

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.288 of 2018

Arising Out of PS. Case No.-65 Year-2016 Thana- BALIYA District- Begusarai

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Jitendra Chaudhary Son of Kapildeo Chaudhary @ Kapo Chaudhary,
Resident of Village- Masudanpur, Police Station- Balia, District- Begusarai.

... .. Appellant/s

Versus

1. The State of Bihar
2. Indu Devi w/o Dilip Ram, Resident of village Masudanpur, P.S. Balia,
District Begusarai.

... .. Respondent/s

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with
CRIMINAL APPEAL (DB) No. 213 of 2018

Arising Out of PS. Case No.-65 Year-2016 Thana- BALIYA District- Begusarai

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Surendra Chaudhary @ Sirinder Choudhary S/o Late Banarsi Chaudhary, R/o
Village- Masudanpur, P.S.- Balia, District- Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with
CRIMINAL APPEAL (DB) No. 217 of 2018

Arising Out of PS. Case No.-65 Year-2016 Thana- BALIYA District- Begusarai

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Ghutru Chaudhary @ Ghutar Chaudhary S/o Late Ram Dinesh Chaudhary @
Bauku Chaudhary, R/o Village- Maksudanpur, P.S.- Balia in the District of
Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with
CRIMINAL APPEAL (DB) No. 276 of 2018

Arising Out of PS. Case No.-65 Year-2016 Thana- BALIYA District- Begusarai

- =====
1. Devendra Chaudhary S/o Ramadhin Chudhary,
 2. Himmat Chaudhary S/o Devendra Chaudhary, Both are R/o Village-



Masudanpur, P.S.- Balia, District- Begusarai.

... .. Appellant/s
Versus
The State of Bihar
... .. Respondent/s

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with
CRIMINAL APPEAL (DB) No. 325 of 2018
Arising Out of PS. Case No.-65 Year-2016 Thana- BALIYA District- Begusarai

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Chhotelal Choudhary @ Hemant Choudhary S/o Ram Shankar Choudhary @
Shankar Choudhary, R/o Village- Masudanpur, P.S.- Balia, District-
Begusarai.

... .. Appellant/s
Versus
The State of Bihar
... .. Respondent/s

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Appearance :
(In CRIMINAL APPEAL (DB) No. 288 of 2018)
For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mr. Pushpendra Kumar Singh, Advocate
Mrs. Vaishnavi Singh, Advocate
For the Respondent : Mr. Binay Krishna, Spl. P.P.
(In CRIMINAL APPEAL (DB) No. 213 of 2018)
For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Ashok Kumar, Advocate
For the Respondent : Mr. Binay Krishna, Spl. P.P.
For the Informant : Mr. Raj Kumar, Advocate
Mr. Sarvottam Kumar, Advocate
(In CRIMINAL APPEAL (DB) No. 217 of 2018)
For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Prabhu Narayan Sharma, Advocate
For the Respondent : Mr. Binay Krishna, Spl. P.P.
(In CRIMINAL APPEAL (DB) No. 276 of 2018)
For the Appellants : Mr. Ajay Kumar Thakur, Advocate
Mr. Vipin Kumar, Advocate
Mrs. Vaishnavi Singh, Advocate
For the Respondent : Smt. Usha Kumari No.1, Spl. P.P.
(In CRIMINAL APPEAL (DB) No. 325 of 2018)
For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Anil Singh, Advocate
For the Respondent : Smt. Usha Kumari No.1, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 12-05-2023

Heard learned counsel for the appellants, learned Spl. P.P. for the State and learned counsel for the informant.

2. These criminal appeals arise out of same judgment of conviction and order of sentence and 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 16.01.2018 and the order of sentence dated 25.01.2018 passed by the learned Special Judge, Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, Begusarai in Sessions Trial No. Balia 65 of 2016 arising out of Balia P.S. case No.65 of 2016, whereby and whereunder the appellants have been convicted under Sections 302/34 of the Indian Penal Code (hereinafter 'I.P.C.'), Section 27 of the Arms Act and Sections 3(2)(v) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act (hereinafter 'SC/ST Act'). The appellants have been sentenced to undergo imprisonment for life and have been awarded fine of Rs.20,000/- under Section 302 of the I.P.C. and in default of payment of fine, simple imprisonment for one year.



They have been further sentenced to undergo rigorous imprisonment for five years and have been awarded fine of Rs.5000/- under Section 27 of the Arms Act and in default of payment of fine, simple imprisonment for three months. They have also been sentenced to undergo imprisonment for life and have been awarded fine of Rs.20,000/- under Section 3(2)(v) of the SC/ST Act and in default of payment of fine, simple imprisonment for one year. All the sentences of the appellants have been directed to run concurrently.

3. The prosecution case as per written information (Ext. 4/1) lodged by the informant Indu Devi (P.W.14), in brief, is that on 21.03.2016 at about 06:00 p.m. she had gone to the flour mill of one Rakesh Chaudhary for getting the wheat grinded and her brother-in-law Mahesh Ram and cousin brother-in-law Ram Pravesh Ram were returning on motorcycle from Balia Bazar. In the meantime, all of a sudden the accused persons including the appellants came out of flour mill and surrounded the motorcycle of her brother-in-laws and pulled them from the motorcycle. It has further been stated that appellant Surendra Chaudhary ordered to kill those purcha holders so that none of purcha holders could dare to go on the lands under their purcha. Thereupon, appellant Surendra Chaudhary himself along with appellants Himmat



Chaudhary, Jitendra Chaudhary, Chhote Chaudhary made indiscriminate firing upon the brothers-in-law of the informant thereby causing their death. Upon hearing the sound of firing, Sarita Devi, Mantus Ram, Shambhu Ram, Jhapsu Ram, Parvati Devi, Mukesh Ram and others came and saw the occurrence. The motive of the occurrence is that Narain Ram, father-in-law of the informant, and others are purcha holders and the accused persons want to dispossess them of their land.

4. On the basis of the aforesaid written information lodged by the informant Indu Devi, Balia P.S. case No.65 of 2016 was instituted for the offences under Sections 147, 148, 149, 341, 342, 302 of the I.P.C., Section 27 of the Arm Act and Sections 3(i)(v) of the SC/ST Act. After completion of investigation, the police submitted charge-sheet for the offence under Sections 302/34 of the I.P.C., Section 27 of the Arms Act and Section 3(ii)(v) of the SC/ST Act. Thereupon, cognizance was taken and the case was committed to the Court of Sessions. Charges were framed against the appellants, to which the appellants pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined altogether nineteen witnesses, namely, Sarita Devi (P.W.1), Lalan Paswan (P.W.2), Goshi Sah (P.W.3), Arbind Sah (P.W.4), Parvati Devi



(P.W.5), Hari Shankar Poddar (P.W.6), Pramod Sah (P.W.7), Sosho Thakur (P.W.8), Mantush Ram (P.W.9), Dr. Diwakar Singh (P.W.10), Shambhu Ram (P.W.11), Jhakshu Ram (P.W.12), Deepo Kumar (P.W.13), Indu Devi-informant (P.W.14), Mukesh Ram (P.W.15), Shankar Yadav (P.W.16), Rabindra Prasad (P.W.17), Sanju Ram (P.W.18) and Chandra Dev Verma (P.W.19). In support of its case, the prosecution has produced exhibits as Ext.1 (postmortem report of Mahesh Ram), Ext.1/1 (postmortem report of Ram Pravesh Ram), Ext.2 (signature of witness Shambhu Ram on inquest report of Ram Pravesh Ram), Ext.2/1 (seizure list), Ext.3 (signature of Dipo Kumar on seizure list), Ext.3/1 (inquest report of Ram Pravesh Ram), Ext.4 (signature of informant Indu Devi on written information), Ext.4/1 (written information of Indu Devi), Ext.5 (F.I.R.), Ext.5/1 (endorsement on written information), Ext.6 (inquest report of Mahesh Ram), Ext.7 (seizure list of mobile). The defence has neither examined any witness nor has produced any document in its defence.

6. Learned counsel for the appellants has 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 has been contended that the prosecution has miserably failed to prove



the manner of occurrence beyond reasonable doubts and the material contradictions and discrepancies in the testimony of the prosecution witnesses cast doubts as to the case of the prosecution. In order to buttress this contention, attention of this Court has been drawn towards the deposition of the prosecution witnesses to assert that there is no eye witness to the alleged occurrence. Also, the PW 14, who is the informant of this case, has turned hostile during the course of trial. It has been further contended that there are severe discrepancies in the ocular testimony of PW 3, PW 11 and PW 17 and in light of their testimony, the place of occurrence as narrated in the F.I.R. has itself become doubtful. The learned counsel has also asserted that the prosecution has not been able to establish the missing causative link and the chain of circumstances do not unerringly point towards the guilt of the appellants. Therefore, it is argued that 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.

7. Learned Spl. P.P. 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 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. It has further been stated that the deceased persons were done to death by the appellants in furtherance of their evil intention to grab the land belonging to the informant party. It has been further contended that there does not lie any hiatus in the chain of circumstances and all the evidences point towards the guilt of the appellants. Therefore, it has been argued that guilt of the appellants has been satisfactorily proved by the evidences adduced during the course of trial and there is no infirmity in the judgment of conviction of the learned trial Court.

8. 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 appeals:

(I) Whether the manner of occurrence, as narrated by the informant in the F.I.R., has been proved beyond all reasonable doubt?

(II) Whether there exists any doubt as to the place of occurrence in the present case?



(III) Whether the prosecution has been able to prove the missing causative link so as to hold that the chain of evidences is complete?

9. With reference to issue no. I, it is pertinent to take note that there are severe inconsistencies in the testimony of prosecution witnesses as regards the manner of occurrence. Though the PW 1 contends to be an eye witness to the alleged occurrence, however, presence of the PW 1 at the alleged place of occurrence becomes doubtful in light of the testimony of PW 2 and PW 11. The PW 2 has specifically deposed in para no. 3 and 6 of the deposition that at the time of alleged occurrence no other person was present and even PW 1, PW 5, PW 9 and PW 14 were not there. Moreover, the PW 11 in para no. 10 of the deposition has stated that it was he who had informed the PW 1 and others regarding the incident and thereupon, the people gathered at the alleged place of occurrence. It is further noted that though the PW 9 contends to be an eye witness to the occurrence, however, the PW 17, who is the Investigating Officer of the case, has stated in para no. 53 of the deposition that the PW 9 had not made such statement before him during the investigation. Thus, it is found that the manner of occurrence as alleged by the prosecution is not proved to the judicial satisfaction of the Court. 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 and contradictions in the testimony of the prosecution witnesses. At this juncture, it is relevant to take note of the decision of the Hon'ble Supreme Court passed in the case of ***Sunil Kumar Shambhudayal Gupta and others versus State of Maharashtra***, reported in ***(2010) 13 SCC 657***, where in para no. 16 the following has been observed:

“The discrepancies in the evidence of eye witnesses, if found to be not minor in nature maybe a ground for disbelieving and discrediting that evidence. In such circumstances witnesses may not inspire confidence if the evidence is found to be in conflict and contradiction with 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.”

In light of the legal position as discussed above, this Court is of the opinion that the prosecution has not been able to prove



the manner of occurrence in accordance with the standard parameters of the criminal law.

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

10. With reference to issue no. II, it is found upon thorough examination of the case record that the entire incident is said to have taken place near a flour mill. The PW 3 and PW 11, have categorically deposed during the course of trial that upon hearing sound of gunfire, they came and saw the dead body of the deceased persons lying in a pool of blood spread across an area of 3 meters. However, in sharp contradistinction to such testimony, the Investigating Officer (PW 17) has stated in his deposition that he did not find any blood at the said place of occurrence. There has been no seizure of any blood stain or any mud soaked with blood. Furthermore, it is relevant to take note that even though the deceased persons had sustained numerous gunshot injuries on their body, as is evident from the post mortem report (Exhibits 1 and 1/1) still, no empty bullet cartridges were found by the Investigating Officer at the said place of occurrence. It is also not clear as to whether the alleged incident has taken place at the flour mill of Buddhi Chaudhary or Rakesh Chaudhary. 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 facts of the case and considering the inconsistencies in the testimony of the prosecution witnesses, coupled with non-finding of any blood stain or bullet cartridges at the alleged place of occurrence makes the entire case doubtful and is certainly fatal for the case of the prosecution.

Accordingly, the issue no. II is decided in the affirmative.

11. With reference to issue no. III, it is found that there is a complete mismatch between the informant's version as narrated in the F.I.R. and the deposition of the Investigating Officer (PW 17). It has been stated by the informant in the F.I.R that upon reaching the place of occurrence, both the deceased persons were pulled from the motorcycle and were done to death. However, in sharp contrast to such contention of the prosecution, it is found that neither did the Investigating Officer (PW 17) find any motorcycle at the place of occurrence, nor has the said motorcycle



been seized at any point of time during the course of investigation. It is further noted that though the informant (PW 14) has stated in the F.I.R. that the entire incident has taken place in her presence, however, during the course of trial, the PW 14 has not supported the prosecution's case and she has turned hostile. The PW 14 has stated in her deposition that she had heard from the commoners that 15 persons as named had caused death of both deceased persons. At this juncture, it is pertinent to take note of the rule of evidence as stipulated in Section 60 of the Indian Evidence Act, 1872, which provides that "*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.*" It has also been observed by the Hon'ble Supreme Court in the case of ***Sakatar Singh versus State of Haryana***, reported in ***(2004) 11 SCC 291*** that:

"the statement of witness not based on his personal knowledge but on what he heard from others is "hearsay" evidence and such evidence is inadmissible."

It is apparent from the perusal of the record that the Investigating Officer (PW 17) has not found any blood stain at the alleged place of occurrence. The owner of the flour mill, who would have been the most competent and independent witness in



this case, has not been arrayed as a witness. It is well established principle that in order for the prosecution to establish its case beyond reasonable doubts, the essential elements namely, *actusreus*, *mens rea* and causative link should be proved. The causative element establishes a live link between the conduct of an accused and the offence alleged to have been committed by him. Considering the facts and circumstances of the present case and the lacunas on part of the prosecution as indicated above, we are of the considered opinion that the prosecution has utterly failed to adduce sufficient evidences to establish the causative link and there lies a hiatus in the case of the prosecution. At this juncture, it would be relevant to take note of the decision passed in the case of ***Santosh @ Bhure versus State (G.N.C.T) of Delhi, Criminal Appeal No. 575 of 2011***, where in para no. 86, the three judges bench of the Hon'ble Supreme Court has observed that:

“We have no hesitation in holding that the prosecution has failed to prove a chain of incriminating circumstances as to conclusively point out that in all human probability it was the two accused or any one of them, and no one else, who had committed the murder... .. In a nutshell, it is a case where the prosecution failed to elevate its case from the realm of "may be true" to the plane of "must be true" as is indispensably required for conviction on a criminal charge.”



In light of the factual matrix of this case and considering the established legal position as discussed above, this Court is of the view that the prosecution has failed to prove the causative link and the chain of circumstances in order to reach to a definite conclusion that it were the appellants herein who have committed the said offence.

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

12. Every trial is a voyage of discovery in which truth is the ultimate quest. It is the duty of the prosecution to prove the case beyond reasonable doubts by establishing that the chain of evidences is so complete that they unerringly point towards the guilt of the accused persons and no other hypothesis is possible. However, in the present case, there are severe discrepancies in the testimony of the witnesses as regards the manner of occurrence and the prosecution has also utterly failed to prove even the place of occurrence. Such failure on part of the prosecution is a most fundamental defect. It is like a termite which goes to roots of the case and is sufficient in itself to make the entire case fall. There are severe latches on part of the prosecution in the present case and sufficient evidences have not been adduced to prove the connecting chain of circumstances as to form inference about the guilt of the appellants. The appellants cannot be held hostage to



the uncorroborated allegations and latches on part of the prosecution. Conviction on the basis of conjectures and surmises is fatal for justice and fairness. As such, the dark clouds of suspicion looming large on the story of the prosecution have poured down heavily to wash away the entire dust ridden allegations.

13. Therefore, we are of the considered opinion that conviction of the appellants is not sustainable in the eyes of law. The appeals stand allowed and the judgment of conviction dated 16.01.2018 and the order of sentence dated 25.01.2018 passed by the learned Special Judge, Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, Begusarai in Sessions Trial No. Balia 65 of 2016 arising out of Balia P.S. case No.65 of 2016 are set aside.

14. Since the appellant Jitendra Chaudhary of Criminal Appeal (DB) No.288 of 2018, appellant Ghutru Chaudhary @ Ghutar Chaudhary of Criminal Appeal (DB) No.217 of 2018 and appellant Chhotelal Choudhary @ Hemant Choudhary of Criminal Appeal (DB) No.325 of 2018 are in custody, they be released from jail custody forthwith, if not wanted in any other case.

15. The appellant Surendra Chaudhary @ Sirinder Choudhary of Criminal Appeal (DB) No.213 of 2018 and the



appellants Devendra Chaudhary and Himmat Chaudhary of Criminal Appeal (DB) No.276 of 2018 are on bail, they are discharged from the liabilities of their respective bail bonds.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	20.05.2023
Transmission Date	20.05.2023

