

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.500 of 2010

Arising out of PS.Case No.-85 Year-2007 Thana-Bhawanipur District-PURNIA

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Din Bandhu Yadav, Son of Late Gholatu Yadav, Resident of Village Lila Teliyari,
P.S. Bhawanipur, District Purnea.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant : Shri Neeraj Kumar @ Sanidh, Amicus Curiae
For the State : Shri Dilip Kumar Sinha, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 24-06-2015

The solitary appellant Din Bandhu Yadav challenges the judgment of conviction and order of sentence passed against him by the learned 3rd Additional Sessions Judge, Purnea in Sessions Trial No. 169 of 2008 by which the appellant was convicted of committing the offence under Section 302 of the Indian Penal Code and was directed to suffer rigorous imprisonment for life as also to pay an amount of Rs. 25,000/- as fine else to suffer rigorous imprisonment for one year.

2. Yamuna Prasad Singh (P.W.5) the father of deceased Indu Prasad Yadav lodged the report by giving his *fardbeyan* to S.I. Bharat Bhushan (P.W.8) on the 30th of August, 2007. It was stated by P.W.5 that while he was sitting at his *Darwaza* with his son Indu Prasad Yadav (deceased), this appellant came there and started talking



to the deceased. During that course the appellant is said to have stated to the deceased that he had come after earning money from outside and as such, he should feed him and also give some money to him for his expenses. The deceased retorted by pointing out that he earned money after investing labour and he was not likely to waste it on feeding the appellant or purchasing drinks for him. The appellant is said to have threatened the deceased by telling him that he would come back again after half an hour at 5.30 P.M. with other accused persons, such as Santosh Yadav, Giranand Yadav, Naresh Yadav, Mauju Yadav and Akhilesh Sah. The accused persons are said indeed to have arrived by two motorcycles, one black and the other of red colour. They parked their vehicles near the tri-junction of the road which was east of the house of the informant and this appellant is said to have fired blank by the Double barrel breach load (DBBL) gun.

3. The informant stated that at that particular time besides the deceased and himself, his sons Subodh Prasad Yadav (P.W.3), Binod Prasad Yadav (P.W.2) and Arjun Yadav Prasad Yadav (P.W.1) were also sitting there at the *Darwaza* and they were talking to each other. This appellant with accused Santosh Kumar Yadav, who was also armed with a country made gun, came to the *Darwaza* of the informant carrying his DBBL gun, while the other accused persons kept standing on the road. The present appellant started asking the



deceased to come down his *Darwaza* which was refused by the deceased as a result of which the present appellant Din Bandhu Yadav and accused Santosh Kumar Yadav are said to have come over the *Darwaza* to drag the deceased out of it and further, with the help of other accused persons, altogether took him to the road near the house of Kamo Yadav (not examined). People from the village started converging upon the place after hearing the *Hulla* and the deceased also started offering resistance on being taken away and also started scuffling upon which this appellant Din Bandhu Yadav is said to have fired a shot by his DBBL gun as a result of which deceased Indu Prasad Yadav fell on the ground and died there, whereafter the accused persons sped away from the place of occurrence by using the two motorcycles by firing shots indiscriminately.

4. As regards the motive for the commission of the murder of Indu Prasad Yadav, P.W.5 stated that the deceased used to live outside and used to entertain the present appellant in feeding and providing drinks to him and when the appellant had asked him to do the same favour to him, the deceased refused as a result of which he was killed by the present appellant.

5. In spite of having recorded the *fardbeyan* P.W.8 did not take up the investigation himself. It was S.I. Ambika Prasad Singh who took up the investigation and during that course he held inquest



upon the dead body and prepared the inquest report (Ext.5). S.I. Ambika Prasad Singh dispatched the dead body for post-mortem examination and as may appear from the evidence of P.W.8, he recorded the statements of the witnesses and further got their statements recorded under Section 164 Cr.P.C. The said S.I. Ambika Prasad Singh had not been examined and as such, we do not have the full description of the place of occurrence. In spite of the non-examination of S.I. Ambika Prasad Singh, P.W.8 stated that there was no recovery of any cartridge case from the place of occurrence but there was some seizure of blood stained earth from the place of occurrence as also some clothes which were worn by the deceased and the seizure memo in that behalf were prepared. The memo was marked Ext.1. However, what appears from his evidence is that after completing the investigation as regards the present appellant the charge sheet was submitted for his trial which ultimately ended in the impugned judgment.

6. The defence of the appellant was that the deceased was a man of lewd behaviour. He went into the hamlet resided by *Santhal* people and attempted to outrage the modesty of one of the girls there which triggered an attack by the *Santhals* upon the deceased to kill him. Thus, what was pleaded by the appellant was that the deceased had not been killed by him or any of the accused.



7. Eight witnesses were examined during the course of the trial. Arjun Yadav (P.W.1), Binod Prasad Yadav (P.W.2) and Subodh Yadav (P.W.3) were the full brothers of the deceased and son of P.W.5 the informant Yamuna Prasad Yadav. Reena Devi (P.W.4) was the wife of the deceased. We have already pointed out that the informant of the case was examined as P.W.5, namely, Yamuna Prasad Yadav. Dr. Rajesh Bharti (P.W.6) had held postmortem examination on the dead body of the deceased and had issued the postmortem examination report (Ext.2). Bhuliya Devi (P.W.7) was the mother of the deceased. As pointed out earlier Bharat Bhushan (P.W.8) had recorded the fardbeyan of the informant and had remained present throughout the investigation which was conducted by S.I. Ambika Prasad Singh.

The defence examined 6 witnesses all of whom deposed to a single fact that the deceased, a man of lewd behaviour, had on the date of occurrence entered into the hamlet resided by *Santhals* and had attempted to outrage the modesty of a girl there and incurred the wrath of the *Santhals* who came together to kill him.

8. After considering the evidence both of the prosecution and the defence, the impugned judgment was rendered by the learned trial Judge.

9. Finding that the learned counsel whose name appeared

in the cause list was not appearing in spite of being contacted by the Court Master on his cellular number, we were forced to request Shri Neeraj Kumar @ Sanidh to assist us in hearing the present appeal. This is how we have heard the present appeal.

10. Shri Sanidh took us through the evidence of the witnesses. Shri Sanidh was drawing our attention to the evidence of P.Ws. 1, 2 and 3 to their respective paragraphs 16, 3 and 29 to submit that there was already an information given by the informant himself to the police station either personally or telephonically and that information was suppressed by P.W.8 or the police to foist a false case upon the appellant. It was contended that the present First Information Report was hit by mischief of Section 162 Cr.P.C. and whatever information was given by P.W.5 as per P.Ws. 1 and 2 was the First Information Report. It was contended in this connection that the fabrication of the First Information Report smacks of foul play for implicating the appellant falsely. Shri Sanidh was also drawing out attention to P.Ws. 7 and 3 in their respective paragraphs 13 and 9 to submit that they had never been questioned by the police and as such their evidence must be eliminated from consideration. As regards the evidence of other witnesses Shri Sanidh was pointing out that all the witnesses were the family members of the deceased, either being his brother, wife or parents, and as such the Court must not act on their



evidence to sustain the conviction. Shri Sanidh by citing before us a judgment of this Court reported in 2015 (2) PLJR 79 in the case of the *State of Bihar vs. Rajendra Mahalda* was submitting that whatever the form and content of the information given personally or telephonically, was the First Information Report and the present report was hit by Section 162 Cr.P.C.

11. Shri D.K. Sinha, the learned Additional Public Prosecutor appearing for the State was controverting the submissions advanced by Shri Sanidh by citing before us (1997) 1 SCC 283 (*Binay Kumar Singh Vs. State of Bihar*) that each and every information could never be treated as a First Information Report unless it was fulfilling the criteria of being such a report as appears from Section 154 Cr.P.C. Shri Sinha was castigating the submission of Shri Sanidh by pointing out that even accepting the evidence of P.W.1 in paragraph-16 and P.W.2 in paragraph-3, those statements do not indeed satisfy those criteria of Section 154 Cr.P.C. and as such the present First Information Report could not be hit by Section 162 Cr.P.C. Shri Sinha was again submitting that the Court must not exclude from its consideration the evidence of P.Ws. 3 and 7 as there was no basic foundation led by the defence by cross examining the two witnesses to show that they had purposely avoided to be questioned by the police. Submission was that merely because they had not met the police after



one a particular day, could not be sufficient and enough factual data to exclude their evidence from consideration. It was, thirdly, contended by Shri Sinha that the evidence is consistent so much so that not even a single fact was brought on record as contradiction and the oral testimony of witnesses, like, P.Ws. 1, 2, 3, 4, 5 and 7 was getting support from the medical evidence of P.W.6 Dr. Rajesh Bharti.

12. P.W.1 in paragraph-16 stated that P.W.8 arrived at the place of occurrence within 2½ hours of the incident and that his father (i.e., P.W.5) had gone to inform the police. P.W.1 also stated that his father was first to come back whereafter the police had come from the police station which was at a distance of about 3 K.M. from the village. P.W.2 in paragraph-3 of his deposition stated that his father had given telephonic information to the police about the incident. When he was put a question as to what was the number of the cell phone the witness P.W.2 stated that his father had used the cell phone of Manoj the *Sarpanch* of the *Panchayat* and as such, he could not tell the cell number, whereafter the police had arrived in between 9 or 9.30 P.M. As regards the evidence of P.W.3 he stated in paragraph-29 that he did not know as to whether any information had been given to the police or not by anyone. Thus, what we, firstly, find is that the evidences of the above three witnesses were not only contradictory to each other but was not leading to any concrete conclusion that indeed



there was an information. If the Court is finding facts diametrically contradictory to each other on the single point, then the Court has to reject the evidence of those witnesses on that part as the diametrically opposed statements of three witnesses could not be leading it to any concrete conclusion and should only be creating confusion in its mind in raising any definite inference. Apart from the above what we find is that in *State of Bihar vs. Rajendra Mahalda* (supra), the Court had taken a view that the evidence on record did not disclose as to when the information which was received at Halka police station had brought the police to the place of occurrence and what was the information which had impelled the police of Halka police station to arrive at the place of occurrence. The Court has held in spite of that in *Rajendra Mahalda* (supra) that if the police had arrived at the place of occurrence on receiving information about offence or offences which were cognizable then the information, which was so received by the police and set thereby the machinery of law into motion ought to be treated as the First Information Report. We are not going to make any comment on the above observation which was laid down by the Division Bench of the Court in the case of *State of Bihar Vs. Rajendra Mahalda* (supra). We want simply to refer to *Binay Kumar Singh* (supra). A similar submission was raised before the Supreme Court in that case and the Supreme Court was answering that submission in

respect to the submission raised before their Lordships that the statement of P.W.32 Sukhdev Bhagat in *Binay Kumar Singh* (supra) ought to have been treated as First Information Report in place of Ext.10/3 which was treated as the real First Information Report by the learned trial judge as also by this Court which had decided the death reference and the batch of criminal appeals which ultimately reached finality in *Binay Kumar Singh* (supra). We think it appropriate to extract the facts of the case and the proposition of law which was laid down by the Supreme Court in paragraphs- 8 and 9 which run as under:

“8. Learned counsel pointed out that neither the trial court nor the High Court has treated Ext. 14 (statement of PW 32 Sukhdev Bhagat) as forming the FIR in this case, instead the statement made by PW 36 Rabindra Bhagat which was marked as Ext. 10/3 was treated as the FIR. True it is, that before the Sub-Inspector of Jehanabad Police Station (PW 42 Kalika Prasad) could record the statement of Sukhdev Bhagat (PW 32) some information had already reached the police station when Rabindra Bhagat (PW 36) went there by early morning. It has been marked as Ext. 10/3. That information was entered in the station diary in the following words:

“At this time Rabindra Bhagat, son of Soharai Bhagat, resident of Paras Bigha, P.S. Jehanabad came to police station accompanied by Bhangi Yadav, resident of Village Titai Bigha and gave the information that the sons (probably he meant sons and grandsons) of late Ram Niranjana Sharma had collected, with large number of persons in his village and they had set fire to the houses and piles of straw and had also resorted to firing. He had fled away seeing the fire and he was not aware of the full facts as to what had happened.”

“9 But we do not find any error on the part of the police in not treating Ext. 10/3 as the first information statement for the purpose of preparing the FIR in this case. It is evidently a cryptic information and is hardly sufficient for discerning the commission of any cognizable offence therefrom. Under Section 154 of the Code the information must unmistakably relate to the



commission of a cognizable offence and it shall be reduced to writing (if given orally) and shall be signed by its maker. The next requirement is that the substance thereof shall be entered in a book kept in the police station in such form as the State Government has prescribed. First information report (FIR) has to be prepared and it shall be forwarded to the magistrate who is empowered to take cognizance of such offence upon such report. The officer in charge of a police station is not obliged to prepare FIR on any nebulous information received from somebody who does not disclose any authentic knowledge about commission of the cognizable offence. It is open to the officer-in-charge to collect more information containing details about the occurrence, if available, so that he can consider whether a cognizable offence has been committed warranting investigation thereto."

As may appear from the above two paragraphs of *Binay Kumar Singh* (supra) a statement in order to qualify as the First Information Report in a case has to fulfill certain criteria which emerge from Section 154 Cr.P.C. Those criteria were pointed out by the Supreme Court by referring to a number of earlier decisions of the Apex Court and it was held under the similar circumstances as are obtained presently to us that mere information which could not be cryptic or which could not be giving the details so as to fulfilling the criteria of Section 154 Cr.P.C. could not be treated as the First Information Report. Thus, what we find is that the submission of Shri Sanidh based on *State of Bihar Vs. Rajendra Mahalda* (supra) could not be upheld as the Apex Court has taken a view different from what was taken by this Court in *State of Bihar vs. Rajendra Mahalda* (supra).

We in fact do not have even a semblance of factual data



which could convince us that in fact there was any concrete statement given by anyone. Merely informing the police about an incident of killing having taken place in a village or in ones family could not, in our opinion, qualify as to be treated as the First Information Report unless it fulfills all the characteristics of being such a report as per Section 154 Cr.P.C. and as was pointed out by the Apex Court in *Binay Kumar Singh* (supra). Thus, we do not find any merit in this submission of Shri Sanidh that there was any report and the present report was a fabricated report. Not only 154 Cr.P.C. but the provisions of Section 157 Cr.P.C. permits the police not to investigate a case by registering the First Information Report if it does not find the genuine necessity of proceeding to investigate into the report which could have been made to it by some person. This is very much clear from the proviso (b) appended to Section 157 Cr.P.C. which directs that if it appears to the Officer-in-Charge of a police station that there is no sufficient ground for entering into an investigation, he shall not investigate the case. Thus, the finding of the Apex Court that in spite of having received an information in respect of commission of a cognizable offence, the police was still empowered not to register a case and rather to proceed to the place of occurrence to gather more information regarding the commission of the offence and then to decide whether a report under Section 154 Cr.P.C. was required to be



registered. The above discussion, in our opinion takes appropriate care of the submission of Shri Sanidh. Even if we accept that the police had some information as appears the case presently also, still P.W.8 was not obliged under law to register a report under Section 154 Cr.P.C. rather he appears justified in moving out of the police station to come to the village of occurrence to find out as to what was the reality behind that information and then to decide whether any statement or report was to be recorded or registered. We cannot in a general way and by conjecturise many things held that *fardbeyan* Ext.2 and the First Information Report Ext.4 were fabricated, antedated document. We do not have satisfactory material and indeed we find that those two basic records were genuinely prepared by P.W.8.

13. So far as the submission of Shri Sanidh on the need to exclude the evidence of P.Ws. 3 and 7 is concerned, we again find ourselves not persuaded to do so. P.W.3 has stated in paragraph-31 that he police had examined the witnesses in the night itself and he was not questioned during that night and further that he could not meet the police thereafter. But, what we find from his evidence in paragraph-30 is that he stated that the police had come at 9 P.M. in the night and he dispatched the dead body for post-mortem examination and then the witness had accompanied the dead body up to Purnea. By



reading the evidence of P.W.3 in paragraphs- 30 and 31, we do not find that any attempt was made by the police to question him and further that P.W.3 had avoided to be queried or questioned by the investigating officer. He did not meet the police officer subsequently after having seen him on the date of occurrence, but what we find is that P.W.8 was pointing out that the statements of witnesses were recorded by the investigating officer. Merely putting a question whether he had met the police officer subsequently also could never justify ourselves to raise an inference that he was never questioned by the police. The fact which was brought on record through the evidence of P.W.8 indicates that witnesses who were cited as such for the prosecution by the police were duly questioned by the police and their statements were also duly got recorded under Section 164 Cr. P.C. by a Magistrate. P.W.3 was never suggested that he had not made any statement either to a police officer who had investigated the case or to the Magistrate before whom he could have been produced for giving his statement. We find ourselves not in a position to draw an inference on the above reasons that P.W.3 had not been examined by the police. As regards the evidence of P.W.7 he had stated in paragraph-9 that he did not meet the *Daroga* till date. This fact is again not sufficient in our opinion to draw any inference. But still out of abundant caution, we have proceeded to exclude the evidence of

both P.W.s 3 and 7 so that the appellant could not feel aggrieved that we were using evidence of such witnesses who could not have answered the police when they were questioned.

14. We have proceeded to examine the findings recorded by the learned trial Judge by reading the evidence of P.Ws. 1,2, 4 and 5. Arjun Yadav (P.W.1), Binod Prasad Yadav (P.W.2) were the full brothers of the deceased whereas Reena Devi (P.W.4) was the wife of the deceased. Yamuna Prasad Yadav (P.W.5) was the informant and father of the deceased. They were family members of the deceased and as such we have to approach their evidence with quite some amount of caution and while applying caution in reading the evidence of these witnesses i.e., P.Ws. 1, 2, 4 and 5, what we could find was that their presence was natural because the very prosecution case indicated that these witnesses, specially, P.Ws. 1, 2 and 5 along with the deceased were sitting at the *darwaza* when this appellant had arrived there to ask the deceased to dole out some money or to feed or purchase drink for him. The occurrence had taken place in their presence when the deceased was dragged out by this appellant and Santosh Yadav forcibly out from the *darwaza* for being taken to the road near the house of one Kamo Yadav. It was evening time of 5.30 P.M. and in a rural village it is always found that at such a time when the day ends, family members do assemble together to discuss family



matters especially the one related to agricultural operations. While we were considering the evidence of P.W.5 in cross-examination he had stated that he was discussing as to what was to be done on agricultural front the next day. It appears a very natural statement as all the family members of the deceased were not employed otherwise than they were engaged in their agricultural operations. In addition to the above they do not appear any bit disposed otherwise towards the present appellant. No record was placed either through evidence or directly before the Court below indicating that the informant or any of his family members was bearing any enmity towards any of the accused persons. These are some of the features of the evidence of these witnesses which we have kept in our mind while proceeding to appreciate the prosecution evidence.

One aberration which was pointed out by Shri Sanidh was appearing in the evidence of P.W.5. P.W.5 had stated in examination-in-chief that this appellant had come firstly, at about 5.00 P.M. to demand the payment of money from the deceased who had come back home after earning money somewhere else and when the deceased had refused, he again came with other accused persons at 5.30 P.M. When he was cross-examined in his very first line of cross-examination, the informant pointed out that the appellant had come only once. We do not attach much importance to this aberration keeping in our mind that



it was not such a statement which could be creating a defect in the prosecution case as important as to reject either his evidence or to view the prosecution story with doubt. It is a mere aberration which might have come on record on account of the pressures which a witness experiences during cross-examination specially when he had dual with a crafty counsel in the Court room. The fact remains that the initial version was supported by P.W.5 that this appellant had come firstly at around 5.00 P.M. and thereafter 5.30 P.M. The same story has been narrated by P.Ws. 1, 2 and 4. They have also stated the same story and they have further supported the informant P.W.5 by stating that when there was refusal by the deceased to pay up money to the appellant, the appellant came back with arms and some companions and he himself with Santosh Yadav dragged out the deceased from his *darwaza* to take him to the road to shoot him dead. The evidence is so prefect and without any blemish that it has convinced us that the manner of occurrence was exactly the same as was narrated by the witnesses who had seen it happening by their own eyes.

The evidence of P.W.6 Dr. Rajesh Bharti lent support to the oral testimony when it was pointed out by the doctor that he had found a lacerated wound with irregular margin over anterior axillary fold on left side of upper part of chest with extension of the wound. It was measuring 4"x3"x3" and was deep up to the loss of muscles and



fibres. After dissection P.W.6 had found the left lung lacerated and the right lung pale. Thoracic cavity was full of blood and blood clot was present there. Nine pillets were recovered from the wound and those were sealed. In the opinion of P.W.6, the death had resulted due to haemorrhage and shock due to the chest injury which was caused by gun shot.

Shri Sanidh was pointing out to us by referring to us that there was one black spot below the left nipple measuring 1½ " in diameter and was further submitting that it was yet another injury which was caused by gun shot. We very carefully considered the submission of Shri Sanidh and with rapt attention we also appreciated the evidence of the doctor P.W.6. We find that the doctor did record the finding of one black spot below the left nipple as pointed out by him, but it was merely a 'spot' and it was never an injury and this opinion of ours gets further reinforced from the fact that there was nothing found on dissection under that particular 'spot' which could convince the doctor to render an opinion that it was an injury which was caused by a gun shot or by any other weapon or means. That being the position as regards the submission of Shri Sanidh on finding by P.W.6 the black spot, we do not have any hesitation in pointing out that the injury which was recorded by P.W.6 was caused by a single gun shot as stated by him in his evidence and that was sufficient as

appears from the very description of the doctor to cause death.

15. Thus, what we find is that the oral testimony of P.Ws. 1,2, 4 and 5 is not only consistent but gets ample corroboration from the evidence of doctor P.W.6.

16. We also feel obliged to discuss and consider the defence of the appellant. The appellant had pleaded before the Court below that the deceased was a man of lewd behaviour and he had entered into a hamlet resided by *santhals* and had attempted to outrage the modesty of a girl there and had incurred the wrath of the *santhal* people so much so that he was shot and killed. Six witnesses were indeed examined by the defence in support of the above plea, but what could we could have desired under the circumstances was that either any *santhal* could have come to depose about the veracity of the defence plea. It could have been more desirable if that very girl who was attempted to be outraged in her modesty should have been brought in the witness box. The law is very trite that any defence which is against the proved facts could not be accepted by any Court. The defence of course has to succeed on mere showing the probability of its version, but after considering the evidence of the six witnesses we felt that it was a mere ploy probably to upset the fully corroborated and established charge and keeping that in view we are not inclined to accept the defence version.

17. After having considered the evidence both of the prosecution and the defence and after having analyzed the same in light of the submission we are of the view that the conviction of the appellant was fully justified on the evidence produced by the prosecution. The charge had been established to the hilt by establishing the participation of the appellant in commission of the murder of Indu Prasad Yadav.

18. In the result, the appeal appears meritless and the same is dismissed.

(Dharnidhar Jha, J.)

(Ahsanuddin Amanullah, J.)

Sanjay/P.Kumar/AFR

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