

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.648 of 2023

Arising Out of PS. Case No.-192 Year-2020 Thana- NARDIGANJ District- Nawada

Mina Devi, Wife of Vijay Choudhary, Resident of Village- Bhadaur P.S-
Nardiganj District- Nawada

... .. Appellant

Versus

1. The State of Bihar.
2. Santosh Choudhary, Son of Gorelal Choudhary, Resident of Village-
Bhadaur, P.S.- Nardiganj, District- Nawada
3. Anil Choudhary, Son of Late Tulli Choudhary, Resident of Village- Bhadaur
P.S.- Nardiganj, Dist- Nawada
4. Gorelal Choudhary, Son of Late Tulli Choudhary, Resident of Village-
Bhadaur P.S.- Nardiganj Dist- Nawada

... .. Respondents

Appearance :

For the Appellant/s : Mr. Sheo Kumar Prasad, Advocate
For the Respondent/s : Mr. Parmeshwar Mehta, Addl. PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 16-02-2024

Heard learned counsel for the appellant and Mr.
Parmeshwar Mehta, learned Additional PP for the State.

2. This appeal has been preferred for setting aside the
judgment dated 30.05.2023 passed by learned Additional District &
Sessions Judge, II, Nawada by which the respondent nos. 2 to 4 who
were facing trial for the charges under Sections 147, 148, 149 and
302 of the Indian Penal Code in Sessions Trial No. 01/2021 arising
out of Nardiganj P.S. Case No. 192 of 2020 have been acquitted.

Prosecution Story

3. As per the prosecution case, Mina Devi (PW-4) submitted a written report before the concerned police officer that on 25.08.2020 at 08:00 A.M. (morning), her elder son Jitendra was returning to his village from Nardiganj market after buying cement. When he reached near the Bajrangabali temple, the co-villagers Mithilesh Chaudhary, Gorelal Chaudhary, Anil Chaudhary, Girani Chaudhary, Pradeep Chaudhary, Raushan Chaudhary, Ratan Chaudhary, Santosh Chaudhary and Gorelal Chaudhary assaulted her son with sword. Girani Chaudhary, Anil Chaudhary and Bhagirath Chaudhary assaulted her son with stick and iron rod. Her son was crying to save himself when she, her husband and one Mahendra Chaudhary came after hearing the cry of her son, they saw the incident with their own eyes but since the accused persons were in huge number, so out of fear the informant could not save her son.

Brief Facts of the Case

4. On the basis of the allegations contained in the written report, Nardiganj P.S. Case No. 192 of 2020 was registered under Sections 147, 148, 149 and 302 of the Indian Penal Code. The investigating agency submitted a chargesheet against the accused persons whereupon cognizance was taken under the aforementioned Sections and the case was committed to the court of Sessions.

5. Charges were framed against the accused persons under Sections 147, 148, 149 and 302 of the Indian Penal Code which were explained to them. The accused persons denied the charges and claimed to be tried.

Prosecution Witnesses

6. On behalf of the prosecution, altogether eight witnesses were examined. PW-1 is Mahendra Chaudhary who claimed to be an eye witness. PW-2 is Madan Chaudhary and PW-3 is Ravindra Chaudhary and both of them have claimed themselves eye witnesses to the occurrence. Mina Devi (PW-4) is the mother of the deceased and she is informant of the case. She has stated that the occurrence was seen by her when she had gone to perform *puja* in the temple. PW-5, PW-6 and PW-7 are the doctors who conducted autopsy on the dead body. PW-8 is Mohan Kumar who is the Investigating Officer of the case. In addition to the ocular evidences, the prosecution also proved the postmortem report (Exhibit P03/PW-5), written statement (Exhibit P01/PW-3), endorsement on FIR (Exhibit P1/1/PW-8) and formal FIR (Exhibit P4/PW-8).

7. After appreciation of the evidences available on the record, the learned trial court recorded that there are material lacuna in the story which is being propounded by the prosecution witnesses. The learned trial court has found that though the prosecution witnesses have tried to project themselves as eye witnesses to the

occurrence but in course of their cross-examination, they have made completely inconsistent and sometimes contradictory statements. The learned trial court has recorded that the type of injuries described by PW-1, PW-2, PW-3 and PW-4 does not match with the detail of the injury mentioned in the postmortem report.

8. Further, the learned trial court has found that the prosecution has failed to produce a single independent witness who could have thrown proper light upon the incident. It has been found that all the prosecution witnesses are related and interested witnesses. The prosecution witnesses are also inimical inasmuch as the learned trial court has found that PW-4 Mina Devi has stated in her examination-in-chief in paragraph '4' that prior to this incident, the deceased Jitendra had a dispute going on with the accused persons and the deceased got instituted 6-7 criminal cases against the accused persons. The prosecution witnesses have stated that the deceased was coming on a motorcycle which was borrowed by him from his brother. Learned trial court found that the police did not seize the said motorcycle and non-seizure of motorcycle would prove fatal because if it was a case of accident then that motorcycle must have suffered some damages which fact could have been brought before this Court so as to ascertain whether there was an accident or the death of deceased was homicidal. The prosecution witnesses did not

produce the motorcycle before the police even though it was in possession of the brother of PW-2, Madan Chaudhary.

9. The learned trial court further found that the prosecution witness Madan Chaudhary (PW-2) has stated in paragraph '26' that the police recorded his statement two months after the said incident at the house of the deceased. Mahendra Chaudhary (PW-1) has also stated in course of his cross-examination in paragraph '18' that the police recorded his statement after two months of the said incident. This has been taken by suspicion as according to the learned trial court, it looks quite strange that the two eye witnesses, namely, PW-1 and PW-2 who claim themselves eye witnesses to the occurrence did not record their statements before police for a period of two months. Why it took two months' period in recording of the statements has not been explained by them initially in their deposition. Such a long delay in recording of the statement of the prosecution witnesses, PW-1 and PW-2 has raised doubt over the veracity of their statements.

10. The learned trial court has finally reached to a conclusion that there is absolutely no legal evidence to connect the accused with the crime. There is no definite evidence as to who caused the death of the deceased and whether it was homicidal.

11. Since the learned trial court seriously doubted the manner and the mode of occurrence of the alleged incident, the court came to a conclusion that the prosecution had not succeeded to prove

the alleged charges leveled against the accused persons beyond shadow of all reasonable doubts. Accordingly, the accused 1. Santosh Chaudhary, 2. Anil Chaudhary and 3. Gorelal Chaudhary have been given the benefit of doubt.

Submissions on behalf of the Appellant

12. Learned counsel for the appellant assailed the impugned judgment. It is his submission that the learned trial court ignored the facts and circumstances which were very much clear from the testimonies of the prosecution witnesses. Learned counsel submits that some fault on the part of the Investigating Officer in not seizing the motorcycle or not collecting the evidence on the point that the deceased had reached the place of occurrence carrying sack of cement on his motorcycle would not take away the whole case of the prosecution. It is submitted that minor discrepancies or inconsistencies in the statement of the prosecution witnesses would not prove fatal in this case.

Submissions on behalf of the State

13. Mr. Parmeshwar Mehta, learned Additional PP for the State submits that the learned trial court has considered the entire materials which came on the record by way of evidence.

14. Attention of this Court has been drawn towards the inconsistencies and contradictions which have been noticed by the learned trial court in paragraph '25' of the impugned judgment.

Again, reference has been made to the discussions made in paragraph '31' of the impugned judgment wherein the learned trial court has recorded that not a single independent witness has been produced by the prosecution.

15. Learned Additional PP submits that where all the prosecution witnesses are either related or interested witnesses and they are on inimical terms, it is all the more necessary to find out an independent witness to bring home the guilt against the accused beyond all reasonable doubts. In this case, since prior enmity is an admitted position, the chances of false implication are to be weeded out by introducing independent witnesses to the occurrence.

16. Further, it is stated that the conduct of the informant (PW-4) in not making any statement before the police at Nardiganj Hospital where the police party had reached and then lodging of the FIR only after she was sent back to her village would throw a serious doubt as to whether the prosecution story was an afterthought.

17. Learned Additional PP, therefore, supports the judgment of the trial court.

Consideration

18. We have heard learned counsel for the appellant as well as learned Addl.PP for the State and perused the record.

19. Learned counsel for the appellant has made available a copy of the deposition of Mina Devi (PW 4). In her examination-

in-chief, she has not alleged that any of the accused was lashed with sword whereas in her written statement, she had stated that the accused persons assaulted her son with sword, iron-rod and stick. According to her, the accused persons had assaulted her son on both legs, chest, head and scrotum but the doctors who have deposed as PW-5, PW-6 and PW-7 did not find any injuries on the head and the scrotum.

20. The conduct of the informant (PW 4) seems to be highly doubtful. In her examination-in-chief, she has stated that she called for a tempo through a co-villager and then took her son to Nardiganj Hosptial from where he was referred to Pawapuri. On reaching Pawapuri, her son died. After his death, his dead body was brought to Nawada Sadar Hospital where postmortem was conducted. After returning from Pawapuri, she got down at Kharath Mor and went to Nardiganj police station where Ravindra Chaudhary (PW-3) had written the complaint and read out the same to the informant after which she put her thumb impression on the written complaint. In her cross-examination, this witness has stated that outside the temple, she had not seen any other person except the accused persons. The prosecution witnesses Mahendra Chaudhary, Madan Chaudhary and Ravindra Chaudhary reached there when the occurrence was going on but the learned trial court

has found that Mahendra Chaudhary (PW-1) has stated in his cross-examination in paragraph '10' that when he reached the place of occurrence, no other person came at the place of occurrence. He further stated in paragraph '11' that between him and the place of occurrence, some persons were standing but he could not tell their names.

21. Thus, this Court finds that the statement of PW-4 that during occurrence, Mahendra Chaudhary (PW-1), Madan Chaudhary (PW-2) and Ravindra Chaudhary (PW-3) reached at the place of occurrence is not getting corroborated from the statement of PW-1. Further, what raises serious doubt over the conduct of the informant would be her statement in paragraph '9' of her cross-examination where she has stated that she had come to Nardiganj hospital with Jitendra (deceased) on the tempo where she stayed for half an hour and during this period, police from Nardiganj police station came there. She states that the police did not inquire anything from her which seems highly doubtful. PW-4 did not inform about the alleged occurrence to the police in Nardiganj Hospital is another fact which would call upon this Court to examine her evidence with more circumspection and care. She has stated in paragraph '9' of her testimony that apart from her, PW-1 and PW-3 had also reached the Nardiganj hospital but PW-1, PW-3

and PW-4 are unable to explain as to why they did not report the alleged occurrence to police at Nardiganj hospital. PW-4 claims that at Pawapuri, Jitendra was declared dead whereafter she was asked to return and on way, she got down at Kharath Mor whereas PW-1 took the dead body to Nawada hospital. From Kharath Mor, she came to her village with her family members. In her examination-in-chief, she states that she got down at Kharath Mor and went with Ravindra Chaudhary (PW-3) to Nardiganj police station but in her cross-examination, she states that from Kharath Mor, she was taken to her house and soon after reaching there, she left for Nardiganj police station with PW-3 to lodge the written report. It is evident from the statement of PW-4 in paragraph '9' of her testimony that her conduct is not natural. She had occasion to tell everything to police in Nardiganj hospital but she did not do so. PW-1 and PW-3 who were present with her also did not inform the police and much after the death of Jitendra, PW-4 returned with PW-3 to her village and then she went to the police station to lodge the FIR.

22. Further, we find that in the written report, it was stated that the accused persons were lashed with sword and they had assaulted her son by sword also but in course of her cross-examination, she states that she had not instructed Ravindra

Chaudhary (PW-3) to write that the accused persons had assaulted her son by sword and if it has been recorded in her written report then it might have been recorded by *Daroga Ji*.

23. We have carefully perused the judgment of the learned trial court. The contradictions noted by the learned trial court are well discussed and reasoned one. There is a delay of over two months in recording of the statement of PW-1 and PW-2 which remains unexplained.

24. In ultimate analysis, we find no reason to issue notice to the accused. No illegality or infirmity may be found with the impugned judgment, hence, this appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

lekhi/-annu/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.02.2024
Transmission Date	17.02.2024