

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.168 of 1993

(AGAINST THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE, DATED 24.02.1993, PASSED BY SHRI BIRENDRA SINGH, 8TH ADDITIONAL SESSIONS JUDGE, MUNGER, IN SESSIONS TRIAL NO. 824 OF 1986, ARISING OUT OF SURAJGARHA POLICE STATION CASE NO. 84(4) OF 1986, CORRESPONDING TO G.R.NO.287 OF 1986).

=====

Muneshwar Yadav, son of Ganesh Yadav, resident of Village-Chandanpura, Police Station-Suryagarha, District-Munghyer.

.... Appellant

Versus

The State of Bihar

.... Respondent

=====

Appearance :

For the Appellant : None

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

For the Informant : Mr. Jai Prakash Singh, Advocate

Mrs. Arti Kumari, Advocate

Mr. Neeraj Kumar @ Sanidh, Advocate, as Amicus Curiae

=====

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

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

Date: 01-05-2015

Under the judgment and order, dated 24.02.1993, passed, in Sessions Trial No. 824 of 1986, by learned 8th Additional Sessions Judge, Munger, the accused-appellant, namely, Muneshwar Yadav, stands convicted under Sections 302 of the Indian Penal Code. Following his conviction, the accused-appellant has been sentenced to suffer imprisonment for life.

2. The case of the prosecution, as unfolded at

the trial, may, in brief, be set out as under:

(i) On 13.04.1986, at about 01:00 PM, when Indira Devi, wife of Tookan Yadav, along with the wife of accused Muneshwar Yadav, was washing dirty clothes at the well, which is claimed by the prosecution to be the well of deceased Ram Yadav, Munakwa Devi (PW 4), wife of Ram Yadav, went to the well and asked the other two women not to wash their dirty clothes at the well. This interruption led to exchange of hot words.

(ii) Hearing the altercation of his wife with the said two female persons, Ram Yadav went to the well and asked Indira Devi and the wife of accused Muneshwar Yadav not to wash their dirty clothes at the well.

(iii) At that point of time, accused Ganesh Yadav and accused Muneshwar Yadav came out of their house abusing Ram Yadav. While accused Muneshwar Yadav was carrying a *farsa* (a sharp-edged weapon) in his hand, accused Ganesh Yadav was holding a *lathi* in his hand and, on being exhorted by accused Ganesh Yadav, accused Muneshwar Yadav gave a blow, by means of *farsa*, on the head of Ram Yadav, who suffered incised wound on the left parietal region of his scalp.

(iv) Being so assaulted, Ram Yadav fell down and became unconscious. In injured condition, Ram Yadav was brought to State Dispensary, Suryagarha, where he was



examined and treated by the doctor (PW 5). While Ram Yadav was lying, under treatment at the said State Dispensary, Prayag Yadav (PW 3), son of Ram Yadav, orally informed the police about the occurrence, the informant's version was reduced into writing as his *fardbeyan* and, treating the same as First Information Report, Surajgarha Police Station Case No.84 of 1986 was registered, under Sections 326/307/109 of the Indian Penal Code, against 02 (two) accused persons, namely, accused Muneshwar Yadav and accused Ganesh Yadav.

(v) During investigation, injured Ram Yadav succumbed to his injuries, whereupon Section 302 read with Section 34 of the Indian Penal Code was added to the case aforementioned. Inquest was held on Ram Yadav's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, *charge-sheet* was laid, under Sections 302/109 read with Section 34 of the Indian Penal Code, against 02 (two) accused persons, namely, (1) Muneshwar Yadav and (2) Ganesh Yadav.

3. At the trial, a charge, under Section 302 read with Section 34 of the Indian Penal Code, was framed against the 02 (two) accused persons, namely, (1) Muneshwar Yadav and (2) Ganesh Yadav. To the charge so framed, both the accused pleaded not guilty.

4. In support of their case, prosecution

examined as many as 06 (six) witnesses. The accused were, then, examined under Section 313 (1) (b) of the Criminal Procedure Code and, in their examinations aforementioned, the accused persons denied that they had committed the offence, which was alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced on behalf of the defence.

5. While accused Ganesh Yadav has been acquitted by the learned trial Court, accused Muneshwar Yadav, having been found guilty of the offence, under Section 302 of the Indian Penal Code, has been convicted accordingly. Following his conviction, sentence has been passed as mentioned above.

6. Aggrieved by his conviction and the sentence passed against him, the convict aforementioned has preferred this appeal.

7. We have heard Mr. Neeraj Kumar Sanidh, learned Counsel, appearing as *amicus curiae*, and Mr. Ajay Mishra, learned Additional Public Prosecution, appearing for the State. We have heard also Mr. Jai Prakash Singh, learned Counsel, appearing for the informant.

8. While considering the present appeal, it may be noted that *post mortem* examination on the dead body of Ram Yadav was, admittedly, performed, on 17.04.1986, at

09:00 AM, at Patna Medical College and Hospital's mortuary, and the *post mortem report* (Exhibit 3), revealed thus:-

"The following ante mortem injuries were found:

(1) Stitched wound of size 3" x ½" x bone deep was found placed in antero-posterior direction on the left parietal region of the skull.

(2) Massive haematoma underneath the scalp was found all over.

(3) Depressed cominutated fracture of size 2" x 1 ½" was found on the left parietal bone.

(4) Linear fracture 5" in length involving the left temporal bone was found.

(5) Linear fracture of size 10" was found involving the left and right parietal and right temporal bones of the skull.

(6) Massive extradment and subdued haematoma was found on both temporal-parietal regions of the brain surfaces.

(7) Brain was congested."

9. In the opinion of the doctor, the cause of death was the head injury, which was sustained by the said deceased. As regards the weapon of assault, the doctor could not give any definite opinion due to surgical interference of the wound aforementioned.

10. A close scrutiny of the medical evidence on record clearly shows that the said deceased had sustained one blow on his head. This apart, what we notice, according to the

evidence of the doctor (PW 5), who had, admittedly, on 13.04.1986, at about 04:15 PM, examined Ram Yadav, at State Dispensary, Suryagarha, found one incised wound measuring 3 1/2 x 1/2" on the head of Ram Yadav, the injury having been caused by a sharp-cutting weapon, which may even be a *farsa*.

11. Bearing in mind that the said deceased had been given one blow with a sharp-edged weapon, when we come to the ocular evidence on record, we notice that out of the witnesses examined by the prosecution, PW 2, PW 3 and PW 4 are claimed to be eyewitnesses. While PW 4 is the widow of the said deceased, PW 3 is the son of the said deceased and also informant of this case; so far PW 2 is concerned, he is one of the neighbours of the informant.

12. Let us, now, determine the veracity of the evidence, given by the informant (PW 3), that he had witnessed the occurrence of assault on his father at the hands of the accused-appellant. This witness's evidence is that on the day of the occurrence, at about 1 o'clock in the afternoon, when dirty clothes were being washed by the daughter-in-law of accused Ganesh Yadav, Indira Devi, Munkawa Devi (PW 4), widow of the said deceased, asked Indira Devi not to wash dirty clothes there. At the same time, PW 4 also asked, accused Muneshwar Yadav's wife, who, too, was washing clothes there, not to wash clothes at the well and this obstruction led to



abusive words being used by both sides and when Ram Yadav came and asked Indira Devi and wife of accused Muneshwar Yadav not to wash clothes at the well, accused Muneshwar Yadav came armed with *farsa* along with accused Ganesh Yadav and, on being asked by accused Ganesh Yadav, accused Muneshwar Yadav assaulted Ram Yadav by means of a *farsa* and, as a result thereof, Ram Yadav fell down and became unconscious, whereupon the accused persons fled away.

13. It is in the evidence of PW 3 that his father was, then, taken to Surajgarha Hospital, where he succumbed to his injury. It is also in the evidence of PW 3 that the police had arrived before his father died and recorded his (i.e., PW 3) statement in the form of *farbeyan*, which is Exhibit-1.

14. We may pause here to point out that, according to the evidence of PW 6, the Investigating Officer, on 13.04.1986, he received a slip from the State Dispensary, Surajgarha, that Ram Yadav was lying injured there and he, then, having made Station Diary Entry No.280, dated 13.04.1986, came to the said hospital, at 6.45 PM, and recorded the *fardbeyan* of Prayag Yadav (PW 3).

15. From the evidence of PW 6, it is clear that he had not been informed that Ram Yadav had suffered injury at the hands of accused Muneshwar Yadav and accused Ganesh Yadav.

16. Be that as it may, the question still remains as to whether PW 3 can be believed to be an eyewitness to the occurrence, though he has claimed, in his evidence, that he was present, at the place of occurrence, when the occurrence took place.

17. In his cross-examination, we notice that PW 3 has denied that he had stated before the police that his father had been given two blows on his head by accused Muneshwar Yadav. However, the Investigating Officer (PW 6) has proved that PW 3, Prayag Yadav, had, in his statement recorded during investigation, did state that the said deceased was given two blows on his head.

18. From the evidence of PW 3, which we have depicted above, it becomes abundantly clear that having realized that the said deceased was found to have sustained one injury on his head, PW 3 has made improvement upon his previous statement and tried to describe as if he had seen one blow being given on the head of the said deceased at the hands of accused Muneshwar Yadav.

19. Situated thus, we find that PW 3 cannot be described as a reliable witness and even if we choose not to reject his evidence outright as evidence of a wholly unreliable witness, his evidence will fall, at best, in the category of those witnesses, who are neither wholly reliable nor wholly unreliable

and the evidence of a witness of this category cannot be accepted as true unless his evidence is found to have been corroborated by some credible independent evidence, direct or circumstantial.

20. Coming to the evidence of PW 2, we notice that according to him, when the said two women were washing clothes, PW 4 went there and asked them not to wash their dirty clothes. This interference led to exchange of abusive words, whereupon Ram Yadav came there and asked the said two women not to wash their clothes and, at that point of time, accused Ganesh Yadav and accused Muneshwar Yadav came and, while accused Ganesh Yadav was armed with *lathi*, accused Muneshwar Yadav was armed with *farsa* and on being asked by accused Ganesh Yadav, accused Muneshwar Yadav gave a blow, by means of *farsa*, on the head of Ram Yadav, Ram Yadav fell down and became unconscious and the accused fled away. The evidence, which has been so given by PW 2, runs contrary to the evidence of PW 1 inasmuch as PW 1 does not claim that Ganesh Yadav was armed with *lathi*.

21. When we turn to the evidence of PW 4, we notice that, according to her evidence, when Indira Devi and the wife of accused Muneshwar Yadav were washing clothes at the well, she (PW 4) went to the well and asked the said two women not to wash their dirty clothes there and, on her asking



the said two women not to wash their dirty clothes at the well, exchange of abuses and altercation ensued and, then, her husband (the deceased) came there to persuade the said two ladies not to wash their dirty clothes there and, at that point of time, accused Ganesh Yadav and accused Muneshwar Yadav came there and, then, on being asked by accused Ganesh Yadav, accused Muneshwar Yadav gave a blow, by means of *farsa*, on the head of her husband, who fell down and became unconscious.

22. It is also in the evidence of PW 4 that her husband died, while he was in the hospital and that her son had seen the occurrence.

23. We have already pointed out above that as far as informant (PW 3), who is son of the PW 4, is concerned, he cannot be treated to be a wholly reliable witness and his evidence would, at best, fall in the category of those witnesses, who are neither wholly reliable nor wholly unreliable.

24. When we examine closely the evidence of PW 1, PW 2 and PW 4, we notice that, according to their evidence, blood had fallen at the place of occurrence. The objective finding of the Investigating Officer, however, shows that he did not find any blood at or near the said well.

25. We cannot, therefore, ignore the repeated suggestions, which had been offered to the prosecution

witnesses by the defence at the trial, that no occurrence had taken place at or near the well. The inference, which is inescapable, is that neither PW 2 nor PW 4 can be regarded as a wholly reliable witness and no implicit reliance can be placed on their evidence.

26. What crystallizes from the above discussion is that none the three so-called eyewitnesses, namely, PW 1, PW 2 and PW 4, can be treated as a wholly reliable witness and even if their evidence is not rejected outright as evidence of wholly unreliable witnesses, their evidence would fall, at best, in the categories of those witnesses, who are neither wholly reliable nor wholly unreliable.

27. 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.

28. The evidence of the eye-witnesses, 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.

29. It is also an undisputed position of law that one infirm witness cannot be treated to have corroborated the evidence of another infirm witness meaning thereby that witnesses of same brand cannot be taken to have corroborated each other. Thus, when a witness is *neither wholly reliable nor wholly unreliable*, his evidence cannot be taken to have been corroborated by a witness of the same brand, namely, a witness, who is *neither wholly reliable nor wholly unreliable*, for, evidence is not to be counted, but weighed. It is not the number of the witnesses, which determines the outcome of a trial; rather, it is the inherent falsity or truth of the evidence given by the witness, which decides the outcome of trial. If each one of a large number of witnesses is found to be *wholly unreliable*, their evidence cannot become acceptable as true merely because a large number of similar brand of witnesses has corroborated each other.

30. A reference, with regard to the above position of law, may be made to the case of **Muluwa, S/o**

Binda and others Vs. The State of Madhya Pradesh (AIR 1976 Supreme Court 989), wherein the Supreme Court has observed as follows :

"It is elementary that the evidence of an infirm witness does not become reliable merely because it has been corroborated by a number of witnesses of the same brand; for, evidence is to be weighed not counted. Since the evidence of P.Ws. 5 and 6 suffered from the same infirmities as that of Smt. Jugatia, it cannot be said that the trial Judge had no basis, whatsoever, for stigmatising it as unreliable."

(Emphasis is added)

31. Situated thus, it is clear that merely because PW 1, PW 2 and PW 4, claiming themselves to be eye-witnesses, have given evidence attributing assault on the said deceased at the hands of accused-appellant, namely, Muneshwar Yadav, by means of *farsa*, their evidence cannot be made basis for holding them truthful witnesses.

32. At any rate, in the light of the nature of the evidence on record, the prosecution could not have been held, and ought not to be held, to have proved their case beyond reasonable doubt against the accused appellants.

33. In the result and for the foregoing reasons, 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 offences, which he stands convicted of, and he is hereby acquitted of the same under benefit of doubt.

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

35. Let the *Amicus Curiae* be paid a fee of Rs.5000/-.

36. 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)

(Vikash Jain, J)

N.A.F.R.
Pawan/-

U		T	
---	--	---	--