kushali Kotharkar And Ors., (Cr. Appeal no. – 498 of 1998)*** the Hon'ble Supreme Court while highlighting the importance of examination of Investigating Officer, observed:

“It is true that as a part of fair trial the investigating officer should be examined in the trial cases especially when a serious sessions trial was being held against the accused. If any of the prosecution witnesses give any evidence contrary to their previous statement recorded under Section 161 Cr. P.C. or if there is any omission of certain material particulars, the previous statement of these witnesses could be proved only by examining the investigating officer who must have recorded the statement of these witnesses under Section 161 Cr. P.C.”

Accordingly, this Court is of the view that non-examination of the I.O. by the prosecution without any explanation has caused prejudice to the appellant Nos. 1 and 2 and is certainly fatal to the case of prosecution.

13. In view of the findings arrived at regarding the issues formulated above, we are of the considered opinion that the prosecution has failed to prove its case beyond all reasonable doubts and, as such, the conviction of the appellant Nos. 1 and 2 is not sustainable in the eyes of law.



14. Therefore, the present appeal stands allowed and the judgment and order dated 23.05.1996 passed by learned 1st Additional District and Sessions Judge, Jehanabad in Sessions Trial No. 45 of 1994 (arising out of Karpi P.S. Case No. 8 dated 31.5.1980), is set aside. Since the appellant Nos. 1 and 2 are on bail, they are discharged from the liabilities of bail bonds.

(Sudhir Singh, J)

(Dr. Anshuman, J)

Pankaj/-

AFR/NAFR	NAFR
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