

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.476 of 2019

Arising Out of PS. Case No.-206 Year-2004 Thana- KOILWAR District- Bhojpur

1. Ramesh Ram Son of Late Mahanand Ram Resident of Village - Purana Haripur, P.S.- Koilwar, District - Bhojpur.
2. Chandesh Ram Son of Late Mahanand Ram Resident of Village - Purana Haripur, P.S.- Koilwar, District - Bhojpur.
3. Mithu Ram @ Mithlesh Ram Son of Late Mahanand Ram Resident of Village - Purana Haripur, P.S.- Koilwar, District - Bhojpur.
4. Akhilesh Ram Son of Late Mahanand Ram Resident of Village - Purana Haripur, P.S.- Koilwar, District - Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ankit Griyaghey, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 07-01-2025

We have heard Mr. Ankit Griyaghey, learned Advocate for the appellants and Mr. Abhimanyu Sharma, learned APP for the State.

2. All the four appellants have been convicted *vide* judgment dated 28.02.2019 for the offences under Sections 302/34 of the IPC passed by the learned 6th Additional Sessions Judge, Bhojpur, Ara in connection with Sessions Trial No. 34 of 2010, arising out of Koilwar P.S. Case No. 206 of 2004. By order dated 02.03.2019, they have been sentenced to undergo



imprisonment for life, to pay a fine of Rs. 2000/- and in default of payment of fine to further suffer R.I. for one month under Sections 302/34 of the IPC.

3. One Ranjeet Kumar Ram is said to have been assaulted to death by the appellants and others. Only the four appellants ultimately faced the Trial.

4. The FIR was lodged by the elder brother of the deceased viz. Ram Prasad Ram (P.W. 9) on 01.11.2004 at about 2 O' clock in the morning. The occurrence had taken place sometimes around 7.00 P.M. on 31.10.2004. According to P.W. 9, while he along with his younger brother (deceased) was going to his home for taking their meal, the appellants and others surrounded the deceased and started assaulting him. In the meantime, Chandesh Ram/appellant no. 2 also arrived at the scene. P.W. 9 wanted to intervene but then he was pushed aside.

5. The occurrence was witnessed by Shiv Prasad Ram, Susato Devi and Bhikhar Ram, none of whom have been examined at the trial. Because of the assault perpetrated on the deceased, he became injured and died instantaneously.



6. It has specifically been alleged by P.W. 9 that because of the assault by Ramesh Ram, the deceased had suffered internal injuries as a result of which he had died. All the accused persons ran away from the scene. The cause of occurrence, as stated by P.W. 9, is that about a month ago, his brother (deceased) had fought with appellants over tobacco and a radio-set. Because of this, the accused persons always threatened his brother (deceased) of dire consequences.

7. On the basis of the aforementioned fardbeyan statement of P.W. 9, a case vide Koilwar P.S. Case No. 206 of 2004 dated 01.11.2004 was registered for investigation under Sections 302/ 34 of the IPC.

8. The police, after investigation, submitted chargesheet against the appellants and others but during the pendency of the Trial, two other accused persons died.

9. The Trial Court after having examined ten witnesses on behalf of the prosecution convicted and sentenced the appellants as aforesaid.

10. While assailing the judgment and order of conviction and sentence, Mr. Griyaghey, learned Advocate for



the appellants has pointed out that Hareram Ram and Dev Sakal Ram have not supported the prosecution case and have been declared hostile. Dev Sakal Ram is the person who had signed the inquest report but at the Trial, he expressed complete ignorance about the cause of occurrence. Hence, he was declared hostile.

11. Basdeo Ram (uncle of the deceased/P.W. 3) though has claimed to be an eye witness to the occurrence but his deposition completely belies his assertion that he was present at the time of the assault.

12. Similarly, Motilal Ram/P.W. 4, the father of the deceased, has also claimed himself to be an eye witness to the occurrence but his deposition also makes his assertions doubtful.

13. So is the case, it has been argued, with respect to the assertions of Sumitra Devi, Namita Devi, Butan Ram and Uma Shankar Singh (P.Ws. 5, 6, 7 and 8 respectively).

14. Drawing the attention of this Court to the deposition of Ram Prasad Ram (P.W. 9, the informant), it has been argued that his deposition before the Trial Court makes the



prosecution case highly doubtful. According to him, while he along with his brother was coming to his home, the appellants and two others surrounded him near the house of one Jiut Ram. All of them started assaulting the deceased.

15. He repeated his version before the Trial Court also that because of the assault perpetrated by the appellant/Ramesh Ram, his brother had died and that the occurrence had taken place because of dispute over exchange of tobacco. He has further asserted before the Trial Court that after the death of his brother, he had informed the police about the occurrence. He has prevaricated about whether in the first instance, the dead body was taken to the police station. Ultimately he deposed that first he went to the police station and then came back to his home with the officer-in-charge of the police station, who conducted the inquest report; whereafter the dead body was brought to the police station where the FIR was lodged.

16. In his cross-examination, it has been pointed out that P.W. 9 made a *volte face* and stated that the deceased was walking about 50-60 steps ahead of him. It was darkness all



around and he was not able to see clearly as to what was happening. When he heard the sound of cries of his brother, then his attention was attracted. He ran to the P.O., where he had found his brother lying injured. Because of the darkness, he could not see who had assaulted him. He then raised halla whereafter the people of the village arrived.

17. Again P.W. 9 repeated that the dispute had occurred because of the exchange of tobacco sometimes in the past and therefore on suspicion, P.W. 9 had named the appellants. He could identify the appellants in the dock because they are his co-villagers. Three of the appellants viz. Ramesh Ram, Akhilesh Ram and Mithu Ram are sons of Mahanand Ram, who too was made an accused in this case but he died during the Trial. Surprisingly another revelation was made by P.W. 9 which again demolishes the prosecution version of P.W. 9 having witnessed the occurrence from close quarters. According to him, appellant/Ramesh Ram at the time of occurrence was in service at Patna and was also stationed at Patna.

18. The occurrence, it need be repeated, had taken place in the village home. At the time of the occurrence



appellant/Ramesh Ram was located at Patna and was busy in getting his wife treated. This statement made by P.W. 9 before the Trial Court thus makes it very clear that the occurrence had taken place in the night and P.W. 9 had not seen any one of the appellants participating in the crime. He has not even claimed to have seen the appellants running away from the scene. All that he has alleged is that when he saw his brother for the first time, he was lying injured on the ground. Because of the old enmity regarding exchange of tobacco, he had supplied the names of the appellants in the FIR.

19. The Post-mortem report discloses that the deceased had suffered one fatal wound on his head in the frontal parietal region which was fractured. Two others bruises were of simple nature viz. a bruise on the lower left chest in the back side and one bruise on the right side of the waist. On dissection of the dead body, the cranial cavity was found to be full of blood. The brains and meninges were found to be lacerated. This was because of the fracture and depression of the frontal and parietal bone of the head on the upper part. No blood was found in the thoracic cavity.



20. It therefore appears that the deceased was struck on his head once which proved fatal.

21. The question is who assaulted the deceased.

22. The only person claiming to be an eye-witness to the occurrence right from the first instance was P.W. 9 as he was accompanying the deceased but was walking about 50 to 60 steps behind the deceased.

23. In view of the specific assertion of P.W. 9 that because of darkness, he could not see the assailants and that appellant/Ramesh Ram whose attack had proved fatal was, at the time of the occurrence, located at Patna, looking after his wife, completely falsifies the prosecution version.

24. It therefore clearly appears that because the appellants had fought with the deceased sometimes in the past, it was suspected by P.W. 9 and perhaps others also that they would have committed the crime.

25. Apart from this, we have taken note of the deposition of the father of the deceased viz. P.W. 4, who has contradicted himself in more than one ways. Though in his examination-in-chief, he has supported the accusation but has



spoken about a different place of occurrence and a different manner of the occurrence.

26. According to him, tobacco was the main cause for the dispute. Appellant/Chandesh had asked for tobacco from the deceased and simultaneously had also snatched a radio-set from him and had thrown it on the ground. He had started abusing the deceased. When his elder son (P.W. 9) tried to reason out with Chandesh, all the accused persons caught the deceased and assaulted him.

27. There are more than one reasons for doubting his presence at the place of occurrence; the first being his narration about the actual happening in a different way than what P.W. 9 had to tell the Court; secondly he has stated before the Trial court that when he came back home on 02.11.2004 from Kolkata, he was told about the occurrence by his son (P.W. 9); and lastly, so far as the incorrectness of the statement made by P.W. 4 is concerned, he has claimed that he had seen the earlier episode of dispute between Chandesh and the deceased regarding tobacco.



28. All these three aspects in his deposition make him absolutely unbelievable. Had he seen the occurrence, P.W. 9 would surely have stated about it in his first statement which was lodged immediately after the occurrence in the wee hours of 01.11.2004.

29. In this background, we have found that Sumitra, Namita, Butan Ram and Uma Shankar Singh (P.Ws. 5, 6, 7 and 8 respectively) have also not spoken the truth about their being present at the place of occurrence. We have also noticed that the appellants are not strangers but neighbours of the deceased and P.W. 9.

30. The consistent story about dispute regarding tobacco and radio-set makes it clear that there was some scuffle between the parties sometimes ago. With respect to the timing of the earlier incident, which is stated to be the root cause for the appellants to have killed the deceased, is also different if the deposition of the other witnesses are to be believed.

31. The father of the deceased spoke about such incident have been taken place only 15 days ago whereas P.W.



9 has stated that such an occurrence had taken place about a month ago.

32. What concerns us is that whether this background could have impelled the appellants to kill the deceased.

33. However, considering the fact the P.W. 9 who only could have been an eye-witness to the occurrence, having prevaricated before the Trial Court with respect to his having seen anyone of the assailants, the prosecution case gets a serious jolt.

34. It is difficult to believe P.W. 9 or for that matter P.W. 4 regarding their versions as eye-witnesses to the occurrence.

35. Thus, giving benefit of doubt to all the appellants, we set aside the conviction and sentence and acquit them of all the charges.

36. The appeal stands allowed.

37. Since the appellants are on bail, they are discharged of the liabilities under their respective bail bonds.



38. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

39. The records of this case be returned to the Trial Court forthwith.

40. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

krishna/arish

AFR/NAFR	NAFR
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