

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 13 of 1993

(Against the Judgment/Order dated 19th December, 1992 passed by 6th
Additional District and Sessions Judge, Arrah in Sessions Trial No. 152 of
1990)

Arising Out of PS.Case No. -181 Year- 1989 Thana -Behea District- BHOJPUR

Dular Chand Yadav, Son of Gambhira Yadav, resident of Village- Manjhaulia,
Police Station- Behea in the District of Bhojpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 55 of 1993

Arising Out of PS.Case No. -181 Year-1989 Thana -Behea District- BHOJPUR

1. Ram Bhaju Yadav
2. Tapeswar Yadav
Sons of Gulab Chand Yadav, resident of Village- Manjhaulia, Police Station-
Behea, in the District of Bhojpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 13 of 1993)

For the Appellant/s : Mr. Akhileshwar Prasad Singh, Sr. Adv.
Mr. Surya Swetabh Advocate.
Mr. Abhishese Anand, Advocate
For the State : Mr. Ashwani Kumar Singh, A.P.P.
Mr. Shwesh Chandra Mishra, A.P.P.

(In CR. APP (DB) No. 55 of 1993)

For the Appellant/s : Mr. Akhileshwar Prasad Singh, Sr. Adv.
Mr. Surya Swetabh Advocate.
Mr. Abhishese Anand, Advocate
For the State : Mr. Ashwani Kumar Singh, A.P.P.
Mr. Shwesh Chandra Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 26-03-2015

These two criminal appeals arise out of judgment and order dated 19.12.1992 passed by the 6th Additional District and Sessions Judge, Arrah in Sessions Trial No. 152 of 1990 whereunder the three appellants have been convicted for the offence under Section 302/34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life.

2. The prosecution case as set out in the Fardbeyan of informant Ishwar Dayal Yadav recorded by S.I., R. S. Prasad, Officer Incharge, Behea P.S. on 11.12.1989 at 9.00 P.M. in Behea hospital is that the informant and his brother Suresh Yadav had returned home after ploughing their field and were attending to their cattle. The accused appellants came to the cattle shed of the informant and caught hold his brother Suresh Yadav, who was assaulted with a dagger by Ram Bhaju Yadav and Tapeswar Yadav, both sons of Dular Chand Yadav. Informant was chased and also assaulted by the two assailants with the dagger. In the *fardbeyan* itself, it has been stated that the accused no. 1, Dular Chand Yadav is the uncle of the informant and the motive behind the occurrence is land dispute and it is said that few days earlier daughter of the informant damaged the pulse crop in the field of the accused persons for which an altercation has taken place between the accused and the deceased Suresh Yadav. On the basis of the *fardbeyan* Behea P.S. Case No. 181 of 1989 dated 11.12.1989 was instituted by the scribe of the *fardbeyan* who having recorded



the *fardbeyan* got the fardbeyan attested by Dasrath Paswan, proceeded with the investigation. Having conducted the investigation by performing the inquest proceeding and examining the witnesses as also after collecting the postmortem report Investigating Officer submitted chargesheet against the three named accused in the *fardbeyan*. After supply of the police paper case was committed to the Court of Session and the charges were framed against the three accused appellants on 04.08.1990 to which they pleaded not guilty and claimed to be tried.

3. In support of the charge prosecution examined as many as 11 witnesses out of whom P.W. 1 Ram Jiwan Singh Yadav is the father of the deceased, P.W. 2 Sushila Devi is the wife of the deceased, P.W. 3 Arti Devi is the wife of the informant, P.W. 4 Ishwar Dayal Yadav is the informant, P.W. 5 Dr. Manoj Kumar Ranjan is the Autopsy Surgeon, P.W. 6 Ramjee Singh and P.W. 10 Baleshwar Yadav have been tendered, P.W. 7 Dinesh Kumar is hostile, P.W. 8 Bhikhari Singh is a witness of the seizure, P.W. 9 Sesh Bahadur Yadav is a witness on the inquest report and has supported that inquest proceeding was conducted in his presence and that he put his signature over the inquest report. P.W. 11 Ram Swarath Prasad is the Investigating Officer of the case.

4. Learned counsel for the appellants assailed the finding recorded by the Court below and submitted that the

conviction of the three appellants is required to be set aside as the informant of the case P.W. 4 himself has not come to the witness box to support the case as from his evidence, it would appear that he has stated in paragraph-2 of his evidence that the occurrence has taken place one and a half year earlier around 6.00 P.M. in the evening when he along with his brother Suresh Yadav returned from the field and while they were attending to the oxen in the cattle shed, four unknown men came from the northern side and attacked them with a dagger but he could not identify any of the assailants. Learned counsel for the appellants further submitted that not only the informant but other eye witnesses i.e. P.W. 7 Dinesh Kumar has also not supported the prosecution case and there is no prosecution witness on whom this Court can place reliance in view of the evidence of the informant P.W. 4, P.W. 3 and P.W. 6 that P.W. 1 father of the informant i.e. Ram Jiwan Singh Yadav and P.W. 2 Sushila Devi, wife of the deceased were not in the P.O. village on the date of occurrence and they had gone to village Majhauri. Learned counsel for the appellants next submitted that soon after the occurrence, informant was taken to the Behea hospital and if his father P.W. 1 Ram Jiwan Singh Yadav and the wife of the deceased P.W. 2 Sushila Devi were available in the P.O. village, then they should have come forward to record the *fardbeyan* as the dead body of Suresh Yadav remained in the village all along which fact would appear from the inquest report

Exhibit 3/2. It is submitted that the informant being in the hospital and the dead body having remained in the P.O. village, the father and wife of the deceased available in the village, there was no impediment for the I.O. to have recorded the *fardbeyan* of P.W. 1 or P.W. 2 about the occurrence, had they been the eye witnesses of the occurrence.

5. Learned counsel for the State has opposed the submission. According to him, the informant suffered injuries in the present occurrence along with the deceased Suresh Yadav, and was removed to Behea hospital soon thereafter for treatment. Behea Officer Incharge, has been informed about the occurrence from Behea hospital. Behea Officer Incharge having learnt about the occurrence came to Behea Hospital first and recorded the *fardbeyan* of the informant and thereafter proceeding to the P.O. village where he conducted not only the inquest proceeding on the body of the deceased in the morning following the occurrence but also recorded the statement of the witnesses. In the light of the aforesaid submission learned counsel submitted that only because the father of the deceased and his wife P.Ws. 1 and 2 have not become the informant in the *fardbeyan*, their presence in the village cannot be disputed. The father of the deceased and his wife have categorically asserted in the evidence that they are eye witnesses of the occurrence as they were present in the house when the informant and the deceased were attending to the oxen in the

cattle shed and had the occasion to see the occurrence as such according to learned counsel for the State, the presence of P.W. 1 and 2 in the P.O. village as also the fact that they are the eye witnesses of the occurrence cannot be doubted.

6. We see substance in the aforesaid submission of the learned counsel for the State. Informant, P.Ws. 3 to 7 have not supported the prosecution case but only because they have chosen not to support the prosecution case, the version recorded by the father of the deceased and his wife cannot be disbelieved. Informant being the brother of the deceased and the witnesses being the co-villagers may in course of time chose not to support the occurrence but such fact cannot persuade us to ignore the testimony of P.W. 1, father of the deceased and P.W. 2, the wife of the deceased. Placing reliance on the testimony of P.Ws. 1 and 2, we hold that at the date, time and manner of occurrence as asserted by the prosecution is correctly deposed and the deceased Suresh Yadav was caught hold by Dular Chand Yadav whereafter the accused persons inflicted three dagger blows on his person. There had been no repetition of dagger blow by these appellants and the nature of the injury caused by them on the person of the deceased as found by the doctor in the autopsy report persuade us to convert their conviction from Section 302 to 304 Part-II I.P.C.

7. Having altered the conviction, we also modify the sentence of the three appellants to period already undergone

by them namely, Dular Chand Yadav who remained in jail custody for the period 13.12.1989 to 15.10.1990 and 19.12.1992 to 20.01.1993, Ram Bhaju Yadav from 13.12.1989 to 23.03.1992 and 19.12.1992 to 28.10.1994 and Tapeswar Yadav from 13.12.1989 to 28.09.1992 and 19.12.1992 to 15.04.1994 and direct that the same will suffice and direct that the three appellants having remained in jail for the aforesaid period be discharged of the liability of their respective bail bonds.

8. With the aforesaid modification in the conviction and sentence, the two appeals are dismissed.

(V.N. Sinha, J.)

(Ahsanuddin Amanullah, J.)

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