

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.598 of 1996

1. NASHIB LAL RAI @ HARBAR RAI SON OF LATE RAM EKBAL RAI
RESIDENT OF VILLAGE - KASWA MAKAR, P.S. - MAKAR, DISTRICT
- SARAN
2. BIRENDRA RAI SON OF MAKESHWAR RAI RESIDENT OF VILLAGE
- KASWA MAKAR, P.S. - MAKAR, DISTRICT - SARAN

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 14 of 1997

BIJOY RAI

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 598 of 1996)

For the Appellant/s : Mr. Alok Kumar with
Mr. Birendra Kumar Singh and
Mr. Raghwendra Pratap Singh, Advocates

For the Respondent/s : Mr. Binod Bihari Singh, A.P.P.

(In CRIMINAL APPEAL (DB) No. 14 of 1997)

For the Appellant/s : Mr. Alok Kumar with
Mr. Birendra Kumar Singh and
Mr. Raghwendra Pratap Singh, Advocates

For the Respondent/s : Mr. Bipin Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)

Date : 25-01-2024

Heard learned counsel for the appellants and
learned Addl. P.P. appearing for the State.

2. These appeals are directed against the



judgment of conviction dated 30.11.1996 and order of sentence dated 02.12.1996, passed by the 2nd Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 447 of 1994 / 3 of 1994, whereby and whereunder the appellant, namely, Bijoy Rai {Cr. Appeal (DB) No. 14 of 1997} has been convicted under section 302 of the Indian Penal Code and rest of the appellants, namely, Nasib Lal Rai @ Harwar Rai, Saryug Rai and Birendra Rai {Cr. Appeal (DB) No. 598 of 1996} have been convicted under section 302 read with section 34 of the Indian Penal Code. All the appellants have been sentenced to undergo rigorous imprisonment for life.

3. Since the appellant no. 2 {Cr. Appeal (DB) No. 598 of 1996} namely, Saryug Rai died in the year 2007, and as such, the appeal stood abated against him vide order dated 07.11.2023.

4. The prosecution story, in brief, is that the informant Jamadar Rai (P.W.2) lodged a fardbeyan on 18.06.1993 before the Officer in Charge of Makar P.S. alleging therein that on 17.06.1993 while the informant was sitting at his house on a cot and his mother (deceased) Sudari Kuer aged about 70 years was sleeping on a Chowki, the appellants arrived from east direction whereupon he fled away, in the meanwhile



Nasib Lal Rai @ Harwar Rai allegedly shot at the deceased (mother of the informant) in the neck and fled away towards east. When the informant returned after the departure of the appellants, he found her mother dead. The motive alleged for the occurrence is said to be the old enmity.

5. On the basis of the aforesaid fardbeyan, Makar P.S. Case No. 21 of 1993 for the offence under section 302/34 of the Indian Penal Code was registered.

6. The police after investigation submitted charge sheet under section 302/34 of the Indian Penal Code against all the accused persons. After cognizance, the case was committed to the court of sessions for trial wherein charges were framed on 04.05.1994.

7. During trial, the prosecution examined altogether six witnesses. P.W. 1 Usha Devi, P.W. 2 Jamadar Rai, P.W. 3 Dr. Sanat Kumar Singh, P.W. 4 Sipahi Rai, P.W. 5 Dinanath Rai and P.W. 6 Anirudh Prasad Singh.

8. In order to establish the charge, the prosecution has examined the following documents as Exhibits:-

Exhibit-1 Signature of Jamadar Rai on fardbeyan.

Exhibit-2 Postmortem Report



Exhibit-3 Fardbeyan
Exhibit-4 Formal F.I.R.
Exhibit-5 Inquest Report
Exhibit-6 Seizure List

9. The accused persons in the statements recorded under Section 313 of the Code of Criminal Procedure have denied and stated that the deceased died due to the firing accidentally made by Jamadar Rai, Sipahi Rai and Rajender Rai. That is the matter of talk in the village.

10. The defence has not produced any oral or documentary evidence.

11. In the appeal, the decision was challenged on the grounds that the distance of the police station from the place of occurrence is only one kilometer, but the first information report was filed late on the next day, whereas according to the first information report, many people of the village had gathered there immediately after the occurrence and the informant was not alone. The time of the occurrence is 10:00 PM but there is no mention of any source of light in the first information report, the informant later corrects this fact in his testimony and mentions the lantern. But he neither presents this sole source before the Investigating Officer nor it has been seized. The



informant and the witness (Bhabhi of the informant), who reached the spot immediately after the occurrence, they both did not see the occurrence with their own eyes, but the Trial Court has given its finding considering them to be the eye witness of the alleged occurrence. In the first information report, it is mentioned that there was already a dispute going on between both the parties and there is clear evidence on this point, but the Trial Court ignored this fact also. In the first information report, it has been said that the mother was shot while sleeping but there is clear evidence of the doctor that the above injury is not possible in the sleeping position. Immediately after the occurrence, many people of the village gathered there but none of them gives any evidence and the witnesses are only the family members. When it has been clearly brought out in the first information report that on seeing the informant, the accused said to shoot him, then what was the purpose of leaving him behind and shooting a 70 years old sleeping mother? It is also not the case that the bullet fired at the informant instead of hitting him, hit the sleeping mother. This point is also worth considering that the four accused, who are armed with weapons and came for killing the informant, will kill his old mother and will leave the informant alive to become an eye witness,



whereas at 10:00 in the night there is no one to save the informant.

12. These appeals were opposed by the prosecution. It was said that the decision was supported by oral and documentary evidence. The medical evidence also corroborate it and the investigation has also been done in a well manner. There is no error in the judgment and therefore, the appeals are fit to be dismissed.

13. Heard both the parties and perused the records.

14. Before reaching to any conclusion, it would be necessary to examine the evidence of witnesses.

15. P.W. 1 Usha Devi, who is Bhabhi of the informant, in her evidence stated she woke up to the sound of gunshot, she came out of the house, saw all four accused standing, Vijay had a pistol in his hand and the rest had *lathi* and *bhala* in their hand, all the accused were standing silently smoke was coming out from the pistol. Nasib Lal said to kill her also, she ran away and entered in the house of Hari Bhajan (not examined). The whole neighbourhood gathered, then the accused ran away. When she went home, she found her mother-in-law dead. She also said that her husband (elder son of the



deceased) was not at home on the night of the occurrence and she had not met him that night. She also said that on that night, she had not met the informant also. Rajendra Rai, who is nephew of the informant, did not come home that day. She also said that earlier there had been an occurrence of fighting between my husband and the family of Nasib Lal (appellant-accused), in which Birendra and Saryug (appellants-accused), had been witnesses against her husband. Among the people who gathered the witness took the names of Mushafir Rai (not examined), Motilal Rai (not examined), Dev Swaroop Rai (not examined) and Haribhajan (not examined).

16. P.W. 2 Jamadar Rai, informant, has stated in his evidence that all four accused came, in which Vijay had pistol in his hand. Nasib Lal asked Vijay to shoot the informant. Hearing this, he ran away and heard the sound of a pistol, when he look back he saw that her mother was shot, smoke was coming out from the pistol. A lantern was burning in the mother's *Chawki*. He ran away to the house of Bhajan Rai (not examined). When he made *hulla*, people came and when he came home with them, found her mother in dead condition. Rudal Rai (not examined), Gajadhar Rai (not examined), Dinanath Rai (P.W.5/Hostile), Dev Swaroop Rai (not examined)



and Dev Nandan Rai (not examined) were present there to whom he told the entire story. There was a fight with the four accused a month prior to the occurrence. His brother Sipahi had broken the arm of Nasib Lal, Nasib did not file any case and had said that he would take revenge. The witness stayed at Bhajan Rai's house out of fear, his Bhabhi (P.W. 2) also came there and stayed there at night. Brother Sipahi (P.W. 4) came in the next morning, the first information report was registered after the arrival of the brother, but brother's statement was not recorded nor he signed on any paper. He also stated that he does not know any Rajendra and he has no nephew named Rajendra. The bed on which the mother was sleeping on the *Chawki* was filled with blood. He also said that he had not shown the lantern to the inspector.

17. P.W. 3 Sant Kumar Singh conducted the postmortem of the deceased and opined the cause of death to be bullet injury. He also said that such an injury would not have been possible had the deceased been sleeping.

18. P.W. 4 Sipahi Rai, who is the elder son of the deceased, had got the information about the occurrence from the informant. The reason for the occurrence was that scuffle took place with Nasib Lal about two months before and Nasib Lal



had given threatening which was informed to the S.D.O. in writing. He had handed over the certified copy of this information to the inspector at the time of investigation. This witness also denied from the fact that he had any nephew named Rajendra Rai.

19. P.W. 5 Dinanath Rai did not give any evidence on the occurrence. He has been declared hostile by the prosecution.

20. P.W. 6 Anirudh Prasad Singh, who is the investigating officer of the case, has proved the fardbeyan, formal F.I.R., inquest report and seizure list. He also proved the place of occurrence. In his evidence, he has stated that he received information that the dead body of a women is lying in Maker Village but he did not record the same in the station diary. It was also revealed that the informant's nephew Rajendra Rai had come to the informant's house on the date of the occurrence and he had mentioned it in the case diary that investigation had to be done regarding Rajendra Rai. It was also stated that the Deputy Superintendent of Police had given instructions that this point should also be investigated to see if the informant had killed his own mother in order to falsely implicate the accused persons. But from perusal of the case



diary, it appears that investigation had not been conducted on these two important points.

21. After hearing both the parties and on perusal of the records, the following facts emerges:

I. There is no eye witness to the occurrence. The informant says that he was present at the spot but did not see the shooting, he guesses from the smoke coming out from the pistol.

II. After the occurrence, the villagers gather there but the Police is informed on the next day even though the police station is only a kilometer away.

III. The informant and his Bhabhi, who are the first to reach the place of occurrence, give the names of about ten witnesses, who reach there, but no one comes to give evidence. One Dinanath Rai (P.W.5) comes, but he becomes hostile. Even the two witnesses, in whose house the informant and his Bhabhi had saved their life by hiding themselves, have not come to depose.

IV. The informant says that he and his Bhabhi remained hidden in Bhajan Rai's house whereas the Bhabhi says that she had not met the informant on that night.

V. P.W. 1 Usha Devi (Bhabhi of the informant and wife of Sipahi Rai, P.W. 4) in her evidence stated that



Rajendra Rai, who is nephew of the informant, was not at her house on the day of the occurrence. On the contrary, the informant and his elder brother have denied the fact that they have any nephew named Rajendra. Investigating Officer also confirmed the evidence of P.W. 1 on this point but has not conducted investigation on this point.

VI. It is also the evidence of P.W. 1 that there was a fight between her husband and Nashib Lal in which Birendra and Saryug were witnesses against her husband. The informant has also admitted that his brother had broken Nasib's arm. Considering these aspects, the Deputy Superintendent of Police orders for investigation on this point, but the investigating officer does not pay attention.

VII. There is no mention of any source of light in the first information report in relation to the occurrence which occurred at 10:00 p.m. although the informant mentions a lantern in his evidence, but he stated that he did not show the lantern to the inspector. Neither the said lantern was seized by the police nor it was presented in the Court.

VIII. The bed on which the deceased was sleeping on the *Chawki* was filled with blood but the investigating officer does not find any such thing on the spot.



IX. P.W. 4 Sipahi Rai, son of the deceased, comes on the next day before lodging of the first information report, but does not give any statement to the investigating officer nor he puts his signature on the inquest report, seizure list or fardbeyan as a witness although case is related to the murder of his mother. Surprisingly, this witness comes to give evidence in the murder case of his mother one year after the evidence of his wife and brother.

He also says that when Nasib Lal threatened him, he had informed the S.D.O., a certified copy of which he handed over to the investigating officer, but no such document has been brought on record.

X. The medical evidence also casts a shadow of doubt on the prosecution story.

XI. The prosecution has not been able to establish any motive for the murder of a 70 year old woman who was sleeping.

XII. There is admitted previous enmity between the parties.

XIII. The investigation has been conducted in a very flawed manner.

22. For the aforesaid reasons, it can be said that



the prosecution has miserably failed to prove its case beyond all reasonable shadow of doubt and all the convicts deserves to be acquitted.

23. Accordingly, both the appeals are allowed. The judgment of conviction dated 30.11.1996 and the order of sentence dated 02.12.1996 passed by the 2nd Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 447 of 1994/ 3 of 1994 are set aside.

24. The appellants are acquitted of the charges levelled against them. Since the appellants are already on bail, they are discharged from the liability of their bail bonds.

(Arvind Srivastava, J)

Sunil Dutta Mishra, J. I agree.

(Sunil Dutta Mishra, J)

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