

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction and order of sentence, dated 13.10.1993, passed by Vikash Kumar Sharma, 2nd Additional Sessions Judge, Saharsa in Sessions Trial No. 16 of 1986/ 04 of 1987, arising out of Nawhatta P.S. case No. 29 of 1982, G.R. No. 270 of 1982)

Criminal Appeal (DB) No.494 of 1993

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Shri Prasad Yadav, son of Buchan Yadav, resident of Village- Sataur, P.S.- Nauhata, District- Saharsa	 Appellant
Versus	
The State of Bihar	 Respondent
WITH	

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Criminal Appeal (DB) No. 555 of 1993

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Maheshwari Yadav, son of Rasik Lal Yadav, resident of Village- Sataur, P.S.- Nauhata, District- Saharsa.	 Appellant.
Versus	
The State of Bihar	 Respondent.
WITH	

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Criminal Appeal (DB) No. 556 of 1993

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Jai Narayan Yadav, son of Rasik Lal Yadav, resident of Village- Sataur, P.S.- Nauhata, District- Saharsa	 Appellant.
Versus	
The State of Bihar	 Respondent.

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Appearance :

(In all the appeals)

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Advocate.
 Mr. Rajesh Kumar Singh, Advocate.
 Mr. Birendra Kumar Singh, Advocate.

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

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

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 08-07-2015

All the three appeals have been preferred against the judgment and order, dated 13.10.1993, passed by the learned 2nd Additional Sessions Judge, Saharsa, in Sessions Trial No.

16 of 1986/ 04 of 1987, convicting the accused appellants, namely, Shri Prasad Yadav, Maheshwari Yadav and Jai Narayan Yadav, under Section 302 read with Section 34 of the Indian Penal Code. Following their conviction, the accused appellants have been sentenced to suffer imprisonment for life.

2. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:

(i) The informant, Bindeshwari Yadav (P.W.9), son of Kari Yadav (deceased), resident of village Sataur, gave his *fardbayan*, on 20.03.1982, at about 2.30 PM, at Nauhatta Police Station, stating to the effect, *inter alia*, that he owns a piece of land measuring 5 ½ Kathas situated west of his house and, out of these 5 ½ Kathas, he had grown crops on 2 ½ Kathas, whereas 3 Kathas remained fallow. On the previous day, i.e., 19.03.1982, at around sun set, Jai Narayan Yadav was tying his mares in the fallow land of the informant, which was objected to by his father, Kari Yadav (deceased), leading to exchange of words. Both soon returned to their respective houses. After some time, Jai Narayan Yadav, Maheshwari Yadav and Shri Prasad Yadav came to the informant's house variously armed with weapons. Jai Narayan Yadav was armed with *Mungari*, whereas Maheshwari Yadav and Shri Prasad Yadav were armed with *lathis* and, on the order of Shri Prasad Yadav, Maheshwari Yadav caught hold of the informant's father and Jai Narayan Yadav gave Mungari blow on the head of



informant's father, on account of which informant's father sustained injury and fell unconscious. According to the informant, Chhotkan Yadav (P.W.3), Jagdish Yadav (P.W. 5) and Amru Yadav (not examined) had witnessed the occurrence. The informant, with the help of his co-villagers, took his father to Kundah Hospital for treatment, where he was kept for the whole of the night. In the morning, the injured, Kari Yadav, was taken to Saharsa hospital on the advice of the doctor of Kundah hospital inasmuch as blood was oozing out of his mouth, nose and head. The informant, then, brought his father to Nauhatta police station, where his *fardbeyan* was recorded giving rise to Nauhatta P.S. Case No. 29 of 1982, dated 20.03.1982, under Section 325 read with Section 34 of the Indian Penal Code to which Section 304 read with Section 34 of the Indian Penal Code was added, when the informant's father, Kari Yadav, died in the intervening night of 24/25-03-1982.

3. Inquest was held over the dead body of the informant's father, which was also subjected to *post mortem* and, on completion of the investigation, a *charge sheet* was laid, under Section 302 read with Section 34 of the of the Indian Penal Code, against the accused aforementioned.

4. The learned trial Court framed charge under Section 302 read with Section 34 of the Indian Penal Code against all the three appellants to which they pleaded not guilty.



5. The prosecution, in support of its case, examined 9 witnesses, namely, P.W. 1 (Kedar Paswan), who is a Chaukidar and had accompanied the deceased to the hospital, P.W. 2 (Jago Mochi) is a tendered witness, P.W. 3 (Chhotkan Yadav) is an uncle of the informant, who has claimed to be eye witness to the occurrence and whose name has appeared in the First Information Report, and P.W. 4 (Mahendra Yadav) is another witness, who has claimed to have seen the occurrence. However, his evidence has disbelieved by the learned trial Court. P.W. 5 (Jagdish Prasad Yadav) is cousin of the deceased, who, too, has claimed to have seen the occurrence and has been named in the First Information Report. P.W. 6 (Dr. J. B. Singh) has conducted *postmortem* on the dead body of informant's father, on 25.03.1982, at Sadar Hospital, Madhepura. P.W. 7 (Kumar Yadav) is the father-in-law of the deceased, who is said to have accompanied the deceased to the hospital. P.W. 8 (Sri Krishna Rai) is the investigating officer of the case. P.W. 9 (Bindeshwari Yadav) is the son of the deceased and the informant of the case and he, too, has claimed to have witnessed the occurrence.

6. The defence examined one witness, namely, Dr. Prem Kant Jha on the plea of *alibi*. This plea of *alibi* was not accepted by the learned trial Court on the ground that the plea of *alibi* had not been taken before the investigating officer by the accused aforementioned.

7. The case of the defence, in the light of the statement, under Section 313 of the Code of Criminal Procedure, was complete denial of the occurrence and false implication on account of land dispute.

8. The learned trial Court, on consideration of the materials on record, convicted the appellants under Section 302 read with Section 34 of the Indian Penal Code and sentenced to suffer imprisonment for life.

9. Being aggrieved, the appellants have preferred separate appeals challenging the common judgment of conviction and order of sentence.

10. As noticed earlier, the prosecution, in order to substantiate its case, examined 9 witnesses; out of these witnesses P.W.1 (Kedar Paswan), Chaukidar of the village, and P.W. 7 (Kumar Yadav), father-in-law of the deceased, are *hearsay* witnesses.

11. P.W. 3 (Chhotkan Yadav), an uncle of the informant, P.W. 4 (Mahendra Yadav), an independent witness, P.W. 5 (Jagdish Prasad Yadav), a cousin of the deceased, and P.W. 9 (Bindeshwari Yadav) have claimed to be eye witnesses to the occurrence.

12. It is relevant to point out that out of the four witnesses, who have claimed to be eye witnesses, P.W. 4 (Mahendra Yadav) has been disbelieved by the learned trial Court and we, too, have no reason to hold him reliable.

13. P.W. 1 (Kedar Paswan) is a local Chaukidar, P.W. 2 (Jago Mochi) is a tendered witness and P.W. 7 (Kumar Yadav), father-in-law of the deceased, are on the point of accompanying the injured, Kari Yadav, to the hospital for treatment. P.W. 6 (Dr. J. B. Singh) conducted the *postmortem* on the dead body of the deceased Kari Yadav and P.W. 9 (Bindeshwari Yadav) is the investigating officer of the case.

14. The informant (P.W. 9) has stated in his evidence that his father has 5½ Kathas of land situated at a short distance from his house on the west. They had grown paddy and maize crops over 2 ½ Kathas of the said plot, while the remaining 3 kathas of land is fallow land and had been left so for growing grass under personal supervision for future use. In the evening of 20.03.1982, accused Jai Narayan Yadav stacked his mare in the fallow land to which his father objected, which led to altercation. Both of them, later on, returned to their respective houses; but after some time, Jai Narayan, along with Maheshwari and Shri Prasad Yadav, came armed to the informant's house. Jai Narayan Yadav was carrying a *Mungari* (a heavy wooden log), whereas Maheshwari Yadav and Shri Prasad Yadav were armed with *lathis*. It is in the evidence of the informant (PW 9) that on being asked by accused Shri Prasad, accused Maheshwari Yadav caught hold of the informant's father and Jai Narayan Yadav inflicted *Mungari* blow on his head, as a result of which informant's father sustained

grievous injuries and became unconscious. The informant claims to have seen the occurrence from the door of his house.

15. P.W. 3 (Chhotkan Yadav) is the uncle of the informant. He, too, has stated that on the alleged day of occurrence, he was sitting at the door of his house, which is situated adjacent to the *darwaja* (i.e., door) of the deceased. On hearing *halla*, he went to the *darwaja* of the deceased and witnessed the entire occurrence. This witness has stated that accused Shri Prasad Yadav ordered to assault, whereupon Maheshwari Yadav caught hold of the deceased and Jai Narayan Yadav gave Mungari blow on the head. He has stated that accused persons assaulted the deceased, as he had objected to stacking of the mare by Jai Narayan Yadav in his field.

16. P.W. 5, Jagdish Prasad Yadav, is a cousin of the deceased. He, too, has supported the prosecution case.

17. The prosecution has examined Dr. J. B. Singh (P.W. 7) in support of its case that deceased Kari Yadav died on account of blow inflicted on his head by hard and blunt substance said to have been given by accused Jai Narayan Yadav. P.W.7, who conducted autopsy on the dead body of Kari Yadav, on 25.03.1982, at Madhepura Hospital, found the following *ante mortem* injuries on his person:

"(i) *Lacerated wound 1" x ½" x scalp
deep on left temporal region.*

On dissection of the wound, big haematoma was found present under the scalp. On opening cranial cavity, extradural and subdural haemorrhage was present in the left side of cranial cavity. However, other vital organs of the deceased's body were intact."

18. According to the doctor, the cause of death was haemorrhage and haematoma caused as a result of the above mentioned injury. In the opinion of the doctor, the injuries were sufficient, in ordinary course, to cause death.

19. The evidence of the doctor establishes the prosecution's case to the extent that the deceased died on account of injuries inflicted on his head by hard and blunt substance. The defence has not disputed the identity of the dead body on which autopsy was held by P.W. 6 on the relevant date.

20. On the strength of these evidence, the prosecution submits that the accused persons, with a common object, came to the house of the deceased and killed him as the deceased had objected to stacking of mare in his field and, thus, the learned trial Court has rightly convicted the appellants under Section 302 read with Section 34 of the Indian Penal Code.

21. The defence has argued that all the witnesses are highly interested and partisan witnesses, they all being very



close relatives of the deceased. It is submitted, on behalf of the appellants, that the appellants have been falsely implicated on account of land dispute as Thithar Mandal, grand father of the accused persons, had sold some land to the deceased, vide sale deed, dated 12.11.1970, which was, later on, cancelled as the latter had not paid the consideration amount. It is next submitted, on behalf of the appellants, that there was no repetition of blow and as such, it cannot be said that the accused persons, who were all armed, had the intention to kill the deceased. It is further submitted, on behalf of the appellants, that there has been inordinate delay of 9 days in placing the First Information Report before the Court, which creates a doubt regarding sanctity of the First Information Report.

22. We find that the First Information Report was lodged, on 20.03.1982, at 2.30 P.M., at Nawhatta police station, but the same was first seen by the Chief Judicial Magistrate after nine days. The Supreme Court, in the case of ***State of Orissa v. Brahmananda Nanda***, reported in (***AIR 1976 SC 2488***) has held that as per the mandate of the law, the First Information Report shall be forthwith transmitted to the Magistrate.

23. In the instant case, we find that there has been inordinate delay of 9 days in producing the First Information Report before the Magistrate. The prosecution has not provided



any explanation for the delay in forwarding the First Information Report to the Magistrate. The reasonable possibility of the First Information Report having been lodged on mutual consultation and deliberations cannot be boldly and confidently ruled out. The possibility of false accusations or of implicating innocent person(s) along with guilty ones can also not be ruled out. It is a serious lapse on the part of the prosecution and this aspect appears to have escaped the attention of the learned trial Court.

24. Coupled with the above, the deceased had suffered injury measuring 1" x 1/2" x scalp deep and there was no sign of previously treatment given to the deceased prior to *post mortem* examination, whereas the prosecution's case has been that the said deceased was treated both at Kudha and Saharsa hospitals. This is yet another serious infirmity with which suffers the case of the prosecution. This aspect also has remained unnoticed by the learned trial Court.

25. In the light of the evidence adduced by the prosecution, all the accused were armed and they came all the way from their house to the house of the deceased and yet only one blow was given on the head of the deceased by means of a blunt heavy substance. There is nothing to show that anyone stopped the alleged assailants from giving further blows on the deceased. This description of the occurrence is, thus, inherently unnatural and cannot be implicitly relied upon,

whereas the prosecution's case entirely depends on those witnesses, who are close relatives of the deceased.

26. Situated thus, we are clearly of the view and in the facts and attending circumstances of the present case, the accused-appellants ought to have been accorded, at least, benefit of doubt.

27. In the result, we allow these appeals. The impugned conviction of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offences, which they stand convicted of, and they are hereby acquitted of the same under benefit of doubt.

28. Since the accused-appellants are on bail, their bail bonds are hereby cancelled and their sureties shall stand discharged.

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

(Samarendra Pratap Singh, J.)

I. A. Ansari, J: I agree.

(I. A. Ansari, J.)

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