

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction and order of sentence, dated 31.03.1993, passed by Shri Ram Prabodh Singh, 2nd Additional District & Sessions Judge, Munger in Sessions Trial No. 434 of 1985, arising out of Lakhisarai P.S. case No. 302 of 1984, G.R. No. 706 of 1984)

Criminal Appeal (DB) No.196 of 1993

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1. Akal Kewat, son of Late Ram Nandan Kewat.
2. Radhey Shyam Kewat, son of Late Prasadi Kewat.
3. Baleshwar Kewat, son of Late Prasadi Kewat.
All residents of Vilage Charokhara, P.S.- Lakhisarai, District- Munger.
..... Appellants.

Versus

The State of Bihar

..... Respondent

with

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Criminal Appeal (DB) No. 234 of 1993

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1. Khiran Kewat @ Khirman Kewat, son of Late Deva Kewat
2. Dukhi Kewat, son o Teja Deva Kewat.
3. Kamal Kewat, son of Teja Kewat.
All residents of Vilage Charokhara, P.S.- Lakhisarai, District- Munger.
..... Appellants

Versus

The State of Bihar

..... Respondent/s

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Appearance :
(In CR. APP (DB) No. 196 of 1993)
For the Appellants : Mr. T. N.Maitin, Senior Advocate
Mr. M. Shahid Siddiqui, Advocate
For the Respondent : Mr. Ajay Mishra, Addl. P.P.
(In CR. APP (DB) No. 234 of 1993)
For the Appellants : Mr. T. N.Maitin, Senior Advocate
Mr. M. Shahid Siddiqui, Advocate
For the Respondent : Mr. Ajay Mishra, Addl. P.P.

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
AND
HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)
Date: -03-2015

Both the appeals have been preferred against the
judgment and order, dated 31.03.1993, passed by the learned

2nd Additional Sessions Judge, Munger, in Sessions Trial No. 434 of 1985, convicting the accused appellants under Sections 302 and 364 read with Section 34 of the Indian Penal Code. Following their conviction, the accused appellants have been sentenced to suffer imprisonment for life under each of the two counts. However, both the sentences have been ordered to run concurrently.

2. The case of the prosecution, as unfolded by the First Information Report may, in brief, be described as under:

The informant, Shanti Devi, widow of late Sheodani Kewat, gave her *fardbayan*, on 23.09.1984, at about 5:00 PM, at Lakhisarai Police Station, that her co-villagers, namely, Akal Kewat, Kamal Kewat, Khiran Kewat, Dukhi Kewat, Radhey Shyam Kewat and Baleshwar Kewat were on inimical terms with the informant's husband and, owing to the enmity, Khiran Kewat, son of late Deva Kewat, Dukhi Kewat, son of Dewa Kewat, and Kamal Kewat, son of Teja Kewat (co-villagers), came, on previous day, i.e., 23.09.1984, at about 5.00 P.M., to the house of the informant and took her husband with intention to kill him. In furtherance of their common intention, they locked him in a room of the house of Khiran Kewat. The informant, along with her mother-in-law (P.W. 4), followed her husband to the house of Khiran Kewat, where Akal Kewat, Radhey Shyam Kewat and Baleshwar Kewat were already present from before. The informant and her mother-in-law



started requesting them to release Sheodani Kewat and, in the meantime, her maternal father-in-law, namely, Garib Kewat (P.W. 1), and her maternal mother-in-law, namely, Sampatiya Devi (P.W. 2), too, arrived there and tried to rescue her husband. However, the accused persons rebuked and drove them away giving out threats. On account of the threat and fear of the accused persons, Sheodani Kewat's wife, Shanti Devi (since deceased) returned to their house. In the morning, on 24.09.1984, the informant, Shanti Devi (since deceased) and the members of her family went back to the house of Khiran Kewat, but they found the dead body of Sheodani Kewat lying near the door in front of his house. Due to fear, they could not notice the injury on the person of Sheodani Kewat and went to Lakhisarai Police Station and, on arriving there, Shanti Devi orally reported the occurrence to the police. The oral information, so given by Shanti Devi, was reduced into writing and considering the same as First Information Report (hereinafter referred to as "F.I.R."), Lakhisarai Police Station Case No. 302 of 1984, under Sections 364/302/34 of the Indian Penal Code, was registered against Khiran Kewat, Kamal Kewat, Dukhi Kewat, Akal Kewat, Radhey Shyam Kewat and Baleshwar Kewat.

3. During investigation, inquest was held over Sheodani Kewat's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation,

charge sheet was laid, under Sections 302/34 of the Indian Penal Code, against all the named accused persons, as also against Dilip Kewat.

4. At the trial, when charges, under Sections 302 and 364 read with Section 34 of the Indian Penal Code, were framed against the accused aforementioned, they pleaded not guilty thereto.

5. In support of their case prosecution examined altogether 7 (seven) witnesses. Accused were, then, examined under Section 313(1)(b) of the Code of Criminal Procedure and, in their examinations aforementioned, all the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of defence being that of denial. No evidence was adduced by the defence.

6. Having, however, arrived at the finding that the accused-appellants, Kamal Kewat, Dukhi Kewat and Khiran Kewat had been proved guilty of the charge under Section 364 of the Indian Penal Code and, further, accused appellants, Kamal Kewat, Dukhi Kewat, Khiran Kewat, Akal Kewat, Radheshyam Kewat and Baleswar Kewat had been proved guilty of the charge under Section 302 read with Section 34 of the Indian Penal Code, the learned trial Court convicted them accordingly. Following their conviction, sentences have been passed against the convicted persons as mentioned above.

7. Being aggrieved, the appellants have filed two



sets of appeal. The Cr. Appeal No. 196 of 1993 was filed by (1) Akal Kewat, (2) Radhey Shyam Kewat, and (3) Baleshwar Kewat, who have been convicted under Sections 302 read with Section 34 of the Indian Penal Code, whereas Cr. Appeal (D.B.) No. 234 of 1993 has been preferred by three other appellants, namely, (1) Khiran Kewat, (2) Dukhit Kewat, and, (3) Kamal Kewat, who have been convicted under Sections 302 and 364 read with Section 34 of the Indian Penal Code.

8. We have heard Mr. T.N.Maitin, learned senior Counsel, appearing on behalf of the appellants, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

9. The appellants of Cr. Appeal No. 234 of 1993 are said to have taken with them Sheodani Kewat from his house, on 23.09.1984 at 5.00 P.M., to the house of Khiran Kewat with intention to kill him. Though the second set of appellants (Cr. Appeal No. 196 of 1993) are not claimed to have gone to call Sheodani Kewat from his house, they nonetheless were, according to the prosecution's case, present at the house of Khiran Kewat from before.

10. We may also point out, at the very outset, that the informant, Shanti Devi, widow of deceased Sheodani Kewat, died and her evidence has, therefore, not come on record.

11. Consequently, prosecution's case rests on the

evidence of seven witnesses, who have been examined at the trial. Out of these witnesses, P.W. 1 (Garib Kewat) is maternal father-in-law of the informant, P.W. 2 (Sampatia Devi) is maternal mother-in-law of the informant, P.W. 3 (Shashi Bhushan Prasad) is the doctor, who conducted *post-mortem* examination, on 25.09.1984, at 9.00 A.M., on the dead body of deceased Sheodani Kewat, P.W. 4 (Hemia Devi) is mother of the deceased and mother-in-law of the informant, P.W. 5 (Raj Kumar Singh) is a social worker, who gave telephonic information to the police about the occurrence, P.W. 6 (Kedarnath Singh) is the Sub-Inspector of police, who, too, carried out the investigation of the case after 16.11.1984 and P.W. 7 (Rajmohan Prasad) is the Officer-in-Charge of Lakhisarai Police Station, who recorded the *fardbayan* given by Shanti Devi and registered a formal F.I.R. on the basis of the said information.

12. Bearing in mind what we have pointed out above, let us, first, turn to the evidence of the doctor (P.W.3) who had, admittedly, conducted *post-mortem* examination on the dead body of Sheodani Kewat and found following injuries:

"(i) Fracture of the upper end of tibia of left leg adjoining knee.

(ii) Fracture of lower end of right femur patella and right tibia with intra articular fracture and heamorthosis. In other words, it was fracture of the joint with blood in it.

(iii) Fracture of left soft of humorous.

(iv) Fracture of right lower part of humorous.

(v) Laceration 2 ½" x ½" x scalp deep on the back of head.

(vi) Laceration 2" x 1/3" x scalp deep on the back of head on left side.

(vii) Laceration ¼" x ¼" x scalp deep on the back of head below injury no. 6.

(viii) Contusion 3" x 1" on left temple."

13. According to the doctor, all the injuries were *ante mortem* in nature and caused by hard blunt substance, time having elapsed since death being 24 to 36 hours. The doctor has opined that Sheodani Kewat died, because of shock and hemorrhage resulting from the aforesaid injuries. It would appear from the evidence of the doctor (P.W. 3) that the death was *homicidal* in nature.

14. Once it is established that Sheodani Kewat has been done to death, the core issue remains: whether it is these appellants, who had committed the murder?

15. Before we examine the eye witnesses account of the occurrence, it would be necessary to notice the evidence of the Investigating Officer, Raj Mohan Prasad, who has been examined as P.W. 7, and Raj Kumar Singh (P.W.5)', who informed the police, on telephone, about the occurrence.

16. According to the Investigating Officer (P.W. 7), the dead body of Sheodani Kewat was found lying towards the west of the house of Mushan Kewat and north of the house of



Khiran Kewat and pool of blood was also found at the place, where the dead body was lying. The Investigating Officer found the courtyard on the north side of the house of Khiran Kewat and Dukhi Kewat. The house of Mushan Kewat was just contiguous to the courtyard. The houses of the other accused were also in the vicinity. The Investigating Officer prepared the inquest report in presence of witnesses, Garib Kewat and Dhandu Kewat (not examined). The inquest report has been marked as Ext. 3.

17. P.W. 5 (Raj Kumar Singh) is a social worker, who has deposed that in the morning of 24.09.1984, the mother and wife of Sheodani Kewat came to his house and informed him of the occurrence and, on coming to know about the occurrence, he informed the police and asked the mother and wife of the deceased to go to the police station. In his cross-examination, this witness (PW 5) has clarified that though the mother and widow of the deceased had mentioned the names of the accused persons, he did not, in his telephonic information to the police, disclose the names of the assailants to the police.

18. Since the informant, widow of the said deceased, has died and PW 4, mother of the said deceased, has also not deposed that she had mentioned to PW 5 the names of the assailants, it clearly follows that the evidence given by PW 5 that the names were disclosed to him by the

widow and mother of the said deceased cannot, but be regarded as *hearsay*.

19. Situated thus, there can be no escape from the conclusion that though the telephonic information was given to the police, the names of the assailants were not disclosed. It would be, too, unreasonable to infer that the police could not have made the enquiry on telephone as to who the assailant of the said deceased was and who were the assailants. Far from this, what would have been, most natural, for the police was to have made enquiry, on the phone itself, as to who the assailants were and yet no name of assailant was revealed to the police at the first point of time.

20. From what has been pointed out above, there can be no escape from the conclusion that the telephonic information, received by the police from PW 5, with regard to the fact that Sheodani Kewat had been put to death, was the information, which was first in point of time and ought to have, therefore, been, treated as the F.I.R.; but in this information, which was the F.I.R. and had set the machinery of law into motion, the names of the assailants had not been mentioned and it was only, later on, that the names of the assailants were disclosed, at the Police Station, by Shanti Devi, who having died, has not been examined in the case.

21. The prosecution, in order to establish that the said deceased was murdered by the appellants, examined



three witnesses in support of their case, namely, P.W.1, P.W.2 and P.W.4. However, two of these witnesses, namely, P.W. 1, Garib Kewat (maternal father-in-law of the informant) and P.W. 2 Sampatia Devi (maternal mother-in-law of the informant) have not supported the prosecution's case and have been declared hostile. The informant, Shanti Devi, too, has died before her deposition could be recorded at the trial. This leaves us with the testimony of P.W. 4, the mother of the deceased, as the sole eye witness and, on the veracity of her evidence, would depend the outcome of this appeal.

22. While considering the evidence of PW 4, mother of the said deceased, it needs to be borne in mind that in an appropriate case, conviction can be based on evidence of a solitary eye witness if the witness is found to be wholly reliable.

23. In the backdrop of the law indicated above, we notice that according to the evidence of P.W. 4 (Hemia Devi), there was a land dispute between one Garib Kewat and the accused and that her son, Sheodani Kewat, was helping and taking the side of Garib Kewat (P.W. 1).

24. With regard to the occurrence, PW 4 has deposed that on the fateful day, at about 5.00 P.M., when she was present at her house, her deceased son and her daughter-in-law, Shanti Devi (informant of the case), were also present and, at around 5 P.M., accused Kamal Kewat, Dukhi Kewat and



Khiran Kewat forcibly took away her son, Sheodani Kewat, assaulting him on the way and she (PW 4), along with her daughter-in-law, followed them. It is in the evidence of PW 4 that the said three accused took her son, Sheodani Kewat, to the house of Khiran Kewat, where Akal Kewat, Radhey Shyam Kewat and Baleshwar Kewat were already present from before. It is in the evidence of PW 4 that the accused persons kept her son confined in a room and, in the meantime, P.W. 1 (Garib Kewat), maternal father-in-law of the said deceased, and his wife, Sampatia Devi, P.W. 2 (maternal mother-in-law), also arrived there and all of them requested the accused persons to release Sheodani Kewat, but the accused persons threatened them and drove them away.

25. It is also in the evidence of PW 4 that on the following day, in the morning, the dead body of Sheodani Kewat was found at the door of the house of Dukhi Kewat and Khiran Kewat, whereupon she (PW 4) and her daughter-in-law went to Raj Kumar Babu (P.W. 5), a social worker, who informed the police and asked them to go to the police station, the *fardbeyan* of Shanti Devi was recorded at the police station and the police, thereafter, came to the place of occurrence.

26. While considering the evidence of PW 4, it needs to be pointed out that according to her evidence, when her son, Sheodani Kewat, was being taken by the accused forcibly and while he was being assaulted, she (PW 4) and her

daughter-in-law, Shanti Devi (since deceased), had raised *hulla*. However, no witness has been examined from the neighbourhood to prove that any such *hulla* was actually raised.

27. In fact, as already indicated above, even the maternal uncle and aunt of the deceased, Sheodani Kewat, has not supported the evidence of PW 4 and/or the contents of the F.I.R. that the accused appellants were the ones, who had forcibly carried Sheodani Kewat to their house and assaulted him there. Similarly, though blood is claimed to have been found at the house of accused, the fact remains that the said dead body was found lying towards the north-west of the house of Musan Kewat and not in the house of accused Khiran Kewat. As the blood, said to have been found on mattress inside the house of the accused, was not put to serological test, the blood, even if found, has not been proved to be the blood of the said deceased. It is, therefore, frightfully difficult to implicitly rely on the evidence of sole eye-witness, namely, PW 4.

28. We may, now, pause here to point out that PW 1 and PW 2 are maternal uncle and maternal aunt of the said deceased and, therefore, there is no reason for them to have lied at the trial, more so, when there is no explanation discernible from the evidence on record as to why PW 1 and PW 2 shall not be believed that they had not seen the

occurrence. If the evidence of PW 1 and PW 2 cannot be disbelieved, it logically follows that the evidence of PW 4, too, cannot be safely relied upon, when her evidence is contradicted by the evidence of PW 1 and PW 2.

29. At any rate, the evidence of PW 4, mother of the said deceased, cannot be said to be evidence of a wholly reliable witness.

30. One can also not ignore the fact that PW 4 has claimed that the accused had given blow by means of a knife on her son, Sheodani Kewat, but the medical evidence on record does not disclose any assault by means of knife inasmuch as not a single incised or puncture wound was found at all on the said dead body. In fact, all the injuries, sustained by the said deceased, were caused by means of hard blunt substance.

31. While considering the evidence of PW 4, it may also be noted that the dead body has not been found at the house of the accused, but near the house of one Musan Kewat.

32. Merely because the accused has made a counter allegation that Sheodani Kewat had entered into the house of Khiran Kewat, Khiran Kewat gave a blow, by means of *lathi*, on the head of Sheodani Kewat, the accused could not have been held to have caused death of Sheodani Kewat.

33. Returning to the question of veracity of the evidence given by PW 4, it needs to be carefully noted, in the



light of the fact that no explanation has been offered and no explanation is discernible from the evidence of PW 4 as to why the names of the assailants had not been disclosed to the police at the first point of time, that when the medical evidence does not support the oral testimony of PW 4 and when the prosecution has also failed to show as to why not a single witness turned up to prove that hue and cry were raised by the members of the family of Sheodani Kewat, when Sheodani Kewat was allegedly taken by the accused persons to the house of Khiran Kewat, coupled with the fact that even the maternal uncle (PW1) and maternal aunt (PW 2) of the said deceased have not supported the evidence of PW 4 that along with her and her daughter-in-law, the maternal uncle (PW1) and maternal aunt (PW 2) of the said deceased had gone to the house, when the *hulla* was raised.

34. Because of what has been discussed and pointed out above, we are constrained to hold that PW 4 cannot be regarded as a wholly reliable witness.

35. In the absence of any other evidence, supporting the description of the occurrence given by the eye-witness, one has no option, but to hold, and we do hold, that PW 4, who has claimed to be eye-witness, can be treated or held to be *wholly reliable* and even if her evidence is not rejected by the Court as *wholly unreliable*, her evidence would fall, at best, in the category of those witnesses, who are

neither wholly reliable nor wholly unreliable.

36. It is trite that the witnesses, ordinarily, fall into three distinct categories, namely, **(i)** wholly reliable, **(ii)** wholly unreliable and **(iii)** neither wholly reliable nor wholly unreliable. If the witness is *wholly reliable*, his evidence can be implicitly relied upon and such a witness's testimony can be made basis for conviction of an accused. Similarly, when a witness is found to be *wholly unreliable*, no reliance can at all be placed on his evidence and his evidence has to be rejected outright. When, however, a witness is found to be *neither wholly reliable*, nor *wholly unreliable*, his evidence cannot be accepted as true unless his evidence is found to have been corroborated by some credible independent evidence, direct or circumstantial.

37. The evidence of the eye-witness, which the prosecution has adduced in the present case, cannot be safely relied upon unless the same is found to have been corroborated by some credible independent evidence, direct or circumstantial. There is, however, no unimpeachable evidence on record, direct or circumstantial, lending corroboration or support to the sole testimony of PW 4.

38. Because of the nature of evidence, which is available on record, the least, which ought to have been done by the learned trial Court, was to accord benefit of reasonable doubt to the accused persons inasmuch as we are clearly of



the view that in the light of the evidence on record, which we have discussed above, it was too hazardous to convict the accused-appellant, particularly, when we find that the evidence, which the prosecution has adduced, is an ad-mixture of half-truth and untruth and it is not only difficult, but wholly impossible to disengage the truth from the falsehood. The benefit of such a situation ought to have been given to the accused-appellant.

39. In the backdrop of what have been discussed and pointed out above, we are firmly of the view that the prosecution had failed, in the present case, to bring home the charges against the accused-appellants beyond reasonable doubt and that the accused-appellants were entitled to be accorded benefit of doubt.

40. Because of what have been discussed and pointed out, the present appeals need to be allowed.

41. In the result and for the foregoing reasons, we allow these appeals. The impugned conviction of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offences, which they stand convicted of, and they are accordingly acquitted of the same under benefit of doubt.

42. As the appellants are on bail, their bail bonds are hereby cancelled and their sureties shall stand discharged.

43. The Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Courts Record.

(Samarendra Pratap Singh, J.)

I. A. Ansari, J.: I agree.

(I. A. Ansari, J.)

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