

(2018) 05 PAT CK 0120

In the Patna High Court

Case No : Criminal Appeal (Db) No. 1469 Of 2017

Hira Lal Paswan @ Hira Lala Ram

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 17-05-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313

Indian Penal Code, 1860 — Section 34, 302

Arms Act, 1959 — Section 27

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(i)(x), 3(ii)(v)

Evidence Act, 1872 — Section 145, 155, 155(3)

Citation : (2018) 3 PLJR 986

Hon'ble Judges : Hemant Kumar Srivastava, J; Rajendra Kumar Mishra, J

Bench : Division Bench

Advocate : Saroj Kumar, Shashi Bala Verma, Vikramdeo Singh

Final Decision : Allowed

Judgement

1. Heard learned counsel for the appellant, learned Additional Public Prosecutor for the State as well as the learned counsel appearing for the

respondent nos.2 and 3 on the point of admission.

2. This criminal appeal has been preferred against the Judgment of acquittal dated 30.05.2017 passed by the 1st Additional Sessions Judge-cum-

Special Judge, SC/ST (Prevention of Atrocities) Act, Rohtas, Sasaram, in Sessions Trial No.192 of 2012 and Sessions Trial No.439 of 2015, by which

and whereunder he acquitted the respondent nos.2 and 3 of the charges framed against them for the offences punishable under Sections 302/34 of the

Indian Penal Code, Section 27 of the Arms Act and Sections 3(i)(x) and Sections 3(ii)(v) of the SC/ST (Prevention of Atrocities) Act.

3. In our view, this criminal appeal can be decided on the admission stage itself.
4. The informant Hira Lal Paswan gave his fardbeyan on 13.12.2011 to this effect that on the same day at about 08.30 P.M., the respondent no.3 came at his door and called his father and asked him about the whereabouts of the informant and, thereafter, he came at the place where the informant was sleeping. The respondent no.3 insisted upon the informant to cut his paddy crops but when the informant refused to do so, the respondent no.3 assaulted him with the butt of the gun and dragged him from his house. The informant further claimed that the respondent no.2 having armed with Katta was present there. However, in the meantime, the informant's brother, namely, Nandlal Paswan, also came out of the house and intervened into the matter but the respondent no.3 shot fire at Nandlal Paswan, as a result of which he fell down on the ground and died then and there. Thereafter, both the aforesaid respondents fled away from there.
5. On the basis of the aforesaid fardbeyan, Sasaram (Mufassil) P.S. Case No.1160 of 2011 was registered and after completion of investigation, charge-sheet for the offences punishable under Sections 302/34 of the Indian Penal Code, Section 27 of the Arms Act and Sections 3(i)(x) and Sections 3(ii)(v) of the SC/ST (Prevention of Atrocities) Act was submitted against the respondent nos.2 and 3, though the respondent no.3 was shown as absconder in the charge-sheet.
6. The cognizance of the offences was taken but the respondent no.3 could not be remanded and, accordingly, his case was separated by the learned Judicial Magistrate, First Class, vide order dated 22.05.2012 and the case of the respondent no.2 was committed to the court of sessions, where the case of the respondent no.2 was registered as Sessions Trial No.192 of 2012 and the same was sent to the Special Court for trial. The respondent no.2 was charged for the offences punishable under Sections 302/34 of the Indian Penal Code, Section 27 of the Arms Act and Sections 3(i)(x) and Sections 3(ii)(v) of the SC/ST (Prevention of Atrocities) Act. The prosecution led the evidence in Sessions Trial No.192 of 2012. The statement of the respondent no.2 was recorded under Section 313 of the Code of Criminal Procedure.
7. It is pertinent to note here that the respondent no.3 was remanded and his case was committed to the court of sessions on 25.06.2015, where his

case was registered as Sessions Trial No.439 of 2015 and the said case was also sent before the court of the 1st Additional Sessions Judge, Rohtas, Sasaram, for trial. The respondent no.3 was also charged on 29.04.2016 for the offences punishable under Sections 302/34 of the Indian Penal Code, Section 27 of the Arms Act and Sections 3(i)(x) and Sections 3(ii)(v) of the SC/ST (Prevention of Atrocities) Act. The prosecution led evidence in Sessions Trial No.439 of 2015 and the statement of respondent no.3 was recorded under Section 313 of the Code of Criminal Procedure and the case was posted for argument. However, on the prayer of defence, Sessions Trial No. 439 of 2015 and Sessions Trial No.192 of 2012 were amalgamated vide order dated 19.05.2017 and the argument in both the cases was heard by the learned trial court and, thereafter, the learned trial court passed the impugned Judgment of acquittal.

8. Learned counsel appearing for the appellant challenged the impugned Judgment of acquittal, arguing that the learned trial court committed error in taking contradictions of the statements of the witnesses recorded in two different sessions trials without drawing attention of the witnesses towards their previous statements and on the basis of the so-called contradictions, he passed the impugned Judgment of acquittal. Learned counsel for the appellant relied upon the decision of Mohan Lal Gangaram Gehani Versus State of Maharashtra, reported in 1982 (1) Supreme Court Cases 700, in which at paragraph-13, the Honâ??ble Apex Court held as follows:

â??13. It is obvious from a perusal of Section 145 that it applies only to cases where the same person makes two contradictory statements either in different proceedings or in two different stages of a proceeding. If the maker of a statement is sought to be contradicted, his attention should be drawn to his previous statement under Section 145. In other words, where the statement made by a person or witness is contradicted not by his own statement but by the statement of another prosecution witness, the question of the application of Section 145 does not arise. To illustrate, we might give an instance-- suppose A, a prosecution witness, makes a particular statement regarding the part played by an accused but another witness B makes a statement which is inconsistent with the statement made by A, in such a case Section 145 of the Evidence Act is not at all attracted. Indeed, if the interpretation placed by the High Court is accepted, then it will be

extremely difficult for an accused of a party to rely on the inter se

contradiction of various witnesses and every time when the contradiction is made, the previous witness would have to be recalled for the purpose of

contradiction. This was neither the purport nor the object of Section 145 of the Evidence Act.â??

9. Learned counsel for the appellant also relied upon the decision of Binay Kumar Singh Versus State of Bihar and other cases, reported in AIR 1997

Supreme Court 322, in which at paragraph-11, the Honâ??ble Apex Court held as follows:

â??11. The credit of a witness can be impeached by proof of any statement which is inconsistent with any part of his evidence in Court. This

principle is delineated in S.155(3) of the Evidence Act and it must be borne in mind when reading S.145 which consists of two limbs. It is provided in

the first limb of S. 145 that a witness may be cross-examined as to the previous statement made by him without such writing being shown to him. But

the second limb provides that â??if it is intended to contradict him by the writing his attention must, before the writing can be proved, be called to

those parts of it which are to be used for the purpose of contradicting him.â? There is thus a distinction between the two vivid limbs, though subtle it

may be. The first limb does not envisage impeaching the credit of a witness, but it merely enables the opposite party to cross-examine the witness with

reference to the previous statements made by him. He may at that stage succeed in eliciting materials to his benefit through such cross- examination

even without resorting to the procedure laid down in the second limb. But if the witness disowns having made any statement which is inconsistent with

his present stand his testimony in Court on that score would not be vitiated until the cross-examiner proceeds to comply with the procedure prescribed

in the second limb of S. 145.â??

10. Learned counsel for the appellant further submitted that the learned court below failed to take notice of this fact that only minor contradictions

occurred in the statements of prosecution witnesses. Learned counsel for the appellant also submitted that the learned trial court committed error in

acquitting the respondent nos.2 and 3 and, therefore, the impugned Judgment of acquittal cannot sustain in the eye of law.

11. On the other hand, learned counsel appearing for the respondent nos.2 and 3

supported the impugned Judgment of acquittal, arguing that the learned trial court rightly taken note of contradictions occurred in the statements of the prosecution witnesses and, as a matter of fact, the decisions cited on behalf of the appellant are not applicable in the present case. Learned counsel for the respondent nos.2 and 3 relied upon the decision of *Bharat Singh and others Versus Mst. Bhagirathi*, reported in AIR 1966 Supreme Court 405 and submitted that the statements of prosecution witnesses recorded in two different sessions trials are their admission and, therefore, Section 145 of the Evidence Act is not applicable in the facts of the present case. He further submitted that the learned trial court has passed a well discussed Judgment and, therefore, there is no need to interfere into the impugned Judgment of acquittal.

12. Having heard the contentions of both the parties, we went through the Lower Court Records.

13. We find that the evidences in Sessions Trial No. 192 of 2012 and Sessions Trial No. 439 of 2015 were recorded separately by the learned trial court but, subsequently, both the sessions trials were amalgamated at the argument stage. Furthermore, we find that the learned trial court, while passing the impugned Judgment of acquittal, took note of contradictions of the statements of the witnesses. There is nothing on the record to show that before taking notice of contradictions of the statements of the witnesses, the learned trial court had drawn the attention of the witnesses towards their previous statements.

14. Here, we would like to say that the second part of Section 145 of Evidence Act says that if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. Furthermore, we would like to refer Section 155 of the Evidence Act, which says that the credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party, who calls him:-

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) by proof of former statements inconsistent with any part of his evidence

which is liable to be contradicted.â??

15. From conjoin reading of Section 145 and Section 155 (3) of the Evidence Act, it would appear that if a party wants to impeach the credit of a

witness on the ground of contradictory statements, the aforesaid party is bound to draw the attention of that witness towards his previous statement

and if the attention of that witness has not been drawn towards his previous statement, the contradictions in respect of later statement cannot be

taken. The learned trial court without drawing the attention of the prosecution witnesses towards their previous statements recorded in Sessions Trial

No.439 of 2015, contradicted those statements by the Statements recorded in Sessions Trial No.192 of 2012 and, therefore, we are of the opinion that

the learned trial court committed illegality, while impeaching the credit of the prosecution witnesses on the basis of the so-called contradictions.

Furthermore, we find that there were minor contradictions but the learned trial court based his Judgment of acquittal on the above stated minor

contradictions and, therefore, we are of the opinion that the impugned Judgment of acquittal cannot sustain in the eye of law and it would be better to

send the matter back to the learned trial court for passing a fresh Judgment in accordance with law.

16. On the basis of the aforesaid discussions, this criminal appeal is allowed and the impugned Judgment of acquittal dated 30.05.2017 is, hereby, set

aside and the matter is remitted to the learned trial court for passing a fresh Judgment in accordance with law within three months from the date of

receipt of copy of this Judgment.