

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.487 of 2016
Arising Out of PS. Case No.-3 Year-2010 Thana- GOVINDGANJ District- East Champaran

Sanoj Thakur son of Batkhari Thakur resident of village - Salha P.S. - Govindganj District - East Champaran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :
For the Appellant/s : Mr. Sanjeev Kumar, Advocate
Mr. Raushan Raj, Advocate
Ms. Manisha Khushi, Advocate
Mr. Bharti Rai, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 20-06-2023

This appeal has been preferred by the appellant under Section 374(2) of the Code of Criminal Procedure, putting to challenge the judgment of conviction dated 12.04.2016 and order of sentence dated 13.04.2016, passed by learned Additional Sessions Judge-II, Motihari (East Champaran), in Sessions Trial No. 464 of 2010/ 135 of 2015, arising out of Govindganj P.S. case no. 03 of 2010, whereby the appellant has been convicted and sentenced as under:

Criminal Appeal (DB) No. 487 of 2016				
Appellant	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Sanoj Thakur	302/34 of the IPC	For life	10,000/-	S.I. for six months



2. The son of the deceased Naresh Kumar (PW-8) is the informant of the case on whose *fardbeyan* recorded by the Sub-inspector of Police near the dead body of the deceased is the basis for the registration of the concerned Govindganj P.S. Case No. 03 of 2010. Briefly narrated, it is the prosecution's case that at 7:30 am on 04.01.2010 when his father (the deceased) was warming himself while sitting near a bonfire, the appellant Sanoj Thakur and one Batkhari Thakur came and inflicted *Daab* (a heavy sharp cutting weapon) blow on the head of his father causing severe injuries. The informant, at the time of occurrence was also sitting nearby. The informant is thus an eyewitness to the occurrence. Based on the informant's *fardbeyan*, the FIR came to be registered at 11:30 am on 04.01.2010. Upon completion of investigation, the police submitted chargesheet against the appellant and five others. Cognizance was taken based on the chargesheet so submitted by the police. One of the accused persons appears to have died and trial of other persons was separated from that of this appellant. Charge was framed against the appellant for commission of the offence punishable under Section 302/34 of the IPC. In support of its case, the prosecution got examined 12 witnesses including the second I.O. (PW-10). PW-4 and PW-7 (grandsons of cousin of the deceased), PW-5 (widow), PW-6 and the agnates of the deceased,



claimed to be the eyewitnesses to the occurrence and deposed at the trial in support of the prosecution. PW-1, a neighbour and PW-9, wife of PW-1 also deposed at the trial in support of the prosecution's case. PW-9 claimed to be an eyewitness. The Doctor, who had conducted the post-mortem examination came to be examined as PW-11. The inquest report and seizure list were proved by PW-12, an advocate's clerk. In addition to the oral evidence of the witnesses, the prosecution also brought on record documentary evidence, including the FSL report (Exhibit-3, 3/1) and the post-mortem report (Exhibit-4) etc.

3. After closure of the evidence of the prosecution's witnesses, the appellant was questioned under Section 313 of the CrPC by the trial court with reference to the circumstances emerging against him based on the evidence of the prosecution's witnesses. The appellant answered in negative all the questions put to him under Section 313 of the CrPC.

4. The trial court after having evaluated and appreciated the evidence adduced at the trial has recorded finding of conviction by the impugned judgment dated 12.04.2016 for the offence punishable under Section 302/34 of the Indian Penal Code as has been noted above and has sentenced the appellant to imprisonment for life with fine with a default clause.



5. We have heard Mr. Sanjeev Kumar, learned counsel for the appellant and Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State. We have perused the impugned judgment of conviction recorded by the trial court as well as the lower court records and we have given our thoughtful consideration to the rival submissions made on behalf of the appellant.

6. Mr. Sanjeev Kumar learned counsel for the appellant has vehemently argued that in the present case the I.O., who had conducted the investigation has not been examined and his non-examination has seriously prejudiced the appellant's case inasmuch as he missed the opportunity to elicit contradictions from the evidence of the prosecution's witnesses. He has placed reliance on the Supreme Court's decision in the case of ***Lahu Kamlakar Patil and Anr. v. State of Maharashtra*** reported in ***2013 AIR SCW 26*** and ***Ravishwar Manjhi and Ors v. State of Jharkhand (AIR 2009 SC 1262)*** in support of this submission. He has further argued that the prosecution's case as disclosed by the informant in the *fardbeyan* is not fully corroborated rather the same is contradicted by the medical evidence. He has thirdly submitted that it would appear from the depositions of the witnesses, who have claimed to be the eyewitnesses to the occurrence that they were infact not



present at the place of occurrence and they have been wrongly considered by the trial court to be the eyewitnesses, while recording finding of conviction.

7. Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor appearing on behalf of the State, defending the impugned order has submitted on the other hand that the finding of conviction is based on due appreciation of the evidence adduced at the trial which does not suffer from any legal infirmity requiring this Court's interference. He has submitted that the weapon used for commission of the crime and the cloth which the deceased was wearing were sent for forensic examination and the results obtained from forensic science laboratory support the prosecution case. He has submitted that considering the consistent depositions of the prosecution's witnesses corroborated by the medical evidence and the forensic report, the appellant's conviction for the offence punishable under Section 302/34 of the IPC is wholly justified. He has also argued that as no attempt was made by the defence to elicit any contradiction during the course of cross-examination and, therefore, non-examination of I.O. cannot be said to have prejudiced the appellant's case.

8. In order to address the rival submission made on behalf of the parties as noted above, it would be apt to look into



the evidence of the prosecution's witnesses and other materials on record to decide as to whether the finding of conviction recorded by the trial court deserves interference. In the facts and circumstances of the case we consider it apt to refer to the evidence of the informant (PW-8) first. In his deposition at the trial, PW-8 testified that he was sitting near the bonfire on 04.01.2010 in the morning and nearby the place where he was sitting, his father, the deceased, was also warming himself with Anand Kumar Thakur (PW-7) and Vivek Kumar Thakur (PW-4). As has been noted above, PW-7 and PW-4 are sons of PW-6. PW-4 specifically deposed at the trial that all the accused persons including this appellant came and this appellant took out a *Daab* from his jacket and gave 2-3 blows in the neck of the deceased. The victim died on the spot. However, for satisfaction, the body of the deceased was taken to the hospital where he was declared dead. When the dead body of the deceased was being brought back to the house, in the meanwhile, the Sub-inspector of police met, who recorded the *fardbeyan*. In cross-examination he deposed that there was dispute regarding illegal possession of the land of the deceased by the accused persons. On careful perusal of the evidence of PW-8, we do not find that the defence could impeach the evidence of PW-8 claiming to be an eyewitness. PWs- 4, 5, 6,



7 and 9 have also supported the prosecution's case as eyewitnesses to the occurrence. PW-4 was not cross examined on behalf of the accused. A submission has also been made on behalf of the appellant that all the witnesses who have claimed to be eyewitnesses are interested witnesses, they being closely related to the deceased. There are two reasons why the said submission does not convince us. Firstly, because some of the witnesses are related to the deceased, they cannot be termed as interested witnesses. Their presence at the place of occurrence was in natural circumstance. They are not chance witnesses. PW-9, wife of P.W.-1 is an independent witness, who is an eyewitness to the occurrence. Her husband, PW-1 also is not a witness to the occurrence as per his deposition. He had, however, seen the accused persons including this appellant fleeing away from the place of occurrence after commission of the offence.

9. At this juncture, we take into account submissions which have been advanced on behalf of the appellant that in the post-mortem report the time lapsed since death has been mentioned as within 24-36 hours. The post-mortem was conducted on 04.01.2010 at 2:30 pm whereas the occurrence as per the prosecution's case had taken place at 07:30 am. It is one of the submissions advanced on behalf of the appellant that the death



must have occurred before 02:30 pm on 03.01.2010, if the medical evidence in the form of post-mortem report is taken into account. The said submission has been aptly replied by learned Additional Public Prosecutor with the submission that when the oral evidence is overwhelming in impeachable, such evidence cannot be discarded on the basis of the medical expert's opinion. We notice that while mentioning the time elapsed since death in the post-mortem report, the doctor has not mentioned the basis for such determination. The doctor found following ante-mortem injuries on the person of the deceased:-

"External Examination- On parieto occipital area lacerated wound measuring 7"X 2"X deep cavity. Brain matter out. Three incised wound over occipital areas measuring 7" X 2" X muscle deep: second 3" X 1" X scalp deep; third 2" X ½" scalp deep.

Internal Examination- Blood & clot in subdural and intracerebral areas of parieto occipital lobe of brain. Heart left side empty. Right side blood & clot viscera pale stomach chyle present.

Cause of death:- Haemorrhage in vital organ brain & loss of brain matter. Caused by sharp cutting weapon. "



10. In our considered opinion, the medical evidence fully corroborates the prosecution's case of assault made by the accused persons including this appellant.

11. PW-10, the second I.O. deposed at the trial that the investigation was handed over to him on 22.04.2010 and he had taken charge of the blood stained *daab* and the jacket which the deceased was wearing at the time of occurrence. After having obtained an order from the Chief Judicial Magistrate, East Champaran on 26.07.2010, the *daab* and blood stained jacket were sent to the Forensic Science Laboratory, Patna. He obtained the report of the FSL, Patna on 14.06.2011. He proved the FSL reports which came to be marked as Exhibit 3 and 3/1, though with objection on behalf of the appellant. We find from the evidence of PW-10 that the *daab* and the jacket were not produced as material exhibits at the trial, though in the FSL report it has been mentioned that the presence of human blood at the *daab* and the jacket were found.

12. In our considered view, since the eyewitnesses have consistently supported the prosecution's case at the trial against the appellant which is corroborated by the medical evidence and the fact that there is no reason that the evidence of such prosecution witnesses can be impeached, we do not find any reason to take n



different view than what has been taken by the trial court while recording the conviction of the appellant. We do not find any material inconsistency in the evidence of the prosecution's witnesses to doubt their veracity.

13. We now come to the submission advanced on behalf of the appellant on the point of non-examination of the I.O. with reference to the Supreme Court's decision in case of **Lahu Kumar Patil** (Supra). Learned counsel for the appellant has placed heavy reliance on the observation made in paragraph no. 19 of the said decision which is being reproduced hereinbelow:

"Keeping in view the aforesaid position of law, the testimony of PW 1 has to be appreciated. He has admitted his signature in the F.I.R. but has given the excuse that it was taken on a blank paper. The same could have been clarified by the Investigating Officer, but for some reason, the Investigating Officer has not been examined by the prosecution. It is an accepted principle that non-examination of the Investigating Officer is not fatal to the prosecution case. In Behari Prasad v. State of Bihar, this Court has stated that non-examination of the Investigating Officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In Bahadur Naik v. State of Bihar, it has been opined that when no material contradictions have been brought out, then non-examination of the Investigating Officer as



a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial judge nor the High Court has delved into the issue of non-examination of the Investigating Officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the Code. Thus, this Court in Arvind Singh v. State of Bihar[16], Rattanlal v. State of Jammu and Kashmir[17] and Ravishwar Manjhi and others v. State of Jharkhand[18], has explained certain circumstances where the examination of Investigating Officer becomes vital. We are disposed to think that the present case is one where the Investigating Officer should have been examined and his non-examination creates a lacuna in the case of the prosecution."

14. It is evident from what has been held by the Supreme Court in the case of **Lahu Kumar Patil** (Supra) that non-examination of investigating officer *per se* cannot vitiate the finding of conviction recorded by the trial court. Non-examination of investigating officer is not always fatal to the prosecution's case



and it is fatal only when accused is shown to have suffered prejudice because of such non-examination. The Supreme Court has referred to an earlier decision in case of ***Behari Prasad v. State of Bihar***, reported in (1996) 2 SCC 317 wherein it has been held that when no prejudice is likely to be suffered by the accused, non-examination of the investigating officer is not fatal to the prosecution's case.

15. Further, the opinion of the Supreme Court in case of ***Bahadur Naik v. State of Bihar***, reported in (2000) 9 SCC 153 has been noted in case of **Lahu Kamlakar Patil** (Supra) to the effect that in case no material contradiction has been brought out, then non-examination of the investigating officer as a witness for the prosecution is of no consequence and under such circumstance, no prejudice is caused to the accused.

16. On close scrutiny of the pattern of cross-examination in the present case, we find that there was no attempt made by the defence to obtain any contradiction within the meaning of the first *proviso* to Section 389(1) of the Code of Criminal Procedure, though the defence had ample opportunity to do so. In such view of the matter, we are of the considered opinion that no prejudice can be said to have been suffered by the defence in the present case because of non-examination of the investigating officer.



17. In such view of the matter, we do not find any merit in this appeal. The impugned finding recorded by the trial court of conviction does not require any interference. This appeal is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Nishant/Nirmal-

AFR/NAFR	NAFR
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