

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.776 of 2022

Arising Out of PS. Case No.-23 Year-2009 Thana- PARSA District- Saran

Gopal Ray @ Gopal Prasad Ray aged about 50 years (M), Son of Late
Vaijanath Ray R/V- Vishunpur, P.S- Parsa, Dist- Saran (Chapra)

..... Appellant/s

Versus

1. The State of Bihar
2. Yogendra Rai aged about 42 years (M), Son of Dharamnath Rai R/V-
Vishunpur, P.S- Parsa, Dist- Saran (Chapra)
3. Arjun Rai aged about 55 years (M), Son of Raman Rai R/V- Vishunpur, P.S-
Parsa, Dist- Saran (Chapra)
4. Naresh Rai aged about 45 years (M), Son of Mahendra Rai R/V- Vishunpur,
P.S- Parsa, Dist- Saran (Chapra)
5. Sikandar Rai aged about 62 years (M), Son of Sabha Rai R/V- Vishunpur,
P.S- Parsa, Dist- Saran (Chapra)

..... Respondent/s

Appearance:

For the Appellant/s	:	Mr. Bashishtha Narayan Mishra, Advocate Mr. Avinash Ray, Advocate
For the Respondent/s	:	Mr. Binod Bihari Singh, APP
For the Opposite Party	:	Mr. Raghwendra Sharan Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)

Date: 13-08-2024

Vide order dated 19-09-2023, name of
respondent no. 6 (Shiv Bachan Rai) has been
deleted as he has died.

2. The present appeal has been filed under
Section 372 of the Code of Criminal Procedure,
1973 (hereinafter referred as 'Cr.P.C') challenging
the judgment and order of acquittal dated



23.08.2022 passed by learned Additional District and Sessions Judge-IX, Saran at Chapra, in Sessions Trial No. 576 of 2012, arising out of Parsa P.S. Case No. 23 of 2009, whereby the concerned Trial Court has acquitted Respondent No. 2 to 5 for the offences punishable under Section 302/34 of the Indian Penal Code.

3. Heard Mr. Bashishtha Narayan Mishra, learned counsel for the appellants assisted by Mr. Avinash Ray and Mr. Vinod Bihari Singh, learned A.P.P. for the State and Mr. Raghwendra Sharan Pandey for the respondent nos. 2 to 5.

4. The prosecution story, in short, is that the present appellant filed Parsa P.S. Case no. 23 of 2009 by recording his *fardbeyan* before the Police for the occurrence alleged to have taken place on 26.04.2009, at about 05:30 PM when his brother went to defecate in the southern side of the house and did not come back till 08:30 PM, they started searching him and during the search, they heard a commotion that a dead body has been found in the field of Sitaram Singh, where the appellant and his



family members went and found the dead body of the deceased lying there. Accordingly, appellant alleged that accused persons, namely, i) Sikander Rai, ii) Arjun Rai, iii) Naresh Rai and iv) Yogendra Rai have murdered his brother Pawan Kumar (deceased) due to previous enmity.

5. After registration of the F.I.R., the Investigating Officer started the investigation and upon completion of investigation, submitted final form against the accused persons on 30.01.2011, stating the case to be not true to the concerned Magistrate Court. Prior to submission of final form by Investigating Officer, a protest petition was filed by the appellant (informant) before the CJM, Saran at Chapra on 23.05.2009, in which 5 persons were made accused including i) Sikander Rai, ii) Arjun Rai, iii) Naresh Rai, iv) Yogendra Rai and v) Shiv Bachan Rai, stating that when the brother of appellant did not come back, a search was made and during the course of the search, appellant found that the accused persons killing his brother and further the protest petition was treated as



complaint and numbered as Complaint Case No. C1253 of 2011, under Sections 200 and 202 of Cr.P.C, witnesses were examined, who supported the case of the prosecution and learned CJM took cognizance under section 302/34 of the Indian Penal Code against the accused persons and as the case was exclusively triable by the Court of Sessions, the learned CJM committed the same to the Sessions Court, where the same was registered as Sessions Trial No. 576 of 2012.

6. During the course of the trial, the prosecution has examined altogether 8 witnesses including the informant, namely, PW-1 Lal Babu Rai, PW-2 Asha Devi (Wife of the deceased), PW-3 Munna Rai (Brother of the deceased), PW-4 Badamiya Devi (Mother of the deceased), PW-5 Bajinath Rai (Father of the deceased), PW-6 Jitendra Rai, PW-7 Dr. Alok Bihari Sharan and PW-8 Gopal Rai (Informant) and documentary evidences exhibited as Exhibit-1 Inquest report, Exhibit-2 Postmortem Report, Exhibit-3 Fardbeyan and Exhibit-3/1 Protest Petition.



7. Learned counsel for the appellant/informant submits that the impugned judgment and order is bad in law as well as on facts. He further submits that the learned Trial Court has failed to appreciate that there are ample materials available on the record to establish the case of prosecution and to prove the guilt of respondents No. 2 to 5. There is no contradiction in the place of occurrence, manner of occurrence and time of occurrence and involvement of respondents and, as such, the acquittal of the respondents is based on erroneous and extraneous consideration and not based on the materials placed on record. The learned Trial Court has further failed to appreciate the evidence of the eye-witness, which is fully corroborated by the Medical Report. It is further stated that the learned Trial Court has committed gross illegality, as it has gone beyond the record of the case as the appellant herein has no reason to falsely implicate the accused persons. The impugned judgment and order of acquittal passed against respondent Nos.



2 to 5 is otherwise, bad in law as well as on facts and is fit to be set aside.

8. Learned A.P.P. has adopted the submissions advanced by the learned counsel for the appellant.

9. On the other hand, learned counsel for the respondent nos. 2 to 5 (accused persons), has opposed the appeal and submitted that the learned Trial Court has not committed any error while recording the judgment and order of acquittal as there are major contradictions, substantive inconsistencies and discrepancies in the depositions given by the prosecution witnesses. Thus, when the prosecution has failed to prove the guilt against the accused persons beyond all reasonable doubt, the learned Trial Court has rightly acquitted the accused persons giving them the benefit of doubt. The State has rightly not preferred any appeal against acquittal. In view of the above, the impugned judgment and order does not need any interference by this Hon'ble Court and the appeal deserves to be



dismissed.

10. 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 exhibited.

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

12. Before the Trial Court, prosecution examined 8 witnesses.

13. PW-1 Lal Babu Rai, in his examination-in-chief has stated that the occurrence is of 26.04.2009 at 06:00 PM. He was in his corn field, when he heard a whisper and saw that Sikander Rai, Naresh Rai, Yogendra Rai, Arjun Rai and Shiv Bachan Rai together were holding Pawan Kumar (deceased). Sikander Rai and Naresh Rai were pulling deceased with a rope around his neck and Yogendra Rai and Arjun were holding deceased. PW-1 further stated that Shiv Bachan Rai had gone there to eliminate the deceased and due to the



injury sustained by the deceased, he died. After that all accused persons ran towards PW-1, but he managed to flee away screaming from the place of occurrence. The land where deceased died belongs to Sitaram.

13.i. In his cross examination, PW-1 has stated that informant is his brother's son and they don't live in the same house. Their house is at distance of 15 ft. from the house of the informant. He further submitted that 15-20 people lived in between their house. It is also stated that when police came at the place of occurrence, he was already present there and after 1 and half hours, police took the statement of the informant. PW-1 continued in his cross-examination regarding the details of the incident and further stated that no blood marks were found from the place of occurrence and before this incident, there was no enmity among the accused persons and the deceased or with his family members. He further stated that he has no enmity with the accused persons and he is not giving a false statement.



14. PW-2 Asha Devi (wife of the informant), in her examination-in-chief has stated that the incident occurred two and half years ago, at 05:00 PM. She was at home when the incident took place and when Pawan Kumar went to defecate, Sikander Rai, Shiv Bachan Rai, Naresh Rai, Arjun Rai and Yogendra Rai followed him. When Pawan did not return till 06:00 PM, they started searching him and went to Sitaram's field with her husband and saw that accused persons were tying a rope around Pawan's neck. PW-2 further stated that, Pawan was dead by the time police came to know about the incident. She recognizes the accused persons present in the court.

14.i. In her cross examination, PW-2 has stated that she does not live with her children in Muzaffarpur, so she used to come and meet them. She has given the same statement before the investigating officer and it is wrong that she has not given the same statement before the investigating officer. Pawan went towards south, to defecate and his dead body was found 10-15



meters away from the house of PW-2. She further stated that land dispute is going on for past 2-3 months in between accused persons and her family for the plot which is near to the house of PW-2. She further submitted that 4-5 people lived in between accused persons house and their house. PW-2 further stated that no blood marks were found at the place of occurrence and she is not giving a false statement.

15. PW-3 Munna Rai (brother of the deceased), in his examination-in-chief has stated that the incident occurred 5 years ago at 05:30 PM. He further stated that when his brother (deceased) went to defecate and did not return, then he along with his mother, brother (Gopal Rai (informant)), Lal Bahadur and sister-in-law started searching him at 07:00 PM. While looking for his brother Pawan Kumar, they went to Sitaram's field and saw that accused persons were pulling a rope around his brother's neck and by that time, he switched the flashlight, they fled away from the place of occurrence. He further stated that his brother died



due to suffocation caused by rope being pulled around his neck. He recognizes the accused persons present in the court.

15.i. In his cross examination, PW-3 has stated that deceased Pawan Kumar was his brother and there was enmity going between the accused persons and his brother. He stated that at the time, when they reached at the place of occurrence it was already dark outside and when they shouted after seeing accused persons pulling rope around the neck of the deceased then accused persons ran away and no one from the village came there. After recording the statement of the informant, police inspector had taken his statement and he has not given false statement to police officials. PW-3 continued in his statement regarding the details of the incident and stated that it is not true that due to personal enmity with the accused persons, they have been implicated falsely in this case.

16. PW-4 Badamiya Devi (Mother of the deceased), in her examination-in-chief has stated



that the incident occurred 5 years ago at 05:30 PM. She was at home when the incident took place and when his son Pawan Kumar (deceased) did not return from defecate, she along with Lal Babu Rai, Gopal Rai (informant) and her daughter-in-law started searching for him. During the course of search, they went to Sitaram's field where, she saw that accused persons were tying a rope around his son Pawan Kumar's neck and killed his son. She recognizes the accused persons present in the court.

16.i. In her cross examination, she has stated that Gopal Rai, Jai Kishore, Munna and Pawan are her sons and it is not true that Pawan used to visit his brother Munna's in-law's house. It is also not true that deceased has illicit relationship with Munna's sister-in-law and it is also not true that due to this illicit relationship, Munna's sister-in-law was 4 months pregnant. It is also not true that on the date of occurrence, Munna Rai and her wife had a fight and due to which they had killed Pawan Kumar (deceased) and threw him in the



field. She further stated that it is not true that incident does not took place and due to enmity with the accused persons, she has implicated them in this present case.

17. PW-5 Bajinath Rai (father of the deceased), in his examination-in-chief has stated that the incident occurred five years ago, while he was in Muzaffarpur, he received information over the phone that when his son Pawan Kumar (deceased) went to defecate and did not return to his house, then all family members went to search him. He further stated that when family members lit the torch, they saw that accused persons, namely, Sikander Rai and Naresh Rai were pulling his son (deceased) with a rope around his neck and other accused persons were standing there. He came next day and went to police station and saw his son's dead body there. He recognizes the accused persons present in the court.

17.i. In his cross examination, he has stated that before the incident, there was no enmity or quarrel between him and accused



persons. At the time of the incident, he was posted in government job in Muzaffarpur. His son Gopal Rai informed him about the incident. Munna Rai's marriage took place in Visahi village and it is not a matter of fact that the deceased had an illicit relationship with Munna Rai's sister-in-law and she was pregnant for 2-5 months. It is not true that Pawan was murdered by his family members because of illicit relations he had with Munna's sister-in-law. He made his statement before the Magistrate. He has said before the police that the murder was committed by tying a rope around the neck of the deceased. He further stated that it is not true that incident did not took place and due to enmity with the accused persons, they are implicated in this present case.

18. PW-6 Jitendra Rai, in his examination-in-chief has stated that inquest report of deceased was prepared in front of him on 26.04.2009 in field of Sitaram Singh. He saw clothes on Pawan's dead body and marks on his neck. He further stated that Sub-Inspector had prepared the inquest report in



front of him, which he signed and was marked as exhibit 1. He recognizes the accused persons present in the court.

18.i. In his cross examination, he has stated that he is unaware of the content of the inquest report made by the police inspector and the same was not read aloud to him.

19. PW-7 Dr. Alok Bihari Sharan, in his examination-in-chief has stated that on 27.04.2009 he was posted at Sadar Hospital, Chapra, and conducted the postmortem of the deceased on the same day and found the following ante-mortem injuries: -

a) Bruise on right side of cheek around 2"X1"

b) Scar mark closes to trachea transversely placed deficient posteriorly.

c) Bruise of 3"X2" size over left lower back.

Internal injury finding:

i) Hemorrhage skin scar area

ii) Fracture of track healing and



cartilage

All viscera are congested and intact. Stomach full of fluid and bladder is empty.

Opinion: Death was caused due by strangulation leading to asphyxia. This postmortem report is in my handwriting and signature, which I recognize and marked as exhibit-2.

19.i. In his cross examination, he has stated that he does not know the deceased before and I have not written who got the body identified. The time of death is written as an estimation, there can be difference up to 6 hours and it is not true that my report is not correct.

20. PW-8 Gopal Rai (Informant), in his examination-in-chief has stated that he has filed this case and the incident occurred 6 years ago around 5:30 in the evening. He was at home at that time and his brother Pawan Kumar (deceased) went to defecate and did not came back, so with his uncle Lal Babu Rai, mother, brother and his wife, he went to search Pawan Kumar. While searching, when they reached near the field of



Sitaram Singh and they saw that Sikandar Rai, Naresh Rai, Arjun Rai, Yogendra Rai, Shiv Bachan Rai were there. They were pulling a rope around his brother's neck. They ran away after seeing them. He gave his statement in the police station. His signature is on the statement and the protest petition filed in the court is also signed by him and same are marked as exhibit 3 and 3/1. He recognizes the accused persons present in the court.

20.i. In his cross examination, he has stated that he had written down the correct details in *fardbeyan* given to the police. He is four brothers, namely, Jai Kishore Rai, Munna Rai, Pawan Kumar and himself. They live in a joint family. Munna Rai's marriage took place in Visahi village and his wife's name is Indu Devi. He does not know how many sisters Indu has and Indu's sisters were not liked in their house, only Indu's brother used to come at their house. It is not true that Pawan Kumar (deceased) had illicit relationship with Indu's sister and was left



pregnant for four months. It is also wrong that when Indu's sister became pregnant with Munna, everyone killed Pawan Kumar. It is also wrong that they killed the deceased Pawan Kumar and threw him away. Before this incident, an altercation between us and accused persons family took place 4-5 months ago and apart from this, nothing ever happened in between us. Police was informed about the said altercation but police did not take any action on that. It is not true that our family ran away from home after the fight. It is also wrong to say that the incident did not happen during his stay and due to enmity with the accused persons, they have been implicated in this present case.

21. We have considered the submissions canvassed by the learned counsels for the parties. We have re-appreciated the entire evidence led by the prosecution before the Trial Court and also perused the documentary evidence exhibited.

22. It would emerge from the record that, as per the *fardbeyan* (Exhibit-3) given by informant, his brother went to defecate in the



southern side of the house and did not come back till 08:30 PM. They started searching for him and during the search, they heard a commotion that a dead body is found in field of Sitaram Singh, where the appellant and his family members went and found the dead body of the deceased and accordingly appellant alleged that accused persons have murdered his brother Pawan Kumar (deceased) due to previous enmity. However, during the course of trial, PW-1 in his examination-in-chief has stated that he was in his corn field when he heard a whisper and saw that all accused persons were holding the deceased with a rope around his neck, whereas PW-8 Gopal Rai in his cross-examination stated that he along with PW-1 (Lal Babu Rai), mother, brother and wife went to search deceased, but in his protest petition, he has stated that he along with PW-1 and other persons saw all accused pulling the deceased with a rope around his neck and in Para-3 of his cross-examination, if we accept that he had written the correct statement in the *fardbeyan*. In such



situation, there is substantive contradiction between the *fardbeyan* and the protest petition and deposition given by the informant PW-8 as well as statement given by PW-1 Lal Babu Rai in his examination-in-chief. As per (PW-2 Asha Devi) in her examination-in-chief, accused persons followed Pawan Kumar when he went to the defecate and when she reached the place of occurrence, she saw that accused persons were pulling deceased's neck with a rope. PW-5 in his examination-in-chief stated that when deceased did not return home, family members went to search him and saw accused persons killing his son.

23. It is clear from perusal of exhibit-3 (*fardbeyan*), that informant did not see anyone being killed and from perusal of exhibit 3/1 (protest petition), it appears that informant along with other prosecution witnesses have seen accused persons pulling deceased with a rope around his neck. In such a situation, *fardbeyan*, protest petition and statement of prosecution witnesses are self contradictory.



24. Hon'ble Supreme Court in the case of **Chandrappa & Ors. Vs. State of Karnataka**, reported in **(2007) 4 SCC 415**, has held in Para-42 as under: -

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1)

(2)

(3)

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favor of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is



further reinforced, reaffirmed and strengthened by the trial court.

(5)

25. Keeping in view of the aforesaid guidelines issued by the Hon'ble Supreme Court, while considering the appeal against the order of acquittal, if the facts of the present case, as discussed herein-above, are examined, we are of the view that no interference is required in impugned judgment and order of acquittal dated 23.08.2022.

26. Even otherwise, there are major contradictions and substantive inconsistencies in the depositions given by the prosecution witnesses with regard to the manner in which the incident took place and due to pre-conceived notions on the part of the informant, the accused were framed by making up a false story in the protest petition. Thus, we are of the view that the prosecution has failed to prove the case against the present respondents/accused persons beyond all reasonable doubt and the Trial Court has not committed any error while passing the impugned



judgment and order of acquittal dated 23.08.2022.

28. Accordingly, the appeal stands dismissed at the stage of admission itself.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Brajesh Kumar/-
Anand Kumar/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	29.08.2024
Transmission Date	29.08.2024

