

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.8 of 1996

1. Saheb Kumar Paswan alias Saheb Paswan, son of Chalitar Paswan
2. Chariter Paswan, son of Banarsi Paswan
3. Doman Paswan, son of Saukhi Paswan
(vide order dated 13.07.2023, appeal against appellant Nos. 2 and 3 stands abated)
All residents of village Maheshkhut, P.O.-Gogri, (Maheshkhut), District-Khagaria.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr.Amish Kumar, Amicus Curiae Dr. Prabhakar Thakur, Advocate Mr. K.C.Jha, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 10-08-2023

Heard Mr. Amish Kumar, learned Amicus Curiae for the appellant No. 1 and learned A.P.P. for the State.

2. This criminal appeal has already been abated against the appellant Nos. 2 and 3, as both of them died during pendency of this appeal.

3. The present criminal appeal has been preferred in the year 1996, i.e. around 27 years, against the judgment of conviction and the order of sentence dated 17.11.1995 passed by Sri R.P. Chaudhary, 1st Addl. Sessions Judge, Khagaria in



Sessions Case No. 127 of 1994, arising out of Gogri P.S. case No. 251/93 whereby and whereunder the appellant No. 1 has been convicted for the offence under Section 302 of the Indian Penal Code (hereinafter referred to as “ the I.P.C.”) and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life under Section 302 of I.P.C. No separate sentence has been awarded under Section 27 of the Arms Act.

4. The prosecution case as per the fardbeyan of informant Nand Lal Paswan recorded by S.I. S.D.Singh of Mahesh Khunt (Gogari) Police Station at 1.00 a.m. in the office of Singh Transport is that the informant has his house in village Meheshkhunt which is adjacent north to the Assam Road. In the adjacent east of his house, the informant has a field in which he had grown potato during the relevant time and adjacent east to that potato field, there is house of Doman Paswan. The informant further stated that 5 days prior to the alleged date of occurrence, one Bimla Devi, daughter of Doman Paswan and wife of Chalitra Paswan had thrown excreta of her son in the potato field of the informant which was objected by the informant on which accused Saheb Kr. Paswan, son of Bimla Devi came over there and caught hold of his hair and assaulted him. On hulla, the members of the family of the informant and the neighbouring



people came over there and pacified them. On the next day, a Panchayati was convened in which Sarpanch Satya Narayan Paswan and Naga Paswan etc., participated and they asked both the parties to maintain peace but accused Saheb Kr. Paswan, Chalitra Paswan and Doman Paswan disobeyed the direction of the Panch and came to the shop of the informant in the night of 16th and 17th of December, 1993 at 10.30 p.m. and shot fire at his father namely Bharat Paswan due to which he died. The informant's father was sleeping at the shop along with informant and his younger brother Sanjay Paswan who awoke on hearing the sound of firing and in the light of lamp, saw that the bullet hit on the frontal part of head of informant's father and blood started oozing. The informant further stated that the accused Saheb Paswan having country made pistol in his hand was standing near the head of Bharat Paswan and accused Chalitra Paswan and Doman Paswan were also standing there. After the firing, the informant's father could not say anything and all three accused fled away. The accused persons also threatened the informant and his brother that if they would reveal the matter to any one, they would be killed. Once the accused persons left the place, the informant informed the nearby people about the incident and thereafter went to home and informed the family



members viz. Umesh Paswan, Bhola Paswan, Yogendra Paswan etc., who came to the place of occurrence and saw the dead body of Bharat Paswan.

5. On the basis of fardbeyan of the informant, Gogari P.S. case No. 251/1993 was registered under Sections 302/34 of the I.P.C. and Section 27 of the Arms Act and investigation was taken up. On completion of the investigation, a charge-sheet was submitted and accordingly cognizance was taken. Charges were framed under Sections 302/34 of the I.P.C. and Section 27 of the Arms Act against appellant No. 1 to which he pleaded not guilty and claimed to be tried.

6. During the trial, the prosecution examined altogether ten witnesses, namely, PW1 Bhola Paswan, PW2 Dhaneshwar Paswan, PW3 Umesh Prasad Singh, PW4 Sanjay Kumar Paswan, PW5 Nand Lal Paswan (informant), PW6 Yogendra Paswan, PW7 Umesh Paswan, PW8 Shanker Dayal Singh (I.O.), PW9 Purusottam Kumar Sinha (doctor who conducted post-mortem of the deceased) and PW10 Shyam Lal Saroj (Judicial Officer who recorded statement of Court Witnesses under Section 164 Cr.P.C.). Prosecution has also produced exhibits as Ext. 1 (signature of informant on fardbeyan), Ext.1/1 signature of Witness Umesh Paswan on the statement u/S 164 Cr.P.C., Ext. 2



(fardbeyan), Ext. 3 (formal F.I.R), Ext. 4 (signature of I.O. on the Surtehal report), Ext. 5 (signature of I.O. on the post-mortem), Ext. 6 (post-mortem report), Ext. 7, 7/1, 7/2 and 7/3(signature of Court witnesses namely Umesh Paswan, Yogendra Paswan, Sanjay Kumar Paswan and Bhola Paswan on their statement u/S 164 Cr.P.C.). Four Court witnesses viz. CW1 Umesh Paswan, CW2 Yognendra Paswan, CW3 Sanjay Kumar Paswan, CW4 Bhola Paswan were also examined by the Court. The defence has neither produced any witness nor produced any documentary evidence in support of its case. Thereafter, the statement of the appellant No. 1 was recorded under section 313 of the Cr.P.C. After conclusion of the trial, the learned Trial Court convicted and sentenced the appellant No. 1 in the manner indicated above.

7. Learned Amicus Curiae for the appellant has submitted that the case of prosecution suffers from several infirmities which having been overlooked by the learned trial Court while passing the judgment under appeal and, therefore, the impugned judgment is not sustainable in the eyes of law. It has been submitted that there is no eye-witness as to the manner of occurrence in the present case except for PW 6. It has been argued that the presence of PW 6 at the place of occurrence is also doubtful, taking into account the evidence of informant (PW



5). Learned counsel further submitted that PW 2, PW 3 and PW 7 have not supported the case of the prosecution case and were declared hostile during the trial. It has been further contended that there are glaring inconsistencies in the evidences of PW 4, PW 5 and PW 6 regarding the source of identification. Rather, no source of identification as such has been seized and brought on record as material exhibit. Further, the learned counsel argued that prosecution has not brought on record any seizure list with respect to articles seized from the place of occurrence. Moreover, the articles seized were not sent for scientific examination by the investigating officer. Therefore, causative link required to connect the appellant to the present offence is found to be missing. The learned counsel for the appellant thus contended that the prosecution has miserably failed to adduce any direct or circumstantial evidence so as to prove beyond reasonable doubts the involvement of the appellant in the occurrence. Therefore, it is argued that there are severe lacunae in case of the prosecution and the chain of circumstances does not unerringly point towards the guilt of the appellant. The 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.



8. Learned A.P.P. appearing for the State, on the other hand, has rebutted the arguments advanced by learned Amicus Curiae. It has been 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 case of the prosecution. The minor inconsistencies in the testimony of the witnesses cannot be a ground to reject their evidence as a whole. Further, it has been submitted that presence of PW 6 cannot be doubted as he was present at his shop situated close to the place of occurrence. The learned A.P.P. argued that the prosecution witnesses had identified the appellant in the light of lamp and as such there were no inconsistencies regarding the source of identification. Furthermore, lapses on the part of the investigating officer are no ground to disbelieve the prosecution's case. Accordingly, it is contended that the guilt of the appellant has been satisfactorily proved by the evidence adduced during the course of trial and there does not remain any hiatus in the chain of circumstances. Hence, there is no infirmity in the judgment of conviction 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 prosecution has been able to establish beyond reasonable doubt the participation of the appellant in the alleged occurrence considering the fact that the source of identification in which the appellant was claimed to be identified has neither been seized nor been produced as material exhibit?

II. Whether the prosecution has proved the presence of PW 6, who contends to be the sole eyewitness, at the place of occurrence beyond reasonable doubt?

III. Whether the non-examination and non-production of the articles seized from the place of occurrence, for which seizure list was made but not brought on record, renders prosecution story doubtful?

10. With reference to issue no. I, as formulated above, upon perusal of entire material available on record, we find that the alleged occurrence took place around 10:30 P.M. at night. It is found that PW 5 (informant), PW 4, and the deceased (father of



the informant) were sleeping inside their shop on a wooden bed i.e. chowki at the time of the occurrence. PW 5, in his deposition, has stated that he identified the appellant in the light of the lamp which was burning in the shop. On the contrary, PW 4 has deposed that he identified the appellant in the light of the electric bulb. However, the Investigating Officer (PW 8), in his evidence, asserted that he did not find any electric bulb burning at the shop except for an oil lamp. Additionally, PW 6 also confirmed in his deposition that an oil lamp was indeed burning in the shop. Apparently, there is a material contradiction between the evidence of PW 4, on one hand and PW 5 and PW 6 on the other hand with regard to the source of identification. We take note of the fact that PW 4 and PW 5 despite witnessing the appellant under the same circumstances provided inconsistent accounts in their depositions regarding the source of identification. Moreover, it is found that no source of identification, i.e., the lamp itself, has been seized by the investigating officer (PW 8), nor has it been produced as material exhibit, which further strengthens the doubt against the prosecution. At this juncture, we would gainfully rely on the decision of the Hon'ble Supreme Court in the case of *Kapildeo Mandal & Ors. vs State of Bihar*



reported in **(2008) 16 SCC 99**, wherein the Hon'ble Apex Court in paragraph 19 has observed the following: -

“19.The incident happened at 11 o'clock in the night. The witnesses have stated that they have seen the incident and recognised the appellants either in the torchlight or in the lantern light which was burning at their house. It has come in evidence of the witnesses as well as the investigating officer that neither the torch nor the lantern was seized by the investigating officer during the course of investigation, nor were they produced before the court. In the circumstances, it is difficult to believe that the appellants have been identified in the torchlight or in the lantern light.”

Therefore, applying the aforesaid view of the Hon'ble Supreme Court in the given facts and circumstances of the case as discussed above, we are of the considered opinion that the evidence regarding the identification of the appellant is not sufficient so as to connect the appellant to the said offence.

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

11. With reference to issue II, a thorough examination of the ocular evidence provided by PW 5 becomes necessary. The presence of PW 6 at the place of occurrence stands falsified in light of the testimony of PW 5. In his deposition, PW 5 clearly stated that PW 1, PW 6, and PW 7 arrived at the place of occurrence within fifteen minutes after the incident took place. Furthermore, upon scrutinizing *fardbeyan* wherein PW 5 has categorically mentioned that after the accused persons fled the



place of occurrence, he immediately informed people present in nearby hotel, and Singh Transport Office. Subsequently, he went home and informed family members and PW 1, PW 6, and PW 7, who then came to the place of occurrence and saw the deceased. Hence, it appears from the evidence of the informant that PW 6 came to the spot on being informed by him. However, PW6, in his deposition has stated that he witnessed the incident while working at his own shop and reached the spot after the appellant fled away. Therefore, it appears from his deposition that none has informed him about the alleged incident. Thus, it is evident that severe contradiction is present in the evidence of PW 5 and PW 6. It is well settled law that there should not be any major inconsistency or contradiction in the testimony of an eyewitness and it must be free from blemish and devoid of any ambiguity, uncertainty and loopholes. It has been observed by the Hon'ble Supreme Court in the case of ***Sadhu Ram & Another vs The State of Rajasthan (2003) 11 SCC 231*** that:

“It is no doubt true that the conviction of an accused can be based solely on the testimony of a solitary witness. However, in such a case the court must be satisfied that implicit reliance can be placed on the testimony of such a witness and that his testimony is so free of blemish that it can be acted upon without insisting upon corroboration. The testimony of the witness must be one, which



inspires confidence and leaves no doubt in the mind of the court about the truthfulness of the witness.”

Thus, in the light of the evidence of PW 5, we find that the prosecution's assertion about PW 6 being present at the place of occurrence at the time of incident appears doubtful.

Accordingly, the issue no. II is decided in ***negative***.

12. Now with regard to the issue no. III, the attention of this Court was drawn towards the testimony of Investigating Officer (PW 8), who stated in his deposition that he made the seizure of *cap, pellet, and blood-stained soil* from the place of occurrence. However, upon a minute perusal of the material available on record, it has surfaced that the prosecution has not brought on record any seizure list contended to be prepared in connection with the present case. On the contrary, it emerges from the deposition of the PW 8 that neither was the seizure list made a part of the case diary, nor has any seizure list been ever produced during the course of trial. There is conspicuous absence of any statement by any of the prosecution witnesses to the effect that they witnessed the preparation of seizure list. Also, there is failure of the prosecution to examine the seizure witnesses, if any. Furthermore, it is found that the *blood-stained soil , pellet, and cap*, which are contended to have been seized by the I.O. were not sent for scientific examination. As such, the causative



link required to connect the appellant to the present offence is found to be missing. Such latches on part of the prosecution causes a hiatus in the chain of circumstances and consequently, the benefit of such a botched-up investigation carried out in a perfunctory manner and badly conducted trial ultimately goes in favour of the appellant. However, it's important to note that when investigating police's default is so flagrant that it speaks volumes about their irresponsible attitude and utter disregard for established cannons of criminal procedure, the same cannot be brushed aside.

In the case of *Sidhartha Vashisht @ Manu Sharma versus State (NCT of Delhi) (2010) 6 SCC 1*, the Hon'ble Supreme Court observed that :

“The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance to the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.”



In light of the discussions made above, such latches on the part of the prosecution creates a serious doubt regarding the truthfulness of the prosecution case and the appellant will be entitled to get benefit of doubts.

Accordingly, issue no. III is decided in the *affirmative*.

13. In light of the legal position as discussed above 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 appellant is not sustainable in the eyes of law and the prosecution has failed to prove its case beyond all reasonable doubts.

14. Accordingly, the appeal is allowed. The judgment of conviction and the order of sentence dated 17.11.1995 passed by Sri R.P. Chaudhary, 1st Addl. Sessions Judge, Khagaria in Sessions Case No. 127 of 1994, arising out of Gogri P.S. case No. 251/93, are set aside. Since, the appellant Saheb Kumar Paswan @ Saheb Paswan is on bail, he is discharged from the liabilities of his bail bonds.

15. Before parting with this appeal, we record our appreciation towards Mr. Amish Kumar, learned advocate appointed as Amicus Curiae to represent the appellant, who has rendered his able assistance to this Court in this appeal. Therefore, we direct the Patna High Court Legal Services



Committee to pay a sum of Rs. 10,000/- to Mr. Amish Kumar learned advocate, who is appointed as Amicus Curiae to represent the appellant at the cost of the State by order dated 13.07.2023 passed by this Court.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Pankaj/-

AFR/NAFR	AFR
CAV DATE	28.07.2023
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