IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1017 of 2017

Arising Out of PS. Case No.-118 Year-2015 Thana- AHIYAPUR District- Muzaffarpur

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Ram Daresh Ray @ Ramdresh Ray @ Tunna Ray S/o Late Nagendra Ray, R/o Village- Dostpur, P.S. Bathnaha, District- Sitamarhi.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

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Appearance :
For the Appellant : Mr. Harsh Singh , Advocate
Mr. Avneesh Pradhan, Advocate
Mr. Kamal Kishor Singh, Advocate
For the Respondent : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 09-10-2023

The present criminal appeal has been preferred against the judgment of conviction dated 17.06.2017 and the order of sentence dated 20.06.2017 passed by Shri Rajendra Pratap Singh, 8th Additional District & Sessions Judge, Muzaffarpur in Sessions Trial No.128 of 2017 arising out of Ahiyapur P.S. case No.118 of 2015, whereby and whereunder the appellant has been convicted under Sections 341, 323, 448 and 302 of the Indian Penal Code (referred to 'I.P.C.'), and has been sentenced to undergo life imprisonment with fine of Rs.50,000/- under Section 302 of I.P.C. and in default of payment of fine, additional imprisonment for one

year, simple imprisonment for one month under Section 341 of I.P.C. and simple imprisonment for six months each under Sections 323 and 448 of I.P.C. The sentences of the appellant was directed to run concurrently.

2. The prosecution case, as per the written report of informant Madhu Devi (PW 10), wife of Santosh Rai, submitted before Officer-Incharge, Ahiyapur P.S. on 16.02.2015 at 6:15 p.m. in S.K.M.C.H, emergency ward, is that the sister-in-law (Nanad) of informant, namely, Rinku Devi wife of Ram Bhagat Rai was living in her Maike at Shekhpur before 5-6 months ago due to assault by her husband. On 16.02.2015 at 7:00 a.m., husband of informant's Nanad, namely, Ram Bhagat Rai, father-in-law of informant's Nanad, namely, Ram Daresh Ray @ Tunna Ray along with Suresh Rai and Pawan Rai came her home and started assaulting the sister-in-law (Rinku Devi) of informant. To protect the sister-in-law, the informant put her son on cot and went to intervene, meanwhile Ram Bhagat Rai ordered to kill the son of Santosh and upon which Ram Daresh Rai took the son of informant from the cot and threw him on the floor, as a result the son of the informant cried and became unconscious. The informant took her son to S.K.M.C.H. for treatment, where the doctor declared him dead. The accused persons were also searching the

husband of informant to kill him and said that they will kill him anytime. The sister-in-law (Nanad) of informant and Priyanshu Kumari were also injured.

3. On the basis of aforesaid fardbeyan of the informant, Ahiyapur P.S. case No.118 of 2015 was registered. The police after investigation submitted charge sheet and thereafter cognizance was taken by the Jurisdictional Magistrate and then the case was committed to the court of Sessions. Charges were framed against the appellant, to which the appellant pleaded not guilty and claimed to be tried.

4. During trial, the prosecution examined altogether thirteen witnesses, namely, Rinku Devi (PW 1), Shila Devi (PW 2), Bachha Rai (PW 3), Kishori Rai (PW 4), Raj Mangal Rai (PW 5), Dilip Kumar Yadav (PW 6), Harendra Rai (PW 7), Saroj Kumar Yadav (PW 8), Santosh Rai (PW 9), Madhu Devi (PW 10), Parmanand Singh (PW 11), Dr. Bipin Kumar (PW 12) and Shiv Chandra Prasad Singh (PW 13). In support of its case, the prosecution has also produced exhibits as Ext.1 (postmortem report), Ext.2 (inquest report) and Ext.3 (fardbeyan). The defence also examined two witnesses, namely, Vasudev Rai (DW 1) and Rajdev Rai (DW 2). After conclusion of the trial, the learned Trial Court convicted and sentenced the appellant in the manner as indicated above.

5. The learned Counsel for the appellant submitted that the judgment of conviction and the order of sentence suffered from several infirmities that had been overlooked by the learned trial Court, rendering the impugned judgment unsustainable in the eyes of the law. The learned counsel argued that there are material discrepancies in the testimonies of the eyewitnesses amongst themselves. He submitted that no independent witnesses have supported the case of the prosecution and have been declared hostile. Furthermore, the learned counsel pointed out that the manner of occurrence is highly doubtful, as the medical evidence renders the testimonies of the prosecution witnesses implausible and contradicts the possibility of their testimonies being true. Moreover, despite the prosecution's claim that Rinku Devi (PW 1) and her daughter were assaulted, no injury report was presented. On the contrary, the Investigating Officer (PW 11) stated categorically during the trial that he did not find any injuries on the bodies of any individuals. Additionally, the appellant's counsel has argued that the prosecution has failed to establish a clear motive for why the appellant would commit such a heinous act, particularly the alleged killing of a two-month-old child. This lack of a discernible motive casts doubt on the prosecution's narrative. It is also submitted that the FIR was lodged at a belated stage, and

there was an unreasonable delay of two days in dispatching the FIR to the area Magistrate, and hence, the same is an afterthought. As a result, the learned counsel submitted that the findings of the trial court were flawed in both legal and factual aspects, lacking sound legal reasoning and merit. Therefore, the judgment of conviction should be set aside.

6. The learned A.P.P. for the State on the other hand, have submitted that the judgment of conviction and order of sentence under challenge require no interference, as the prosecution has been able to prove the case beyond all reasonable doubts. It is observed that the testimony of the witnesses has been consistent throughout, thereby strengthening the prosecution's case, and minor inconsistencies in the witnesses' testimonies do not undermine the entirety of their evidence. Moreover, the medical evidence, coupled with the oral testimony of PW 12, provides a comprehensive explanation of the injuries sustained by the deceased, thereby corroborating the accounts presented by the prosecution witnesses.

7. After hearing the arguments advanced by the learned counsels appearing for the parties and upon thorough examination of the entire material available on the record, the following issues arise for consideration in the present appeal:

(I) Whether the manner of occurrence as narrated by the prosecution rules out the possibilities of whatsoever of the injuries taking place in the manner stated in the light of the medical evidence brought on record?

(II) Whether in absence of any motive the alleged occurrence as stated by the prosecution can be relied upon?

(III) Whether the delay in lodging the FIR as well as in its dispatch to the Magistrate by the Investigating Officer has caused prejudice to the appellant?

8. With reference to the first issue as formulated above, the learned counsel for the appellant has drawn this Court's attention to the testimony of the eyewitnesses namely, PW 1, PW 2, PW 3 and PW 10. They have consistently deposed during trial that the appellant on exhortation of his younger brother (accused) uplifted the baby from a *chowki* and forcefully threw the infant onto the ground, resulting in the tragic death of the two-month-old child. Subsequently, the baby was rushed to S.K.M.C.H for medical attention, where the doctor declared the child dead. However, it is crucial to take note of the injuries sustained by the deceased, as documented in the post-mortem report ***(Ext. 1)***:

1. Abrasion 1½" x ½" over right lateral and upper part of abdomen.

2. Abrasion ¾” x 1/4” over right side of upper part of abdomen just below right costal margin.

On opening the chest and abdominal cavity there was bruising of the right lobe of liver with presence of blood in the cavity.

Opinion:- The deceased died due to haemorrhage and shock as a result of above-mentioned injuries. Injuries were caused by impact of hard and blunt object.

Time since death:- Within 12-24 hours from the time of examination.

As evident from the expert evidence, the cause of injuries is said to be the impact of a hard and blunt object. However, upon scrutinizing the testimony of the doctor who conducted the post-mortem (PW 12), it is evident that he stated in his cross-examination that such injuries could potentially occur if a two-month-old baby were to fall from a height. Therefore, the critical point of contention is whether this alternative explanation of a fall aligns with the prosecution’s version of events. Here, we find it difficult to accept that the causation of the injuries is a fall, as it is essential to consider the inherent vulnerability of newborn babies. Common understanding holds that infants of such a tender age have limited control over their bodies, making it highly

implausible for a two-month-old infant to avoid multiple injuries on account of fall. However, the post-mortem report ***(Ext. 1)*** clearly shows that the injuries are confined to the stomach alone, and there is no evidence of multiple injuries on body parts such as the head, face, chest, or shoulders – areas that the deceased would naturally be exposed to if he had indeed fallen face down, impacting the abdomen. Moreover, upon scrutinizing the inquest report ***(Ext. 2)***, there is no mention of any injuries on the body of the deceased. Also, PW 3, in his oral evidence, stated that deceased child neither had got any cuts or tears on his person, nor was there any bleeding. Under such circumstances, we find it difficult to accept the contention put forth by the learned counsel for the state, which suggests that the injuries, as described by PW 12, could have resulted from a fall. Thus, the prosecution's narrative about the manner of occurrence, specifically attributing the injuries to a fall, does not find support from the medical evidence, nor has the prosecution alleged that the appellant assaulted the deceased with a hard and blunt object. At this point, we put reliance upon the case of ***Ram Narain Singh versus State of Punjab and Ama Singh & Ors. versus State of Punjab*** reported in ***(1975) 4 SCC 497*** wherein the Hon'ble Supreme Court has held that inconsistency between the ocular and medical evidence is a most

fundamental defect in the prosecution case and unless reasonably explained, it is sufficient to discredit the entire case.

We also put reliance on the decision of the Hon'ble Supreme Court in the case of ***Abdul Sayeed v. State of M.P.,*** reported in ***(2010) 10 SCC 259*** wherein the principle has again been crystallized in the following manner:

> *33. In State of Haryana v. Bhagirath [(1999) 5 SCC 96 : 1999 SCC (Cri) 658] it was held as follows : (SCC p. 101, para 15)*
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> *"15. The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject."*
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> *(emphasis added)*

> *39. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.*

Furthermore, it is crucial to note that the prosecution witnesses have unequivocally testified in their depositions that both PW 1 and his daughter sustained injuries as a result of the alleged assault by the accused, Rambhagat Rai. However, the prosecution has not brought on record any official injury reports or medical documentation to substantiate these claims. Additionally, the Investigating Officer (PW 11) has provided a categorical statement during his testimony, affirming that he found no evidence of injuries on any individuals and did not even encounter PW 1’s daughter during the course of his investigation. Thus, there exists a substantial gap in the prosecution’s narrative and the credibility of their case.

Thus, in light of the facts and circumstances of the case and considering the legal position as discussed above, issue no. I is decided in the ***negative.***

9. Now adverting to the second issue as formulated above, we find that the prosecution during the entire trial has not assigned any motive against the appellant for commission of murder of the deceased. Notably, the prosecution has not introduced any substantial evidence into the record that would suggest the appellant harbored any personal enmity or grudges against the informant (PW 10) or her husband (PW 9). In fact, it is worth highlighting that the prosecution witnesses themselves admitted that neither the appellant nor the other accused individuals had engaged in any form of assault against the informant (PW 10), PW 2, and PW 3. Therefore, if there was no apparent animosity or aggression directed toward the family members or the informant, one must question why would the appellant or any of the co-accused individuals suddenly resort to assaulting a defenseless two-month-old child of the informant. Thus, the absence of any motive would certainly weigh in favour of the accused.

Accordingly, the issue no. II is decided in the ***negative***.

10. With reference to the third issue, it would be pertinent to take note that the occurrence took place at about 7:00 a.m. on the

morning of 16.02.2015, whereas fardbeyan was recorded in the evening at 6:15 p.m. and subsequently the F.I.R. was registered at 7:30 p.m. in the evening. It is also evident from the F.I.R. that the distance from the place of occurrence to the Police Station is only one kilometer. The prosecution has not provided any explanation as to what caused approximately an 11-hour delay, even when the police station was just a kilometer away, and the child was immediately rushed to the hospital and declared dead. This fact raises doubts about the authenticity of the F.I.R. and casts suspicion on the prosecution's case. Moreover, from the records, it appears that there is a delay of two days in dispatching the copy of the F.I.R., and no explanation whatsoever has been given for this delay. Such an unexplained delay of two days in dispatching the FIR to the Magistrate contradicts Section 157 of the Code of Criminal Procedure, 1973, which mandates that the F.I.R. must be dispatched to the area Magistrate 'forthwith'. The objective behind insisting upon the prompt lodging of the FIR is to obtain the earliest information regarding the incident, ensure a just and fair investigation, and prevent any possible foul play. This fact further raises doubts about the F.I.R's authenticity and casts doubt on the entire case presented by the prosecution. In the case of '***Meharaj***

Singh and Ors. vs. State of U.P. and Ors. (1994) 5 SCC 188, the Hon'ble Supreme Court observed that :

> *"12…Delay in lodging the FIR often results in embellishment, which is a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR, was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate…"*

In the case of ***Arjun Marik and Ors. vs. State of Bihar 1994 Supp(2) SCC 372***, the following observation was made by the Hon'ble Apex Court :

> *"24…The forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest dispatch which intention is implicit with the use of the word "forthwith" occurring in Section 157, which means promptly and without any undue delay. The purpose and object is so obvious which is spelt out from the combined reading of Sections 157*

> *and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation."*

In light of the discussions made above, this Court holds the view that the unreasonable delay casts significant doubt and is indeed detrimental to the prosecution's case.

Accordingly, the issue no. III is decided in the ***affirmative.***

11. In view of the findings arrived at on the issues formulated above, we are of the considered opinion that the prosecution has failed to prove the charge framed against the appellant and, therefore, the conviction of the appellant cannot be sustained.

12. In the result, the present appeal stands allowed and the judgment of conviction dated 17.06.2017 and the order of sentence dated 20.06.2017 passed by Shri Rajendra Pratap Singh, 8th Additional District & Sessions Judge, Muzaffarpur in Sessions Trial No.128 of 2017 arising out of Ahiyapur P.S. case No.118 of 2015, are set aside.

13. Since the Ram Daresh Ray @ Ramdresh Ray @ Tunna Ray is in jail custody, he is directed to be released from custody forthwith, if not wanted in any other case.

14. Pending application (s), if any, stand disposed of.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/-

AFR/NAFR	AFR
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