

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.146 of 2023

Arising Out of PS. Case No.-2 Year-2017 Thana- AZIMABAD District- Bhojpur

Mithlesh Kumar, Son of Ranjeet Kumar Singh @ Ashok Singh, Resident of
Village- Koshiyar, P.S.- Chauri, District- Bhojpur. Appellant
Versus

1. The State of Bihar
2. Harendra Tiwary, Son of Shri Sidhnath Tiwary, Resident of Village-
Koshiyar, P.S.- Chauri, District- Bhojpur.
3. Satyendra Tiwary, Son of Shri Sidhnath Tiwary, Resident of Village-
Koshiyar, P.S.- Chauri, District- Bhojpur.
4. Shyam Sundar Tiwary, Son of Shri Sidhnath Tiwary, Resident of Village-
Koshiyar, P.S.- Chauri, District- Bhojpur.
5. Vikash Yadav, Son of Bhikhari Yadav, Resident of Village- Tarachak, P.S.-
Ajimabad, District- Bhojpur.
6. Bipin Yadav @ Bipin Singh, Son of Shyam Lal Singh, Resident of Village-
Balihari, P.S.- Charpokhri, District- Bhojpur.
7. Ajit Yadav, Son of Late Satish Yadav, Resident of village - Kamriya, P.S.-
Ajimabad, District - Bhojpur.
8. Vikash Yadav, Son of Kamriya, Resident of village - Kamariya, P.S.-
Ajimabad, District- Bhojpur.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate
	:	Mr. Brajesh Prasad Gupta, Advocate
For the State	:	Mr. Binod Bihari Singh, Addl. PP
For the Resp. No. 2 to 8	:	Mr. Manoj Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)
Date : 20-02-2024

Heard Mr. Baxi S.R.P. Sinha, learned Senior Counsel
assisted by Mr. Brajesh Prasad Gupta, learned counsel for the
appellant and Mr. Manoj Kumar, learned counsel for the respondent
nos. 2 to 8 as also Mr. Binod Bihari Singh, learned Additional
Public Prosecutor for the State.



2. This appeal has been preferred for setting aside the judgment dated 15.12.2022 (hereinafter referred to as the 'impugned judgment') passed by learned Additional Sessions Judge-VII, Bhojpur at Ara in Sessions Case No. 312 of 2018 arising out of Azimabad P.S. Case No. 02 of 2017 whereby and whereunder the respondent nos. 2 to 8 have been acquitted from the charges under Section 302 and 120B/34 of the Indian Penal Code (in short 'IPC').

Prosecution Story

3. As per the prosecution story, one Mithilesh Kumar @ Mithilesh Kumar Singh (PW-3) alleged in his written complaint submitted to the Officer-Incharge of Azimabad Police Station, Bhojpur that his father, namely, Ranjeet Kumar Singh was engaged as a driver of the Bolero Vehicle bearing Registration No. BR03P-5165 owned by Uday Kumar (PW-2). On 16.02.2017 at 06:30 P.M., he talked to his father on his mobile number, his father informed him that he has to come to Ara after taking a passenger, therefore, there would be some delay in reaching at Ara. The informant claimed that when his father did not return till 10:00 P.M. (night) and he tried to contact to his father on his mobile, his mobile number was coming off. The informant became afraid of any untoward incident because according to him, a land dispute was going on for last five years with (1) Satyendra Tiwary, (2) Harendra



Tiwary and (3) Shyam Sundar Tiwary of Village Koshiyar and they were regularly threatening his father to lift the case otherwise he would be killed. The informant alleged that till 17.02.2017 in the morning, when his father did not return and he could not be contacted on his mobile then he started searching his father together with the other family members and his relatives. In course of search, he came to know that in Village Godiha, in a field one Bolero Vehicle is lying in abandoned condition. The informant reached there and found that it was the same vehicle which his father was driving. At about 1 O'clock (afternoon), he got an information that in Phulari Badhar within the Azimabad Police Station dead body of a person is lying. On this information, the informant and other family members went to Phulari Badhar where he found that both the hands of his father had been tied with a plastic rope with a Palm tree and the face was covered by a 'gamcha'. The informant claimed that the named accused persons had along with some unknown persons hatched a conspiracy and committed murder.

4. After investigation, police submitted a chargesheet against the accused persons and cognizance of the offence was taken under Section 302, 120B/34 IPC. After commitment of the case to the court of Sessions, charges were framed under Sections 302, 120B/34 IPC against all the accused persons-respondent nos. 2



to 8. The accused persons denied the charges and claimed to be tried.

Prosecution Witnesses

5. The prosecution examined seven witnesses out of ten chargesheet witnesses. No exhibit was marked. The defence did not examine any witness. PW-1 is Manji Singh, PW-2 is Uday Kumar, PW-3 is Mithlesh Kumar @ Mithlesh Kumar Singh (Brother-in-law of the deceased), PW-4 is Dharmendra Kumar, PW-5 is Vishnu Yadav, PW-6 is Sushil Kumar and PW-7 is Ranjan Kumar Singh. The learned trial court has examined the evidences of the prosecution. In ultimate analysis, the learned trial court found that none of the prosecution witness was present at the place of occurrence and nobody had seen the occurrence from his own eyes. All the prosecution witnesses are hearsay witnesses. The prosecution evidence was closed with the consent of the prosecution. The learned trial court acquitted the accused persons giving them benefit of doubt and discharged them from the liability of their bail bonds.

Submissions on behalf of the Appellant

6. Mr. Baxi S.R.P. Sinha, learned Senior Counsel for the appellant has assailed the impugned judgment. Learned Senior Counsel submits that the learned trial court could not appreciate that the whole case of the prosecution was based on circumstantial evidence. All the accused persons with common intention killed the



father of the informant. It is submitted that the accused Harendra Tiwary (respondent no. 2), Satyendra Tiwary, (respondent no. 3) and Shyam Sunder Tiwary (respondent no. 4) lost a land dispute case five years ago to the deceased. Due to that, the accused persons along with others killed the informant's father for the sake of revenge.

7. Learned Senior Counsel further submits that it was a clear case of pre-planned murder with common intention of all the accused persons. The *post mortem* report on the dead body of the deceased mentioned transverse sharp cutting wound on front neck. It is submitted that neither the Investigating Officer nor the Doctor who conducted the *post mortem* were examined by the prosecution. It is submitted that it was the duty of the court to ensure that the I.O. and the doctors be examined in course of trial.

Submissions on behalf of Respondent Nos. 2 to 8

8. On the other hand, Mr. Manoj Kumar, learned counsel for respondent nos. 2 to 8 submits that it is a case of no evidence. The informant has not been examined. The written report and the formal FIR have not been exhibited. The prosecution planted the uncle and brother-in-law of the deceased who are PW-1 and PW-3 respectively. PW-1 has stated in his cross-examination that he had not seen the occurrence and he had not enquired as to who had committed the murder of Ranjeet. PW-3 is the brother-in-law of the



deceased who claims that on 16.02.2007, he had gone to Koshiyar village and from there while he was returning to village, in Pawana Bazar he met his brother-in-law (deceased). PW-3 has stated that his brother-in-law told him that he was going to pick up a person to take him to Ara whereafter his brother-in-law left with the vehicle and PW-3 went towards Ara. PW-3 claims that at Pawana Bazar, he had seen three persons Harendra Tiwary, Shyam Sundar Tiwary and Satyendra Tiwary at a tea shop and when he reached Ara then his *bhagina*, Mithilesh Kumar (informant) had telephoned him to say that his brother-in-law had not come back and his mobile number was coming off.

Learned counsel submits that at this stage, the conduct of PW-3 may be noticed that he did not inform the informant that he had met the deceased and that he had seen the three persons Harendra Tiwary, Shyam Sundar Tiwary and Satyendra Tiwary and that he had any suspicion against them. In his cross-examination, PW-3 has stated in paragraph '10' that he had seen the brother-in-law (deceased) in the vehicle and with him one person was sitting in the vehicle but he cannot say the name of that person. In paragraph '15' of his evidence, he has stated that he was present at the time of registration of the case. According to him, after *post mortem*, police reached in the village, dead body was cremated and thereafter the case was lodged. This witness has further stated that after



registration of the case, he had never met the police. In paragraph '16', PW-3 has stated that he was not the *pairvikar* of the civil case. Mithilesh and Ranjeet had never shown him any document related to the said case. Learned counsel for respondent nos. 2 to 8, therefore, submits that from the evidence of PW-3, it is evident that he was neither a witness of the occurrence nor had he made any statement before the I.O.

9. Learned counsel further submits that PW-4 is a driver of another vehicle who claims that on 16.02.2017, he was also standing at Ara stand with Ranjeet Kumar Singh (deceased) when one person had come to hire a vehicle from Kheri to Ara Station on the pretext of carrying his family but the said boy had thereafter talked to Ranjeet for hiring the vehicle. In paragraph '2' of his evidence, PW-2 has stated that he cannot identify the said person.

10. Learned counsel further submits that PW-5 is the cousin brother of the deceased. He has stated in paragraph '2' of his examination-in-chief that when he was coming with Mithilesh Kumar Singh (PW-3) from Koshiyar to Ara, at Pawana Bazar, he had met Ranjeet Kumar Singh (deceased) who was in his Bolero vehicle. This witness says that at that time, on the left seat of the Bolero vehicle, Vikash Yadav was sitting. PW-5 is said to have asked Ranjeet as to where he was going, upon which Ranjeet said that Vikash Yadav has hired his vehicle. Learned counsel for



respondent nos. 2 to 8 submits that it is not believable that Vikash Yadav with whom Ranjeet is said to be on inimical terms would be sitting in the Bolero vehicle and that Ranjeet will accept an offer for hiring of vehicle by Vikash Yadav. It is further submitted that PW-5 claims that when he stood at a tea shop, he saw Satyendra Tiwary, Harendra Tiwary and Shyam Sundar Tiwary who had been following the said Bolero vehicle on their bike. Learned counsel submits that the conduct of this witness, PW-5 cannot be said to be natural because he went to village Gyanpura which is the village of PW-3 where he stayed in the night and in the night, he had a telephonic talk with the informant who told him that his father had not come back and his mobile is switched off but PW-5 did not disclose to the informant that he had met his father in Pawana Bazar and that he had seen Vikash Yadav in his vehicle. He did not disclose it to the informant that he had seen Satyendra Tiwary, Harendra Tiwary and Shyam Sundar Tiwary following the said Bolero vehicle. Learned counsel submits that in paragraph '24' of his deposition, PW-5 has stated that between the year 1996 and 2017, no criminal case has been registered between the family of the deceased and the accused persons. PW-5 could not say the name of the tea shop owner where he was taking tea and he did not meet or talk to any person in Pawana Bazar. In paragraph '13' of his



evidence, PW-5 has stated that FIR was registered on the next day after cremation of the dead body.

11. Learned counsel submits that in paragraph '33' of his deposition, PW-5 has stated that he did not remember as to where the police had taken his statement. He has stated that at that time, he was not in good condition and he did not remember that apart from him whose other statements were recorded by police.

12. Learned counsel for respondent nos. 2 to 8 submits that PW-6 was declared hostile. He had neither seen the occurrence nor identified the accused persons. It is submitted that PW-7 is the younger brother of the deceased who has also stated the version of the informant. In paragraph '11' of his deposition, this witness has stated that he was not present so he cannot say at what time his nephew had talked to his deceased brother.

13. Learned counsel submits that so far as the non-examination of the I.O., doctor and the informant are concerned, that has not prejudice the case of the prosecution because the informant of this case is not an eye witness and from the various orders passed by the learned trial court, it would appear that the prosecution had been given ample opportunity to produce the prosecution witnesses and it is only when the prosecution expressed its inability to produce the witnesses, the prosecution evidence was closed.



Consideration

14. Having regard to the discussions made hereinabove and the materials available on the record, we find that the learned trial court has examined the evidence of all the seven prosecution witnesses. Nobody had seen the alleged occurrence and the story forwarded by PW-3 and PW-5 did not inspire confidence. The chain of circumstances which are required to be proved could not be established by the prosecution. Hence, this Court finds no reason to interfere with the impugned judgment.

15. This appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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