

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.435 of 2016

Arising Out of PS. Case No.-74 Year-2010 Thana- PARSABAZAR District- Patna

Dinesh Manjhi, Son of late Kirit Manjhi, Resident of Village- Jhalen Chak,
P.S. Parsa Bazar, District Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 298 of 2016

Arising Out of PS. Case No.-74 Year-2010 Thana- PARSABAZAR District- Patna

Maheshwar Manjhi, Son of Krit Manjhi, Resident of Village - Jhichak, P.S. -
Parsa Bazar, District - Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 414 of 2016

Arising Out of PS. Case No.-74 Year-2010 Thana- PARSABAZAR District- Patna

- 1. Raju Manjhi, Son of late Rajendra Manjhi
- 2. Yogendra Manjhi, Son of Late Rajendra Manjhi
- 3. Mithlesh Manjhi, son of late Kirit Manjhi
All resident of village -Jhaion Chak, P.S. Parsa Bazar, district Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 435 of 2016)
For the Appellant/s : Mr. Prasoon Sinha, Advocate
Mr. Ajay Kumar Jain, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP
(In CRIMINAL APPEAL (DB) No. 298 of 2016)
For the Appellant/s : None
For the Respondent/s : Mr. Dilip Kumar Siha, APP



(In CRIMINAL APPEAL (DB) No. 414 of 2016)
For the Appellant/s : None
For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 16-01-2023

By the impugned judgment and order dated 02.03.2016/09.03.2016 passed by learned Additional District and Sessions Judge-III, Patna, in Sessions Trial No. 192 of 2011, arising out of Parsa Bazar P.S. Case No. 74 of 2010, the appellants have been convicted and sentenced as under:

CRIMINAL APPEAL (DB) No.435 of 2016				
Appellant Name	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Dinesh Manjhi	302/34 of the IPC	For Life	10,000/-	SI for 6 months
	27(1) of the Arms Act	RI for 3 years	5,000/-	SI for 3 months
CRIMINAL APPEAL (DB) No. 298 of 2016				
Maheshwar Manjhi	302/34 of the IPC	For Life	10,000/-	SI for 6 months
CRIMINAL APPEAL (DB) No. 414 of 2016				
Raju Manjhi	302/34 of the IPC	For Life	10,000/-	SI for 6 months
Yogendra Manjhi	302/34 of the IPC	For Life	10,000/-	SI for 6 months
Mithlesh Manjhi	302/34 of the IPC	For Life	10,000/-	SI for 6 months



2. A *fardbeyan* of the deceased recorded on 20.05.2010 at 9:30 p.m. in the emergency ward of the Patna Medical College Hospital (P.M.C.H.), Patna, by the Officer-in-Charge of Parsa Bazar Police Station is the basis for the registration of the concerned Parsa Bazar P.S. Case No. 74 of 2010 levelling commission of the offences punishable under Sections 341, 324, 326, 447, 307 of the Indian Penal Code read with Section 34 thereof and Section 27 of the Arms Act, 1959 . Section 302 of the Indian Penal Code was subsequently added as the informant Sushil Manjhi died on the very next day, after his *fardbeyan* was recorded.

3. The prosecution's case as disclosed by the deceased/informant in his *fardbeyan* in brief is that at 7:00 p.m. on 20.05.2010, he was having his meal while sitting adjacent to a road near his house when all of a sudden, his neighbours Dinesh Manjhi (appellant in Criminal Appeal (DB) No. 435 of 2016), Mithlesh Manjhi, Raju Manjhi and Jogendra Manjhi (appellants in Criminal Appeal (DB) No. 414 of 2016) and Maheshwar Manjhi (appellant in Criminal Appeal (DB) No. 298 of 2016), came there and started abusing him which was protested by him. The appellant Dinesh Manjhi thereafter shot at the deceased with his pistol, on the orders of the appellants Raju Manjhi and Jogendra Manjhi which hit the



informant in his abdomen. Thereafter, local people assembled there and brought him (the informant) to the P.M.C.H. where his *fardbeyan* was recorded, when condition was serious. He died later, during the course of his treatment. The informant (the deceased) in his *fardbeyan* mentioned that the persons named therein were accused in a criminal case alleging commission of rape with his (deceased's) sister and the accused persons were pressurising him to enter into a compromise; which according to him was the reason behind the occurrence.

4. Upon completion of investigation, the police submitted its charge-sheet, where upon the cognizance was taken of the offences and the case was committed to the court of Sessions for trial. A charge of commission of offence punishable under Section 302 read with 34 of the I.P.C. was framed against all the appellants. The appellant Dinesh Manjhi was charged also of commission of offence punishable under Section 27 of the Arms Act.

5. At the trial, altogether six prosecution's witnesses were examined including PW-1, Tilak Manjhi (father of the deceased), PW-2, Sakalbaso Devi (the mother of the deceased) and PW-3, Poonam Devi (the wife of the deceased). A sister of the deceased, Manju Devi was examined as PW-4. PW-5, Ajit Manjhi,



who had gone to the P.M.C.H. to see the informant, did not support the prosecution's case. He has been declared hostile at the instance of the prosecution. Arun Kumar Chaudhary, who had recorded the *fardbeyan* of the informant came to be examined as PW-6. Ranjit Kumar Singh, who was posted as Station House Officer, Parsa Bazar Police Station on 06.07.2010, was examined as a court's witness. He had assumed the charge of investigation after the first Investigating Officer i.e. PW-6. He had submitted the charge-sheet as he had found that his predecessor S.H.O. and the I.O. of the case had concluded the investigation into the case on all points. The said court's witness is a formal witness and has simply proved submission of charge-sheet by him.

6. After closure of the evidence of the prosecution's witnesses, the trial court explained to the accused persons the circumstances emerging against them for the purpose of soliciting their explanation. The appellants simply denied all such circumstances as were explained by the learned trial court to them, in tune with the requirement under Section 313 of the Cr.P.C..

7. A defence witness, DW-1, Krishna Manjhi, was examined. From his deposition it appears that he happened to be the immediate neighbour of the informant and the appellants. He deposed in his evidence, *inter alia*, that at about 7:30 p.m. while



returning back after his work from Pipra, he had seen the appellant Sushil Manjhi running towards his house, pressing tightly his belly with his hand and had fallen down upon reaching his house. He was coming from the western side.

8. The trial court, upon consideration of the evidence adduced at the trial, has concluded that the prosecution was able to establish beyond all reasonable doubts the commission of the offence by these appellants punishable under Section 302 read with 34 of the I.P.C.. Further, the appellant Dinesh Manjhi was guilty of the offence punishable under Section 27 of the Arms Act.

9. Assailing the impugned judgment of conviction, Mr. Prasoon Sinha, learned counsel appearing on behalf of the appellant Dinesh Manjhi of Criminal Appeal (DB) No. 435 of 2016, has submitted that the finding of conviction recorded by the trial court is manifestly erroneous on various grounds. He has submitted that though the *fardbeyan* of the deceased, which is the basis for registration of FIR, bears the signature of the deceased, his signature has not been proved by any witness during the course of the trial. He has further submitted that even the S.H.O./Investigating Officer who claimed to have recorded the *fardbeyan* of the deceased has not formally proved the signature of the deceased on the *fardbeyan*. He has also submitted that the



formal FIR has not been proved at the trial, by referring to the examination-in-chief of the Investigating Officer (PW-6). He has also submitted that PW-6 has not clearly disclosed in his evidence as to how had he received the information regarding the occurrence where upon he had reached P.M.C.H. to record the *fardbeyan* of the deceased. He has drawn our attention to the evidence of PW-6 in paragraph-6 wherein he deposed that he had learnt about the occurrence at 9:00 a.m. on 21.05.2010 and he further deposed at the same breath that such information was received by him at 11:00 a.m. whereafter he had gone to P.M.C.H. where the dead body of the deceased was kept in I.J. Ward. He has further submitted that the prosecution did not prove at the trial the *postmortem* report which is fatal to the prosecution's case, inasmuch as, the prosecution has failed to prove, beyond all reasonable doubts the nature of injuries sustained by the deceased which was the cause of his death. He has argued that PWs- 2, 3 and 4, who are mother, widow and sister of the deceased, have supported the case, claiming themselves to be the eye witnesses. He has however, contended that the father of the deceased, examined as PW-1, in his evidence, on the other hand, has specifically deposed in the cross examination that there was no person present at the time of occurrence. He accordingly submits



that the claim of the PWs- 2, 3 and 4, that they were eye witnesses, is falsified by the evidence of PW-1, the father of the deceased. He has submitted that in any case, considering the nature of injury which the deceased was said to have sustained by fire-arm in his abdomen, the prosecution was obliged to prove that he was in a fit state of mind to make his statement for the purpose of the same being recorded by a police officer as his *fardbeyan*. He contends that there is no certificate of a Doctor available in the P.M.C.H., when the *fardbeyan* was recorded by the S.H.O. of the police station to the effect that the deceased was in a fit state of mind to make his statement.

10. Mr. Abhimanyu Sharma, learned Additional Public Prosecutor representing the State in Criminal Appeal (DB) No. 435 of 2016, Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor representing the State in Criminal Appeal (DB) No. 298 of 2016 and Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State in Criminal Appeal (DB) No. 414 of 2016 have submitted that the eye witnesses to the occurrence have consistently supported the prosecution's case to the effect that the deceased Sushil Manjhi was shot at by the appellant Dinesh Manjhi with a pistol in his abdomen. The motive behind the occurrence has been duly explained not only in the *fardbeyan* but



also in the evidence of the prosecution's witnesses to the effect that a criminal case was pending with the accusation that the sister of the deceased was raped, which case, the accused persons wanted to get compromised and were pressurising the deceased for the same. It has been submitted that there being consistent ocular evidence of assault made by the appellant Dinesh Manjhi in the occurrence in which all these appellants had participated, absence of proof of the *postmortem* report, cannot be said to be fatal to the prosecution's case. They have submitted that the trial court has rightly recorded conviction of these appellants which do not require interference by this Court.

11. We have perused the impugned judgment and order of the trial court as well as the lower court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties as noted above. It is manifest on perusal of the lower court's records that for the reasons best known to the prosecution, the *postmortem* report was not brought on record at the trial. We find force in submission made on behalf of the appellant Dinesh Manjhi by Mr. Prasoon Sinha, that it was incumbent upon the prosecution to have established at the trial that the deceased was in a fit state of mind when his *fardbeyan* was being recorded by the S.H.O. of Parsa Bazar Police Station (PW-6)



in P.M.C.H.. Failure on the part of the prosecution to prove this aspect of the matter at the trial, in the Court's opinion, is a serious flaw in the prosecution's case. Further, the prosecution did not prove the signature of the deceased on the *fardbeyan*. We have carefully scrutinised the evidence of the witnesses including that of PW-6 for the said purpose and we have no hesitation in recording that none of the witnesses has proved the signature of the deceased on the *fardbeyan*.

12. Now, coming to the evidence of the prosecution's witnesses, we notice that PW-1, the father of the deceased, supported the prosecution's case. He deposed that the appellant Dinesh manjhi, had committed rape upon the sister of the deceased in relation to which a criminal case was lodged and in the process of an attempt to get the case compromised, an altercation between the deceased and the accused persons had taken place. He further deposed that his statement was recorded by the police in the hospital and the police had arrived in the village four days after the occurrence and had returned after making inquiries from the local inhabitants. As has been pointed out by learned counsel for the appellant, PW-1 clearly deposed that no person was present at the place of occurrence when the occurrence had taken place.



13. The evidence of PW-2 (mother of the deceased), is also on the same line. She deposed that there was sufficient light when the occurrence had taken place.

14. Wife of the deceased, PW-3, in her evidence deposed that at about 7:00 in the evening when she was serving meal to the deceased, the appellants came, entered into some altercation with the deceased and thereafter the appellant Dinesh Manjhi shot at the deceased in his abdomen. The deceased was thereafter taken to Parsa bazar with her father-in-law (PW-1), mother-in-law (PW-2) and sister-in-law (PW-4) and thereafter to the P.M.C.H.. In her deposition, PW-3 further deposed that it was the appellant Mithlesh Manjhi who had committed the rape in relation to which the criminal case was lodged which the accused persons wanted to get compromised. She claimed that she had witnessed her husband being shot at. In her cross examination, she admitted that the appellant Dinesh Manjhi had got registered a criminal case against her husband, but she did not know as to how many cases were instituted against her husband, the deceased. She further deposed in her cross examination that after the death of the deceased, the police had not come to her house nor her statement was recorded by the police, thereafter.



15. PW-4, a married sister of the deceased, claimed that though she was married ten years ago, on the date of occurrence she was at her paternal home. She deposed that she had seen from behind, the accused persons fleeing away. From her deposition, it transpires that the deceased was treated by a doctor at Parsa, but she was not able to disclose the name of the doctor who had treated the deceased. It is significant to note that PW-4 in her evidence deposed that the deceased died immediately after he was taken to '*Bara hospital*' (apparently the P.M.C.H.).

16. As has been noted above, PW-5, a witness of the inquest report, did not support the prosecution's case. He deposed that his signature was taken on a paper. He declined that his statement was ever recorded by the police. He has accordingly being declared hostile at the instance of the prosecution.

17. Now, coming to the evidence of PW-6 (I.O.), it is to be kept in mind that the occurrence had taken place on 20.05.2010. On the same date, the *fardbeyan* was recorded by him in the hospital, according to the prosecution's case. In his evidence, he deposed that he had inspected the place of occurrence on 21.05.2010 itself, that is the next day of the occurrence. This statement is contradicted by the evidence of PW-1, who in his evidence has deposed that the police had visited the village four



days after the date of occurrence. Though, he (PW-6) deposed that he had received the *postmortem* report, but strangely enough, the *postmortem* report was not proved at the trial. He further deposed that he had learnt about the occurrence from a spy and based on rumours (hearsay). He has apparently suppressed the first source of information which he had received regarding the occurrence. In paragraph-6 of his deposition, he has stated that he was informed about the occurrence on 21.05.2010 at 9:00 a.m. and at the same breath he has deposed that he had received such information at 11:00 a.m. whereafter, he had gone to the P.M.C.H.. If the said information about the occurrence, as disclosed in paragraph-6 of the evidence, is treated to be the occurrence of the death of the deceased in the P.M.C.H., the evidence of PW-6 becomes self contradictory. In his deposition, in paragraph-2, he has stated that he had gone to the place of occurrence on the next day of occurrence i.e. 21.05.2010 and during the course of inspection of the place of occurrence he received an information that the deceased had died in P.M.C.H.. Based on the said information, he had sent an Assistant Sub Inspector of Police, Brij Mohan Prasad with Chawkidar Chotan Mahto to P.M.C.H. for *postmortem* examination. It is noteworthy that neither Brij Mohan Prasad nor Chotan Mahto have been examined at the trial.



18. Taking into account the evidence of the prosecution's witnesses as noted above and the failure on the part of the prosecution to bring on record the *postmortem* report and prove the *fardbeyan* of the deceased said to have been recorded by the Investigating Officer in P.M.C.H., in our opinion, the prosecution can not be said to have been able to prove the charge against these appellants beyond all reasonable doubts.

19. Situated thus, in the background of the discussions noted above, the finding of conviction recorded by the trial court can not be upheld, which requires interference by this Court by extending the appellants benefit of doubt.

20. It is noted at this juncture that the appellants of Criminal Appeal (DB) No. 298 of 2016 and Criminal Appeal (DB) 414 of 2016 have remained unrepresented before this Court. In view of the forgoing discussions, however, their conviction by the trial court is also unsustainable. In the facts and circumstances noted above, we reverse the finding of conviction recorded by the trial court in its impugned judgment.

21. Accordingly, these appeals are allowed. The appellants stand acquitted of the charge punishable under Section 302/34 of the Indian Penal Code. In addition, appellant Dinesh



Manjhi stands acquitted of the charge of commission of the offence punishable under Section 27 of the Arms Act, 1959.

22. Consequently, the Judgment and order dated 02.03.2016 and 09.03.2016 passed by learned Additional District and Sessions Judge-III, Patna, in Sessions Trial No. 192 of 2011 arising out of Parsa Bazar P.S. Case No. 74 of 2010, are set aside.

23. The appellant Dinesh Manjhi is in custody. Consequent upon his acquittal by the present judgment, let him be released forthwith if he is not required in any other case. The appellants Maheshwar Manjhi, Yogendra Manjhi, Mithlesh Manjhi and Raju Manjhi are on bail upon suspension of their respective sentences by this Court. Consequent upon their acquittal by the present judgment, they stand discharged of the liabilities of their respective bail bonds and sureties if any.

(Chakradhari Sharan Singh, J)

I agree
Rajesh Kumar Verma, J

(Rajesh Kumar Verma, J)

Rajesh/Nishant

AFR/NAFR	NA
CAV DATE	12.01.2023
Uploading Date	.02.2023
Transmission Date	.02.2023

