

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.114 of 1996

1. Bablu Singh @ Amresh Singh, Son of Chandradev Singh
2. Vijoy Singh @ Chhotka, Son of Gita Singh, both resident of Village-
Babhangama, P.S. Birpur (Barauni), District- Begusarai

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 125 of 1996

1. Dayaram Singh
2. Ram Sujana Singh
3. Ravindra Singh alias Dhunman Singh, all sons of Gita Singh, resident of
Village- Babhangama, P.S. Birpur (Barauni), District- Begusarai.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 114 of 1996 and CRIMINAL APPEAL (DB) No. 125 of 1996)

For the Appellants : Mr. Ajay Kumar Thakur, Advocate
Mr. Ritwik Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate

For the Respondent : Mr. Bipin Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 19-08-2023

The criminal appeals arise out of common judgment of conviction and order of sentence dated 13.03.1996, hence they have been heard together and are being disposed of by this common judgment.



2. Both the criminal appeals have been preferred against the judgment of conviction and the order of sentence dated 13.03.1996 passed by Shri Dahaur Baitha, 1st Additional Sessions Judge, Begusarai in Sessions Trial No.59 of 1988/ 98 of 1995 arising out of Barauni P.S. case No.289 of 1986, whereby and whereunder the appellants of both criminal appeals have been convicted under Sections 302/34 of the Indian Penal Code (referred to 'I.P.C.') and have been sentenced to undergo imprisonment for life for the offence under Sections 302/34 of I.P.C.

3. The prosecution case, as per the fardbeyan of informant Ramakant Singh (PW8) recorded by A.S.I. Barauni P.S. on 30.08.1989 at 5:30 p.m., is that while the informant alongwith Sarpunch Rabindra Singh was taking tea at the shop of Md. Akamul by the side of Karichak chowk, his brother Ajay Kumar Singh alias Nunu Singh was coming by cycle from Begusarai after seeing his ailing mother, who was getting treatment in the clinic of Dr. M.N. Rai, Begusarai alongwith his villagers Hare Ram Singh and Surendra Singh. When his brother proceeded ahead Karichak chowk and came infront of the shop of Md. Esamul Mian at about 5:00 p.m., then accused Bablu Singh uttered that enemy had come. Just thereafter the accused Vijay Singh alias Chhotka, Rabindra Singh alias Tunmun, Daya Ram



Singh and Ram Sujan Singh having pistol in their hands came from west side of the road. Accused Bachcha Singh and accused Arun Kumar Jha came out from the shop of Esamul having pistol in their hands. All the accused persons attempted to encircle his brother, but he tried to flee away. In the meantime, accused Daya Ram Singh opened fire, which hit on the hand of his brother and then he leaving his cycle, shoes, etc. in order to save his life began to flee towards the villager in the east. But the accused persons chased him and accused Ram Sujan Singh in course of chase shot on him, which hit his back and as such his brother fell down. Thereafter accused Rabindra Singh shot on him, which hit his chest. Accused Arun Kumar Jha and Bachcha Singh also opened fire, which hit him. Thereafter accused Vijay Singh opened fire uttered that now he is dead. The accused persons seeing the villagers and passersby assembling there fled towards east in a lonely place. The informant has also alleged that such crime was committed after making plan as litigation is going on from before with them.

4. On the basis of aforesaid fardbeyan of informant, Barauni P.S. case No.289 of 1986 was registered. After investigation, the Investigating Officer submitted charge sheet and thereafter 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 appellant pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined altogether fourteen witnesses, namely, Bhagirath Singh (PW1), Ram Sogarath Singh (PW2), Ram Dinesh Singh (PW3), Ram Nandan Singh (PW4), Hare Ram Singh (PW5), Dr. S.M. Bakar (PW6), Rabindra Singh (PW7), Ramakant Singh-informant (PW8), Surendra Prasad Singh (PW9), Indradeo Singh (PW10), Suresh Kumar Thakur-I.O. (PW11), Md. Salimuddin (PW12), Mahanth Pandey (PW13) and Umakant Mishra (PW14). In support of its case, the prosecution has also produced exhibits as Ext.1 (signature of Bhagirath Singh on seizure list), Ext.1/1 (signature of Ram Sogarath Singh on seizure list), Ext.2 (signature of Ram Dinesh Singh on inquest report), Ext.2/1 (signature of Ram Nandan Singh on inquest report), Ext.1/2 (signature of Ram Dinesh Singh on seizure list), Ext.1/3 (signature of Ram Nandan Singh on seizure list), Ext.3 (carbon copy of P.M. Report dated 31.8.92 of dead body of deceased Ajay Singh alias Noonu Singh), Ext.4 (fard beyan), Ext.1/4 (signature of Ashok Kumar Singh on fard beyan), Ext.1/5 (signature of Shankar Singh on fard beyan), Ext.5 (forwarded fardbeyan), Ext.6 (pagination on fardbeyan),



Ext.7 (formal F.I.R.), Ext.8 (inquest report), Ext.9 (seizure list), Ext.9/1 (seizure list), Ext.10 (charge sheet), Ext.3/1 (postmortem report). The defence has not produced any witness in support of its case. The defence has produced exhibits as Ext.A (C.C. of F.I.R. of Muffasil P.S. case No.151/89), Ext.A/1 (C.C. of F.I.R. of Barauni P.S. case No.470/90), Ext.A/2 (C.C. of F.I.R. of Barauni P.S. case No.49/84), Ext.A/3 (C.C. of F.I.R. of Barauni P.S. case No.134/82), Ext.B (C.C. of judgment of S.T. No.80/87), Ext.C (C.C. of charge sheet of G.R.2397/84), Ext.C/1 (C.C. of F.I.R. of charge sheet of G.R.1517/89), Ext.C/2 (C.C. of charge sheet of G.R.46/87), Ext.D (C.C. of deposition of C.R. case No.2423/93 of Rabindar Singh), After conclusion of the trial, the learned Trial Court convicted and sentenced the appellants in the manner as indicated above.

6. 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 deceased along with PW5 and a tendered witness (PW9) were coming on their bicycle, but the Investigating Officer recovered only one bicycle belonging to the deceased, which doubts the presence of PW5 at the place of



occurrence. Furthermore, it has been argued that the prosecution has also failed to prove the presence of the other witnesses and the manner of the occurrence beyond all reasonable doubts by withholding the persons as witness to this case, whose house was by the side of the place of occurrence and number of charge-sheet witnesses who were examined during the investigation. It has also been pointed out that PW12, who claimed to have witnessed the occurrence, has admitted that the appellants were not at the place of occurrence. Moreover, it is contented that PW5, PW7 and PW8, who are alleged to be the eyewitnesses to this case, are the chance witnesses, who are in inimical terms with the prosecution. Therefore, it is contended 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.

7. Learned A.P.P. 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 is observed that the testimony of the witnesses has been consistent throughout, thereby solidifying the case of the prosecution. It has been pointed out that PW12 admitted in examination-in-chief



that when he reached the place of occurrence, he found the deceased dead and also in paragraph 7, admitted that he was a bit away from the place of occurrence when he listened to the firing sound. Therefore, P.W.12 is not an eyewitness to the case. It is observed that minor defect in the investigation or unexplained delay in lodging the FIR after the fardbeyan by itself cannot be a ground to discard the basic prosecution version. Accordingly, it has been contended that the guilt of the appellants has been satisfactorily proved by 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.

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

(I) Whether the non-examination of any independent witness by the prosecution witness will vitiate the prosecution case?

(II) Whether the defect in the investigation will prejudice the trial of the appellants?

9. In order to address issue no. I, it is found that the eyewitnesses to the occurrence i.e. PW5, PW7, PW8 (Informant)



and (PW9, who is a tendered witness) are co-villagers. It has been discerned from the testimonies of the aforementioned witnesses that PW5 was a co-accused and co-witness along with the deceased, while the witness PW7 maintains an ancestral affiliation with the deceased. The witness PW8 serves as the informant in this case. After undertaking a thorough and meticulous scrutiny of the depositions offered by these witnesses, it is evident that their narrations converge towards establishing the guilt of the accused. No significant disparities or contradictions materialize with respect to the time, place or manner of the occurrence. At this juncture, we find it relevant to refer to the judgment of Hon'ble Supreme Court in the case of ***Bhagwan Jagannath Markad v. State of Maharashtra*** reported in ***(2016) 10 SCC 537*** in paragraph 19 that:

“... .. Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a “partisan” or “interested” witness may lead to failure of justice.”



Furthermore, the Hon'ble Supreme Court in the case of ***Sadhu Saran Singh v. State of U.P.*** reported in ***(2016) 4 SCC 357*** in paragraph 29 of the judgment has held that:

“29. As far as the non-examination of any other independent witness is concerned, there is no doubt that the prosecution has not been able to produce any independent witness. But the prosecution case cannot be doubted on this ground alone. In these days, civilised people are generally insensitive to come forward to give any statement in respect of any criminal offence. Unless it is inevitable, people normally keep away from the court as they find it distressing and stressful. Though this kind of human behaviour is indeed unfortunate, but it is a normal phenomenon. We cannot ignore this handicap of the investigating agency in discharging their duty. We cannot derail the entire case on the mere ground of absence of independent witness as long as the evidence of the eyewitness, though interested, is trustworthy.”

Therefore, considering the aforesaid discussion and the referenced judgments, it is the considered opinion of this Court that the prosecution's case does not suffer from vitiation solely on account of non-examination of an independent witness. Consequently, non-examination of an independent witness does



not cast any aspersion on the credibility or robustness of the prosecution's case.

Accordingly, the issue under consideration is decided in negative.

10. In relation to issue no. II at hand, a meticulous examination of the case record reveals that two Investigating Officers have been presented as witnesses in the proceedings, identified as PW11 and PW13. It is to be noted that these Investigating Officers chose not to examine certain witnesses in close proximity to the place of occurrence. Additionally, they refrained from initiating a chemical analysis of the articles seized at the place of occurrence. Notable among these observations are certain minor doubts concerning the conduct of the Investigating Officers. However, these reservations, though warranting attention, do not inherently corrode the veracity and reliability of the prosecution's case. While these doubts may have arisen, they ought not to overshadow the overarching credibility and coherence evident in the testimonies presented. At this juncture, we find it relevant to refer to the judgment of Hon'ble Supreme Court in the case of *Dashrath Singh v. State of U.P.* reported in *(2004) 7 SCC 408* in paragraph 15 that:



“... Though the investigation appears to be perfunctory, that should not, in our view, materially affect the substratum of the prosecution case which stands established by cogent and reliable evidence.”

Also, the Hon’ble Supreme Court in the case of ***State of Punjab v. Hakam Singh*** reported in ***(2005) 7 SCC 408*** in paragraph 14 of the judgment has held that:

“14. During the course of investigation, a serious doubt was cast on the fair investigation by the investigating officer and the investigating officer was subsequently changed but that does not render the testimony of PW 3 unreliable. After going through the testimony of PW 3 Harbans Kaur, the wife of the deceased, it leaves no manner of doubt in our mind that she is a truthful witness and her testimony fully supports the case of the prosecution. The technical grounds sought to be utilised by the High Court in discarding the testimony of this witness nowhere shakes the truthful version given out by PW 3 Harbans Kaur. Therefore, we are of the opinion that the conviction of Hakam Singh under Section 302 IPC by the trial court for causing the death of Harbans Singh was correct and it should not have been reversed by the High Court.”



Therefore, in view of the discussions made hereinabove and the decisions referred to above, in our considered opinion, it is incumbent upon this Court to uphold the principle that even in the presence of such doubts, the substantial foundation of the prosecution's case, established through consistent and compelling evidence, remains unaffected. the non-examination of specific witnesses and the omission to subject the seized articles to chemical analysis shall not cast any aspersion on the prosecution's case. Consequently, the perceived inadequacies in the investigative process shall not result in any prejudice to the appellants.

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

11. In light of the factual matrix under consideration and in alignment with the elucidated judgments of the Hon'ble Apex Court, this Court holds the conviction that the prosecution has furnished ample evidence to substantiate the culpability of the appellants. Furthermore, the Hon'ble Supreme Court in the case of ***Mukesh v. State (NCT of Delhi)*** reported in **(2017) 6 SCC 1** at para 433 observed that:

“433. While appreciating the evidence of a witness, the approach must be to consider the entire evidence and analyse whether the



evidence as a whole gives a complete chain of facts depicting truth. Once that impression is formed, it is necessary for the court to scrutinise evidence particularly keeping in view the prosecution case. Any minor discrepancies or improvements not touching the core of the prosecution case and not going to the root of the matter, does not affect the trustworthiness of the witness.”

12. Therefore, our position is that the eyewitnesses in this case, namely PW5, PW7, and PW8, demonstrate unwavering consistency in their depositions. Moreover, the accounts provided by additional prosecution witnesses also instill a degree of confidence within this Court regarding the details encompassing the occurrence's setting and manner. As a result, the prosecution has effectively fulfilled its responsibility of establishing the chain of circumstances, thereby solidifying the case beyond any reasonable doubt.

13. Accordingly, both the criminal appeals stand dismissed and the judgment of conviction and the order of sentence dated 13.03.1996 passed by Shri Dahaur Baitha, 1st Additional Sessions Judge, Begusarai in Sessions Trial No.59 of 1988/ 98 of 1995 arising out of Barauni P.S. case No.289 of 1986 are affirmed.



14. Since the appellants of both the criminal appeals are on bail, their bail bonds are, hereby, cancelled. The trial Court is directed to take immediate steps for sending the appellants in jail custody for serving the remaining sentence.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/-

AFR/NAFR	AFR
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