

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.670 of 2015

Arising Out of PS. Case No.-98 Year-2008 Thana- NAUBATPUR District- Patna

Mithilesh Singh Son of Late Janak Singh, Resident of Village - Shahar Rampur, P.S. - Naubatpur, District -Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 538 of 2015

Arising Out of PS. Case No.-98 Year-2008 Thana- NAUBATPUR District- Patna

Dhanesh Singh S/o late Janak Singh, R/o village Shahar Rampur, P.S. Naubatpur, District Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 670 of 2015)

For the Appellant : Mr. Yogesh Chandra Verma, Sr. Advocate
Mr. Dhananjay Kumar, Advocate
Mr. Sunil Prasad, Advocate
Mr. Adarsh Singh, Advocate

For the Respondent : Mr. Bipin Kumar, APP

(In CRIMINAL APPEAL (DB) No. 538 of 2015)

For the Appellant : Mr. Rajesh Kumar, Advocate
Mr. Prince Kumar, Advocate

For the Respondent : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE DR. JUSTICE ANSHUMAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 13-02-2023

Heard the learned counsel for the appellants and learned

A.P.P. for the State.



2. The aforementioned 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 dated 06.06.2015 and the order of sentence dated 09.06.2015 passed by the learned Additional Sessions Judge II, Danapur, Patna in Sessions Trial No.230 of 2010 arising out of Naubatpur P.S. case No.98 of 2008 corresponding to G.R. No. 871 of 2008, whereby and whereunder the appellants have been convicted under sections 147, 148, 302/149 and 342 of the Indian Penal Code, 1860 (hereinafter 'I.P.C.') and they have been sentenced to undergo rigorous imprisonment for life with fine of Rs.10,000/- each for offences under sections 302/149 of the I.P.C. and they have been further sentenced to undergo rigorous imprisonment of six months for offence under Section 147 of the I.P.C., one year rigorous imprisonment for offence under Section 148 of the I.P.C. and three months rigorous imprisonment for offence under section 342 of the I.P.C. All the sentences have been directed to run concurrently.

4. The prosecution's case, as per the fardbeyan of informant Geeta Devi recorded by S.I. Shri R.D. Pandey of Naubatpur P.S.



on 24.03.2008 at 16:00 hours at the house of the informant, in short, is that on the same day at about 1:00 p.m. while the informant's son namely Pannu @ Rakesh Kumar was going to poultry farm from his house after taking meal, in course thereof when Pannu @ Rakesh Kumar reached in front of the house of Mithilesh Singh, in the meantime co-villagers, namely, Mithilesh Singh, Dhanesh Singh, Amresh Kumar @ Pintu, Tullu @ Rakesh Kumar and Surendra Singh, variously armed with country made pistols, surrounded the informant's son and thereupon the accused Suresh Singh caught hold of him and the accused Mithilesh Singh opened fire at him and got him wounded. It is further alleged that the family members of the informant took her son to Patna for better treatment. The cause of occurrence has been stated to be dispute arising out of post panchayat election.

5. On the basis of aforesaid fardbeyan of informant Geeta Devi, an F.I.R. bearing Naubatpur P.S. case No.98 of 2008 was drawn up against five accused persons. After investigation, the police submitted charge-sheet against the two accused persons showing the accused Suresh Singh as dead and keeping the investigation pending against the rest others, namely, Amresh Singh @ Pintu, Rakesh @ Tullu and Umesh Singh. Then learned A.C.J.M., Danapur after taking cognizance against the above



named two accused persons on 28.01.2010 committed the case to the Court of Sessions. Thereupon, 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, Geeta Devi (P.W.1-informant), Shashi Devi (P.W.2), Munni Devi (P.W.3), Dr. Arbind Kumar Singh (P.W.4), Krishna Murari Sharma (P.W.5), Rakesh Kumar (P.W.6), Tej Narain Vishwas (P.W.7) Investigating Officer of the case, Dr. Girish Kumar Sharan (P.W.8) and Bhavesh Kumar Dinkar (P.W.9). In support of its case, the prosecution has produced exhibits as Ext.2 (postmortem report), Ext.1/3 (fardbeyan of informant Geeta Devi), Ext.3 (formal F.I.R.), Ext.4 (Inquest report). The defence has also produced exhibits as Ext.A (signature of S.I. R.D. Pandey on F.I.R.), Ext.A/1 (signature of witness Ranju Devi), Ext.D (signature of Mithilesh Singh on complaint petition), Ext.C (true copy of final report). Ext.B (formal F.I.R. of Naubatpur P.S. case No.97/2008).

7. Learned counsel appearing for the appellants 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 was further submitted that the prosecution has miserably failed to prove the manner of occurrence beyond the shadow of reasonable doubts and that there are material contradictions in the deposition of the prosecution witness PW1, who is the informant of this case. In order to buttress this contention, the attention of the court has been drawn towards the fardbeyan of the informant and her deposition as a witness made before the learned trial court. It has further been submitted that PW2, PW3, PW5 and PW6 are not eye witnesses in the present case. It has also been vehemently argued that the opinion given by PW4 the Doctor who conducted the post mortem on the person of the deceased and also the opinion given by the PW8 the surgeon who operated upon the deceased (then injured) do not disclose anything about the nature of weapon used in the commission of the alleged offence. Therefore, it is contended that the findings of the learned trial court is 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 requires no interference as the prosecution has been able to prove the case beyond all reasonable doubts. From the evidence adduced by the prosecution, guilt of the appellant is



satisfactorily proved and there is no infirmity in the impugned judgment of conviction and order of sentence 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 PW1, that is, the informant can be considered an eye witness to the alleged occurrence?
- (II) Whether the non-recovery of the weapon alleged to be used in the course of occurrence or any other incriminating article will be fatal for the prosecution case, especially in an offence under the Arms Act?
- (III) Whether the absence of any medical finding about the nature of weapon used and about the injury sustained by the deceased will make the case of the prosecution fall?
- (IV) 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?

10. **With reference to issue no. (I)**, from perusal of the fardbeyan, it is evident that the informant (PW1) is conspicuously silent regarding her presence at the alleged place of occurrence. However, during the course of trial the PW1, states in paragraph no. 5 of the examination-in-chief that while her son was going to the poultry farm, she was behind her son (i.e. the deceased). This



statement of the PW1 is in sharp contradistinction to her statement made in paragraph no. 25 of the examination-in-chief where she mentions that she was going to collect cowdung cake from the verandah (dalan) at the time of the alleged occurrence. She further states that she was going alone and that she did not reach the poultry farm. Thereupon, the PW1 makes a distinct statement in the latter part of the deposition that at the time of occurrence, her son-in-law, namely, Krishna Murari Sharma (PW5) had also gone with her son (deceased). However, this statement is negated in the deposition of PW5 wherein he states that he had no information about the incident as he had already left his in-laws' house at about 08:00 am, whereas the time of the alleged incident is 01:00 pm. It is settled principle that the testimony of a person, who is an eye witness to the incident, must not be dangling or self contradictory. In criminal law, loose, contradictory and uncorroborated statements cannot be relied upon, much less than forming the basis of conviction. The statement of an eye witness must be free from blemish and devoid of any ambiguity, uncertainty and loopholes. In the present case, it is quite manifest that there are material inconsistencies in the testimony of PW1 and the same also stands contradicted by the testimony of other witnesses. At this juncture, it is would be relevant to take note of the decision of the Hon'ble



Supreme Court, in the case of ***Sunil Kumar Shambhudayal Gupta and others versus state of Maharashtra (2010) 13 SCC 657***, wherein para no. 16 the following has been observed:

“The discrepancies in the evidence of eye witnesses, if found to be not minor in nature may be a ground for disbelieving and discrediting that evidence. In such circumstance, the witness may not inspire confidence if the evidence is found to be in conflict and contradictory to 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, this court is of the firm view that PW1 is not an eye witness to the alleged incident and therefore, the issue number (I) is decided in negative.

11. **With reference to issue no. (II) and (III)**, it is relevant to take note of the statements of the PW7 who is the investigating officer of the case. During the trial, the PW 7 deposes that no recovery of any weapon or any other incriminating article has been made in the present case either from the place of occurrence or from elsewhere. There is no specific mention as to whether any arms were recovered from the house of the accused or not. Also there is no mention of finding any blood marks on the alleged place of occurrence. In paragraph no. 16 of the examination-in-



chief, the PW7 specifically deposes that he did not find any object worth mentioning on the place of occurrence.

So far the issue relating to absence of any medical finding about the nature of weapon resulting in death of the deceased is concerned, the depositions of the PW4 and PW8 assume paramount importance. PW4 is the doctor who conducted postmortem upon the person of the deceased whereas PW8 is the surgeon who operated upon the body the injured victim (now deceased). It has been mentioned by PW4 that no precise opinion can be given about the nature of weapon used in the alleged occurrence because of the prior surgical intervention done on the person of the deceased. The PW8 further deposed that the photocopy of the prescription of Rakesh Kumar @ Pannu (deceased) shown by the prosecution before him during the trial was neither in his writing nor in his signature. He further stated that he attends Rajeshwari Hospital whenever any call comes and that he has done surgery of many patients there who have received bullet injury but cannot name them. As such, neither any reliance can be placed on the testimony of PW8 nor is there any injury report on the record on the basis of which the nature of weapon used in the alleged occurrence can be ascertained.



Considering the facts and circumstances of the case, such non-recovery of any weapon or other incriminating article coupled with absence of any medical opinion as to the nature of weapon used in the alleged occurrence casts dark clouds of suspicion on the case of the prosecution. In criminal law, there are three essential requisites of any offence, viz. *mens rea*, *actus reus* and the causative link. In order to convict the accused, in addition to establishing *mens rea* and *actus reus*, the prosecution also has the onus to establish the causality element, that is, the prosecution has to prove that it was the act of the accused only that has resulted into the *actus reus*. The element of causality establishes a live link between the conduct of the accused and the *actus reus*. In the present case, though the *actus reus*, i.e. death is apparent and an undisputed fact, however, there is no material on the record to establish the causative link. Accordingly, it cannot be said with certainty that it is the appellants only that have caused the death of the deceased. In absence of such live causative link, taking any contrary view in the backdrop of the facts of this case will be against the principles of fairness and justice. The court cannot take a view against the established principles of criminal jurisprudence that derive their authenticity from the *grundnorm*, the Constitution.



Accordingly, the issue no. (II) and (III) are decided in the affirmative.

12. **With reference to issue no. (IV)**, upon perusal of the case record and minute examination of the deposition of the witnesses, it is apparent that the PW2, who is the sister of the deceased, went to the alleged place of occurrence on hearing gunshot sound whereupon she saw that her brother (deceased) had fallen down and that people around were saying that Mithilesh Singh (appellant) had shot upon him. PW3, who is also the sister of the deceased, states in paragraph no. 1 of her deposition that she heard people raising *hulla* and saying that appellant Mithilesh Singh had shot upon the deceased. The rule of evidence as stipulated in section 60 of the Indian Evidence Act, 1872 is :

“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.”

Accordingly, PW 2 and PW 3 cannot be considered to be eye witnesses to the alleged occurrence for the reason that the statements made by them do not find origin from what they had actually witnessed from their ocular senses. Rather, their statements stem from what they heard from others. As such, PW2 and PW3 are hearsay witnesses and their testimonies cannot be



relied upon for the reason that hearsay evidence is not admissible in the eyes of law.

The other witnesses viz. PW5 and PW6 have been declared hostile during the course of trial. The PW5, who is the son-in-law of the informant of this case, says that he has no information about the incident and he has not given any statement before the police. On the date of the occurrence, he had already left the in-laws' house at about 08:00 am, whereas the time of occurrence has been alleged to be 01:00 pm. The PW6 who is also the son-in-law of the informant, deposes that on the date of the occurrence, he had returned back to his house in the morning and he received information at his house that his brother-in-law namely Rakesh Kumar @ Pannu had been shot. He further mentions that he has no knowledge as to who had shot upon the deceased. Accordingly, there is no concrete evidence to suggest the presence of the appellants at the place of occurrence at the time of the alleged incident.

13. Every trial is a voyage of discovery in which truth is the ultimate quest. In a case where no direct evidence is available, the onus lies on the prosecution to prove its case by establishing that the chain of circumstantial evidences is so connected together that they lead to only one inference, i.e. the guilt of the accused. Any



hiatus in the connecting chain of circumstances will prove to be fatal for the prosecution.

In the case of ***Hanumant versus State of Madhya Pradesh (AIR 1952 SC 343)***, three judge bench of the Hon'ble Supreme Court observed :

“It is well to remember that in cases where the evidence in of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and pendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

The Division Bench of the Hon'ble Supreme Court, in the case of ***Subramanya versus State of Karnataka, (Criminal appeal no. 242 of 2022)***, in para no. 49, has made following observation:

“In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The Court has to draw an inference



with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.”

Accordingly, in view of the discussions made above, the issue no. (IV) is decided in the negative.

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

15. Therefore, both the appeals stand allowed and the judgment of conviction dated 06.06.2015 and the order of sentence dated 09.06.2015 passed by the learned Additional Sessions Judge II, Danapur, Patna in Sessions Trial No.230 of 2010 arising out of Naubatpur P.S. case No.98 of 2008 corresponding to G.R. No.871 of 2008 are set aside.

15. Since the appellant Mithilesh Singh of Criminal Appeal (DB) No. 670 of 2015 is in custody, he be released from the jail



custody forthwith, if not wanted in any other case. The appellant Dhanesh Singh of Criminal Appeal (DB) No.538 of 2015 is on bail, therefore, he is discharged from the liabilities of his bail bonds.

(Sudhir Singh, J)

(Dr. Anshuman, J)

Pankaj/-

AFR/NAFR	NAFR
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