

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1362 of 2018

Arising Out of PS. Case No.-108 Year-2014 Thana- GRIYAK District- Nalanda

Arvind Kumar @ Mathura Prasad S/o Late Sohrayee Mahto Resident of
Village-Chorsua P.S. Giriyak, Dist.-Nalanda

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1329 of 2018

Arising Out of PS. Case No.-108 Year-2014 Thana- GRIYAK District- Nalanda

1. Ranjit Kumar, S/o Arvind Kumar @ Mathura Prasad.
2. Manjit Kumar, S/o Arvind Kumar @ Mathura Prasad. Both are Resident of
Village- Chorsaya, P.S.- Giriyak, District- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1362 of 2018)

For the Appellant/s : Mr. Shashank Chandra, Advocate.

Mr. Smriti Verma, Advocate.

Mr. Vatsal Verma, Advocate.

For the Respondent/s : Mr. Ajay Mishra, APP.

(In CRIMINAL APPEAL (DB) No. 1329 of 2018)

For the Appellant/s : Mr. Shashank Chandra, Advocate.

For the Respondent/s : Mr. Ajay Mishra, APP.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 01-07-2024

1. Both the appeals have been taken up



together and are being disposed of by this common judgment.

2. We have heard Mr. Shashank Chandra, the learned Advocate for the appellants (three in number in both the appeals) and Mr. Ajay Mishra, the learned APP for the State.

3. Appellant/ Arvind Kumar @ Mathura Prasad has been convicted under Sections 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959, whereas appellants/ Ranjit Kumar and Manjit Kumar have been convicted under Section 302/34 of the IPC and Section 27 of the Arms Act, *vide* judgment dated 27.09.2018 passed by the learned Additional Sessions Judge-III, Biharsharif in Sessions Trial No. 491 of 2016, Trial No. 102 of 2017 arising out of Giriyak P.S. Case No. 108 of 2014. By order dated 11.10.2018, appellant/ Arvind Kumar @ Mathura Prasad has been sentenced to undergo R.I. for life, to pay a fine of Rs.10,000/- for the offence under Section 302 of IPC and to undergo R.I. for



three years, to pay a fine of Rs. 5,000/- for the offence under Section 27 of the Arms. So far as, appellants/ Ranjit Kumar and Manjit Kumar are concerned, they have been sentenced to undergo R.I. for life and to pay a fine of Rs.5,000/- each for the offence under Section 302/34 of IPC and to undergo R.I. for three years, to pay a fine of Rs. 5,000/- each for the offence under Section 27 of the Arms Act. In default of payment of fine, all the appellants have been further directed to undergo R.I. for three years.

4. The sentences have been ordered to run concurrently.

5. Meena Devi @ Kamla Devi is alleged to have been shot dead by appellant/Arvind Kumar @ Mathura Prasad, who had come to the house of the deceased along with his two sons, viz., appellants/ Ranjit Kumar and Manjit Kumar. According to the prosecution case, the deceased was shot at by appellant/ Arvind Kumar @ Mathura Prasad in presence of her son/Pradeep



Kumar (P.W. 3) and Urmila Devi and Kusum Devi (P.W. 5 and P.W. 7). The deceased was taken to hospital but on way, she died. Still, the dead-body was taken to the hospital, where she was officially declared dead. This had happened on 05.05.2014 at about 08 O'clock in the night. At about 10:50 in the night, the inquest was performed. The post-mortem on the dead-body was conducted at 07:45 A.M. on the next day, i.e. on 06.05.2014.

6. The fardbeyan has been given by Pardeep Kumar (P.W. 3), which was recorded by S.I. Praveen Kumar/S.H.O. of Pawapuri outpost in the district of Nalanda (P.W. 9) though wrongly stated in the paper book as P.W. 10.

7. P.W. 3 has alleged that while he was sitting along with his mother (deceased) in front of the Kirana shop belonging to him, his neighbour Arvind Kumar @ Mathura (appellant in Cr. APP. (DB) No. 1362 of 2018) along with his two sons, viz., Ranjit Kumar and Manjit



Kumar (appellants in Cr. APP. (DB) No. 1329 of 2018) came near the shop. He has further alleged that Arvind Kumar fired at his mother which hit her on the right side of the waist. After injuring his mother, all the three accused persons/appellants fled away towards eastern side. His mother started crying in pain. She bled profusely. With the help of the others/neighbour, his mother was taken to Biharsharif Hospital but on way she died. Still, she was taken to Sadar Hospital where she was declared dead. The cause of occurrence as stated in the fardbeyan is that about fifteen to twenty days before a plot of fallow land situated to the South of his house was measured and during such measurement, the accused persons/appellants had threatened him and his mother that they shall not allow the land to pass on in their hands and that either him or his mother shall be killed.

8. On the basis of the afore-noted *fardbeyan*/statement of P.W. 3, Goriyak P.S. Case No. 108 of 2014, dated 06.05.2014 was registered for



investigation for the offences under Section 302/34 of the IPC and Section 27 of the Arms Act.

9. We have noticed that one Dhuri Mahto P.W. 5A (wrongly stated in the paper book as P.W. 6) has signed as a witness to the afore-noted fardbeyan. Optically, it appears that his signature was obtained even prior to Pradeep Kumar (P.W. 3) having signed the document.

10. We say so, for the reason that the positioning of the signature of P.W. 5A is very close to last line of the fardbeyan, whereas the signature of P.W. 3 is at some distance towards the right-hand side of the document. This may not generally be any ground to harbour any suspicion, but as we proceeded ahead with the hearing of the case, we discerned some disquieting features which has shrouded the prosecution version in some doubt.

11. At this point only, it would be relevant to state that P.W. 5A (Dhuri Mahto) is no stranger to the



appellants. Appellant/Arvind is his own brother, whereas appellants/ Ranjit and Manjit are his nephews. It is not expected that a brother or uncle would be a signatory to the accusation against his own family members, especially when there is nothing on record to indicate that the appellants in the past had any fallout with P.W. 5A.

12. This is one of the grounds for us to look at the entire prosecution case with some suspicion and more so when during the Trial Dhuri Mahto (PW5A) was declared hostile.

13. We deem it apposite to first deal with the deposition of Dhuri Mahto before discussing the evidence of the so-called eyewitnesses, namely, informant/Pradeep Kumar (P.W. 3), Bhartendu Prasad Kushwaha (P.W. 2), Urmila Devi (P.W. 5) and Kusum Devi (P.W. 7).

14. Dhuri Mahto (P.W. 5A) has vividly remembered and stated before the Trial Court that about 8:30 P.M. on 05.05.2014, while he was at his *darwaaza*,



he heard a gun-shot sound coming from the house of the deceased. He went there and found that she has been shot at. She had been uttering that one Chhotu had fired at her. After about quarter of an hour, her son Pradeep Kumar (P.W. 3) came. Thereafter, a vehicle was arranged for taking the deceased to Hospital for treatment. While being taken to the Hospital, the deceased was speaking that it was Chhotu, who had fired at her. By the time he had reached the hospital along with the deceased, she had already stopped talking. It was at the hospital that the Officer-in-Charge of Giriyak Police Station came. Before his arrival, the deceased had been declared dead. He was made to sign on a blank sheet of paper, but no statement of any person was recorded there. In fact, the statement of P.W. 3 also was not recorder at that place.

15. It was at that point of time that he was declared hostile and permission was sought from the Trial Court to cross-examine him by the prosecution side.

16. In his cross-examination, he has stated



about his relationship with the appellants. He has denied that he along with appellants had killed the deceased. He insisted that he had not signed on the fardbeyan; rather, his signature was obtained on a blank piece of paper. He has denied to have made any statement before the police implicating the appellants. In fact, he has gone to the extent of saying that the police did not ask any question from him regarding the occurrence.

17. In further cross-examination, he has declared that he was the first person to come to the house of the deceased. After 20 minutes, P.W. 3 had come to the P.O. Thereafter many persons of the village had arrived. When P.W. 3 was asked by him as to where from he had been coming, he is said to have told him that he was coming from the library. Chhotu, the name which was repeatedly taken by deceased, is a resident of Bakhtiyarpur. He has repeated before the Trial Court that he had signed on a blank sheet of paper.

18. We must, however, state the reason for



our analyzing the evidence of P.W. 5A, though he has been declared hostile.

19. A three Judge Bench of the Supreme Court in case of ***Khuji @ Surendra Tiwari vs. State of Madhya, Pradesh 1991 (3) SCC 627***, relying upon the judgments of the Supreme Court occurred in ***Bhagwan Singh vs. State of Haryana, 1976 (1) SCC 389***; ***Sri. Rabindra Kumar Dey vs. State of Orissa, 1976 (4) SCC 233*** and ***Syad Akbar vs. State of Karnataka, 1980 (1) SCC 30***, has held that the evidence of a prosecution witness cannot be rejected in totality merely because the prosecution chose to treat him as hostile and cross-examined him.

20. It was further held that the evidence of such witness cannot be treated as effaced or washed off the records altogether. But his statement can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof.

21. Similar views have been expressed in ***C.***



Muniappan and Ors. vs. State of Tamil Nadu, 2010 (9) SCC 567 and State of U.P. vs. Ramesh Prasad Misra and Anr., 1996 (10) SCC 360.

22. In the aforesaid cases, it was very succinctly held by the Supreme Court that the evidence of the hostile witnesses would not be totally rejected if spoken in favour of the prosecution or the accused but is required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon (also refer to ***Selvamani vs. State Rep. By the Inspector of Police, 2024 SCC Online SC 836***).

23. In ***Anees vs. State Govt. of NCT, 2024 SC Online 757***, the Supreme Court has gone to the extent of saying that if any prosecution witness turns hostile and the public prosecutor seeks permission of the Trial Court to cross-examine such a witness, then that witness is like any other witnesses. The witness no longer remains the prosecution witness.



24. We would get back to the evidence of P.W. 5A sometimes later after the discussion on the evidence of P.W. 3 and other so-called eye-witnesses to the occurrence.

25. The informant (P.W. 3) in his deposition has supported the prosecution case of his having seen every part of the occurrence. At the Trial, for the first time, he has stated that along with him and his mother, Urmila Devi (P.W. 5) and Kusum Devi (P.W. 7) were also sitting when firing was resorted to. After his mother was shot at, he took the help of four to five persons to carry his mother to Biharsharif Hospital but she unfortunately died midway. Immediately, after their reaching the Hospital, the Sub-Inspector of Pawapuri O.P. had also reached at the Hospital. His fardbeyan was recorded thereafter (Exhibit- 1). As a witness to the fardbeyan, Dhuri Mahto also signed on such document (Exhibit 1/1). It was there only that inquest was performed and the inquest report also was signed by him and Dhuri both. He repeated about the cause of occurrence being some



dispute which had occurred during the measurement of a fallow land near the house of P.W. 3, when the appellants had threatened him or the deceased of being killed.

26. His further statement was recorded after a day. He had spotted the appellants when they were at a distance of 3ft. The appellants were approaching the house of PW3 firing from their weapons. However, in the same breadth, he says that only one shot was fired and appellants/Ranjit and Manjit never used their fire arms. The deceased was shot at a from a close distance. No attempt was made by the appellants to harm anyone, even him. In the cross-examination, he has again given some twist to his earlier version. He has stated that after his mother received gunshot and fell down on the ground, she was brought to the hospital by a *tempo* (a three wheeler). The deceased was brought to the main road on a cot from where *tempo* was hired for taking the deceased to the hospital. He has denied the suggestion that the land in question belongs to Arvind and he is in possession and that during the attempts at



dispossessing the appellants, firing was resorted to from the side of the prosecution and one shot hit blue upon blue. He has named Urmila and Kusum before the Trial Court for the first time. He has, but for naming Dhuri Mahto (PW5A) and Uday Sao (PW4), has not named anyone of the villagers, neighbours or any other person, who had come after the occurrence to his house. He has also not offered any document regarding the land which was measured 15 to 20 days ago to the I.O. for any confirmation about any threatening doled out by the appellants. There is no evidence on record to indicate as to any dispute regarding that land between the appellants and PW3 or as to who actually was in possession of the land.

27. What is even more surprising is that when threatening was given to him and his mother, no attempt was made by the appellants to even slightly harm PW3. Only his mother was chosen as a target and was shot at and killed. Nobody else got injured. There is complete absence of any evidence regarding the flurry of



activity or of the movement of PWs 5 and 7, who were sitting close to the deceased when she was targeted by the appellants.

28. To believe such story, appellant/Arvind has to be a consummate marksman. To test the truthfulness or the lack of it of his deposition, we would be referring to the evidence of the I.O., who has been examined as PW9. In his examination in chief, he has stated that on 05.05.2014, while on patrolling duty in the evening, he learnt that a woman in village Chorsua has been killed by somebody and that she has been taken to Sadar Hospital, Biharsharif. After having come to know about this incident without any further details, he along with the police party proceeded straight to Biharsharif Sadar Hospital, where he saw the dead body of the deceased of this case. He had prepared the inquest report thereafter and had requested the Medical Officer to conduct the postmortem examination. After recording the fardbeyan of PW3, he had sent the documents through special messenger to Giriyak Police Station for registering



the formal F.I.R. It was only after he received a copy of formal F.I.R. on 06.05.2014 that he took up the investigation of the case and went to the P.O. for the first time in the next morning of the occurrence i.e. on 06.05.2014. The further statement of PW3 was recorded by him. He inspected the P.O. and found a pellet with blood spots on the floor. The P.O. was found to be somewhat away from the house of the deceased. The nearest neighbour of the deceased was Mithilesh Thakur @ Krishna Thakur. He seized the blood soiled earth and the pellet, referred to above, and prepared a seizure list which was signed by Urmila and Kusum (Ext. 3/2). Urmila and Kusum were also examined by him. He had also seized the wearing apparels of the deceased in the hospital and had made PW3 and Uday Sao (PW4) sign on such seizure list (ext. 2/2). He claims to have recorded the statement of Dhuri Mahto (PW5A), Bhartendu Prasad Kushwaha (PW2), Shivji Sao (PW1) and Uday Sao (PW4).

29. Shivji Sao (PW1) had told him that on



05.05.2014, he had learnt on mobile telephone that his sister had been killed at the hands of the appellants and that she was being taken to hospital at Biharsharif for treatment. On that information, aforementioned Shivji Sao had proceeded for the village home of the deceased and on way, he learnt that the deceased had already died. He, thereafter, instead of going to the home of the deceased, proceeded for hospital where he found his sister dead.

30. The seized articles were never sent for any forensic examination. The I.O. has also admitted that he did not examine any person of the neighbourhood including Mithilesh Thakur and his family members. He was not offered any document with respect to land in question for which the occurrence had taken place.

31. Bhartendu Kushwaha (PW2) had never stated before him that the deceased was sitting along with PW3 and Urmila and Kusum (PWs 5 and 7) at the time of the occurrence. However, he had told the Investigator that he learnt about the occurrence from



PW3 and his family members. He had also stated before the I.O. that on hearing the gunshot, he had come out of his house and had seen the deceased writhing in pain and bleeding profusely. He had not stated that he was told at that time that the appellants had killed her.

32. The Investigator (PW9) has further stated in his cross-examination that even PW 3/informant had not told him that he was sitting in front of the Verandah of his shop along with his mother, Urmila Devi and Kusum Devi and while talking amongst themselves, the appellants had come and Arvind had opened fire which hit the deceased. Even Uday Sao (PW4) had not told the Investigator that on reaching the hospital, he had learnt that the appellants had killed the deceased. Neither had Urmila told the I.O. that she was present along with the deceased at the time of the occurrence.

33. Be it noted that, Bhartendu Prasad Kushwaha (PW2), Urmila Devi (PW5) and Kusum Devi (PW7) have all claimed to be the eye-witnesses to the



occurrence.

34. Juxtaposed with the deposition of Investigator, which we have just referred to, all the three witnesses do not appear to be truthful in their claim of being the eye-witnesses to the occurrence.

35. Bhartendu Prasad Kushwaha (PW2) claims to have seen the occurrence from 10 to 15 ft. as he resides across the road of the house of the deceased. This claim stands falsified by the deposition of the I.O. His evidence but assumes some importance. We have already noticed that Dhuri Mahto (PW5A) had spoken about the deceased having named as one Chhotu as the assailant. PW2 is directly related to afore-noted Chhotu. Aforesaid Chhotu was contesting a Title Suit No 4/2014 with Dhuri Mahto. The relationship between the witnesses appear to be rather complex for two sets of them supporting and opposing the prosecution version. He has contradicted himself about his having seen the occurrence when in his cross-examination, he admitted that when he



was in his home, he heard a sound of firing. If this is true, then perhaps the assailants had run away by that time. He has also provided a relevant information to the Court that the appellants stayed only three houses away from the deceased and in between their houses, 3 to 4 villagers resided, none of whom have been examined at the Trial. The other place where he has contradicted himself is that when he claimed that he met the police in the night of the occurrence and on the other day as well. The I.O. had visited the P.O. only the next day in the morning and not in the night of the occurrence.

36. Shivji Sao (PW1), who is the brother of the deceased, has been declared hostile.

37. Uday Sao, (PW4) another brother of the deceased does not claim to have seen the occurrence. He was informed by PW3 on telephone about the occurrence. He came to the hospital where 4 to 5 persons of the village told him the names of the appellants.

38. The relationship of Urmila and Kusum



also need be spelled out here. Urmila happens to be the cousin sister-in-law of PW3 whereas Kusum is the daughter-in-law of the deceased. Their deposition thus has to be seen with some circumspection, especially when they claim to be sitting near the deceased when she was shot at and they not having been hurt even a bee bit.

39. With this evidence on record, we have examined the inquest report which deals with the reason for death and the opinion of the police officer conducting the inquest report. It has only been stated by PW9 that probably the death was caused because of gunshot. We are conscious of the fact that it is not required for a police officer to record the names of assailants in the inquest report but the very purpose of conducting the inquest report is to get every such information about the dead body, specially the place; time; the nature of injury as also the names of the assailants if known and their details. The inquest was signed by PW3/informant and Dhuri Mahto (PW5A) and if PW3 had seen the occurrence and had known about it, he would not have withheld such



information from the police officer conducting the inquest.

40. The postmortem report confirms that the deceased died a homicidal death. There were two gunshot wounds; one of entry and the other of exit, found on the dead-body which were communicating with each other. The wound of entry was on the back side but near the right waist. The deceased therefore must not have faced the assailants.

41. That apart, there was no blackening or charring near the wound of entry. PW3, we must state here, has categorically stated in his cross-examination that the shot was fired at from a close distance.

42. In this fact scenario, we again get back to the deposition of PW5A, the witness, who has been declared hostile and cross-examined by the prosecution, as his statement too is not very off the line when he says that he had signed on a blank piece of paper in the night of the occurrence in the hospital. If that were not so, the positioning of his signature would not have been so close



to the last line of the document. Would he have been a signatory to the accusation of his own brother and his nephews? This lends credence to his statement that he had not signed on the fardbeyan but his signature was obtained on a blank sheet of paper on which fardbeyan was record. He has been declared hostile too.

43. Some part of his statement is quite in consonance with the circumstances of the case and some part of the prosecution version as well. We cannot doubt him that he was one of the first persons to reach the P.O. and had accompanied the deceased and PW3 to the hospital when the inquest was done. His signature on the inquest report along with that of PW3 bears testimony to his being present in the hospital. He would not have been with the deceased and the informant, if he had any idea that his own brother and nephews had committed the occurrence. The appellants, therefore, are not unjustified in concluding that neither PW3 nor the other witnesses, namely, PWs 2, 5 and 8 had seen the occurrence and since there is a pending dispute with respect to a fallow



land which was measured about 15 to 20 days ago and at which time, the appellants had threatened PW3 and the deceased of being killed, there could be a possibility of PW3 feeding fat the old grudge and thereby removing all obstacles to his or his family's possession over that plot of land.

44. At least, the accusation against the appellants has become doubtful.

45. No overt act has also been attributed against appellants/ Ranjit and Manjit.

46. Thus, giving benefit of doubt to the appellants, we set aside the judgment of conviction and order of sentence and acquit them of the charges levelled against them.

47. Appellant / Arvind Kumar @ Mathura Prasad in Criminal Appeal (DB) No.1362 of 2018 is in jail since 27.11.2015. He is directed to be released forthwith from jail, if not wanted or detained in any other case.

48. Appellants / Ranjit Kumar and Manjit



Kumar in Cr. Appeal (DB) No 1329/2018 are on bail.
They are discharged from the liabilities of the bail bonds.

49. The appeals stand allowed.

50. The Interlocutory application/s, if any,
stands disposed of.

51. Let a copy of this judgment be
dispatched to the Superintendent of concerned jail for
record as also for compliance.

52. Let the records of this case be also
returned to the concerned court below forthwith.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Manoj/
Sunilkumar-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.07.2024
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