

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3071 of 2022

Arising Out of PS. Case No.-125 Year-2011 Thana- JAYNAGAR District- Madhubani

Bal Bahadur Rai @ Bal Bahadur Ray Son Of Jai Bahadur Ray Resident Of
Aualnamachi, P.S.- Nammachi Bazar, District- Nammachi, State- Sikkim

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anand Kr. Tiwari, Adv.
Ms. Jyoti Prakash, Adv.
Mr. Nishant Kashyap, Adv
Mr. Harshit Ranjan, Adv
Mr. Anamika Kumar, Adv
For the Respondent/s : Mr. Zeyaul Hoda, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 17-10-2024.

1. Heard learned counsel appearing on behalf of
the parties.

2. The present appeal preferred by
appellant/convict, namely, Bal Bahadur Rai @ Bal
Bahadur Ray under section 374(2) of the Code of
Criminal Procedure (in short Cr.P.C.) against the



judgment and order dated 01.07.2022 rendered by learned 3rd Additional Session Judge, Madhubani in Session Trial No. 20 of 2012, CIS Registration No. 2743 of 2013 (arising out of Jainagar P.S. Case No. 125 of 2011) by which the learned trial court has convicted the appellant for the offence punishable under Sections 304 of the Indian Penal Code and sentenced the appellant to undergo rigorous imprisonment for eight years and fine of Rs. 20,000/- and in default of payment of fine, the appellant shall further undergo an additional period of simple imprisonment for six months.

3. Brief case of prosecution, as it appears from written application of the informant namely Bharat Bhushan (PW-1) that a sudden dispute between constable C. Murkeshan and Head Constable Bal Bahadur Ray taken place on 20.06.2011 at about 11:30 P.M. in BOP camp, Jainagar in which Bal Bahadur Ray assaulted C. Murkeshan by a wooden piece which injured C. Murkeshan. The informant further alleged that when



he reached at the place of occurrence, he saw blood was oozing from head of C. Murkeshan and he was unconscious, whereinafter he was taken to the P.H.C., Jainagar where he was declared brought dead by attending doctors.

4. On the basis of aforesaid information, Jainagar P.S. Case No. 125 of 2011 was lodged on 21.06.2011 for the offence under Section 304 of the Indian Penal Code, where after investigation police submitted charge-sheet accordingly.

5. To established its case before the learned trial court, the prosecution altogether examined total of eight witnesses, namely, PW-1 Bharat Bhushan (Informant), PW-2 S. Bhogendra Singh, PW-3 Shiv Kumar Yadav, PW-4 Sardar Singh Chauhan (other witness), PW-5 Sanjay Kumar III, PW-6 Kumar Kriti, PW-7 Dr. Sudhanshu Shekhar Jha (doctor) and PW-8 Dr. Subhash Chandra Ray (doctor).

6. The prosecution also exhibited following



documents during the trial to substantiate its case which
are as:-

Exhibit 1 – The written application to
the police station by informant.

Exhibit 2 – Signature of witness S.
Bhogendra Singh over the seizure list.

Exhibit 2/1 – Signature of witness
Sardar Singh over the seizure list.

Exhibit 3 – Inquest Report.

Exhibit 4- Endorsement of SHO over
written application of the informant.

Exhibit 5- Signature of SHO Jainagar
over the formal FIR.

Exhibit 6 - 6 P.M. report dated
21.06.2011.

7. On the basis of evidences, as surfaced
during the trial, the appellant/convict was examined
under Section 313 of the Cr.P.C., where he denied all



the evidences as surfaced against him and claimed his complete innocence and false implication.

8. No witness was examined in defense, neither any documents were exhibited during trial by appellant/convict in his favour.

9. Upon the basis of evidences as surfaced during the trial and also by taking note of the argument as advanced by the learned counsel appearing on behalf of the parties, the learned trial court convicted appellant/convict for the offence under Section 304 of the Indian Penal Code, where appellant/convict sentenced to undergo for rigorous imprisonment of eight years.

10. Being aggrieved with aforesaid judgment of conviction and order of sentence, the appellant/convict preferred the present appeal.

11. Hence the present appeal.

Argument on behalf of the appellant/convict:

12. It is submitted by the learned counsel for



the appellant that none of the prosecution witnesses including the informant is an eye witness of the occurrence and, therefore, the convictions of appellant as recorded by learned trial court is purely based upon the circumstantial evidence. It is submitted that merely on the ground that appellant was found standing near to injured/deceased, namely, C. Murkeshan, who was also residing in same camp in capacity of his employment, he was implicated with present case. It is submitted that a wooden stick was also found there and having only this much evidences, appellant was convicted. It is submitted that the circumstantial evidence is not sufficient to complete the chain on the basis of which it can be said that no one else than accused/appellant caused the death of injured/deceased, namely, C. Murkeshan and, therefore, the judgment of conviction is liable to be quashed/set aside. In support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court as reported in the case of **Sharad Birdhichand**



Sarda vs. State of Maharashtra reported in **(1984)**
4 SCC 116.

Argument on behalf of State:

13. The learned APP appearing on behalf of the State, while arguing, conceded that the conviction is based upon circumstantial evidence. It is submitted that the appellant was the camp-mate of the deceased. It is further submitted that the wooden stick was also found near to injured constable, namely, C. Murkeshan who found unconscious and appellant was also found standing thereof is such a strong evidence in itself which is sufficient to convict the appellant and, therefore, the convictions as recorded by learned trial court is not required to be interfered.

14. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.



15. As to re-appreciate the evidences, while disposing the present appeal, it would be apposite to discuss the evidences available on record, which are as under:-

16. PW-1 namely Bharat Bhushan is the informant of this case. It appears from his deposition that while he was sleeping in his room on 20.06.2011 at about 11:30 P.M, he was informed by his roommate/ constable, namely, Rajiv Kamal that a scuffle took place between two *jawan*/constable of Sashastra Seema Bal (SSB). On said information, he went there and found that C. Murkeshan was lying on his bed and blood was oozing from his head. He checked his pulse but it was not available. It was deposed by him that scuffle took place between C. Murkeshan and appellant which was informed by one Sardar Singh (Major). It was also informed to him that appellant Bal Bahadur assaulted on head of C. Murkeshan with wooden plate causing fracture of his head. He brought C. Murkeshan to



government hospital Jainagar alongwith other persons where doctor declared him brought dead whereafter, he furnished a written information *qua* occurrence to Jainagar police station which he identified during the trial being in his handwriting and also bearing signature of SHO which upon his identification,exhibited as Exhibit-1.

16.1. Upon cross-examination, it was stated by him that he did not saw any scuffling with C. Murkeshan (deceased) with appellant. He was informed by Rajiv Kumar regarding occurrence. He found blood on bedsheet and pillow of deceased. It was stated by him that he cannot say that how C. Murkeshan died. It was also stated that no discussions regarding occurrence was made with Sardar Singh. He also stated that after written information, his statement was never recorded by police. He also stated that constables are not supplied with '*lathi*' or '*phatta*' (wooden plate) rather they provided rifle.



17. PW-2 is S. Bhogendra Singh. He also supported the date and time of occurrence and deposed that he came to place of occurrence on public alarm/*halla*. He saw bleeding from the head of C. Murkeshan. Blood was also available on his bedsheet. With the help of other constables of camp, injured/deceased was taken to hospital. It was deposed that one rod was found there which was of *sheesham* wood, which was seized by police. Seizure list was signed by him also. It was deposed that Bal Bahadur Rai (appellant) was standing near to C. Murkeshan (deceased).

17.1. Upon cross-examination, it was deposed by him that total four person lived in his barrack of SSB camp. It was stated that relation of C. Murkeshan was good with all constables/employee. The relation of Bal Bahadur Rai (appellant) was also good with C. Murkeshan (deceased). He did not saw scuffling/*maar-peet* with C. Murkeshan. It was stated



that a mobile and *sheesham* wooden rod was found on way of the camp.

18. PW-3 is Shiv Kumar Yadav. On the date and time of occurrence, he was posted as front guard of BOP Camp. He also came to place of occurrence on alarm. He was with torch. He found that head constable Sardar Singh was standing near his bed and head constable Bal Bahadur Rai was going to his bed and found crossing mosquito net. He found bleeding from the head of C. Murkeshan, who was lying on his bed. He blown whistle and thereafter all persons of camp came over there. When all persons came there, with government vehicle, C. Murkeshan was brought to Primary Heath Centre of Jainagar where doctor declared him brought dead. Thereafter, the occurrence was reported to police. Bal Bahadur Rai (appellant) was arrested in morning. It was stated in cross-examination that the room of deceased was also shared by Sardar Singh, Bal Bahadur Rai (appellant) and Romendra Singh.



The room was accessible by all persons deputed over there. He heard four to five sound of "*Phat-Phat*" and when he went there, he found bleeding from the head of C. Murkeshan. He did not enquired whether he was dead or alive. He stated also that pillow and bedsheet of injured/deceased was stained with blood. He saw appellant going to his bed crossing mosquito net. He did not saw Romendra Singh. The bed of Romendra Singh was just in opposite of C. Murkeshan. When he entered into the house, he found two persons in room excluding C. Murkeshan. Bal Bahadur Rai (appellant), Sardar Singh, J. Nagrajan and Hriday Verma taken C. Murkeshan to hospital. He did not noticed any blood spot near to C. Murkeshan. He could not say that how C. Murkeshan received injury on his head.

19. PW-4 is Sardar Singh Chauhan. He also supported the death and time of occurrence and arrived at place of occurrence on alarm. It was deposed that police seized two and half feet long wooden rod and one



mobile phone from place of occurrence for which the seizure list was prepared which was also signed by him. He identified his signature on seizure list which upon his identification, exhibited as Exhibit no.2/1.

19.1. Upon cross-examination, it was stated that appellant is his friend as he also working with SSB. It was stated that his bed was in front of the bed of deceased C. Murkeshan. When he saw first time, he found bleeding from the head of C. Murkeshan. Bal Bahadur Rai (appellant), Bharat Bhushan, Sipahi Nagrajan went hospital with C. Murkeshan where doctor declared him brought dead. It was stated that the relation of C. Murkeshan was good with every person posted over there.

20. PW-5 is Sanjay Kumar. He is the witness of the injury report. He also supported the date and time of occurrence. He identified his signature on inquest report which upon his identification, exhibited as Exhibit no.3.



20.1. Upon cross-examination, it was stated that he could not say that when information regarding occurrence was given to Jainagar police station. He visited hospital as per direction of SHO. It was stated that inquest report is lacking of police case no.

21. PW-6 is Kumar Kirti. He is the Investigating Officer of this case. He lodged present case as Jainagar P.S. Case No. 125 of 2011 and took the charge of investigation for himself. He visited place of occurrence and recorded the re-statement of informant/PW-1 and also recorded the statement of other prosecution witnesses. He also prepared the inquest report. He identified handwriting on formal FIR which upon his identification, exhibited as Exhibit no.5.

21.1. Upon cross- examination, it was stated that information was received at about 2:30 A.M. He did not recorded any '*sanha*' regarding occurrence. It was stated that he recorded the re-statement of the informant (paragraph 2 of the case diary). He did not



prepared the map of place of occurrence. He did not seized the blood stained cloth, bedsheet etc. He did not found any blood stain on wooden straw which was seized at place of occurrence. It was stated that none of the prosecution witnesses are the eye witness of the occurrence.

22. PW-7 is Dr. Sudhanshu Shekher Jha, who conducted autopsy upon deceased C. Murkeshan and found following results:-

"1. Sharp cut 2' $\frac{1}{2}$ x 1' $\frac{1}{2}$ x bone deep over occipital area scalp behind left ear.

2. Sharp cut 3' x $\frac{1}{2}$ ' x bone deep over left perital region of scalp

3. Sharp cut 1' x $\frac{1}{2}$ ' x bone deep over lateral side of head over left eyebrow.

On dissection- Hematoma within scalp. There was fractured of frontal bone on left side on opening cranial cavity hematoma present inside.

Opinion- Death in my opinion



is due to shock and hemorrhage as a result of above mention injuries caused by sharp cutting weapon.”

22.1. Upon cross-examination, he identified his handwriting and findings of the post-mortem report which upon his identification, exhibited as Exhibit no.6. It was stated that all three injuries were caused by sharp edged weapon.

23. PW-8 is Dr. Subhash Chandra Rai. He was also the member of the committee of doctor who conducted post-mortem upon deceased.

23.1. Upon cross examination, it was stated that post-mortem was conducted by S.S. Jha (PW-7).

24. It appears from the aforesaid discussion of the evidence that present case is completely based upon the circumstantial evidence and, therefore, paragraph nos. 152, 153 and 154 of Sharad Birdhichand Sarda (supra) case is appearing relevant to quote hereinbelow for better understanding of law regarding crime in question:-



"152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other



words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

153. *A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."



(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. *These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."*

25. It appears from the discussions of aforesaid evidences that even the informant/PW-1 is not an eye witness of the occurrence. The room of the deceased was not only shared by appellant rather it was shared by two other constable namely, Shiv Kumar Yadav and Romendra Singh. Shiv Kumar Yadav was



examined as PW-3. It also appears that the PW-3 was the guard man of the BOP camp, who upon public alarm, arrived at place of occurrence having torch in hand and found that appellant was going to his bed to retire for the night and for so, he was entering inside the mosquito net covering his bed. PW-6, who is the Investigating Officer of this case categorically, stated that none of the prosecution witnesses are eye witness of the occurrence. It appears that only *sheesham* wooden plate having two and half feet length was recovered. It was recovered from the entering point of the house. The house was also said to be accessible by all. There was no blood stain on cloth or hand or any part of body of the appellant. It appears highly unbelievable that PW-4 namely, Sardar Singh Chauhan, who was also the roommate, did not saw anything, particularly, as to assault the injured/deceased.

26. PW-7, who is the doctor and conducted autopsy upon the deceased, found three incised wound



upon the head of the deceased and it was opined that same was caused by sharp edged weapon. No sharp edged weapon was found near to place of occurrence. The only incriminating circumstances from the available evidences appears against appellant that he is the room mate of the deceased alongwith PW-3, namely, Shiv Kumar Yadav and one Romendra Singh. None of the prosecution witnesses even deposed that wooden rod/plate (*Phatta*) was found in the hand of appellant.

27. Having such evidence, connections of the appellant with crime in question appears very remote almost of no connection. Accordingly, this court finds that prosecution miserably failed to prove charge against appellant during the trial, as chain of circumstances failed to suggest that crime in question was committed none else than appellant.

28. Accordingly, the impugned judgment, conviction and order of sentence dated 01.07.2022 passed by learned 3rd Additional Session Judge,



Madhubani in Session Trial No. 20 of 2012, CIS Registration No. 2743 of 2013 (arising out of Jainagar P.S. Case No. 125 of 2011) is hereby set aside/quashed.

29. Appellant namely, Bal Bahadur Rai @ Bal Bahadur Ray is in custody in connection with this case, he is directed to be released forthwith, if not required in any other case. Fine, if any paid, by appellant, be returned to him immediately.

30. Office is directed to send back the trial court records and proceedings along with a copy of this judgment to the trial court, forthwith.

(Chandra Shekhar Jha, J)

kiran/suruchi-

AFR/NAFR	NAFR
CAV DATE	NA
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