

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.135 of 1993

Arising Out of PS.Case No. 166 Year- 1989 Thana - Jamui District- JAMUI
Against the judgment, dated 06.03.1993 passed by Shri Nirmalendu Kumar Kanth Niraj, Additional
Sessions Judge, I, Jamui, in Session's Case No. 80 of 1990/131 of 1919

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1. Faudi Yadav, son of late Chulho Yadav	
2. Kesho Yadav, son of Jibu Yadav, all residents of village Lagma, P.S. Jamui, district Jamui	 Appellants
	Versus
The State of Bihar	 Respondent
	With

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Criminal Appeal (DB) No. 152 of 1993

Arising Out of PS.Case No. -null Year- null Thana -null District- JAMUI

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1. Bhuna Yadav, son of Hari Yadav	
2. Arjun Yadav, son of Saurangi Yadav	
3. Jibu Yadav, son of Ganauri Yadav, all residents of village Lagma, P.S. Jamui, district Jamui	 Appellants
	Versus
The State of Bihar	 Respondent

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Appearance :

(in both the cases)

For the Appellants :M/S Bharat Lal & Rabindra Kumar, Advs.

For the State : Mr. Dr. Maya Nand Jha, Addl.P.P.

For the informant :M/S Rana Pratap Singh No. 2 & Ranvijay Narain Singh, Advs.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE GOPAL PRASAD)

Date: 30-01-2015

These two appeals are heard together and disposed of through this common judgment since they arise out of the judgment in Session's Case No. 80 of 1990/131 of 1991 on the file of Additional District and Sessions Judge, I, Jamui. The session's case is in retaliation of Jamui P.S. Case No. 166 of 1989, G.R. No. 1125 of 1989.

2. The case of prosecution, before the trial Court was that on 17.09.1989 at 05.30 p.m., P.W. 6, Bipin Singh, went to south-east of his village Lagma to irrigate the paddy crop and in the meantime his brother, Praveen Kumar (deceased) proceeded towards south of the canal to answer the call of nature and when he proceeded to some distance, 5-6 persons, who concealed themselves, caught hold of his

brother on which his brother made alarm (hulla) to save him. Then, P.W. 6 is said to have noticed the incident and started to make alarm (hulla) and then he saw, accused persons, Faudi Yadav, Kesho Yadav, Jibu Yadav, Arjun Yadav, Bhuna Yadav and Hari Yadav, all residents of village Lagma, over powering his brother, Praveen Kumar, and taking him away along the bund. He saw Faudi Yadav and Kesho Yadav, armed with sword, and others armed with lathi. The informant, out of fear concealed himself and watched the occurrence and did not go to the place of occurrence. Two-three persons caught hold of the hands and legs of the brother of the informant and Faudi Yadav and Kesho Yadav assaulted him by sword on the back, shoulders, arms, hands and legs indiscriminately. The brother remained crying and rolling in pain. The further case that Faudi Yadav stated that victim is alive, kill him and all the rest accused persons, Arjun Yadav, Jibu Yadav, Hari Yadav, Bhuna Yadav started assaulting by lathi and when his brother got unconscious, then, all the accused persons fled away towards their homes. The, further, case is that on alarm (hulla) of the informant several persons of village Bithalpur and Lagma, who were irrigating their lands in and around saw the occurrence includes Raghunandan Singh (P.W. 2), Narendra Kumar (P.W. 4), Shailendra Singh (not examined), Binod Singh (P.W. 3) and other came to the place of occurrence by the time the accused persons fled away. The informant when saw that the villagers are coming to the place of occurrence, the informant dared to go to see his brother and come to place of occurrence and saw his brother having injury of sword on his brother and clothes besmeared with blood and the earth stained with pool of blood. The, further, case is that the informant seeing his brother unconscious carried him on cot to Subdivisional Hospital, Jamui, where he was treated. The further case of prosecution that the Medical Officer, Subdivisional Hospital, Jamui, issued O.D. slip to the Police Station and the Assistant Sub Inspector of Police, Maheshwar Pandey, was deputed, but, the fardbeyan was not recorded as deceased, Praveen Kumar, was unconscious. After the death of Praveen Kumar at 12.00 in the mid



night he again has issued O.D. slip, then, the fardbeyan of the informant was recorded at 02.15 hours on 18.09.1989 at Subdivisional Hospital, Jamui, Male Ward, Bed No. 20 and first information report drawn at 04.00 a.m. First information report received by the Chief Judicial Magistrate on 22.08.1989. The motive for the occurrence alleged that there was dispute between Faudi Yadav and deceased (Praveen Kumar) with regard to fixing of khunta (anvil) about one month back and since then Faudi Yadav was threatening that he will kidnap Praveen Kumar when he will find him alone, regarding which an information was given to the Sub Divisional Court, Jamui.

3. After lodging of the first information report the investigation proceeded, the inquest report prepared, post mortem conducted, the statements of the witnesses were recorded and subsequently the charge sheet submitted by the police. After submission of the charge sheet the cognizance was taken, case committed to the Court of session, the charges were framed under Sections 302 and 148 of the Penal Code against Faudi Yadav and Kesho Yadav and against other accused persons the charges were framed under Sections and 302/149 of the Penal Code as well as under Section 147 of the Penal Code. During the trial ten witnesses were examined on behalf of the prosecution. The documents marked as Exhibits 1 to 9 have also been proved. No evidence, oral or documentary, has been adduced on behalf of the defence.

4. The defence of the accused is that no occurrence as alleged occurred. The victim was assaulted somewhere and he was taken to Hospital by some one else and in the Hospital the victim died. The prosecution party learnt about the death and then in the morning the first information report lodged ante time after due deliberation and consultation in collusion with police.

5. The trial Court, taking into consideration the evidence of the witnesses, the facts and circumstances and the documentary evidence, convicted and sentenced the appellants the appellants Faudi Yadav and Kesho Yadav have been convicted under Section 302 of the Penal Code and sentenced to undergo rigorous imprisonment for

life with a fine of Rs.2000/- and in default to undergo rigorous imprisonment for one year and have, further, been convicted under Section 148 of the Penal Code and sentenced to undergo rigorous imprisonment for two years, remaining three appellants, Bhuna Yadav, Arjun Yadav and Jibu Yadav have been convicted under Section 302/149 of the Penal Code and sentenced to undergo rigorous imprisonment for life and have, further, been convicted under Section 147 of the Penal Code and sentenced to undergo rigorous imprisonment for one year.

6. The learned counsel for the appellants has challenged the order of conviction and sentence on the ground that there is delay in lodging the first information report. Neither the informant nor the witnesses are the eye witnesses and the first information report lodged after due deliberation in collusion with the police. Neither the place of occurrence has been established nor the informant stated from where he learnt and saw occurrence and nor the police recorded the blood in case diary at the place of occurrence nor objective evidence found. The first information report lodged after due deliberation and consultation. The witnesses are tutored and gave a vague and omnibus description of occurrence. Hence, prosecution has not been able to prove the case beyond reasonable doubt.

7. The learned counsel for the State submitted that the witnesses have supported the prosecution case. The trial Court has rightly convicted the appellants as prosecution proved the case beyond reasonable doubt.

8. The prosecution case in the first information report that at the time of occurrence the informant was in his paddy field and on hearing hulla he came on road and then saw the occurrence that 5-6 overpowering the victim taking him towards Ahar having armed with sword and then out of fear he concealed himself and saw the occurrence, however, in his evidence in paragraph 27, the informant, P.W. 6, says that the accused persons chased him to kill then he concealed himself. There is no case of informant in the first information report that he was chased by accused persons and, hence,

prosecution developed the present case. He has, further, stated that in paragraph 16 that he can not say the khata number, khesra number nor even the boundary of the field. He has, further, stated he can not say the distance of the pitch road from that field. He has, further, stated that he can not say the distance between his house and the field. He can not say the name of persons whose field lies in between his home and the field. Hence, the witness making evasive reply unable to say the place from where he heard the alarm (hulla) on which he went to pitch road from where he saw the occurrence, hence, hid evidence does not inspire confidence. This evidence about the occurrence is also general and vague without narration of the occurrence that who hold the hand and who hold the leg and who assaulted on what part of body. Hence, his narration about the occurrence unfolding the truth suffers from vice general and omni bus allegation to believe him to be an eye witness.

9. He in his further evidence in paragraph 33 has stated that he loaded his brother on cot at 05.30 P.M. and P.Ws. 2, 3 and 4 stated that they took the victim to Hospital. In paragraph 34 he says that he reached Hospital at 06.30 P.M. In paragraph 35 he says the distance of Hospital and Police Station can be covered within two minutes. In paragraph 38 he stated that police had come to Hospital from Jamui Police Station within ten minutes of their arrival and police had seen his brother, the victim. Police wrote something and went away. However, neither the fardbeyan recorded nor the prosecution has brought any contemporaneous document about any recording by police at about 06.30 to 07.00 P.M. neither fardbeyan recorded nor the first information report lodged, whereas the prosecution case is that informant, P.W. 2, P.W. 3 and P.W. 4 and others brought the victim to Hospital and on O.D. slip the police came within ten minutes, but, first information report was not recorded till 02.30 A.M. cast a serious doubt on prosecution case. This witness has stated in paragraph 36 that he did not send any one to Police Station. There is no reason for not reporting the police when Police Station is by the side of the Hospital.

10. P.W. 8 in his evidence stated in paragraph 2 that information of the occurrence was given by Medical Officer, Subdivisional Hospital, Jamui, on which Assistant Sub Inspector of Police, Maheshwar Pandey was deputed, but, he could not record the statement of Praveen Kumar as he was unconscious and in paragraph 17 of cross examination has stated that other were not present there to record his statement. Hence, from these evidences it is apparent that either the witnesses were not present at Hospital at the time of the victim was brought there or prosecution deliberately did not make statement as up to the time they were not sure who are the accused and to whom they should make accused and due deliberations were made to concoct the false story. They neither gave the statement when police came nor they went to Police Station to record the first information report.

11. However, in view of evidence of P.W. 6, the informant, in paragraph 38 that the police came to Hospital within ten minutes, seen his brother and even writing of something is believed, but, no such writing has been produced in evidence, hence, the prosecution case again become doubtful as the initial version or evidence collected can well be said to have been concealed by prosecution.

12. However, coming to the evidence of P.Ws. 2, 3, 4 and 5 who have come to support the case of prosecution, their evidence about occurrence is only to the effect that on alarm (hulla) they seen six accused persons named were assaulting Praveen Kumar, Faudi Yadav and Kesho Yadav assaulted him by sword and other assaulted him by lathi, hence, the evidence of these witnesses are parrot like statement without any description of the details of narration unfolding the truth who assaulted on what part, hence, this evidence does not confine evidence to believe to have seen the occurrence. P.W. 1 is not an eye witness and is only a hear-say. His evidence about place of occurrence is by side of road.

13. P.W. 8 in his evidence about Place of occurrence has stated that he has not made any map. He has, further, stated in



paragraph 8 of his deposition that at the place of occurrence on the land surface he saw sign of dragging and blood stain in about five feet and three places blood stain earth at a distance of one and half feet. He, further, stated that he seized the blood stained earth. However, in his cross examination he has stated that at the time of inspection of place of occurrence the informant, Bipin Kumar, was not there. He has, further, stated in his evidence at paragraph 23 that he had seized the blood stained earth. He has stated in the case diary about seizure from three places. He did not think it necessary to make seizure list of blood stained earth. The said seized blood stained earth is not produced in Court. He did not send the blood stained earth to the chemical examination. He did not mention the name before whom he seized the blood stained earth in the case diary as he did not make seizure list. He did not seize the blood stained clothes of the deceased. Hence, from the evidence it is apparent that though the veracity of the witness about finding of the blood suffers from infirmity to be believed when he stated that he has not mentioned the same in case diary and he did not neither prepare any seizure list nor the send the same to chemical examination nor produced the same in Court. Hence, finding of the blood at the place of occurrence also becomes doubtful.

14. Hence, having regard to the fact that the witnesses though claimed o have seen the occurrence, but, their statements suffer from the defect of parrot like statement without narration of the minute details unfolding the truth as to who caught his hand and who caught his leg and who dragged him to suggest the manner of occurrence and their evidences are general and omni bus, the description of place of occurrence suffers from contradiction as P.W. 1 stated that the dead body found by side of pitch road in paragraph 11 whereas evidence of other witnesses is down to Ahar on the back and further the police alleged to have found the blood at place of occurrence seized, but, neither prepared seizure list nor mentioned about the same in the case diary nor sent the same for chemical examination nor produced the same in the Court, cast a serious doubt

about place of occurrence and this followed with the evidence of the informant evading to mention the description of his land not only the khata number and khesra number, but, even unable to say the boundary of his paddy field where he was at the time of occurrence and even the distance of same from place of occurrence from his house or even the pitch road from where he claimed to come to see the occurrence cast a serious doubt about the prosecution case and this followed with delay in lodging the first information report and sending the same to Chief Judicial Magistrate Court a serious doubt about the prosecution case to be earliest version to lend assurance that prosecution case suffers from concoction and result of due deliberation and true version has been concealed to probablize the defence set by prosecution, hence, we are of the view that the accused persons are entitled the benefit of doubt as the prosecution has not been able to prove the case beyond reasonable doubt and, hence, the order of conviction and sentence is set aside and the accused persons are ordered to be acquitted of charges and the **appeals are allowed**. Since the appellants are on bail, they are discharged from the liabilities of their bail bonds.

(L. Narasimha Reddy,CJ)

(Gopal Prasad, J)

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