

IN THE HIGH COURT OF JUDICATURE AT PATNA

Sashikant & Anr.

vs.

The State of Bihar

CRIMINAL APPEAL (DB) No.1095 of 2016

27 September 2023

(Hon'ble Mr. Justice Ashutosh Kumar & Hon'ble Mr Justice Alok Kumar Pandey)

Issue for Consideration

Whether conviction of Appellants for offence u/s 302, 387, 34 of the IPC and section 27(1) of the Arms Act is sustainable or not?

Headnotes

Code of Criminal Procedure - Appeal Against Conviction for offence u/s 302, 387, 34 of the IPC and section 27(1) of the Arms Act – Appreciation of Testimonies of Related Witnesses – Principles - allegation against appellants is of having killed the deceased for non-payment of protection money which was earlier demanded of the deceased.

Held: it is well settled principle that just because the witnesses are related or interested or appear to be partisan, their testimonies cannot be disregarded - nonetheless, it is also true that when the witnesses are related, their testimonies have to be scrutinized with greater care and circumspection - the evidence of an interested witness does not suffer from any infirmity as such but the Courts require as a rule of prudence and not as a rule of law that while appreciating such evidence, extra care has to be taken - If a ring of truth is found even in an interested witnesses, it could be relied upon even without any corroboration – in the present matter, with respect to the manner of occurrence, the way the deceased was shot at and was taken to the hospital where he was declared dead, we could not find any major discrepancy in the statement of the witnesses - even assuming that the story of demand of protection money by the appellants is not correct because of no complaint having been lodged, there is no way in which the eyewitness account of the father of the deceased can be ignored - prosecution case held well proven - judgment and order of conviction affirmed – appeal dismissed. (**Para – 4, 32-36**)

Case Law Cited

Gangadhar Behara and Others Vs. State of Orissa **(2002 (8) SCC 381**Referred To.
 Raju @ Balachandran and Others vs. State of Tamilnadu; **2012 (12) SCC 701**Relied
 Upon.

List of Acts

Code of Criminal Procedure; Indian Penal Code;The Arms Act

List of Keywords

Appeal Against Conviction – Murder - Place of Occurrence – Motive of Occurrence -
 Manner of Occurrence - Eye-Witness Testimony – Testimony of Interested Witnesses - Rule
 of Prudence - Rule of Law.

Case Arising From

Judgment dated 12.08.2016 and order dated 22.08.2016 passed by the learned Sessions
 Judge, Begusarai in Sessions Trial No. 588 of 2014.

Appearances for Parties

For the Appellants: Mr. Ramakant Sharma, Sr. Advocate.

For the Informant: Mr. Ajay Kumar Thakur, Advocate.

For the State: Mr. Sujit Kumar Singh, APP.

Headnotes Prepared by Reporter: Ghanshyam, Advocate.

Judgment/Order of the Hon'ble Patna High Court

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1095 of 2016**

Arising Out of PS. Case No.-352 Year-2014 Thana- BARAUNI District- Begusarai

- 1. Shashikant @ Lucho Mahton
- 2. Manikant Kumar @ Fucho Mahton,

Both sons of Sri Dulli Chandra Mahto, Resident of Village- Keshawe, Police Station Ward No. 7, Police Station Barauni Refinery, in the district of Begusarai.

... .. Appellants

Versus

The State of Bihar

... .. Respondent/s

Appearance :
For the Appellants : Mr. Ramakant Sharma, Sr. Advocate.
For the Informant : Mr. Ajay Kumar Thakur, Advocate.
For the State : Mr. Sujit Kumar Singh, APP.

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 27-09-2023

We have heard Mr. Ramakant Sharma, the learned Senior Advocate for the appellants and Mr. Ajay Kumar Thakur, the learned Advocate for the respondent/ informant. The State has been represented by Mr. Sujit Kumar Singh, the learned APP.

2. Both the appellants, who are own brothers have been convicted under Sections 302/34 and



387 of the IPC and Section 27(1) of the Arms Act vide judgment dated 12.08.2016 passed by the learned Sessions Judge, Begusarai in Sessions Trial No. 588 of 2014 and *vide* order dated 22.08.2016 and sentenced to undergo imprisonment for life for the offence under Section 302/34 of the IPC and R.I. for five years for the offence under Section 387 of the IPC. The appellants have further been sentenced for imprisonment for one year for the offence under Section 27(1) of the Arms Act. The sentences, however, have been ordered to run concurrently.

3. One Chunchun Kumar Singh is said to have been shot, at leading to his death, by the appellant no. 2/ ManiKant @ Fucho Mahto. As noted above, the other appellant/Shashikant @ Lucho Mahto is the own brother of Manikant @ Fucho Mahto.

4. The allegation against them is of having killed the deceased for non-payment of protection money of Rs.5,00,000/- which was earlier demanded of the



deceased. The FIR was lodged by the father of the deceased viz. Bindeshwari Prasad Singh (P.W. 5). In his fardbeyan which was recorded at Sadar Hospital, Begusarai, it has been alleged that on 16.08.2014 at about 2 'O' clock in the day while he and his son Chunchun Kumar Singh (deceased) was getting the godown of the gas agency constructed, the appellants came on a motorcycle from the eastern side. Appellant/Shashikant @ Lucho Mahton was driving the motorcycle. Appellant/Manikant @ Fucho Mahton is said to have taken out a pistol from his pocket and fired at the deceased which hit in him at his chest. After the occurrence, both the appellants fled away towards Mahna. On the cries raised by P.W.5, many persons from the neighbourhood including labourers who had been working there, arrived. P.W.5 claims to have got his own car from his house on which the deceased was taken to Begusarai Hospital but there he was declared dead. The reason for the occurrence as stated by the P.W5 in his fardbayan is non-



payment of protection money by the deceased to the appellants.

5. On the basis of the aforementioned fardbayan statement, a case *vide* Barauni (Refinery) P.S. Case No.352 of 2014 dated 16.08.2014 was instituted for investigation for the offences under Sections 302, 387, 34 of the IPC and Section 27 of the Arms Act.

6. The police after investigation submitted charge-sheet whereafter cognizance was taken and the case was committed to the Court of Sessions for trial.

7. The learned Trial court, after having examined eight witnesses on behalf of the prosecution and four on behalf of the defence, convicted and sentenced the appellants as aforesaid.

8. Mr. Sharma, the learned Senior Advocate appearing for the appellants has submitted that though the informant (P.W.5) claims to be an eyewitness to the occurrence, but from the circumstances which can be seen from the evidence on record, it would appear that he was



not a witness to the occurrence. The reason for his saying so is that during the trial, three other persons claimed to be present at the time of occurrence about whom P.W.5 has said nothing in his fardbayan statement. The other reason for doubting that P.W.5 was an eye-witness to the occurrence is that if his son was shot at for not paying the protection money PW5 too, was most vulnerable and was unprotected at that time. The appellants/accused persons would not have been so careless as to spare the father of the slain for him to become an eye-witness to the occurrence. It has further been argued that the falsity of the case would appear from the fact that even though the place of occurrence is about 200 meters away from the local police station, but neither any police party arrived nor any information was given to the police by anyone of the family members of the deceased. The deceased was taken on a vehicle to the hospital, where he was declared dead.

9. Secondly, it has been argued that the motive introduced by P.W.5 could not be proved by the



prosecution. If the demand of protection money was made earlier also, as claimed by P.W.5 and other witnesses, a complaint ought to have been made to the local police. Evidence suggests, Mr. Sharma has argued, that there was no enmity between the appellants and the deceased as well as the informant. The appellants resided only at a distance of about a kilometer. The father of the appellants was a petty contractor in Barauni Refinery, whereas P.W.5 is a retired employee of the Refinery. In fact, it has been argued, the deceased has been murdered by someone else because of some unsaid relationship between the deceased and the daughter of a nurse, who resided in the house of P.W.5. Such suggestions were though given to P.W.5 and the other sons of P.W.5, who have been examined as witnesses at the trial but none of them have refuted the suggestion that one of the houses of P.W.5 having 60 rooms had been put on rent and at some point of time, one nurse by the name of Jaya used to reside there. It has also been urged by Mr. Sharma that the elder brother of



the appellants got himself examined as D.W.1 and has specifically stated that one of the tenants of P.W.5, viz. Shubham along with the deceased and another had fought with one of the appellants. It was only for that reason that the name of the appellants have been taken by P.W.5 after the murder. That P.W.5 never made any attempt to apprehend or nab the assailants appears to be rather surprising.

10. Another limb of argument of Mr. Sharma is that if the construction work was going on at the place of occurrence, there would be presence of many work-force. They ought to have been cited as witnesses as they would also have seen the occurrence. However, at the trial, only interested and related persons have been brought to the witnesses stand to depose against the appellants.

11. In that context, Mr. Sharma, has also drawn the attention of this Court to the deposition of the I.O., who while inspecting the place of occurrence and its neighbourhood, had found that there were several hut-



dwellers near the place of occurrence, who could have been independent persons to speak the truth about the occurrence.

12. The deceased, according to the prosecution case, was sitting on a cemented platform when he was shot at by appellant/Manikant after he had got down from the motorcycle. The injury suffered by the deceased, according to Mr. Sharma, is not in consonance with the ocular testimony. If the deceased was sitting on a cemented platform, the trajectory of the bullet would be moving upwards and not downwards as is found in the postmortem report. Several suggestions were given to the witnesses that they were not present at the place of occurrence, but only with a purpose, they have claimed to be the eyewitness to the occurrence.

13. As opposed to the afore-noted contentions, Mr. Thakur, the learned Advocate for the informant has submitted that the story of demand of protection money is absolutely correct. That no case was



lodged when such demand was first put up, may be because of other factors but that itself would not be a ground to disbelieve the prosecution version. He has further submitted that P.W.5, on being questioned on this issue stated that he had advised his son (deceased) to lodge a complaint, but he had no idea whether such complaint was ever lodged.

14. P.Ws.2 and 3, namely, Ashok Singh and Bambam Singh were present at the place of occurrence along with the deceased and P.W.5, which fact stands corroborated by the testimony of the aforementioned witnesses. The deceased was shot at after having been briefly spoken to, whereafter the appellants fled away on the motorcycle. Shortly thereafter, one of the appellants was arrested whereas the other surrendered before the Court below.

15. The Doctor (P.W.1), who conducted the postmortem on the deceased found one wound of entry with inverted margin. There was blackening and tattooing over the wound. The bullet had not come out. After



dissecting the body, the bullet was found lodged inside the body, which was taken out, put in a sealed envelope and handed over to the Investigator. The injury received by the deceased, therefore, is in complete conformity with the ocular testimony.

16. The argument of the appellants that the manner of occurrence is rendered doubtful as the deceased was sitting on a cemented platform and, therefore, the trajectory of the bullet should have been upwards and not downwards, is not worth accepting. The deceased was sitting on a raised platform but he was shot at by a person who was standing and would definitely, therefore, be placed higher than the deceased.

17. Lastly, it has been submitted that in view of the categorical eye-witness account of three persons regarding one of the appellants having shot at the deceased leading to his death, no question could be raised about the fairness of the trial and that also only on the ground that all the witnesses were related to the informant



and the deceased. All that a Court of law is required to do in case of interested witnesses is to put their testimony to stricter scrutiny. The law till date is well settled and needs no reiteration that merely because a witness is related to the deceased or the informant, he should, in all circumstances, be disbelieved.

18. After having heard the learned Advocates for the parties and having examined the records of this case, we find that P.W.5 was present at the place of occurrence who saw from a short distance that appellant/Manikant got down from the motorcycle and shot at the deceased. The argument raised on behalf of the appellant that the informant would not have been spared, had he been present, is not worth accepting for the reason that the deceased was the person-in-charge of the gas agency and not the informant, who is a retired employee of Barauni Refinery. Even otherwise, there was no reason for any preparedness of P.W.5 or his associates. There was no



imminent threat on the life of the deceased or the informant.

19. Under such circumstances, if the assailants were armed with lethal weapons, no person would muster the courage to stop the assailants or interfere or attempt to nab them. As the prosecution story has unfolded, both the appellants sped away on the motorcycle on which they had come.

20. From the evidence on record, we further find that immediately after the deceased was shot at, information was sent to Charan Singh, another son of P.W.5, to bring the family vehicle to the place where the deceased had been shot dead. The father and brother of the injured person would be more interested in administering medical help to the injured rather than reporting the matter straightway to the police.

21. The objection raised on behalf of the appellants that P.W.5 and his sons ought to have first



informed the police and then should have gone to the hospital for treatment, is not worthy of acceptance.

22. True it is that the evidence suggests that at about 200 meters, the Barauni Refinery police station is situated. It appears to be rather surprising that no Police Officer from the nearby police station came to the place of occurrence. However, that itself could not be a ground to disbelieve the prosecution case. This only reflects that the police personnel present in such police station had not been cognizant of what was happening nearby.

23. In this context, we have also taken note of the admission of P.W.5 that one of the police officers of Barauni Refinery O.P. is a tenant in his house. Perhaps the prosecution was only alluding to the collusion with the police in framing the appellants in the present case. There does not appear to be any substance in such suggestion for two reasons. The P.W.5 and his sons have clearly stated that there was no enmity with the appellants. The family of the appellants and of the deceased were not on



regular visiting terms. In fact, P.W.5 had last met the father of appellants some 10 years ago. Under such circumstances, there would be no reason for sparing the real culprits/assailants and framing the appellants in this case for no rhyme or reason.

24. The evidence of D.W.1, who is elder brother of the appellants, also does not throw any light on the line of defence taken by the appellants. He has narrated the story of one of the appellants having been assaulted by the deceased and one Shubham, who is stated to be one of the tenants in the house of P.W.5. Even if it were true, the inference would only be against the appellants for avenging such fight.

25. Two of the other witnesses on behalf of the defence have only tried to prove before the Trial court that appellant/Manikant was treated for his eye problem in the year 2013.

26. This leads us to nowhere.



27. We have also examined the deposition of Ashok Singh (P.W.2) and Bambam Singh (P.W.3), the former being a cousin of the deceased, whereas the latter is his own brother. Both of them have supported the prosecution case of appellant/Manikant having shot at the deceased and before the act of shooting, appellant/Shashikant having told the deceased that he had forgotten/failed to pay the protection amount which was demanded of him.

28. The I.O. of this has certified that he had seized a fired cartridge at the place of occurrence. The raised cemented platform had blood spots on it. A pair of slippers were found at the place of occurrence which belonged to the deceased. A seizure list also was prepared by him (exhibit 2/1). He had visited the place of occurrence and had arrested the appellant/Shashikant from his house on 17.08.2014. He had learnt that appellant/Manikant had surrendered before the court on 22.08.2014. The I.O. has denied that any case with



respect of demand of protection money was lodged by P.W.5 or his sons. However, that is not even claimed by the P.W.5 or his sons.

29. The learned Advocate for the appellants has argued that P.W.5 had sufficient time to falsely frame the appellants in this case. The reason for his advancing such argument is that the I.O. in his deposition has admitted that nobody from the family of the deceased had gone to police station to inform about the occurrence. Neither was there any telephonic communication from the side of the informant. The I.O. first of all received information by way of rumor at about 3 'O' clock in the afternoon. But not recording any such entry in the station diary does not falsify the prosecution case.

30. Thus, for all practical purpose, we have found that the prosecution has been able to prove the case beyond all reasonable doubts.

31. The examination of only related witnesses would not render the prosecution case doubtful on any



score. We have found that the Trial court has attached great weight to their testimonies. It would, therefore, be necessary for us to spell out as to how the evidence of a related witnesses is required to be appreciated.

32. We have already noted the well settled principle that just because the witnesses are related or interested or appear to be partisan, their testimonies cannot be disregarded. Nonetheless, it is also true that when the witnesses are related, their testimonies have to be scrutinized with greater care and circumspection (refer to **Gangadhar Behara and Others Vs. State of Orissa (2002 (8) SCC 381)**).

33. In **Raju @ Balachandran and Others vs. State of Tamilnadu; 2012 (12) SCC 701**, the Supreme Court has very succinctly stated that the sum and substance of the proposition is that the evidence of related or interested witnesses should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the



assailant, the bar/level of the scrutiny would need to be raised and the evidence of the witnesses would have to be examined by applying a higher standard of scrutiny. The Supreme Court has but cautioned that this is only a rule of prudence and not one of law.

34. The evidence of an interested witness does not suffer from any infirmity as such but the Courts require as a rule of prudence and not as a rule of law that while appreciating such evidence, extra care has to be taken. If a ring of truth is found even in an interested witnesses, it could be relied upon even without any corroboration.

35. With respect to the manner of occurrence, the way the deceased was shot at and was taken to the hospital where he was declared dead, we could not find any major discrepancy in the statement of the witnesses. That there was no enmity between the appellants and the deceased is given in the facts of this case. Even assuming that the story of demand of



protection money by the appellants is not correct because of no complaint having been lodged, there is no way in which the eyewitness account of the father of the deceased can be ignored.

36. Tested from all angles, we have found the prosecution case to have been well -proven for us to affirm the judgment and order of conviction.

37. For the reasons aforementioned, we dismiss this appeal.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

manoj/-
Sunilkumar

AFR/NAFR	AFR
CAV DATE	NA
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