

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.404 of 1994**

1. Sia Saran Beldar son of Late Gopi Beldar resident of Bangachha Police Station Harnaut, District Nalanda
 2. Chandrika Beldar son of Late Biltu Beldar, resident of Bengachha Police Station Harnaut, District Nalanda
- ... Appellants**

with

CRIMINAL APPEAL (DB) No. 461 of 1994

Congress Beldar, son of Kishua Beldar resident of village Bangchha, Police Station Harnaut, District Nalanda

... Appellant

with

CRIMINAL APPEAL (DB) No. 469 of 1994

Binod Beldar, son of Rajendra Beldar, resident of village Bagchha, P.S. Harnaut, district Nalanda

... Appellant

Versus

State Of Bihar in all the three appeals

... Respondent

Appearance :

For the Appellants
(in all the three appeals)

: Mr. Ajay Kr. Thakur, Advocate
Mr. Md. Imteyaz Ahmad, Advocate
Ms. Swati Sinha, Advocate and
Mr. Udbhav, Advocate

For the State
In Cr.App(DB) No.404/94
: 461/94
469/94

: Mr. Dilip Kr. Sinha, Addl Public Prosecutor
: Mr. SC Mishra, Addl Public Prosecutor
: Mr. SN Prasad, Addl Public Prosecutor

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

C.A.V JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH)

Date : 14th August, 2019.

Heard learned counsel for the appellants as well as
learned Additional Public Prosecutor representing the State.



2. All the three criminal appeals being Cr. Appeal (DB) No.404 of 1994 filed by appellants Sia Saran Beldar and Chandrika Beldar, Cr. Appeal (DB) No.461 of 1994 filed by appellant Congress Beldar and Cr. Appeal (DB) No. 469 of 1994 filed by appellant Binod Beldar have been preferred against the judgment of conviction and sentence order dated 9th August, 1994 passed by learned Additional Sessions Judge-III, Nalnda (hereinafter referred to as 'trial court') in Sessions Trial No. 220/24 of 1993/93 by which and whereunder the above stated appellants have been convicted for the offence punishable under sections 302/34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life thereunder. Since, these criminal appeals have been arisen out from one and same judgment, as such, they are being heard and disposed of by this common judgment.

3. The prosecution's case, lodged on the *fard beyan* of PW 1, the informant Smt Dhanmanti Devi before the Officer in charge of Talmore Outpost on 8.7.1992 at 8 PM at her house, in brief is that on 8.7.1992 at about 7 PM, when her husband Shiya Beldar (hereinafter referred to as 'the victim') was returning to his house after buying Bididi,



the appellants, namely, Congress Beldar, Rajendra Beldar, Chandrika Beldar, Binod Beldar and Sia Saran Beldar, armed with *kakut (garasi)* caught hold of the victim near his house and started dragging him towards north. On being asked by him, accused Rajendra Beldar replied that he will be killed in place of his brother. Informant requested them not to kill her husband. Meanwhile, as soon as they reached in front of the door of accused Rajendra Beldar, the accused persons started assaulting on the back portion of his neck with *garasi*. Thereafter, Rajendra Beldar pushed him lying on the back and assaulted on his neck, cheek and temporal region. Informant, her father-in-law, mother-in-law and son of elder brother of the victim tried to save him but accused Binod Beldar and Congress Beldar warned them of dire consequence. The accused persons tried to carry the dead body with themselves towards the west side of the river but due to arrival of Pokhan Jamadar, Sadan Jamadar, Srichand Jamadar and some villagers the accused persons, leaving the dead body in the river beds, fled away towards the west. Motive alleged for the occurrence is that there was old enmity between the parties and about two months ago victim's elder brother Dukhit Beldar had altercation with



co-accused Rajendra Beldar and appellant Sia Saran Beldar and on account of fear Dukhit Beldar shifted to Patna for working as labourer.

4. Police, after investigation, submitted charge sheet on 31.8.1992, whereafter cognizance of the offence was taken and the case was committed to the Court of Sessions for trial. It is not out of place to mention here that out of five accused persons named in the FIR, accused Rajendra Beldar could not be apprehended by the police. Hence, separating his trial the Court proceeded against four accused persons and pronounced the impugned judgment of conviction which is under challenge in these three appeals.

5. In course of trial, the prosecution examined altogether 12 witnesses and got exhibited some documents in order to prove its case. PW 1 Dhanwanti Devi, who happens to be the wife of the victim, is the informant of the case. PW 2 Pokhan Jamadar, claims to be the eye witness of the occurrence. PW 3 is Satish Kumar and PW 4 is Sadan Beldar. PW 5 is Leela Beldar. PW 6 Keshar Beldar is father of the deceased and has claimed to have seen the occurrence. PW 7 Kripali Beldar is father-in-law of the victim and claims to be eye witness. PW 8 Sona Devi, being mother of



the victim, also claims to be eye witness. She has supported the prosecution case. PW 9 is Mishri Sao, from whose shop victim had purchased *bidi* just before the incident. PW 10 Dr. Baleshwar Pd. Verma, being posted as Deputy Superintendent of Sadar Hospital, Biharsharif, conducted autopsy on the dead body of Siya Beldar on 9.7.1992 at 4.55 PM. PW 11 Mukesh is the son of the deceased aged about 8 years and there is nothing material in his cross-examination. PW 12 is the IO of the case. On behalf of the appellants, no witness has been examined but a number of papers have been filed to show enmity between the parties.

6. Statements of appellants were recorded under section 313 of the Cr.P.C. in which they denied the prosecution story and claimed their false implication on account of old enmity and furthermore, they claimed that the deceased being notorious criminal might be killed by his enemies.

7. Learned counsel for the appellants, while assailing the order of conviction and sentence, submitted that the prosecution has suppressed initial information given to the police with regard to the manner of occurrence as well as the belated transmission of the FIR to the magistrate having



not been explained, cast shadow on the credibility and possibility of the prosecution version and as such falsely implicating the appellants due to previous enmity, cannot be ruled out and on this score alone, the impugned judgment of conviction and sentence is fit to be set aside. It is further submitted that in this case all the witnesses, who have been examined on behalf of the prosecution, are related and interested witnesses and hence their testimonies are required to be scanned and scrutinized with full care and caution. It is the further case of the appellants that in this case there is no independent evidence to support the alleged occurrence and in absence of the corroboration by any independent evidence it would not be safe to rely on the testimonies of the related and interested witnesses. He further submits that there is vital and material contradiction in the depositions of the witnesses with regard to the place and manner of occurrence and in this view of the matter the trial court has committed grave error in placing reliance on their testimonies without any corroboration. It has been further submitted on behalf of the appellants that non-examination of Chaukidar and Dafadar have also prejudiced case of the prosecution. It is further submitted that though it has been stated by the IO



that blood and other incriminating materials were seized from the place of occurrence but no seizure list was brought on the record by the prosecution during the trial. Furthermore, in view of the statement made by PW 6 Keshar Beldar, father of the victim, visibility of the place of occurrence from the house of informant where the aforesaid prosecution witnesses were sitting and engaged in gossip at the relevant time, is also doubtful. Thus, learned counsel presenting the case of the appellants, submits that in the wake of the aforesaid infirmities, material contradiction in the testimonies of the prosecution witnesses, non-examination of the independence witnesses and suppression of initial version of the prosecution case, makes the prosecution's case completely doubtful and in the aforesaid facts and circumstances of the case order of conviction and sentence is required to be reversed by this Court.

8. On the other hand, learned Additional Public Prosecutors appearing for the State in these appeals submit that the trial court has discussed in detail the evidence of the prosecution witnesses and after considering their evidence and the materials collected on the records during investigation as well as in course of trial, has rightly



pronounced judgment of conviction and sentence. They further submit that the impugned judgment is well considered and reasoned judgment and therefore not liable to be reversed by this Court.

9. Having heard the contentions of both parties, I minutely went through the records and find that out of 12 witnesses, PWs 1, 3, 4, 5, 8, and 9 have been declared hostile in course of the trial. PW 11 Mukesh is son of the deceased who has been tendered for cross examination. PW 1 Dhanwanti Devi, who is informant and wife of the victim, has also been declared hostile. As such, apart from the official witnesses (PWs. 11 & 12), four prosecution witnesses (PWs. 2, 6, 7 & 9) are left to be examined in the case.

10. PW 2 Pokhan Jamadar claiming himself to be the eye witness of the occurrence finds place in the FIR as a witness. He has stated that on hearing *hulla* of Dhanmanti Devi, Sonawa Devi and Keshev Jamadar, he reached the place of occurrence and saw that the victim was put down and Rajendra and Congress were cutting him by *garasi*. Other three accused persons Sia Saran Beldar, Binod and Chandrika had pressed his feet and hands. It is further



submitted that all the accused persons threw the dead body of the victim in the river. In paragraph 15 of the cross examination, he also admits that he has given vivid description of the occurrence including murder of the victim to the police on Telmore outpost, but the same was not recorded. However, police came along with him to the place of occurrence. In his cross examination, he admitted enmity and previous altercation between his elder brother and accused Congress Beldar. He also admits that murder case of Raja Ram is pending against him. In paragraph 16 of the cross examination, he has also stated that in the night of the occurrence statement of the informant was recorded in the Police Station.

11. PW 6 Keshav Beldar, who happens to be father of the victim, has supported the case of the prosecution. He states that while the victim was returning after purchasing bidi, and when he was just 10 Gaj/Yard (30 feet) nearer to his house, accused Rajendra Beldar and Congress Beldar overpowered him with the help of other accused persons and then dragged him towards the house of Rajendra Beldar and by taking him inside the house he was put down and Chandrika, Sia Saran and Binod had pressed his hands and



feet, while Rajendra and Congress were engaged in cutting his throat with *garasi*. He also admits the previous enmity with the accused persons. He has given vivid description of the scene of occurrence. He has further stated that the house of Rajendra Beldar is not visible from his house because there are so many curves/turnings and *galis*/narrow lanes between the two houses. In paragraph 11 of his deposition, he has specifically stated that PW 1 Dhanwanti Devi had gone to the Police Station and thereafter he also went to the Police Station and statement was recorded and registered in the Police Station. In paragraph 12 of the cross examination, he has further stated that his statement as well as statements of his brother Pokhan Beldar (PW 2) and his daughter-in-law Dhanwanti Devi (PW 1) were also recorded by the police in the Police Station.

12. PW 7 Kirpal Beldar, who happens to be the father-in-law of the deceased, has also supported the case of the prosecution. He has stated that at the time of occurrence, he along with the victim, Keshav Beldar (PW 6) and Samadhin Sona Devi (PW 8) was sitting at Darwaqja. While they were gossiping, the victim proceeded to purchase *bidi* and when he was near to his house while returning, accused



persons Chandrika, Congress, Binod dragged the victim towards the house of Rajendra Beldar. At that time, his son was crying, and then he came outside and saw Rajendra Beldar, Congress Beldar and Sia Saran Beldar were holding the victim. Thereafter, he was put down and Binod Beldar and Chandrika Beldar sat over his legs. Sia Saran Beldar pressed his hands. Rajendra Beldar and Congress were cutting his neck by *garasi* and after his death they threw the dead body in the river. In paragraph 5 of the cross examination, he has stated that on hearing the sound of groaning of his son-in-law, the victim, he went to the place of occurrence and saw the dead body was lying in the river beds. He further stated that he saw Binod Beldar and Sia Saran Beldar giving 15/16 blows of *garasi* and cutting of his neck.

13. PW 8 Sona Devi, who happens to mother of the deceased, has stated in her deposition that she was sitting on the Darwaja along with her daughter-in-law Dhanwanti Devi (PW 1), Kirpal Beldar (PW 7) and her husband Keshav Beldar (PW 6). At that time, victim had gone to purchase *bidi* and when he was returning accused Congress Beldar caught hold of him and said that he will not



spare him and thereafter Rajendra Beldar, Binod Beldar, Chandrika Beldar and Sia Saran Beldar also overpowered him and took him in front of the house of Rajendra Beldar. Thereafter, Congress Beldar and Rajendra Beldar attacked on him with *Kakut*. The victim cried that he is dying. Thereafter, they threw the dead body in the river. She further stated that apart from her, Sadan, Satish and her Bhaisur Pokhan Jamadar also saw the occurrence. She has also identified the accused persons in the dock. In paragraph 2 of the deposition, she has stated that she had gone to Telmore outpost alone and lodged the case and statement of Dhanwanti Devi (PW 1) was also recorded on the paper by police. Dhanwanti Devi also gave her thumb impression on the paper and after 10 days of the occurrence her statement was recorded by the police. Her first statement was taken in the Telmore outpost. Second statement was also recorded in the Police Station. After her statement, statement of her husband and daughter-in-law were also recorded in the said police station. In paragraph 3 of the deposition, she further states that when her son (the victim) was going to purchase *bidi*, all the accused persons were present at the house of accused Rajendra Beldar. At that time, Rajendra was armed



with pistol, Sia Saran and Binod were having *hasuli*, whereas Congress and Chandrika were carrying *kakut/garasi* in their hands. Congress and Rajendra asked her son (the victim) to give *bidi and* when her son was returning to his house, all the accused persons who were still present at the house of Rajendra and accused Congress, Siya Saran and Chandrika snatched *biri* from him. Thereafter, Congress Beldar caught hold of her son and dragged towards house of Rajendra Beldar. They pushed down her son. Congress and Rajendra were sitting on the back of the victim and cutting his neck by *grasi*. She further states that the entire occurrence was over within two hours and Binod Beldar fired from his pistol upon us but fortunately it did not hit anybody and none was injured. Dhanwanti Devi and Kripal Beldar were sitting there and empty cartridges fell down there.

14. PW 10 Dr. Baleshwar Pd. Verma, was posted as Deputy Superintendent of Sadar Hospital, Biharsharif, when he conducted autopsy on the dead body of Siya Beldar on 9.7.1992 at 4.55 PM. He has mentioned a number of injuries on the person of the deceased. Among other injuries, he also noticed an incised cut with blood clot 10” x 2” x 3”



on the upper part of neck postero lateral part at the level of second cervical vertebra and incised cut with blood clot 4" x 1/2" x 1/2" on the left side of neck lower part. There were other incised injuries on the right side of cheek, on the ventral surface of four fingers of right hand and also those of left hand. He has opined that the death occurred due to wounds noticed by him which led to profused haemorrhage, shock and circulatory failure. In his opinion, death was caused by sharp cutting weapons like *garasi* and *kakut*.

15. PW 12 Rameshwar Prasad Yadav is the IO of the case. He has stated that around 7.30 he heard rumor that someone has been killed in Beldartoli. After receiving the information, he entered Sanha entry no.91 dated 8.7.1992 and went to the place of occurrence and saw Chaukidar and Dafadar were guarding the dead body of the victim. Wife of the victim was also sitting beside the dead body. He took her *fard beyan* and further identified the signature and proved the *fard beyan* as exhibit 3. He also sent the *fard beyan* to Harnaut Police Station for recording of formal FIR. He also proved the formal FIR as exhibit 3/1. Thereafter, he assumed the investigation of the case and took re-statement of the informant (PW 1). He also recorded statements of Keshav



Beldar (PW 6), Sadan Beldar (PW 4), Mishri Sao (PW IX) and other witnesses. He further states that he inspected the place of occurrence in presence of all the witnesses and prepared inquest report. He found blood on the place of occurrence. He also found the dead body lying near the river *Baya* in pool of blood. In paragraph 4 of the deposition, he has stated that he also took the statement of Dafadar and Chaukidar and deputed them to keep guard of the dead body. Thereafter, he sent the dead body to Sadar Hospital for *post mortem*. After sending the dead body for *post mortem* examination, he recorded the statement of witnesses. In paragraph 13 of the cross examination, he denied that any statement was given by Pokhan Beldar (PW 2) at Telmore outpost Police Station. He also denied that Sona Devi (PW 8), mother of the deceased, had gone to the Police Station. He also denied that any statement of Sona Devi and other witnesses were recorded at the Telmore outpost Police Station. In paragraph 15 of the deposition, he has also stated that he did not find any injury on the chest, abdomen, frontal thigh, legs etc of the victim. In paragraph 22 of his cross examination, he has completely denied that any such statement was made by Kripal Beldar (PW 7) that while the



victim was returning after purchasing bid he was caught hold by the accused persons and Sia Saran Beldar and Congress Beldar put down the victim and Chandrika Beldar and Sia Saran Beldar caught hold of his legs and hands.

16. From the minute scrutiny of the evidence adduced by the depositions of the prosecution witnesses as well as from the materials collected during investigation, it is apparent that almost all the witnesses have stated that they had made their initial statements before the police which were duly recorded by the police but the same has not been brought on record by the prosecution. In this connection, I find force in the statement of the appellants that the initial information regarding the manner of occurrence has been suppressed by the prosecution which cast serious doubt on the veracity of the case.

17. On perusing the case records, it also appears that the *fard beyan* was recorded at 8 PM on 8.7.1992 and formal FIR was recorded on 9.7.1992 but the same had been received in the office of the concerned magistrate on 14.7.1992 and no explanation has been given by the prosecution about the delayed transmission of the FIR by the police. There is considerable force in the submission of the



appellants that suppression of initial information received by the police by the prosecution witnesses as well as delayed transmission of the same to the court of the concerned magistrate without explanation create possibility of improvement in the prosecution story and introduction of any distorted version after deliberations and consultation and thus makes serious doubt about the truthfulness of the prosecution case. In this connection, reference is made to the decisions of the Hon'ble Apex Court in case of **Arshad Hussain Vs. State of Rajasthan**, reported in **2013 Cri. L.J. 3955 SC** and **Shivlal and another Vs. State of Chhattisgarh**, reported in **2012 Cr.L.J. 616 SC** as well as Division bench decision of this Court in case of **Guddu Singh Vs. the State of Bihar**, reported in **2015(2) PCCR 280**.

18. Secondly, from the objective findings of the IO (PW 12) it reflects that he had inspected the place of occurrence and had collected certain quantity of blood as well as other incriminating articles from the place of occurrence but no seizure list has been brought on record by the prosecution. In addition to that, PW 2 Pokhan Beldar, who claims to be eye witness of the occurrence, has also given vivid description of the occurrence in his deposition



but as per the *fard bayan* of informant PW 1 (wife of the victim), PW 2 Pokhan Beldar is said to have arrived at the place of occurrence after the occurrence was over. In paragraph 14 of the cross examination, PW 2 has contradicted himself by stating that when he reached the place of occurrence, the dead body of the victim was thrown in the river and the victim was dead and at the place where the dead body was thrown he did not find any blood, though the victim was butchered as per the prosecution case. From his own statement, it is apparent that PW 2 does not appear to be the eye witness of the occurrence, rather he reached at the spot after completion of the offence. Similarly, PW 6 Keshav Beldar, father of the victim, in his statement has completely deviated from the prosecution version and according to him, the victim was killed inside the house of accused Rajendra Beldar, whereas case of the defence is that the deceased was killed in front of the house of Rajendra Beldar and thus there is much variation in respect of manner and place of occurrence. Moreover, PW 7 (Kirpal Beldar), who claims to be the eye witness of the occurrence, has supported the prosecution case but the IO (PW 12) in paragraph 22 of the cross examination, has completely denied that any such



statement was given by PW 7 in course of investigation of the case before him and thereby presence of PW 7 also becomes doubtful. Similarly, PW 8, mother of the victim, has also given a very different version of the occurrence. In fact, she has stated that at the time of occurrence, accused Rajendra Beldar was armed with pistol, Sia Saran and Binod were having *hasuli*, whereas Congress and Chandrika were carrying *kakut/garasi* in their hands and when she along with others advanced to save the victim, Binod fired upon them which hit none. Thus, her version of occurrence is also in variance with the prosecution's case.

19. In view of the aforesaid discussions, it is apparent that there are serious discrepancies, inconsistency and contradictions in the depositions of prosecution witnesses with regard to manner and place of occurrence and, therefore, it becomes difficult to rely on the depositions of the witnesses and hence I hold that the prosecution has utterly and miserably failed to substantiate the prosecution case and bring home the charges levelled against the appellants beyond all reasonable doubt by adducing convincing, cogent, consistent and worth credence evidence. Hence, the impugned judgment and order of conviction and



sentence passed by learned trial court against the appellants is set aside and the appellants are acquitted of all the charges levelled against them giving them benefit of doubt.

20. As the appellants are on bail, they are discharged from the liabilities of their bail bonds.

21. Accordingly, all the three Criminal Appeals are allowed.

(Prabhat Kumar Singh, J)

Hemant Kumar Srivastava, J. I agree.

(Hemant Kumar Srivastava, J)

Shashi

AFR/NAFR	AFR
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