

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.572 of 2019**

Arising Out of PS. Case No.-142 Year-2002 Thana- SHAHPUR
PATORI District- Samastipur

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1. Mahesh Choudhary, age 69 (M), Son of Late Jageshwar Chaudhary Resident of Village - Sultanpur Chorahi, P.S.- Patory, District- Samastipur
 2. Ganesh Choudhary, age 64 (M), Son of Late Jageshwar Chaudhary Resident of Village - Sultanpur Chorahi, P.S.- Patory, District- Samastipur
 3. Mahabir Chaudhary, age 59 (M), Son of Late Jageshwar Chaudhary Resident of Village - Sultanpur Chorahi, P.S.- Patory, District- Samastipur
 4. Arjun Choudhary age 54 (M), Son of Late Jageshwar Chaudhary Resident of Village - Sultanpur Chorahi, P.S.- Patory, District- Samastipur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s :	Mr. Ramakant Sharma, Sr. Advocate Mr. Jitendra Narain Sinha, Advocate Mr. Suneil Kumar Thakur, Advocate Mr. Amresh Kumar, Advocate Ms. Khushi Awadh, Advocate
For the Respondent/s:	Mr. Sujit Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE VIPUL M.
PANCHOLI**

and

**HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA)**

Date : 04-07-2024

Learned senior counsel appearing on behalf of the
appellant has submitted that Ganesh Choudhary, has died during



the pendency of this appeal.

2. Accordingly this appeal *qua* appellant No. 2 Ganesh Choudhary, stands abated.

3. The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the judgment of conviction dated 08.04.2019 and order of sentence dated 10.04.2019 passed in Sessions Trial No. 387 of 2005 (arising out of Patory P.S. Case No. 142 of 2002, by learned Additional Sessions Judge-3rd, Samastipur by which the appellants/accused have been convicted for the offences punishable under Sections 341, 342, 328, 302, 120B of Indian Penal Code and sentenced to undergo simple imprisonment for life.

4. Heard Mr. Ramakant Sharma, learned senior counsel for the appellants assisted by Mr. Suneil Kumar Thakur, Mr. Amresh Kumar, Ms. Khusi Awadh, Mr. Jitendra Narain Sinha and Mr. Sujit Kumar Singh, learned A.P.P. for the respondent-State.

5. The brief facts leading to the filing of the present appeal as per the prosecution version in brief is that the instant



case initially as an U.D. Case No. 04 of 2002, dated 23.10.2002 was registered and thereafter on 20.11.2002 a Complaint Case No. 1349 of 2002 was filed by the informant Ram Japan Rai stating that in the morning, he got an information that at about 6:30 AM his son Ashok Kumar Rai (deceased) was called by Pawan Choudhary son of Satnarayan Chaudhary for taking *taadi* (palm wine). Later on, it transpired that Ashok Kumar Rai (deceased) has been killed and his family members and other people went at the place of occurrence. Thereafter, the informant also reached there and found his son dead on the doors of accused, where his mouth and nose were frothing with blood. On the basis of the said circumstances, the informant suspected that the accused persons, including the appellants, had administered poison in *taadi* (palm wine) with an intention to kill his son. It has further been alleged that one Om Prakash, elder son of the informant, also told the informant that four days before the incident, Ashok Kumar Rai had some altercations with Satnarayn Choudhary for the lease money. Police did not lodge the F.I.R, hence complaint case was filed bearing no.1349 of 2002 and there were total seven accused in the complaint case.

6. On the basis of subsequent complaint filed by the



informant, the present case was instituted and investigation was taken up converting the U.D. Case No 04 of 2002 into F.I.R. and after receiving chargesheet, learned Chief Judicial Magistrate, Samastipur took the cognizance of the offence.

7. During course of the trial, the prosecution has examined altogether 11 (Eleven) witnesses including the informant. Out of them, PW-1 Raj Kumar Rai, PW-2 Tilakeshwar Rai, PW-3 Nanhki Mahto, PW-4 Om Prakash Rai S/o Lakshma Rai, PW-5 Kamal Rai, PW-6 Mamta Devi, PW-7 Ram Japan Rai (Informant), PW-8 Om Prakash Rai S/o Ram Japan Rai, PW-9 Ghuran Rai, PW-10 Nagendra Rai, PW-11 Arjun Rai have been examined. The Investigating Officer of the case and the doctor who has done post mortem have not been examined during course of the trial.

8. Learned senior counsel for the appellants, Mr. Ramakant Sharma, at the outset, submits that in this complaint case i.e. the very basis of F.I.R has been lodged after an inordinate as well as unexplained delay of 03 days of lodging the U.D. Case No. 04 of 2002, which has not been explained.

9. Learned counsel for the appellants, Mr. Jitendra Narain Sinha further submitted that in a circumstance, when the prosecution has not taken any pain to examine both the doctor



as well as the IO prejudice in the prosecution case and, as such, it becomes very fatal for the prosecution, when the Viscera is preserved during post mortem examination. He further submitted here that none of the independent witnesses have supported the prosecution version. Contradictory statement by prosecution witnesses before police and before trial Court coupled with non-examination of Investigating Officer in trial is fatal for the prosecution. It is further submitted that the prosecution miserably failed to prove the motive, though alleged in First Information Report. The statements of prosecution witnesses run contrary to each other. In view of the aforesaid facts, the impugned Judgment of conviction and the order of sentence is bad and not sustainable. Therefore, prosecution has not successfully proved the case beyond shadow of all reasonable doubts against the appellants. Therefore, accused persons/appellants are liable to be acquitted.

10. On the other hand, learned Additional Public Prosecutor Mr. Sujit Kumar Singh has vehemently opposed the appeal. The learned APP has submitted that the incident had occurred in the morning and all the prosecution witnesses who have testified before the Trial Court prove the circumstantial aspect of the case from heated argument between the accused



persons/appellants with the deceased on the pretext of outstanding amount for leased property to the co-accused calling the deceased from his house in the morning till the commotion caused at the house of the accused persons/appellants due to the death of the deceased (Ashok Kumar Rai). PW-6 has seen Pawan Chaudhary, calling the deceased to the house of Satnarayan Chaudhary to settle the due amount of leased property, further proving the appellants' motive and on that basis the prosecution story is correct and the appellants should not be acquitted. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellant and the present appeals should not be entertained.

11. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence as exhibited.

12. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court.

13. Before the Trial Court, prosecution examined 11 witnesses. PW-3 and PW-4 have been declared hostile.

14. PW-1 in his examination-in-chief has stated



that the incident has occurred four years ago at 6.00 A.M. in the morning. When the PW-1 was at his door, he saw Pawan Chaudhary calling and taking the deceased. When PW-1 went there, he saw the dead body of the deceased at the door of Pawan Choudhary's house. He recognized the accused present in the Court.

14.1 In his cross-examination, he has stated that the accused was not present at the time of the incident and the accused used to reside in Kolkata. Pawan Chaudhary was the person who is attached with all the matter.

15. PW-2 in his examination-in-chief has stated that the incident occurred four years ago at 7.00 AM in the morning. When he was going to Umansarai for bringing medicine, he saw the accused persons, namely, Satyanarayan Choudhary and Pawan Choudhary running away. PW-2 further stated that on questioning both of them as to why they were running, they replied that nothing has happened. While returning back after taking medicine, PW-2 came to know that Ashok Kumar Rai (deceased) has been murdered. PW-2 saw the dead body at the door of Satnarayan Choudhary house. PW-2 recognized the accused/appellants present in the Court.

15.1 In his cross-examination, he has stated that



he had come to give statement on summon. He further stated that other people, namely Mahesh Choudhary, Ganesh Choudhary, Arjun Choudhary and one other person used to live outside of the village at the time on occurrence.

16. PW-5 in examination-in-chief has stated that the incident had occurred eight years ago at about 6.30-6.45 am. and he had gone to look for labourers to harvest paddy, where, he also saw the deceased drinking *taadi* (palm wine) at accused's house with fish and roti. While returning after talking labourers, he saw the deceased writhing in pain. He came back to the place where the deceased with some other villagers was also present there. Saliva was flowing out of the deceased's mouth. Later on blood was also coming out of his mouth and he died. The accused persons crossed the river and fled away. After sometime, the police came and took the dead body of the deceased and sent it for postmortem. The accused persons namely Satnarayan Choudhary had taken the land of the deceased (6 kattha) on lease, for which the accused persons had not paid the rent, and for the same, there was a heated argument between the accused persons and the deceased. The accused persons also threatened the deceased of dire consequences on demand of money for the leased property. PW-5 recognized the



accused persons present in the Court.

16.1 In his cross-examination, he has stated that Ashok Choudhary is his uncle in village relations. He has no business with Ashok Choudhary and he has no knowledge or record with regard as to who gave land on rent to whom in the village. He further stated that he has no knowledge if the deceased was a drunkard or not and he had never drunk *taadi* (palm wine) with the deceased. He further stated that the house of the accused is about 200 laghis (local unit of distance) from his house. He has not counted as to how many houses are between his house and the accused persons' house. He went on to give the details of the house and the boundaries of the area surrounding the accused house and his house. He further stated that the police had prepared an inquest report and he did not remember as to whether he has signed the report or not. He further stated that he does not know the time at which the dead body of the deceased was picked up by the police. No doctor had come to the place of incident. The police recorded his statement and he did not remember when the police took his statement. He only remembers what he has stated and APP did not tutor him. Om Prakash had told that there was a dispute between the deceased and the accused brothers. He only saw



that the deceased was drinking *taadi* (palm wine) and the accused persons were sitting with him. He further stated that he did not remember as to when the deceased gave the land to the accused persons. The father of the deceased was not present at the village on the date of the incident. The deceased was a married person with children and it is not true that the deceased used to beat the children and his wife a lot after drinking. It is also not true that the deceased was a drunkard. It is also not true that he was forcibly given *taadi* (palm wine) to drink. He further stated that the father of the deceased has not filed a false case against the accused persons to extort money from the accused persons.

17. PW-6 in his examination-in-chief has stated that she is the wife of the deceased and the informant is her father-in-law. The incident occurred 8-9 years ago at around 6.00 am in the morning on Wednesday when she was at her home. Before the incident, the husband (deceased) of PW-6 was sleeping at his house and then Pawan Chaudhary came and told the deceased that father and uncle of Pawan Chaudhary are calling him to settle the accounts related to the 10 kattha of land. After half an hour, she heard that her husband is getting unconscious and thereafter she went to the door of the house of



the accused. Other co-villagers were also present there with her. She saw that Thymus poison was coming out of the mouth of her husband. Her husband was unconscious at that time. She further stated that the accused persons gave her husband *taadi* (palm wine) mixed with poison due to which he died. She also stated the reasons behind this being the dispute of leased land and its rent. She recognized the accused persons present in the Court.

17.1 In her cross-examination, she has stated that the accused Satnarayan Choudhary is a *taadi* (palm wine) seller and her husband used to drink with the said accused persons when he was with his friends. She saw that her husband was unconscious and some medicine was smelling from his mouth when she went to the house of the accused. She did not see any injury or wound mark on the body of the deceased and she also did not see her husband drinking *taadi* (palm wine) on the day of the incident. No one took her husband to the doctor. She does not remember as to how many people were present with her at the house of the accused. She gave her statement before the police that Pawan Choudhary had called her husband stating that his uncle and father are calling to settle the account of 10 khatta land and *taad* (palm) tree. She also told the police that



thymus (poision) was coming out of the mouth of the deceased. She also gave the names of the accused persons who killed her husband by mixing poison in *taadi* (palm wine). She stated that it is not a case wherein her husband drank *taadi* (palm wine) and mistakenly fell and injured himself due to which he started bleeding and got unconscious and later on succumbed to the injuries.

18. PW-7, in his examination-in-chief, has stated that, he is the informant in this present case and the incident has occurred on 23.10.2002 at about 6-7 am. At the time of the incident, he was at Paharpur and one Nagina Rai came and told him to go to his son's house as some problem has occurred. He came to his house in Sultanpur, where everyone was saying that, his son, Ashok Rai had died. He went to the house of the accused and saw his son dead at the door. He stated that he felt that his son was lifted and thrown on the ground as there was dust on the body of the deceased. Foul smell and froth was coming out of the mouth of the deceased. His daughter-in-law told him that the accused persons called his son in the morning to settle the account of the leased land of 5-6 kattha and 10-11 *taad* trees which were leased at the rate of 50/date palm and 200/kattha per annum which was paid every year in the month



of Baishakh but the rent was not being paid since two years. The deceased, at times, has asked the accused persons to pay the due amount but they did not pay him and also threatened him that he will face dire consequences if he again asks for the money. He further stated that his son was killed by the accused persons and PW-7 recognized the accused persons present in the Court.

18.1 In his cross-examination, he has stated that he had not given his statement before the police at the time of the incident, but he gave his statement two months after incident. He also did not disclose to the police that he was not present in the village at the time of the incident. He gave his statement to the police that he heard the noise that his son died. He has seen the dead body of his son and he stated that he felt that someone had lifted him and thrown him on the ground as there was dust on the body of the deceased. Foul smell and froth was coming out of the mouth of the deceased. He further told the police that his daughter-in-law told him that the accused persons called his son in the morning to settle the account of the leased land of 5-6 kattha and 10-11 *taad* trees which was leased at the rate of 50/date palm and 200/kattha per annum which was paid every year in the month of Baishakh but the rent was not being paid since two years, the deceased at times, has asked the



accused persons to pay the due amount but they did not pay him and also threatened him that he will face dire consequences if he again asks for the money. PW-7 further stated that he has filed the case and has also given his complaint letter which has been signed by him. He further stated that he had not seen the incident himself. It is not true that he was not in good terms with his son and due to that he used to live at some other place. The reason behind this is that his family had farms at two places and that is why they used to live at two places. PW-7 had no quarrel with his son. He further stated that, it is not a case wherein her husband drank *taadi* (palm wine) and mistakenly fell and injured himself due to which he started bleeding and got unconscious and later on succumbed to the injuries.

19. PW-8 in his examination-in-chief, has stated that the incident occurred 7-8 years ago at 6.00 to 7.00 am. The deceased was his elder brother. He further stated that his brother has gone to Pawan Choudhary's house to ask for due amount of the leased property, but PW-8 did not know as to whether there was any outstanding amount or not. After half an hour he heard some commotions and saw the accused persons running away and his brother writhing in pain. He did not see any injury mark on the body of the deceased. He was not able to take his brother



to doctor as his brother died within five minutes. The amount which was due with the accused persons has not been paid till date and the incident happened for the dispute with regards to the due amount of the leased property.

19.1 In his cross-examination, he has stated that the incident occurred on Wednesday, 23.08.2008. PW-8 was at his home when the incident occurred and he did not go to the hospital while the incident occurred as his brother died on the way. PW-8 was at his home through out the day and he did not go to the police station to report the incident. The incident occurred on the pretext of dispute with regard to the outstanding amount pertaining to the leased property. He further stated that there were many villagers present at the place of the incident and few of them including PW-8 have recorded their statement before the police. He was not tutored by his brother.

20. PW-9 in his examination-in-chief has stated that the incident occurred 8-9 years ago at around 8.00 am when he was at his house. The accused persons took the deceased to their house and after sometime he heard that Pawan Chaudhary and Ashok were tossing and turning in a inebriated state after drinking *taadi* (palm wine). When people went there all the accused persons had left after killing Ashok Rai. Foam was



coming out of the mouth of the deceased. PW-8 did recognize the accused present in the Court.

20.1 In his cross-examination he has stated that he had not seen the accused persons giving poison to the deceased and he had not seen the occurrence of the incident. His statement was recorded after 5-10 days after the death of the deceased. He gave his statement at his house and he did not tell the police that Pawan Choudhary took the deceased with him. He also did not hear that Pawan and Ashok were causing mischief after drinking *taadi* (palm wine). He also did not tell the police that when people gathered near the dead body of the deceased, foam was coming out of his mouth. He has not testified falsely at the behest of the father of the deceased.

21. PW-10 in his examination-in-chief, has stated that, the occurrence took place on 23.10.2002 at around 7-8 O'clock, while he was cutting fodder in his farm. The accused persons took the deceased to his house where the other co-accused persons were also present. The deceased had a heated argument with regards to the outstanding amount of the leased property. In the evening, there was a commotion at the accused persons' house and he saw the deceased lying on the ground and staggering. He also asked the deceased as to what



has happened but he did not reply. He did identify the accused, Ganesh Choudhary and claimed to identify the remaining accused persons.

21.1 In his cross-examination, he has stated that his statement was recorded by the police after three days and the incident has occurred on 23.10.2002 at around 7.00 am. He also gave the details to the place as to where the deceased was lying and the surrounding area. The accused persons took the deceased to his house where the other co-accused persons were also present. The deceased had a heated argument with regards to the outstanding amount of the leased property. The entire family of the accused persons were present at the place of the incident and no other person was present there.

22. PW-11 in his examination-in-chief has stated that the incident occurred 9-10 years ago at around 6-7 am. while returning from the farm he saw the deceased drinking *taadi* (palm wine) at accused's house with fish and *Chapati* and all the accused persons were present there. Thereafter, he went home but when he heard that the deceased is writhing in pain, he came back to the place where the deceased was. Some other villagers were also present there. Blood and foam was coming out of the deceased's mouth and he died. The accused persons



fled away. The police prepared the inquest report and he had put his signature on the same. He also recognized the two accused persons present in the Court. he saw the deceased drinking *taadi* (palm wine) at accused's house with fish and *Chapati* and all the accused persons were present there. Thereafter, he went home but what he heard that the deceased is writhing in pain, he came back to the place where the deceased was. Some other villagers were also present there. Blood and foam was coming out of the deceased's mouth and he died.

22.1 In his cross-examination, he has given the details of the house of the accused persons which was situated at the same place. All the accused persons work in *taadi* (palm wine) shop only. The sub-inspector has recorded his statement on the date of incident. He also told the police that Pawan Choudhary called the deceased to settle the outstanding amount which was due with regard to the leased property. The deceased was a married persons with children and it is not true that the deceased used to beat the children and his wife a lot after drinking. It is also not true that the deceased was a drunkard and used to create ruckus after drinking. He further stated that the father of the deceased has not filed a false case against the accused persons to extort money from the accused persons.



23. It would emerge from the evidence that the doctor as well as the IO has not been examined and the list of exhibits include the post mortem report, F.S.L. report and inquest report. Some PW's have stated that they have seen the deceased eating fish and Chapati but the same was not taken as evidence by the police and also the same was not sent for examination. Further the PW's have stated that the *taadi* (palm wine) was mixed with poison due to which Ashok Rai (deceased) died but the container as well as the utensils through which the deceased ate his food or had *taadi* (palm wine) was also not been taken into evidence to the police when they arrived at the incident.

24. In this case, Investigating Officer and Doctor have not been examined. In consideration of this fact, the Supreme Court in a recent judgment of **Munna Lal Vs The State of Uttar Pradesh, 2023 SCC OnLine Sc 80** has held that-

“Non-examination of investigating officer creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case.”



25. The Supreme Court in **Habeeb Mohammad vs The State Of Hyderabad 1954 AIR 51, 1954 SCR 475** pointed out that-

“it was the duty of the prosecution to examine all material witnesses who could give an account of the narrative of the events on which the prosecution is essentially based and that the question depended on the circumstances of each case. In our opinion, the appellant was considerably prejudiced by the omission on the part of the prosecution to examine Biabani and the other officers in the circumstances of this case and his conviction merely based on the testimony of the police jamedar, in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission.”e police



Jamedar, in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission.”

26. The duty of the Investigating Officer is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth. Common roles and duties of an investigating officer are crime scene management, gathering information and evidence, analyzing evidence, case documentation, report writing, testimony in court etc. In the present case, it is evident that the roles and duties of the IO which have been envisaged here are not followed. For instance, when police officials arrived at the place of occurrence, the IO and police did not conduct the crime scene management properly and various crucial evidences such as, the utensils in which the deceased ate his food and container through which the deceased consumed *taadi* etc. were not taken into account.

27. The police official had filed a U.D. case on 23.10.2002. The family members of the deceased did not file



any case and further after a delay of about one month, the informant (father of the deceased) filed a complaint case on 20.11.2002. This suggests that the prosecution story is a doctored one and, is, unreliable. Coming to the point that the doctor who conducted the postmortem report was not examined which raises a question on the Forensic Science Laboratory report as to who has taken, received, stored the viscera sample. Further, the question also arises that the viscera report which is attached with the present case is of the deceased (Ashok Kumar Rai) or not. Lastly, it is hard to believe that only after a few days, when he was threatened to face dire consequences, if the outstanding payment is asked again, the deceased, still went to meet the accused persons and ate fish, chapati and had taken *taadi* at accused persons' house. Further, no one is an eye witness to the present case and all the PWs are hearsay and have not seen the occurrence of the incident.

28. In view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the appellants beyond all reasonable doubts, despite which the trial Court has recorded the impugned judgment of conviction and the order of sentence. As such, the same are required to be quashed and set



aside.

29. Accordingly, the impugned judgment of conviction dated 08.04.2019 and order of sentence dated 10.04.2019 passed by the learned Additional Sessions Judge-III, Samastipur, in connection with Sessions Trial No. 387 of 2005 (arising out of Patori (Samastipur) P.S. Case No. 142 of 2002) are quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned Trial Court.

30. Since, the appellant nos. 1, 3 and 4 (namely, Mahesh Choudhary, Mahabir Chaudhary and Arjun Choudhary) of Cr. Appeal (DB) No. 572 of 2019, are in jail, hence they are directed to be released from custody forthwith, if their presence is not required in any other case.

31. The appeal stands allowed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Brajesh Kumar,
Anand Kumar/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	12.07.2024
Transmission Date	12.07.2024

