

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1047 of 2018

Arising Out of PS. Case No.-29 Year-2007 Thana- MAKER District- Saran

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Ram Bahadur Mahto @ Bahadur Mahto, S/o Late Sheopujan Mahto, R/o
Vill.- Jamalpur, P.O. Maker, P.S.- Maker, District- Saran.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

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with
CRIMINAL APPEAL (DB) No. 421 of 2018

Arising Out of PS. Case No.-29 Year-2007 Thana- MAKER District- Saran

- =====
1. Hari Narayan Mahto, Son of Late Laxaman Mahto,
 2. Manoj Mahto @ Manoj Kumar Mahto, Son of Hari Narayan Mahto,
Both are resident of Village- Pir Maker, Dihi Tola Brahamsthan, P.S. Maker,
in the District of Saran, Chapra.

... .. Appellants

Versus

The State Of Bihar

... .. Respondent

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with
CRIMINAL APPEAL (DB) No. 425 of 2018

Arising Out of PS. Case No.-29 Year-2007 Thana- MAKER District- Saran

- =====
1. Ramanand Mahto, S/o Late Shiv Pujan Mahto,
 2. Ramjee Sah S/o Late Bharat Sah,
Both are resident of village - Jamalpur, P.S.- Maker, in the District of Saran,
Chapra.

... .. Appellants

Versus

The State Of Bihar

... .. Respondent

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Appearance :

(In CRIMINAL APPEAL (DB) Nos. 1047 of 2018 & 425 of 2018)

For the Appellant/s

:Mr. Rajeeva Roy, Sr. Advocate
Mr. Sunil Prasad Singh, Advocate
Mr. Shashank Shekhar Sinha, Adv.
Mr. Makardhawaj Upadhyay, Advocate
Mr. Akash Keshav, Advocate



For the Respondent/s : Mr. Abhimanyu Sharma, APP
(In CRIMINAL APPEAL (DB) No. 421 of 2018)
For the Appellant/s : Mr. A.K. Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP

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

Date : 15-09-2023

The present batch of appeals has been preferred against the judgment of conviction dated 24.01.2018 and the order of sentence dated 02.02.2018 passed by Sri Om Prakash Pandey, IXth Additional Sessions Judge, Saran, Chapra in Sessions Trial No. 290/2016, New No. 293/2016, arising out of Maker P.S. case No. 29/2007, G.R. No. 2691/2007 whereby and whereunder all the appellants have been convicted for the offences under Sections 148, 302/149 and 380/149 of the Indian Penal Code (for short 'I.P.C.'), Section 27 of the Arms Act and Section 17 of the C.L.A. Act and sentenced to undergo rigorous imprisonment of three years under Section 148 of the I.P.C., imprisonment for life and a fine of Rs. one lakh each under Section 302/149 of the I.P.C., rigorous imprisonment for three years and a fine of Rs. 5,000/- each under Section 380/149 of the I.P.C., rigorous imprisonment for five years and a fine of Rs. 10,000/- each



under Section 27 of the Arms Act and rigorous imprisonment for six months under Section 17 of C.L.A Act. All the sentences so imposed on the appellants shall run concurrently and in default of payment of fine amount, the appellants shall undergo additional sentence for six months, one month and two months respectively.

2. The prosecution case, as per the fardbeyan of Mukesh Kumar Sharma @ Guddu Sharma recorded on 19.08.2007 at 20.45 hrs at his residence at Machhahi Jamapur, is that today i.e. 19.08.2007 the informant went to the *Maker* bazar and returned to his house at about 19.30 hrs. The informant further stated that while he was talking to Rohit and Deepak at the *dalan* and informant's father, driver, brother, private bodyguard, Mritunjay Singh and neighbours Srikant Sharma, Muneshwar Sharma and his uncle Shambhu Sharma were talking at the *varandah* and the children were studying inside the house and lady members were cooking and were also doing domestic works, suddenly, 50-60 persons including 5-6 ladies, armed with various weapons, came to his door. The informant further stated that they captured the persons present at the *varandah* and assaulted them with bamboo stick and also tied the legs and hands of female members and started indiscriminate firing and exploding bombs and were



searching for informant. Out of fear, the informant jumped from the room through a window in the bush at the back side of his house and saw that Rampukar Mahto along with 25 others named in the F.I.R. and some unknown persons (to whom the informant can identify on seeing face) set on fire the Bolero vehicle, tractor and motorcycles. When the informant came back to his house, he saw that his wife, uncle and bodyguard Mritunjay Singh were lying dead and there were injuries on their person of firing and bomb. The informant further stated that on search it was found that his DBBL gun No.19517, 315 Bore Rifle of the personal body guard, a VIP containing cash of Rs. 1,50,000/-, ornaments of gold, silver, clothes and some papers including of vehicle and Panchayat, cheques, three mobiles were also taken away by the accused persons. The accused persons also destroyed the house hold articles of the informant. The accused persons pasted some posters on the wall showing *maowadi* and *naxali* slogans. The informant further stated that after the incidence, his uncle Pramod Sharma and servant Loha Singh were missing.

3. On the basis of fardbeyan of the informant Maker P.S. case No. 29/2007 was registered under Sections 147, 148, 149, 380, 427, 302, 307 of I.P.C., Section 27 of the Arms Act, Sections



3, 4 and 5 of the Explosive Substance Act and Section 17 of C.L.A. Act. The police after investigation submitted charge-sheet against the appellants. The cognizance of the offence was taken by the learned jurisdictional Magistrate and thereafter the case was committed to the Court of Sessions. Charges were framed against the appellants on which they pleaded not guilty and claimed to be tried.

4. During the trial, in order to substantiate the charges against the accused persons, the prosecution examined as many as nine witnesses, namely, PW1 Shailesh Kumar Sharma, PW2 Raj Deo Sharma, PW3 Mithilesh Devi, PW4 Mukesh Kumar Sharma (informant), PW5 Surendra Mahto, PW6 Sri Kant Sharma, PW7 Vijai Kumar, PW8 Santosh Kumar and PW9 Grindra Shekhar Singh. The prosecution has also produced exhibits, namely, Ext. 1 signature of witness Shailendra Kumar Singh on seizure list, Ext. 1/1 signature of Mukesh Kumar Sharma on fardbeyan, Ext.2 post-mortem report of Mritunjay Kumar Singh, Ext. 2/1 post-mortem report of Pawan Devi, Ext. 2/2 post mortem report of Shambhu Sharma, Ext. 3 signature and writing of fardbeyan, Ext. 3/1 pagination on fardbeyan, Ext. 3/2 formal F.I.R., Ext.3/3 complete seizure list, Ext.3/4 to 3/6 inquest report, Ext. 4 injury report of Pramod Sharma and Ext.



4/1 injury report of Srikant Sharma. The defence has also produced one witness Malti Devi D.W.1 in support of its case. No documents has been produced on behalf of the defence. Thereafter, the statements of the appellants were recorded under section 313 of the Cr.P.C and after conclusion of the trial, the learned trial Court convicted the appellants in the manner stated above.

5. Learned counsel for the appellants has submitted that the trial 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 place and manner of occurrence beyond reasonable doubts, as the material contradictions and discrepancies in the testimony of the prosecution witnesses cast doubts to the case of the prosecution and the true facts have been suppressed by the prosecution. In order to buttress this contention, attention of this Court has been drawn towards the deposition of the eye-witnesses to assert that there there are severe discrepancies in the ocular testimony of PW 1, PW 2, PW 3 and PW 4 and it has been pointed out that their testimonies suffer from inconsistencies and deserve to be rejected. The attention of this court has also been



drawn towards the absence of any source of light and thereby, the possibility of participation of appellants in the alleged crime cannot be believed to be true. Thus, it was contended that appellants had been falsely implicated in this case and had no role to play whatsoever in the commission of the alleged offence. Therefore, it has been argued that there are severe lacunae in case of the prosecution and the chain of circumstances do not unerringly point towards the guilt of the appellants. Hence, 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.

6. 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 submitted that the prosecution witnesses have remained consistent in the testimony during the course of trial and there does not remain any lacuna in the case of the prosecution. The minor inconsistencies in the testimony of the witnesses cannot be a ground to reject their evidence as a whole. It has been further contended that there does not lie any hiatus in the chain of circumstances and all the evidence points towards the guilt of the



appellants. Therefore, it has been argued that guilt of the appellants has been satisfactorily proved by the evidence adduced during the course of trial and there is no infirmity in the judgment of conviction of the learned trial Court.

7. 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 the place of occurrence beyond all reasonable doubt?

(III) Whether the prosecution has been able to establish the source of identification under which the appellants have been identified?

(III) Whether the manner of occurrence, as narrated by the eye-witnesses, has been proved beyond all reasonable doubt?

8. With reference to issue no. I, it is found upon the perusal of the *fardbeyan* that the entire incident is said to have taken place at the house of the informant. Also, from the careful reading of the testimonies of PW 1, PW 2, PW 3 and PW 4 (informant), it appears that the place of occurrence is the house of the informant. However, in sharp contradistinction to such testimonies, the Investigating Officer (PW 7) has pointed out three different places of occurrence. He has stated in para 3 of his deposition that the dead body of one of the deceased (Shambhu



Sharma), was found inside the room of a separate house which belongs to the deceased; dead body of another deceased (Pawan Devi), was found inside the room of a separate house which was a joint house of informant and his uncle (deceased); and the dead body of one Mritunjay Kumar Singh, who is the bodyguard of informant, was found in the bush situated in southern side of *pagdandi*.

Furthermore, the Investigating Officer (PW 7) has stated in his deposition that he did not find any mark of violence at the said place of occurrence. It is relevant to take note that even though the deceased persons had sustained firearm injuries and bomb blast injury on their body, as is evident from the post-mortem report (Exhibits 2, 2/1 and 2/2), still, no marks of bomb or bullet were found at the wall or door of the said place of occurrence by the Investigating Officer. Thus, considering the facts of this case as indicated above, the place of occurrence as narrated by the prosecution is doubtful. Such a fundamental defect casts reasonable doubts as to the genuineness of the prosecution's case. 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 version of the prosecution.

In light of the factual position as discussed above, this Court is of the opinion that there exists reasonable suspicion as to the place of occurrence of the alleged incident. The prosecution has not been able to prove the place of occurrence beyond the iota of reasonable doubts.

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

9. With reference to issue no. II, it is relevant to take note that out of four prosecution eye-witnesses, only two of them have claimed to identify the appellants in the presence of light. The PW 2 in para no. 5 of his deposition has stated that he identified the appellants in a solar light which was at the door of the house of the informant, on the other hand, the PW 4 (informant) in para no. 8 of his deposition has stated that he identified the appellants in a bulb light which was at the door of his house. However, it is worthy to take into account the fact that the Investigating Officer has deposed that dead bodies of two deceased were found inside the room of two completely separate houses and one dead body was found in a bush situated in the southern side of *pagdandi*. Thus, in light of this fact, it is quite difficult to accept that the above mentioned witnesses had been able to identify the



appellants and their involvement in the alleged offence in the light emitted by the bulb or solar light which was present at the door of the informant's house.

The prosecution's case gets further hammered in light of the fact that no evidence has been brought on record by the Investigating Officer to show the presence of any solar light or bulb which could have been used for the identification of the appellants. It would be relevant to take note of the decision of Hon'ble Supreme Court in the case of ***State of Madhya Pradesh versus Ghudan*** reported in ***(2003) 12 SCC 485*** wherein it was observed that:

".. If really there was a tube light by which PW-26 identified the respondent then investigating agency would certainly have shown the existence of a tube light and its placement in the sketch because it was a very important fact mainly because the identification of the accused is a vital factor to be proved by the prosecution. The benefit of the omission to point out the existence of such light in the sketch, in our opinion, should go to the accused. .."

Therefore, in the light of the above referred decision of the Hon'ble Supreme Court, in the facts of the present case we find that the prosecution has failed to establish and prove the source of identification under which the appellants have been identified.

Accordingly, the issue no. (II) is decided in the negative.



10. With reference to issue no. III, it is pertinent to take note that there are severe inconsistencies in the testimony of eye-witnesses as regards the manner of occurrence. The PW 1 has specifically deposed in para 1 of his deposition that four persons namely, Lalmati Devi, Ramji Mahto, Jitendra Ram, Tarkeshwar Ram, had recklessly fired upon the Shambhu Sharma (deceased) and thereby he died. In contrast, PW 2 has deposed in para no. 3 of his deposition that four persons namely, Bahadur Mahto, Rakesh Mahto, Deepak Mahto, Dr. Ambika Rai had started firing and due to which Shambhu Sharma (deceased) died. In contrast to the statements made by PW 1 and PW 2, different sets of persons were named by PW 3 and PW 4 regarding the firing made on the Shambhu Sharma (deceased).

Further, the PW 3 has deposed in para no. 3 and 4 of his deposition that ten persons namely, Pukar Mahto, Bahadur Mahto, Ambika Rai, Amin Sahni, Madan Ram, Jitendra Ram, Lalmati Devi, Rakesh Mahto, Tarkeshwar Ram, Harinarayan Mahto, had fired bomb at Pawan Devi (deceased) due to which she died, on the other hand, other eyewitnesses had deposed that Ram Pukar Mahto had fired a bomb at Pawan Devi (deceased). And, with respect to the death of Mritunjay Kumar Singh (deceased), PW 3 had named the same set of persons who were



involved in the death of Pawan Devi (deceased). Meanwhile, PW 1 and PW 4 has deposed that three persons namely, Bahadur Mahto, Rakesh Mahto and Deepak Mahto had fired on Mritunjay Kumar Singh (deceased) which caused his death. In contrast to above statements, PW 2 has deposed that the bullet that hit and caused the death of Mritunjay Kumar Singh (deceased) was fired by one Bahadur Mahto. Thus, it appears that all the eye witnesses have come with different sets of people on the point of assault.

Moreover, according to the *fardbeyan*, the accused persons have looted DBL Gun no. 19517, 315 bore rifle, VIP suitcase, cash, ornaments of gold & silver, clothes, important documents including the papers of vehicles, Panchayat, government cheques and three mobile phone sets. But, the statements made by PW 1, PW 2, PW 3 and PW 4 in regard to the articles that have been looted by the accused persons neither tally with each other nor with the allegations made in *fardbeyan*. It has been further pointed out that the prosecution has not produced any arms licence to prove that they were in possession of any licensed firearm which they claim to have been looted by the appellants. Thus, the deposition of eye witnesses regarding the allegation of theft is doubtful at the threshold itself.



In light of the factual position as discussed above, this Court finds that there is inconsistency and variation in the testimony of the prosecution witnesses, who contend to be the eyewitnesses to the occurrence. It is a 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 eyewitnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that the prosecution proved its case beyond reasonable doubt.”

Therefore, in light of the aforesaid discussions and considering the inconsistencies in the testimonies of the eye-witnesses, coupled with the fact that no source of identification has been established for connecting the appellants with the alleged offence, this Court is of the view that the prosecution has not been able to prove the manner of occurrence beyond



reasonable doubts and this certainly makes the entire case doubtful.

Accordingly, the issue no. (III) is decided in the negative.

11. 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. Rather, the onus on the prosecution is to establish that the chain of circumstances is so complete that possibility of any other hypothesis is negated out in toto and the guilt of the accused is unerringly pointed out.

12. In light of the above mentioned legal positions 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 all the appeals is not sustainable in the eyes of law and the prosecution has failed to prove its case beyond all reasonable doubts.

13. Therefore, all the appeals stand allowed. The judgment of conviction dated 24.01.2018 and the order of sentence dated 02.02.2018 passed by Sri Om Prakash Pandey, IXth Additional Sessions Judge, Saran, Chapra in Sessions Trial



No. 290/2016, New No. 293/2016, arising out of Maker P.S. case
No. 29/2007, G.R. No. 2691/2007, are set aside.

14. Since the appellants of all the three criminal appeals
are in jail custody, they are directed to be released from custody
forthwith, if not wanted in any other case.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Pankaj/-

AFR/NAFR	NAFR
CAV DATE	05.09.2023
Uploading Date	15.09.2023
Transmission Date	15.09.2023

