

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.36 of 1996

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Ram Lal Singh son of Badsah Singh, resident of Village Buraura, P.S. Agion,
District Bhojpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant : Mr. Yogesh Chandra Verma, Sr. Advocate

Mr. P.P.N. Sahi, Advocate

Mr. B.K. Tiwary, Advocate

For the Respondent : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 05-04-2023

The present appeal has been preferred against the judgment of conviction dated 23.12.1995 and order of sentence dated 02.01.1996 passed by the 7th Additional Sessions Judge, Rohtas, Sasaram in Sessions Trial No.69/94 arising out of Sasaram (M) P.S. case No.308/93, whereby and whereunder the appellant has been convicted under Sections 302 and 307 of the Indian Penal Code (hereinafter 'I.P.C.') and has been sentenced to undergo imprisonment for life under Section 302 of the I.P.C. and rigorous imprisonment for seven years under Section 307 of the I.P.C. Both



the sentences of the appellant have been directed to run concurrently.

2. The case of the prosecution case in brief is that on 20.07.1993 at 14:00 hours informant Chaukidar Shyam Lal Ram gave his fardbeyan to A.S.I. Hareshwar Mishra (P.W.13) at Arrah-Sasaram road near Lalganj village to the effect that on the same day he was coming from his village and as soon as he reached near Arya Vidyalaya, he saw that bus No. BR-3-4343, driven by accused Ramlal Singh, was proceeding towards Bikramganj from Sasaram at a high speed. As the informant reached near the house of Ramdhari Singh, some boys were seen going towards Lalganj by the left side of the road. The driver of the bus intentionally dashed the boys, as a result of which two boys died on the spot and three boys were badly injured and thereafter the driver with the bus fled away towards Bikramganj. The informant raised alarm, upon which the villagers of Lalganj came running to the place of occurrence and they identified the dead persons as Sanjay Kumar Baitha and Ravindra Tiwary. They also identified the injured persons as Manoj Dubey, Ram Ekbal Dhobi and Balmiki Singh. The injured persons were brought by the villagers to Sasaram Sadar Hospital for treatment. It has also been stated that at the P.O. the informant heard that the people were saying that this driver



was beaten by some boys one day prior to this occurrence and at that time, the driver went by saying that he would teach a lesson and on the next day with a view to take revenge, the driver intentionally killed the boys by dashing with bus.

On the basis of fardbeyan of the informant, Sasaram (M) P.S. case No.308/93 was instituted under Section 302 of the I.P.C. and formal F.I.R. was drawn up against the accused Ramlal Singh. After completion of investigation, the police submitted charge sheet under Section 302 of the I.P.C. and thereafter learned C.J.M., Sasaram took cognizance of the offence and committed the case to the Court of Sessions. The learned trial court framed charges against the appellant, to which the appellant pleaded not guilty and claimed to be tried.

3. During trial, the prosecution examined altogether thirteen witnesses. P.W.1 is Rajgrihi Singh, P.W.2 is Brahmanand Prasad Rajak, P.W.3 is Balmiki Singh, P.W.4 is Mananjay Kumar, P.W.5 is Ram Sarup Ram, P.W.6 is Shyam Lal Paswan, P.W.7 is Satendra Kumar Singh, P.W.8 is Krishna Balabh Singh, P.W.9 is Pradip Kumar Agrawal, P.W.10 is Shashi Bhushan, P.W.11 is Deo Lal Ram, P.W.12 is Surendra Paswan and P.W.13 is Hareshwar Mishra. The prosecution has brought on record the documents like the fard beyan (Ext.1), the post-mortem reports (Ext.3 to 3/2), the



Inquest reports (Ext.6 to 6/2). However, the defence has not adduced any oral nor documentary evidence in his defence.

4. Learned counsel for the appellant 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 is contended that the testimony of the prosecution witnesses is inconsistent and there are severe contradictions in their deposition as regards the manner of occurrence. As such, the prosecution has not been able to prove the manner of occurrence beyond reasonable doubts. It has been further pointed out that the narrative of there being a fight between the appellant and the deceased/injured persons a day prior to the incident has been floated only with ulterior motives. No evidence whatsoever has been brought on the record to prove the alleged fight and therefore, the prosecution has utterly failed to prove the requisite *mens rea*. The learned counsel for the appellant further submits that the dead bodies have been found in the middle of the road and at the most, it is a case of accident. The appellant, i.e. the bus driver himself took the bus to the police station soon after the accident and such conduct of the appellant indicates absence of any vengeance or evil intention. Moreover, the PW3 who is an injured witness has



turned hostile. Accordingly, it has been contended that there is absence of sufficient material to sustain the conviction of the appellant and hence, 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.

5. 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 minor variations in the testimony of witnesses cannot be a ground to disbelieve and discard the witnesses as a whole. The appellant's conduct of ramming the bus into five boys is indicative of his evil intention and thus, the requisite element of *mens rea* has been sufficiently proved. It is therefore argued that 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.

6. 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 prove requisite *mens rea* to hold the appellant guilty for offences under sections 302 and 307 IPC?
- (II) Whether the prosecution has proved the manner of occurrence beyond reasonable doubts?
- (III) Whether there is any other substantive evidence to hold that the prosecution has discharged the burden of proving the case beyond the shadow of reasonable doubts?

7. With reference to issue No. I, it is apparent from perusal of the case record that no evidence has been brought on the record to prove the fight that is alleged to have taken place between the appellant and the deceased/injured persons. No witness has deposed before the learned trial Court to the effect that he had himself seen the alleged fight between the parties. Also, it is evident from the F.I.R. itself that the informant's statement about the alleged fight is a hearsay version. It has been stated by the informant that he heard from the people who had gathered near the PO that a fight had taken place a day prior to the present incident. However, no effort has been made by the prosecution to prove the source of such information. Accordingly, considering the facts and circumstances of the case, this court is of the view that the



prosecution's contention about the occurrence of the alleged fight is nothing more than a hearsay version. In this regard, it is pertinent to take note of the rule of evidence as stipulated in section 60 of the Indian Evidence Act, 1872, which states that "*oral evidence must, in all cases, whatever, be direct; that is to say- if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it.*" It has also been observed by the Hon'ble Supreme Court in the case of ***Sakatar Singh and others versus State of Haryana*** reported in **(2004) 11 SCC 291** that "*the statement of witness not based on his personal knowledge but on what he heard from others is "hearsay" evidence and such evidence is inadmissible.*"

In criminal law, the prosecution has the onus to establish *actus reus*, *mens rea* and the causative link, which are the three essential requisites of any criminal offence. In the present case, the first requirement, i.e. *actus reus* (the consequence of human conduct that is made punishable by law) is an undisputed fact. The death of the persons has been proved by the postmortem reports (Exhibit 3 to 3/2). The second requisite, i.e. '*mens rea*' refers to the guilty state of mind which is required to hold the accused guilty. The degree of *mens rea* required to be proved varies depending upon the concerned penal provision. In order to establish a case



under section 302 or section 307 I.P.C., the requisite *mens rea* required to be proved by the prosecution. In the case of ***Satpal versus State of Haryana*** reported in ***(2004) 10 SCC 794***, it was observed that :

“Whether there was intention to cause death has to be decided upon a totality of the facts and circumstances of the case and the evidence on record. Even where the victim was dashed to death by a motor car, it may be a case of culpable homicide amounting to murder, depending, of course on the evidence on record.”

In the present case, no evidence- direct or circumstantial, has been adduced by the prosecution to prove the requisite *mens rea*. Accordingly, this Court is of the view that the prosecution has utterly failed to prove the *mens rea* required to hold the appellant guilty for offences under Sections 302 and 307 I.P.C. Such failure on part of the prosecution is a most fundamental defect that goes to the roots of the case and is sufficient to make the entire case fall.

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

8. With reference to issue no. II, upon thorough examination of the case record, this Court finds that there are severe variations in deposition of the prosecution witnesses



regarding the manner of occurrence. The PW 6, who is the informant of this case and the chowkidar of police, has deposed during the trial that after having hit the boys, the bus did not stop. The PW 6 has not stated anything to the effect that the bus was reversed and hit the deceased/injured persons again. However, in sharp contradiction to such statement of PW 6, it has been deposed by the PW 2 that the after having hit the deceased/injured persons, the bus stopped. Furthermore, the other prosecution witnesses have specifically stated in their deposition that after hitting, the bus was reversed. Thus, this Court finds that there is inconsistency and variation in the testimony of the prosecution witnesses, who contend to be the eye witnesses to the occurrence. It is trite principle of criminal jurisprudence that the testimony of an eye witness must not be dangling. It must be free from blemish and devoid of any ambiguity, uncertainty and loopholes. In criminal law, loose and 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.”

In light of the facts and circumstances as discussed above, this Court is of the view that the prosecution has not been able to prove the manner of occurrence beyond reasonable doubts.

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

9. With reference to issue no. III, it is apparent from the record that the PW 3 (who is an injured witness) has not made any statement about the occurrence of any fight with the appellant. The PW 3 has not supported case of the prosecution and he has been declared hostile by the learned trial Court. Furthermore, it is relevant to take note that soon after the occurrence, the appellant himself took the bus to the police station. Such subsequent conduct on part of the appellant clearly indicates absence of vengeance. It is logical to state that a man who has determined for a quite few days to take revenge (as is contended by the prosecution), will not show remorse soon after the incident. Vengeance and remorse are staunch enemies and they cannot go side by side. When one of them appears, the other vanishes. Accordingly, the contention of



prosecution that the accident was done wilfully by the appellant driver with an evil intention to take revenge of the alleged fight stands rejected. Contrarily, we are of the view that said incident is a case of nothing but an accident. In this regard, it is relevant to consider that the informant and the other witnesses have deposed consistently that the bus was being driven at a high speed. Such act of driving the bus at a high speed clearly indicates rashness and negligence in the conduct of the appellant. The rash and negligent act has ultimately cost the lives of four young boys. In light of the factual matrix as indicated above, it would be pertinent to examine the ingredients essential for establishing an offence under section 279 of IPC. The following are the essential ingredients :

- (i) The accused was driving a vehicle;
- (ii) the vehicle was being driven on a public way;
- (iii) He was also doing so rashly or negligently;
- (iv) The act of driving was such as to endanger human life or was likely to cause hurt or injury to any other person.

Furthermore, this court also finds it pertinent to examine the ingredients essential to establish a case under section 304A of IPC. In the case of *State of Punjab versus Balwinder Singh* reported in *(2012) 2 SCC 182*, the following has been held by the Hon'ble Supreme Court :



“in order to bring a cause of homicide under section 304A of IPC, the following conditions must exist, namely:

- (i) there must be death of the person in question;*
- (ii) the accused must have caused such death; and*
- (iii) that such act of the accused was rash or negligent and that it did not amount to culpable homicide.”*

In the case of ***Balwant Singh versus State of Punjab*** and another reported in ***1994 SCC (Cr) 844***, it was observed that :

“the provisions of section 304A apply to cases where there is no intention to cause death and no knowledge that the act done will in all probability cause death. The provision is directed at offences outside the range of secs. 299 and 300 IPC and obviously contemplates those cases into which neither intention nor knowledge enters. The section applies only to such acts which are rash or negligent and are directly the cause of death of another person.”

10. Considering the facts and circumstances of the case and in light of the legal position as discussed above, this Court comes to the conclusion that conviction of the appellant for offences under sections 302 and 307 of I.P.C. is not sustainable in the eyes of law. However, we are of the considered opinion that the



prosecution has been able to prove the case under sections 279 and 304A of I.P.C. against the appellant.

11. In such view of the matter, the judgment of conviction dated 23.12.1995 and order of sentence dated 02.01.1996 passed by the 7th Additional Sessions Judge, Rohtas, Sasaram in Sessions Trial No.69/94 arising out of Sasaram (M) P.S. case No.308/93 are set aside and the appellant is acquitted of the charges under sections 302 and 307 of I.P.C.. However, in light of the evidence available on record, the appellant stands convicted for the offences under sections 279 and 304A of I.P.C. So far the quantum of punishment is concerned, we find that the case was registered in the year 1993 and the trial was concluded in December, 1995. Further, it is evident from the record that the appellant has remained in custody for approximately two years and six months. This Court also cannot lose sight of the fact that the present appeal itself is of the year 1996, which means that has been pending before this Court for about 27 years.

12. Therefore, in our considered opinion, the period of custody already undergone by the appellant in this case would suffice the purpose of meeting the ends of justice. Hence, the sentence awarded under sections 279 and 304A of I.P.C. is the period of custody already undergone by the appellant in this case.



Since the appellant is on bail, he is discharged from the liabilities of his bail bond.

13. With the aforesaid observation, the present appeal stands disposed of.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/-

AFR/NAFR	NAFR
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