

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.388 of 1993

Against the judgment of conviction dated 09.07.1993 and the order of sentence, dated 14.07.1993, passed by Shri Kali Dayal Mishra, Fifth Additional Sessions Judge, Nalanda at Bihar Sharif, in Sessions Trial No. 95 of 1980/180 of 1980, arising out of Islampur Police Station Case No. 8(5) of 1979

Bindeshwar Yadav, son of Late Komal Yadav, resident of Village-Dindayal Ganj, Police Station- Islampur, District-Nalanda.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : None

For the Respondent : Mr. Ajay Mishra, A.P.P.

Mrs. Shama Sinha, Advocate, Amicus Curiae

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 26-02-2015

By the judgment, dated 09.07.1993, passed, in Sessions Trial No. 95 of 1980/180 of 1980, by learned Fifth Additional Sessions Judge, Nalanda at Bihar Sharif, the appellant, Bindeshwar Yadav, stands convicted under Section 302 read with Section 34 of the Indian Penal Code. Following his conviction, the accused-appellant has, by order, dated 14.07.1993, been sentenced to undergo imprisonment for life.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be set out as under:

(i) On 06.05.1979, at about 12.00 Noon,



informant, Jamuna Singh (PW1), sent his son, Srikant Singh (since deceased), for recovery of loan of Rs.1100/- from Bindeshwar Yadav (i.e., accused-appellant), the loan of the said sum of Rs.1100/- having been given by the informant about a year back. In the evening, on that very day, i.e., on 06.05.1979, while the informant was present at his field, his wife, Lal Keshar Devi (PW 4), came there and informed her husband (PW 1) that one Sarjug Singh had told her that a woman of Deendayalganj had informed Islampur Police Station that a thief, belonging to Rajput community, had entered into her house and she had kept the thief confined in her house. On the information so received, the informant (PW 1), accompanied by his wife, Lal Keshwar Devi (PW 4), went to Deendayalganj, where they found that police personnel had already reached from Islampur Police Station and there they found the dead body of Srikant lying in one of the rooms of the house of the accused.

(ii) Having found the dead body of his son Srikant, in the manner indicated hereinbefore, the informant went to Islampur Police Station and lodged there an information alleging that his son, Srikant Singh (since deceased) had, at 12.00 Noon, on 06.05.1979, gone to recover a loan of Rs.1100/- from Bindeshwar Yadav (accused-appellant), which was given to him by the informant about a year back and, in



the evening on that very day, i.e., 06.05.1979, while the informant was present at his field, his wife, Lal Keshar Devi (PW 4), came there and informed him (PW 1) that one Sarjug Singh had told her that a woman of Deendayalganj had informed Islampur Police Station that a thief, belonging to Rajput community, had entered into her house and she had kept the thief confined in her house and, on the information so received, the informant (PW 1), accompanied by his wife, Lal Keshar Devi (PW 4), went to Deendayalganj, where they found that police personnel had already reached from Islampur Police Station and there they found the dead body of Srikant lying in one of the rooms of the house of the accused. In the information so given to the police, it was alleged by the informant (PW 1) that Bindeshwar Yadav (i.e., the appellant), along with his sister, namely, Kauleshwari Devi (since dead) had killed Srikant with the aid of Ishwar Yadav (since dead), Lallu Yadav and Deo Saran Yadav. The information, so given by the informant, was reduced into writing and treating the same as the *first information report*, Islampur Police Station Case No. 8(5) of 1979 was registered, under Section 302/34 of the Indian Penal Code, against six persons, namely, (i) Bindeshwar Yadav, (ii) mother of Bindeshwar Yadav, (iii) sister of Bindeshwar Yadav (i.e., Kauleshwari Devi), (iv) Ishwar Yadav, (v) Lallu Yadav and (vi) Deo Saran Yadav.

(iii) During the course of investigation, inquest was held over the accosted body, which was also subjected to *post mortem* examination and, on completion of investigation, police laid *charge sheet*, under Section 302/34 of the Indian Penal Code, against the accused persons, namely, Bindeshwar Yadav, Kauleshwari Devi, Ishwar Yadav, Lallu Yadav and Deo Saran Yadav.

3. At the trial, a charge under Section 302 read with Section 34 of the Indian Penal Code was framed against four accused persons, namely, Bindeshwar Yadav, Kauleshwari Devi, Ishwar Yadav and Deo Saran Yadav. To the charge so framed, all the accused pleaded not guilty.

4. In support of their case, prosecution examined altogether 9 (nine) witnesses, the relevant witnesses, out of them, being PW 1 (Jamuna Singh), father of the deceased, PW 2 (Mahesh Singh), a cousin of the deceased, PW 3 (Ramdhin Yadav, a co-villager of the deceased), PW 4 (Lal Keshar Devi), mother of the deceased, PW 5 (Raj Kishore Singh) and PW 7 (Jaikant Singh), both brothers of the deceased, PW 8 (Dr. Bindeshwari Prasad), who had conducted *post mortem* on the dead body of Srikant Singh, and PW 9 (Baleshwar Singh) is the Investigating Officer of the case. So far as PW 6 (Punia Devi) is concerned, she turned hostile.

5. During the course of trial Kauleshwari Devi and



Ishwar Yadav died and the trial, therefore, proceeded against the remaining two accused, namely, Bindeshwar Yadav and Deo Saran Yadav. The accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, two accused, namely, Bindeshwar Yadav and Deo Saran Yadav, who were facing the trial, denied that they had committed the offence, which was alleged to have been committed by them along with Kauleshwari Devi and Ishwar Yadav, the case of the defence being that of denial and of the accused aforementioned having been implicated falsely in the case. No evidence was adduced by the defence.

6. Having, however, arrived at the finding that accused-appellant, namely, Bindeshwar Yadav, had been proved guilty of the charge under Section 302 read with Section 34 of the Indian Penal Code, the learned trial Court convicted him accordingly. Following his conviction, sentence has been passed against the convicted person as mentioned above. The co-accused, namely, Deo Saran Yadav, was, however, acquitted at the trial.

7. Aggrieved by his conviction and the sentence passed against him, the accused aforementioned, as convicted person, has preferred the present appeal.

8. We have heard Mrs. Shama Sinha, learned

Counsel, who has appeared as *Amicus Curiae*, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

9. In the case at hand, there is, admittedly, no eye-witness to the occurrence of assault on, or killing of, Srikant. The prosecution's case, thus, rests on circumstantial evidence, the circumstances being that on 06.05.1979, at about 12.00 noon, Srikant Singh (since deceased) had gone to recover a loan of Rs.1100/- from Bindeshwar Yadav (i.e., accused-appellant), which was given to him by the informant (PW 1) about a year back. In the evening on that very day, i.e., on 06.05.1979, while the informant was present at his field, his wife, Lal Keshar Devi (PW 4), came there and informed her husband (PW 1) that one Sarjug Singh had told her that a woman of Deendayalganj had informed Islampur Police Station that a thief, belonging to Rajput community, had entered into her house and she had kept the thief confined in her house. On the information so received, the informant (PW 1), accompanied by his wife, Lal Keshwar Devi (PW 4), went to Deendayalganj, where they found that police personnel had already reached from Islampur Police Station and there they found the dead body of Srikant lying in one of the rooms of the house of the accused.

10. Bearing in mind the above noted broad features

of the prosecution's case, we, first, come to the evidence of PW 8 (Dr. Bindeswari Singh), who had, admittedly, conducted *post mortem* examination on the dead body of Srikant. According to this witness's evidence, on 07.05.1979, at 4:00 PM, he had performed *post mortem* examination on the dead body of Srikant Singh, son of Jamuna Singh, at Sadar Hospital, Biharsharif, and found as follows:

"(i) An incised wound 1" x 1/8" x muscle deep over the middle 1/3rd of the right leg, caused by sharp instrument or weapon.

(ii) An incised wound 1" x 3/4" x skin deep over the dorsum of right feet, caused by sharp instrument or weapon.

(iii) An incised wound 1" x 1/8" x 1/8" over the right malleolus of ankle, caused by sharp instrument or weapon.

(iv) An incised wound 1-1/4" x 1/2" x skin deep over the dorsum of left knee, caused by sharp instrument or weapon.

(v) An incised wound 3/4" x 1/8" x 1/8" over the middle third of left leg, caused by sharp instrument or weapon.

(vi) Six incised wounds 3/4" x 1/8" x 1/8" over the left forearm, caused by sharp instrument or weapon.

(vii) An incised wound 1" x 1/8" x skin deep in between right thumb and index finger, caused by sharp instrument or weapon.

(viii) An incised wound 1/2" x 1/8" x muscle deep over the right side of forehead, caused

by sharp instrument or weapon.

(ix) Fracture of Tibia, right leg caused by hard and blunt substance.

(x) Chest wall is loose, caused by hard and blunt substance.

(xi) Fractures of upper left six ribs, caused by hard and blunt substance.

(xii) Fractures of 2nd to 4th ribs right side, caused by hard and blunt substance.

(xiii) Faecal matter around the anus and surrounding area. Anus was lacerated 1/8"x 1/8" caused by frontal end of hard blunt substance like stick."

11. In the opinion of the doctor, the death was due to shock and hemorrhage and that the incised wounds, found on the said dead body, were, in ordinary course of the nature, sufficient to cause death and, similarly, even fractures, which had been found to have been sustained by the said deceased, were sufficient to cause death.

12. The medical evidence on record was not disputed at the trial and we, too, find nothing inherently incorrect or improbable in the evidence of doctor (PW 8).

13. In the light of, therefore, the medical evidence on record, there cannot be any escape from the conclusion that so far as Srikant was concerned, he met with homicidal death.

14. The question, however, remains and, which falls for consideration in the present appeal, is: whether the

accused-appellant, Bindeshwar Yadav, is the one, who has been proved to be the person, who had caused the death of Srikant.

15. In order to find answer to the question posed above, when we turn to the evidence of PW 1 (Jamuna Singh), who is the informant of the case, we notice that according to his evidence, he sent his son Srikant, at about 12.00 noon, to the accused for recovery of Rs.1100/-, which the informant had lent to the accused about a year back, and while he was still in his field in the evening, his wife, Lal Keshar Devi (PW 4), came there and informed him (PW 1) that one Sarjug Singh had told her that a woman had informed Islampur Police Station that one thief, belonging to Rajput community, had entered into her house and that she had kept him confined in her house and, on receiving this information, when the informant, accompanied by his wife (PW 4), reached the house of Bindeshwar Yadav, they found that police had already arrived there from Islampur Police Station and it was thereafter that PW 1 lodged the information with regard to the occurrence, as already indicated above, and Islampur Police Station Case No.8(5) of 1979 came to be registered, under Section 302/34 of the Indian Penal Code, against six persons, namely, Bindeshwar Yadav, mother of Bindeshwar Yadav, sister of Bindeshwar Yadav (i.e., Kauleshwari Devi), Ishwar

Yadav, Lallu Yadav and Deo Saran Yadav.

16. Close on the heels of the evidence of her husband (PW 1), PW 4 (Lal Keshar Devi) has deposed that she informed her husband that she had received information from Sarjug Singh that a woman of Deendayalganj had informed Islampur Police Station that a thief, belonging to Rajput community, had entered into her house and she had kept the thief confined in her house, and accompanied by her husband (PW 1), she went to the house of the accused Bindeshwar Yadav and found there her son, Srikant, lying dead.

17. Though PW 4 (Lal Keshar Devi) has also asserted that loan of Rs.1100/- had been given by her husband (PW 1) to accused Bindeshwar Yadav, it has come on record that no such statement was made by her to the police during investigation.

18. Be that as it may, two prominent noticeable features in the evidence of PW 1 and PW 4 are that Sarjug Singh, who claimed to having informed PW 4 that a woman had reported to Islampur Police Station that a thief, belonging to Rajput community, had entered into her house and she had kept the thief confined in her house, was not examined. The second and very important aspect of the evidence of PW 1 and PW 4 is that according to their evidence, when they reached the house of Bindeshwar Yadav, police personnel from

Islampur Police Station had already arrived at the house of the accused. How the police personnel happened to come to the house of the accused, where Srikant's dead body was found lying in a room, has not been explained by the prosecution nor is there any explanation discernible, in this regard, from the evidence on record.

19. Situated thus, it is clear that the evidence on record shows that the police had already been informed about the factum of presence of Srikant's dead body inside the house of Bindeshwar Yadav. Further, what exactly was the information given to the police at Islampur Police Station has not been disclosed to the Court.

20. Situated thus, it is clear that the learned trial Court was neither informed nor it endeavored to find out as to what was the initial information given to the police as regards the presence of Srikant, dead or alive, inside the house of the accused-appellant, was the accused-appellant named, in the information so given to the police, as the assailants or not, remains also shrouded in mystery. Whose name(s) was reported to the police at Islampur has also not been answered by the prosecution or is ascertainable from the evidence on record.

21. With the above strikingly noticeable features of the prosecution case, when we turn to the evidence of PW 3



(Ramadhin Yadav), we find that his evidence is not of much assistance to the prosecution inasmuch as he has merely given evidence with regard to the character of the said deceased that the said deceased was in the habit of teasing girls. No better is the evidence of PW 5 (Raj Kishor Singh), who, too, reached the place of occurrence, i.e., the house of the accused, after the police had already arrived there and his claim is that the loan amount was Rs.500/- and not Rs.1100/-. His evidence, thus, does not, admittedly, advance the case of the prosecution.

22. Coupled with the above, bearing in mind the fact that PW 6 (Punia Devi) had been declared hostile, when we turn to the evidence of PW 7 (Jaikant Singh), we notice that according to his evidence, he went to the house of the accused, on the basis of the information given to him by Sarjug Singh (who, as already indicated above, has not been examined), and as far as the Investigating Officer (PW 9), Baleshwar Singh, is concerned, his evidence is that he reached at the place of occurrence on information given to him by an Assistant Sub Inspector of Police and he found, at the place of occurrence, some blood-stained weapons, blood-stained earth, blood-stained *saree* and seized the same and sent the seized materials to Forensic Sciences Laboratory for examination. The report of the Forensic Sciences Laboratory has not been

brought on record.

23. In substance, what emerges from the evidence on record, even if believed in entirety, is that the informant (PW 1) had sent his son, Srikant, to the accused-appellant, Bindeshwar Yadav, for recovery of Rs.1100/-, which had been given as loan, according to the informant, a year back to the accused-appellant, and, on receiving the information that a woman had reported to Islampur Police Station that a thief, belonging to Rajput community, had entered into her house and she had kept him confined in her house that the police had arrived there and found Srikant lying dead in one of the rooms of the house and after the police had arrived at the house of the accused, PW 1 (Jamuna Singh), accompanied by his wife (PW 4), arrived there and saw Srikant's dead body lying in one of the rooms of the said house.

24. The question, therefore, as already indicated above, remains as to whether the accused-appellant could have been held, in the light of the evidence on record, as the person, who had, and none other, caused the death of Srikant.

25. While considering the above aspect of the prosecution case, it may be noted that the first information report itself has named as many as six persons as accused and there is nothing in the evidence on record to show that at the time, when Srikant arrived at the house of the accused-



appellant or was killed there, the accused-appellant was present there. When even the presence of the accused-appellant at the time of death of Srikant, at the house of the accused-appellant, has not been proved by direct or circumstantial evidence, it was wholly unsafe and too hazardous to hold the accused-appellant as a person guilty of the offence of murder.

26. When the case is based on circumstantial evidence, the chain of circumstances must be fully established and the chain shall be so complete as to leave no room for doubt that it is none, but the accused, who is facing the trial, is the offender. The evidence on record must not only be consistent with the guilt of the accused, but must also be in consistent with every hypothesis of innocence of the accused.

27. In the present case, the evidence on record was grossly inadequate to hold that the accused-appellant was the one, who had, either alone or in furtherance of common intention of some others, caused death of Srikant. At the rate, in the context of the facts as discernible from the evidence on record, the accused-appellant ought to have been accorded, at least, benefit of doubt.

28. Because of whatever has been discussed and pointed out above, we allow this appeal. The impugned conviction of the accused-appellant and the sentence passed

against him by the judgment and order, under appeal, is hereby set aside. The accused-appellant is held not guilty of the offence, which he stands convicted of, and he is hereby acquitted of the same under benefit of doubt.

29. Since the accused-appellant is on bail, his bail bonds are hereby cancelled and his sureties shall stand discharged.

30. Let the Amicus Curiae be paid a fee of Rs. 5,000/-.

31. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J.)

(Gopal Prasad, J.)

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