

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.323 of 1996

1. Heman Paswan Son of late Sundar Paswan
2. Bilat Paswan Son of late Kuldip Paswan
3. Ram Bharos Das Son of late Lal Dhari Das
4. Shankar Paswan Son of late Yogendra Paswan (appeal abated against
appellant Nos.3 and 4 vide order dated 13.04.2023)
5. Madan Das Son of Ram Kripal Das,
All residents of Village Harpur Eloth, P.S. Musrigharari, Dist. Samastipur

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 404 of 1996

Ganga Sagar Paswan Son of Ram Sundar Paswan, resident of Village Harpur
Elauth, Police Station Musri Gharari, District Samastipur

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 323 of 1996)

For the Appellants : Mrs. Vaishnavi Singh, Amicus Curiae
For the Respondent : Mr. Abhimanyu Sharma, A.P.P.

(In CRIMINAL APPEAL (DB) No. 404 of 1996)

For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mr. Imteyaz Ahmad, Advocate
Mr. Ritwik Thakur, Advocate
Mrs. Kiran Kumari, Advocate
For the Respondent : Mr. Abhimanyu Sharma, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH
ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 18-04-2023

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

2. Both the 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. Vide order dated 13.04.2023, on the basis of report submitted by Superintendent of Police, Samastipur, the appeal with regard to appellant Nos.3 and 4, namely, Ram Bharos Das and Shankar Paswan (of Criminal Appeal (DB) No. 323 of 1996) has already abated. Hence, Criminal Appeal (DB) No. 323 of 1996 subsists only against the appellant Nos.1, 2 and 5.

4. Due to no representation on behalf of appellant Nos.1, 2 and 5 of Criminal Appeal (DB) No.323 of 1996, therefore, in the interest of justice we deem it appropriate that Mrs. Vaishnavi Singh, learned advocate, be appointed as Amicus Curiae to represent the appellant Nos.1, 2 and 5 of Criminal Appeal (DB) No.323 of 1996 at the cost of the State.

5. The criminal appeals have been preferred against the judgment of conviction and the order of sentence dated 01.08.1996 passed by the learned 5th Additional Sessions Judge, Samastipur in



Sessions Trial No.405 of 1993/ 159 of 1993, whereby and whereunder the appellant Ganga Sagar Paswan has been convicted under Sections 302 and 148 of the Indian Penal Code (hereinafter 'I.P.C.') and has been sentenced to undergo rigorous imprisonment for life under Section 302 of the I.P.C. and rigorous imprisonment for three years under Section 148 of the I.P.C. The appellants Bilat Paswan, Heman Paswan and Ram Bharos Paswan have been convicted under Section 148 of the I.P.C. and have been sentenced to undergo rigorous imprisonment for three years under Section 148 of the I.P.C. The appellants Madan Das and Shankar Paswan have been convicted under Section 147 of the I.P.C. and have been sentenced to undergo rigorous imprisonment for two years under Section 147 of the I.P.C. The sentence of the appellant Ganga Sagar Paswan has been directed to run concurrently.

6. The prosecution case, in brief, is that appellants Heman Paswan and Ganga Sagar Paswan used to pass stool on the land in front of the informant's house. On 23.05.1993 at 5 0'clock in the evening, Ganesh Jha, father of the informant, went to protest against the aforesaid act because the family members of the informant got annoyed due to said act by aforesaid appellants. Thereafter informant's father returned back. Further, the case is that appellants Ganga Sagar Paswan, Heman Paswan, Bilat



Paswan and others began to abuse the father of the informant, who was going from his house at 9.30 O'clock in the night of the said date of occurrence to protest and forbid them from using filthy language. Further, the case is that Ganga Sagar Paswan, Heman Paswan, Bilat Paswan and Ram Bharos Das being armed with bhala, who were sitting on kachchi road of Lagunia of Mohnarchotapul near Pokhar Bhindi in their bathan, came running to the informant and launched onslaught in the right chest of the informant's father with bhala and Ganga Sagar Paswan, Heman Paswan inflicted blow with bhala but Ram Bharos Das and Bilat Paswan inflicted blow with their bhalas in peru of the father of the informant and caused him to fall down and thereafter, the appellants Madan Das and Shankar Paswan began to assault the informant's father with lathi and expressed their intention to take away his life by assaulting with lathi. The further prosecution case is that the father of the informant raised cry, upon which the informant and his neighbours, namely, Hiranand Jha, Ramanand Jha, Ramesh Jha, Sheo Kumar Choudhary, Lal Bahadur Singha and Yogendra Jha rushed to the place of occurrence and saw that Ganga Sagar Paswan, Heman Paswan, Bilat Paswan, Ram Bharos Das were armed with bhala, but Madan Das and Shankar Paswan were armed with lathi and they



were assaulting with bhala also in the right chest of the father of the informant, due to which the informant's father sustained injuries and fell down. The father of the informant was being taken to the Railway Hospital, but he died in the way.

7. On the basis of the fardbeyan of informant Raj Kumar Jha, an F.I.R. was lodged against the accused persons. After completion of investigation, the police submitted charge-sheet and thereupon, cognizance was taken and 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.

8. During trial, the prosecution examined altogether nine witnesses, namely, Sudama Devi (P.W.1), Ramesh Jha (P.W.2), Dr. Anil Chandra Sinha (P.W.3), Shiv Kumar Choudhary (P.W.4), Lal Bahadur Singh (P.W.5), Raj Kumar Jha-informant (P.W.6), Paramhansh Prasad Singh (P.W.7), Nag Narayan Thakur (P.W.8) and Rajeshwar Prasad Singh (P.W.9). In support of its case, the prosecution has produced exhibits as Ext.1 (postmortem report), Ext.2 (signature on fard beyan), Ext.3 (fard beyan), Ext.4 (formal F.I.R.), Ext.5 (seizure list), Ext.6 (inquest report), Ext.7 (dead body chalan) and Ext.8 (endorsement on fard beyan). Defence has



neither examined any witness in support of its case nor any document has been produced.

9. Learned counsel for the appellants has 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. It has been contended that the prosecution has miserably failed to prove the manner of occurrence beyond reasonable doubts and even the postmortem report does not corroborate the manner of assault as alleged by the informant (PW 6). It has further been submitted that the place of occurrence has not been proved and there is severe inconsistency in the deposition of the prosecution witnesses regarding the place of occurrence. In order to buttress this contention, the attention of this Court has been drawn towards the deposition of PW 7 (i.e. the Investigating Officer). It has been further submitted that the occurrence is alleged to have taken place at about 09:30 pm, but no evidence has been adduced by the prosecution to prove the source of identification. The learned trial court has committed gross error and illegality in holding the appellants guilty, in spite of the fact even though the learned trial court had itself come to the finding that the appellants were not members of the unlawful assembly, still the



learned trial court was held them guilty, thereby committing gross error illegality. In this regard, the attention of this Court has been drawn to the relevant portion of the impugned judgment where it has been held by the learned trial court that the prosecution has not been able to establish and prove that the appellants were members of the unlawful assembly in prosecution of the common object to commit murder of the deceased. Accordingly, it has been contended by the learned counsel for the appellants that there is absence of sufficient material to sustain the conviction of the appellants and finding of the learned trial court is bad in law, wrong on facts, bereft of legal reasoning, devoid of merit and the judgment of conviction and order of sentence are fit to be set aside.

10. 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 witnesses have been consistent in their depositions and there does not remain any lacuna in the case of the prosecution. The guilt of the appellants has been satisfactorily proved from the evidence adduced during the course of trial and



there is no infirmity in the impugned judgment of conviction and order of sentence of the learned trial court.

11. 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 discharged its burden of proving the manner of occurrence beyond reasonable doubts?

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

(III) Whether the prosecution has proved the presence of any source of light at the alleged P.O., that would have facilitated the identification of the appellants?

12. With reference to issue No. I, it would be pertinent to take note that there is conflict between the ocular evidence and the medical evidence as regards the manner of occurrence. It is case of the prosecution that the deceased was assaulted by four persons using bhala and by two persons using lathi. However, it is evident from the post mortem report (Exhibit 1) that the deceased had suffered only one external injury on his person. Thus, there is



evident contradiction regarding the manner of occurrence as alleged by the prosecution and the medical evidence. It has been observed by the Hon'ble Supreme Court in the case of ***Ram Narain Singh versus State of Punjab*** reported in ***(1975) 4 SCC 497*** 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.

In light of the legal position as discussed above, this court is of the opinion that there is absence of any reasonable explanation by the prosecution regarding such material contradiction between the ocular and the medical evidence. Such a defect goes to the roots of the case and is sufficient to make the entire prosecution case fall.

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

13. With reference to issue no.II, the attention of this Court has been drawn towards the glaring inconsistencies between the statement made in the F.I.R. and the testimony of PWs in their deposition before the learned trial Court regarding the place of occurrence. It has been stated by PW 7 (Investigating Officer of this case), in paragraph no. 2 of his deposition that the place of occurrence is situated near the Harpur Chhotkipul about ten feet wide, adjacent southern side of house of Lochan Das situated in



the village Harpur Aloth. The investigating officer has found blood stains and also made seizure of the blood stains and bhala that had been lying in an abandoned condition at the place described above. However, the place of occurrence as stated by the PW 7 is completely different from the place of occurrence as described in the deposition by the PWs 1, 2, 4, 5 and 6. Thus, there is evident inconsistency in the testimony of prosecution witnesses regarding the place of occurrence. In this regard, it is pertinent to take note of the decision of Hon'ble Supreme Court, passed in the case of ***Syed Ibrahim versus State of Andhra Pradesh*** reported in ***(2008) 10 SCC 601***, wherein it has been held that :

“when the place of occurrence itself has not been established, it would not be proper to accept the prosecution version”.

Moreover, it is trite principle of criminal jurisprudence that the testimony of an eye witness must be free from blemish and devoid of any ambiguity, uncertainty and loopholes. In criminal law, contradictory statements cannot be relied upon, much less than forming the basis of conviction. In the case of ***Sunil Kumar Shambhudayal Gupta and others versus State of Maharashtra*** reported in ***(2010) 13 SCC 657***, it has been observed that :



“The discrepancies in the evidence of eye witnesses, if found to be not minor in nature maybe a ground for disbelieving and discrediting that evidence. In such circumstances witnesses may not inspire confidence if the evidence is found to be in conflict and contradiction with the other evidences and the statement already recorded. In such a case, it cannot be held that the prosecution proved its case beyond reasonable doubt.”

Accordingly, in light of the factual position as discussed above, the issue no. II is decided in the negative.

14. With reference to issue no. III, it is apparent from the record that the alleged occurrence is said to have taken place at 09:30 pm. However, there is conspicuous absence of any statement by any of the eye witnesses regarding the presence of any luminous object at the place of occurrence or in the vicinity that would be a source of identifying the miscreants at night. Even the Investigating Officer while describing the place of occurrence, has not made any statement about the presence of any source of light. Such failure on part of the prosecution to prove any source of identification certainly casts a dent on the story of the prosecution. In the case of ***Ram Narain Singh versus State of***



Punjab reported in (1975) 4 SCC 497, the Hon'ble Supreme Court emphasising upon the need of proving the source of identification, made the following observations:

*“On the day of the occurrence i.e. October 2, 1972, it would be quite dark at 8-00 P.M. and unless there was some light burning in the house it would be difficult for the witnesses to have identified the assailants and to have given such a graphic description of the occurrence...
... There also the accused could not be identified because there is no evidence of any witness to show that any light was burning there, nor does any of the eye witnesses say that he had identified the accused by voice. For these reasons, therefore, we are convinced that even accepting the prosecution case at its face value, if the occurrence took place at 8-00 P.M. the possibility of mistake in identification cannot be excluded in the present circumstances.”*

In light of the legal position as discussed above, this Court is of the view that in the present case, there is absence of sufficient evidence to make out a fool proof case for conviction and the prosecution has failed to discharge its onus of proving the case beyond iota of reasonable doubts. The dark clouds of suspicion looming large on the story of the prosecution, have



poured heavily only to wash away all the dust ridden allegations. The prosecution has failed to pull the ropes sufficiently tight so as to bring conviction to the door steps of the appellants.

Thus, the issue no. III is decided in the negative.

15. In light of the legal position as discussed above and on the basis of the findings arrived at on the issues formulated, we are of the considered opinion that the conviction of the appellants is not sustainable in the eyes of law and the prosecution has failed to prove its case beyond all reasonable doubts.

16. Therefore, both the appeals stand allowed and the judgment of conviction and the order of sentence dated 01.08.1996 passed by the learned 5th Additional Sessions Judge, Samastipur in Sessions Trial No.405 of 1993/ 159 of 1993 are set aside. Since the appellants of both the appeals are on bail, they are discharged from the liabilities of their respective bail bonds.

17. We record our appreciation towards Mrs. Vaishnavi Singh, learned advocate appointed as Amicus Curiae to represent the appellant of Criminal Appeal (DB) No.323 of 1996, who has rendered her able assistance to this Court in Criminal Appeal (DB) No.323 of 1996. Therefore, we direct the Patna High Court Legal Services Committee to pay a sum of Rs.5000/- to Mrs. Vaishnavi Singh, learned advocate, appointed as Amicus Curiae



to represent the appellant of Criminal Appeal (DB) No.323 of 1996 at the cost of the State.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/-

AFR/NAFR	NAFR
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