

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.122 of 1990

Appeals against the judgment and order dated 30th March, 1990 passed by sri Nawal Kishore Prasad, 1st Additional Sessions Judge,Bhagalpur in Sessions Trial No. 77 of 1987/ T.R.No. 55 of 1989.

Sadhu Sharan Bhagat son of late Ram Prasad Bhagat, resident of village Belhar, P.S. Belhar,District- Bhagalpu
r.... Appellant
Versus
.... Respondent/s
The State of Bihar
With

Criminal Appeal (DB) No. 136 of 1990

- 1. Bajrangi Yadav s/o Karu Yadav
- 2. Tekan Yadav s/o Beni Yadav
- 3. Tarni Yadav s/o Gujal Yadav
- 4. Rabindra Yadav s/o Thakuri Yadav
- 5. Andu Yadav
- 6. Nuneshwar Yadav
- 7. Sanichar Yadav s/o puna Yadav
- 8. Karu Yadav s/o Durga Yadav
- 9. Rajo Yadav s/o Sanichar Yadav
- 10. Govind Yadav s/o Faakair Yadav
- 11. Khiro Yadav s/o Govind Yadav
- 12. Bharat Yadav s/o Triloki Yadav

All residents of village- Chiraiyadih P,.,S. Belhar,District- Bhagalpur.
.... Appellants
Versus
The State of Bihar
.... Respondent

Appearance :
(In CR. APP (DB) No. 122 of 1990)
For the Appellant/s : Mr. Rakesh Kumar Sinha
For the Respondent/s : Dr. Mayanand Jha, A.P.P.
(In CR. APP (DB) No. 136 of 1990)
For the Appellant/s : Mr. Rakesh Kumar Sinha
For the Respondent/s : Dr. Mayanand Jha, A.P.P.

CORAM: HONOURABLE THE CHIEF JUSTICE
and

HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 01-05-2015

These appeals arise out of the judgment of 1st Additional Sessions Judge, Bhagalpur in Sessions Trial No. 77 of 1987/ 55 of 1989 rendered on 30th March, 1990.

2. The trial court convicted the appellants herein for the offences punishable under Sections 302, 34 and 323 of the Indian Penal Code and imposed several punishments.

3. The criminal prosecution against the appellants herein was initiated in connection with Belhar Police Station Case No. 21 of 1986 dated 12.10.1986, which came to be instituted under Sections 147, 148, 149, 324, 323 and 302 of the Indian Penal Code, on the basis of statement of the informant, namely, Darbari Yadav (P.W.5) made before the police on 12.10.1986. He alleged therein that on the preceding day i.e. on 11.10.1986 at around 7 P.M., when he was at his door, his cousin brother, namely Arjun Yadav s/o Mahadev Yadav, who was returning home, after attending call of nature, passed in front of the house of the accused Tirloki Yadav, and at that time accused Ishwari Yadav, Tirloki Yadav, Bharat Yadav, Govind Yadav, Khiru Yadav, Karu Yadav, Andu Yadav, Bajrangi Yadav, Tekan Yadav, Ravindra Yadav, Sanichar Yadav, Nuneshwar Yadav and Rajo Yadav formed unlawful assembly and armed with lathies,



Bhala and Farsa etc., surrounded Arjun Yadav and started assaulting him. Arjun Yadav is said to have fallen down and all the accused persons dragged him at the door of Ishwar Yadav and killed him. P.W.5 stated that he raised hulla and thereupon Chandeshwari Yadav (P.W.1), Ashrafi Yadav (P.W.4), Surendar Yadav and Baudhu Yadav, reached there and saw the incident. He has also stated that since the accused persons were armed with dangerous weapons, none dared to rescue Arjun Yadav due to threat of life, whereas his mother Rewani Devi and mother of the deceased Guzri Devi had gone to the rescue of Arjun Yadav, but both of them were also assaulted by all the accused persons. It was alleged that Arjun's mother was assaulted by Ishwari Yadav with Bhala and by other accused, with lathies, and his mother was assaulted by the accused persons, with lathies.

4. Motive behind the occurrence is said to be that brother-in-law of P.W.5, namely, Yogendera Yadav filed a case against Lattu Yadav, in which Arjun Yadav figured as witness of that case, and the accused Triloki Yadav had also filed a case against Arjun Yadav and others. He stated that due to the said enmity, the accused killed Arjun Yadav.

5. Altogether fifteen (15) accused persons were put on trial on the charges framed alleging offences punishable under Section 302 read with Section 149 of the Indian Penal Code in connection

with the murder of Arjun Yadav. They were also charged with the offences punishable under Section 323/34 of the Indian Penal Code, for voluntarily causing injuries to Rewani Devi and Guzri Devi. While the accused Khiro Yadav, Bharat Yadav and Triloki Yadav were further charged under Section 325/34 of the Indian Penal Code, accused Ishwari, Khiri and Bharat Yadav were charged under Section 324/34 of the Indian Penal Code for voluntarily causing hurt to Guzri Devi. The accused pleaded not guilty.

6. In course of trial altogether seven witnesses were examined by the prosecution. P.W.1 Chandeshwari Yadav, P.W.4 Asharfi Yadav and P.W.5 Darbari Yadav (informant) are the cousin brothers, P.W.2 Guzri Devi is the mother and P.W.3 Rewani Devi is aunt of the deceased. P.W.6 is the doctor, who examined the injured Guzri Devi and Rewani Devi, P.W.7 is the Investigating Officer and P.W.8 is the doctor, who conducted post-mortem examination.

7. Exhibit 1 is the signature of the informant made over the FIR, Exhibits 2 and 2/1 are injury reports of Guzri Devi and Rewani Devi, Exhibit 3 is the FIR, Exhibit 4 is carbon copy of the inquest report and Exhibit 5 is the post mortem report.

8. The trial court convicted and sentenced all fifteen accused persons. Out of them appellant no.1, Bajrangi Yadav, appellant no.7, Sanichar Yadav, appellant no.8 Karu Yadav and appellant no. 10 Govind Yadav, in Cr.Appeal(DB) No. 136 of 1990,

died during the pendency of the appeal and the appeal, in so far it related to them, stood abated. Appellant no.1 Ishwari Yadav and appellant no.2 Triloki Yadav, in Cr. Appeal(DB) No. 314 of 1990 have also died and, the appeal in relation to them stands abated.

9. Sri Rakesh Kumar Sinha, learned counsel for the appellants submits that two witnesses, namely, Sundar Yadav and Budho Yadav, who were named in the FIR as well as of the charge sheet, have not been examined in this case and their non-examination would certainly lead to adverse inference against the prosecution. He submits that there are number of contradictions in the evidence of prosecution witnesses not only as regards the manner of occurrence but also the place of occurrence, and the prosecution version does not find support even from the inquest report. It is argued that P.W.1 Chandeshwari Yadav, in his cross examination, has clearly stated that on the alarm raised by the informant, he came out from his house, thereby hardly there was any occasion for him to see the incident and the fact that he did not make any attempt to save the life of the deceased, who was his family member; casts serious doubt about his presence at the time of occurrence.

10. Learned counsel further submits that P.W.2, the mother of the deceased, is an interested witness and though in the FIR P.W.5 said that on hulla made by him, this witness came at the



place of occurrence, she pleaded her ignorance regarding the presence of other witnesses at this place and about the number of injuries said to have been caused by Bhala over the person of the deceased; or about the persons who held the deceased, and the one who was dragging him. It is also submitted that P.W.3 Rewani Devi has stated that she was also following the deceased with P.W.2, but the same does not find support from the FIR or from the evidence of other witnesses.

11. As regards P.W.4, it is argued that he is said to have come out from the house on hearing alarm and he had no occasion to see the occurrence, and his statement that the accused persons kept the dead body inside the house of the accused Triloki Yadav does not find support either from inquest or from the FIR and the evidence of that witness is equally unbelievable. Other contentions are also urged.

12. The learned A.P.P., on the other hand, submits that though there are certain variations in the deposition of prosecution witnesses, they are consistent as regards the basic and vital fact. He submits that the trial court has analyzed the evidence of witnesses in a perfect manner and arrived at the conclusion that the appellants have caused the murder of the deceased.

13. Relevant facts have already been stated in the preceding paragraphs. One person died and two persons are said to

have suffered injuries in the incident. P.Ws.2 and 3 are the witnesses, who are said to have sustained injuries in course of the incident and if that is true, their evidence becomes crucial and important. P.W.5 is the informant, who too claims to be the eye witness of the occurrence.

14.The evidence of the injured witnesses (P.W. 2 and P.W.3) of the informant (P.W.5) does not find corroboration from the contents of the FIR (Ext. 3) and inquest report (Ext.-4). Ext. 3, the FIR is to the effect that appellants killed the deceased at the door of Ishwar Yadav but the inquest report mentions that the dead body was recovered from the Varandah of the joint house of accused appellant Ishwari Yadav, Triloki Yadav and Yugal Yadav. It clearly indicates that the death was not caused in the manner set out in the FIR. On applying the principle of appreciation of evidence i.e preponderance of the probabilities, the plea of defence gets support from Inquest Report (Ext.4).

15. The source of identification of the accused, has been explained by the prosecution. The incident is said to have taken place around 7.00 P.M. in the month of October when the sunset usually take place around 6.00 P.M. It was not probable for the witnesses, who were standing far away from the scène of offence to see the occurrence and it makes their testimony not completely reliable. Further it is only P.W.5 who said in his cross examination that he



witnessed the occurrence in the moonlight, whereas the none of the witnesses stated that there was moonlight. It appears that just to fill up the lacuna regarding source of the identification the informant developed such story but in our opinion it was improbable for the informant to give such vivid picture of the occurrence, who was standing far away from the place that under threat to his own life, even if there was moonlight. Similarly none of the witnesses have claimed to have closely observed the occurrence. Therefore, in absence of any better source of identification their testimony regarding the occurrence become unreliable and the same does not inspire confidence of the Court.

16. So far the evidence of P.W.1 and P.W.4, who claimed to be the eye witnesses is concerned, it loses credit, considering their specific statement that they came out from their house after hearing alarm of P.W.5 (the informant). As regards the injured witnesses, the record discloses that they have been examined after three days of the alleged occurrence on 14.10.1986 and it makes their statement very doubtful that they witnessed the occurrence and sustained injuries when they attempted to save the deceased on 11.10.1986. Non-examination of any independent witness and examining only the witnesses, who are the family members of the deceased, casts serious doubt regarding the prosecution versions of the occurrence, particularly, in view of the fact that occurrence is

said to have taken place in the middle of the village. It is not at all safe to rely upon such evidence to rest the conviction and sentence against the appellants.

17. The doctor who was examined as P.W.8 stated that injuries found on the P.Ws. 2 and 3 can be the result of falling down. Further he did not attribute the injuries on the deceased to the weapons, that were stated to have been held by the appellants. The prosecution did not place the weapons before the court as material exhibits.

18. The cumulative effect of all the factors, referred to above, is that the prosecution failed to prove the case against the appellants beyond doubt. Therefore, we allow the appeals and set aside the judgment under appeal. The appellants are discharged from their respective bail bonds

(L. Narasimha Reddy,CJ)

singh/-

(Sudhir Singh, J)

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