

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.213 of 1992

Arising Out of PS.Case No. -182 Year 1986 Thana -Hilsa (Karaï) District- NALANDA (BIHARSHARIFF)

- 1. Laxminia Devi, wife of Arjun Yadav @ Arjun Gope, resident of Village Galimput, Police Station Karaiparsuari, District Nalanda
- 2. Komal Gope, son of Harinandan Gope
- 3. Dhanpat Gope, son of Harinandan Gope
- 4. Yugeshwar Gope, son of Bali Gope

All are residents of Village Sandhe-ke-Bigha, Police Station Karaï, District Nalanda

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 220 of 1992

Arising Out of PS.Case No. -182 Year- 1986 Thana -Hilsa (Karaï) District- NALANDA (BIHARSHARIFF)

- 1. Arjun Gope
- 2. Karu Gope - both sons of Narshing Gope, resident of Village Galimpur, Police Station Karaï Parsurai, District Nalanda

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance : (In CR. APP (DB) No. 213 of 1992)

For the Appellant/s : M/s Ansul, Arun and Sanjay Kumar @ S K , Advocates

For the Respondent/s : Dr. Mayanand Jha, APP (In APP (DB) No. 220 of 1992)

For the Appellant/s : M/s Ansul, Arun and Sanjay Kumar @ S K , Advocates

For the Respondent/s : Dr. Mayanand Jha, APP

CORAM: HONOURABLE THE CHIEF JUSTICE and HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Dae: 20-02-2015

These two criminal appeals arise out of the judgment dated 29.6.1992 rendered by the court of 1<sup>st</sup> Additional Sessions Judge, Nalanda in Sessions Trial No. 41 of 1988. Accused nos. 1 and 2 are the appellants in Cr. Appeal No. 220 of 1992 and accused nos. 3, 4, 5 and 6 are the appellants in Cr. Appeal No. 213 of 1992. The seventh accused by name Harinandan Gope was acquitted.

On the charge of committing the murder of one Indu Devi, in the village Galimpur in the district of Nalanda in the intervening night of 30<sup>th</sup> October and 1<sup>st</sup> November, 1986, the trial court convicted accused nos. 1 to 6 for the offence punishable under Section 302/34 of the Indian Penal Code and sentenced them to undergo imprisonment for life, through the judgment under appeal. In addition to that, the appellants convicted for the offence punishable under Section 201/34 and were imposed sentence of imprisonment for seven years.

The case, as presented by the prosecution before the trial court was that PW 1 is a resident of Pakri village and the deceased Indu Devi is his daughter. PW 2 Sunita Devi is the daughter-in-law of PW 1, and is the sister of son-in-law of PW 1. It was stated about ten days before the occurrence, the deceased and PW 2 her sister-in-law have gone from Pakri to Galimpur village and two days thereafter the son of PW 1 by name Shishupal Yadav went to Galimpur to fetch two bullocks for the purposes of ploughing the field; and after completion of the work Shishupal Yadav went Galimpur again for returning the bullocks. On both occasions of his visit to Galimpur he is said to have not noticed his sister, Indu Devi.

About ten days after her departure from village Pakri,

PW 2 is said to have returned from Galimpur and informed PW 1 that all the accused that included her two brothers and other relations have killed Indu Devi by strangulation during night hours. She further stated that when she sought to intervene, her brothers accused no.1 and 2 threatened her with dire consequences and locked her and her minor son, in a room for about nine days preventing them from any access to others. She is said to have escaped on one day and came to the village Pakri and informed about the incident.

The fardbeyan of PW 1 was recorded in the handwriting of PW 3 and was also signed by PW 2. Based upon that, further investigation was taken up and the dead body of the deceased is said to have recovered from the adjacent village Merhwa Khondla Khadda. After recording the statements of various listed witnesses and conducting the steps of inquest and post-mortem, the prosecution filed charge-sheet alleging offences punishable under Section 302/34 and Section 201 read with Section 34, IPC against the appellants. The manner in which the trial court passed its judgment has already been indicated in the preceding paragraphs. Hence these Appeals.

Sri Ansul, learned counsel for the appellants submits that the prosecution was not even certain as to when the incident of the death of Indu Devi had taken place and who came to know about the death of Indu Devi for the first time. Learned counsel submits that there is hardly any consistency between the evidence of PW 1, PW 2 and PW 3, and the fardbeyan is totally at variance with evidence of all the witnesses. He further submits that according to the only independent witness, i.e. PW 3, the suspicion about the death of Indu Devi was entertained for the first time by Shishupal Yadav who is said to have initially started searching for her on his own accord and thereafter conducted search along with PW 3 but the said Shishupal

Yadav was not examined as a witness. He submits that the version of PW 2 that she was confined for about nine days in a room though she was permitted to go outside for the purposes of answering nature's call and other exigencies, is unbelievable. It is also urged that PW 1 was silent on many aspects stated by PW 3.

Dr. Mayanand Jha, learned APP, on the other hand, submits that notwithstanding the minor inconsistencies pointed out by the appellants, the prosecution case was clear and certain, as regards the involvement of the accused in causing the death of Indu Devi. He submits that on account of the heinous act of causing death and taking away the dead body clandestinely, nobody was able to know the factum or cause of death for quite some time and as and how the events unfolded the involvement of the accused became very clear. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Rameshbhai Mohanbhai Koli v. State of Gujarat [(2011) 11 SCC 111]***, he submits that even where a witness is declared hostile the court cannot treat his entire evidence as totally irrelevant; and to the extent the evidence remains unrebutted, it can certainly be taken into account.

The family of the accused on the one hand and the complainant on the other are closely related. They have in fact adopted the marriages of 'Golet' wherein the one woman from the family is given marriage to other family and vice versa. The deceased was the daughter of PW 1 Jagdeo Gope. PW 2 on the other hand is the sister of the husband of Indu Devi.

According to the prosecution, Indu Devi came from village Galimpur to village Pakri for taking some seeds to her in-laws' place and along with her, PW 2 her sister-in-law, had also gone to Galimpur. Though the visit of PW 2 to Galimpur was expected to be

short, she did not return for about ten days.

A perusal of the fardbeyan i.e. the statement of PW 1 discloses that news about the death of Indu Devi was known for the first time when PW 2 came to village Pakri and revealed it to PW 1. In the same statement, PW 1 mentioned that two days after the PW 2 left for Galimpur, his son Shishupal Yadav went to that village to fetch bullocks for ploughing the land. After completion of the work, Shishupal Yadav is said to have again visited Galimpur for returning the bullocks and that on both the occasions he did not notice Indu Devi. In the cross-examination, PW 1 stated that Shishupal Yadav did not make any effort to know about Indu Devi.

The evidence of PW 2 is to the effect that during the night on which she herself and her sister-in-law Indu Devi went to Galimpur she heard some sound when she was asleep. It was also her case that when she came out from the room she found her brothers accused no.1 and accused no.2 holding sticks on both the sides of the neck of the deceased and the latter crying for help. The accused were said to have threatened PW 2, pushed her into a room and bolted from outside. One of the accused is said to have acted as guard to ensure that PW 2 does not escape and this was continued for about nine days.

Since PW 2 spoke against her brothers and mother, the evidence certainly gains considerable respect and acceptability. However, if we test the versions that were presented by PW 1 and PW 3, the dependability on the evidence of PW 2 gets shaken. While PW 1 and PW 2 are from the same family, PW 3 is an independent person. In fact he is the scribe of the fardbeyan. This witness stated that on a particular Tuesday in October 1986 Shishupal Yadav came to his house in search of his sister and thereafter both of them have searched for the lady. On the next day, i.e. Wednesday both of them are said to



have gone to village Pakri and they remained there for two days. During his stay at that village PW 2 is said to have come to that village and informed about the incident. From this, it becomes clear that though he spoke about the arrival of PW 2 to the village Pakri, he belied the contention of the prosecution that the news about the disappearance of the deceased came through PW 2 alone. His evidence was extensive as regards the search undertaken by Shishupal Yadav. It means that Shishupal Yadav knew about missing of his sister and he undertook search firstly by himself and thereafter with PW 3. Non-examination of Shishupal Yadav, the person, who is said to have noticed the missing of his sister, is certainly fatal to the prosecution case.

Another serious dent to the credibility of the case of the prosecution occurred in the form of cross-examination of PW 3. He stated that after himself and Shishupal Yadav arrived Pakri village, PW 1, one Suresh Yadav, Rajendra Yadav and Chhotu Yadav proceeded to Galimpur village in search of the deceased. He stated that though they had gone to the house of the accused they did not go inside the house and none in the village had any discussion with them. This was not the case of PW 1 at all.

Further there is serious lack of consistency as regards the manner in which the dead body was discovered. The injuries noticed on the dead body did not accord with the case of the prosecution.

It is true that Hon'ble Supreme Court held that the evidence of a witness who is declared as hostile need not be discarded completely. In fact, none of the witnesses is declared hostile nor it is proposed to discard the evidence of any witness; for the sake of it.

Under these circumstances, we are of the view that it

would not at all be safe to convict the appellants herein for the offence of causing death of Indu Devi. We therefore allow the appeals and set aside the conviction and sentence and their bail bonds are cancelled.

**(L. Narasimha Reddy,CJ)**

**(Vikash Jain, J)**

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