

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.433 of 1993

(Against the judgment of conviction, dated, 25th September, 1993, and the order of sentence, dated, 27th September, 1993, passed by Shri Ram Prit Pathak, 5th Additional Sessions Judge, Bhojpur at Arrah, in Sessions Trial No.504 of 1991, arising out of Barhara P.S. Case No. 06 of 1991).

- =====
1. Nirmohi Dom, son of late Ram Gulam Dom,
 2. Sheo Kumar Dom, son of Nirmohi Dom
 3. Kamta Dom, son of Nirmohi Dom
 4. Suraj Dom, son of late Banshi Dom
 5. Dara Dom, son of late Banshi Dom
 6. Shiya Dom, son of late Banshi Dom

All residents of village Parahia Police Station Barahara, district
Bhojpur

.... Appellants

Versus

The State of Bihar

.... Respondent

=====

Appearance :

For the Appellants : Mr. Vikram Deo Singh, Advocate

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

Mr. Suneil Kumar Thakur, learned counsel as *Amicus Curiae*.

Mr. Ashuman Singh, learned counsel 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: 21-07-2015

Under the judgment, dated 25th September, 1993,
passed, in Sessions Trial No. 504 of 1991, by learned 5th
Additional Sessions Judge, Bhojpur, at Arrah, the accused-



appellants, namely, Nirmohi Dom, Kamta Dom, Suraj Dom, Dara Dom and Shiya Dom, stand convicted under Section 302 read with Section 34 of the Indian Penal Code. Accused-appellant, Sheo Kumar Dome, has been convicted under section 302 of the Indian Penal Code. In consequence of their conviction, all the accused-appellants aforementioned stand, under the order, dated 27.09.1993, 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 first informant, Jarman Dome (PW 3), and his brother, Sonelal Dome (since deceased), had a dispute with the accused-appellants on the question of sharing of collection of toll tax from the cremation Ghat at Dashuchak. In order to resolve the dispute, a Panchayati (i.e. sitting for settlement of the disputes) was called, on 10.01.1991, at Dashuchak Ghat.

(ii) For the settlement of the said dispute, the members of the community belonging to the accused and the deceased were to come to, and assembled at, Nathmanpur Madhudahi. Though, both the parties to the dispute went to the said place on time, those, who were to mediate, did not arrive there. As a result thereof, both the parties started to leave for

their respective villages.

(iii) When both the parties aforementioned reached Nathmanpur, near the coal depot of Ambika Singh, it was about 5.30 P.M. At that time, accused Kamta Dome told Sonelal Dome that he (Sonelal Dome) would not be given any share at the said Cremation Ghat. Reacting to the remarks so made by accused Kamta Dome, Sonelal Dome asked Kamta Dome as to why he (Sonelal Dome) would not be given his share at the said Ghat.

(iv) Instead of replying to the query so made by Sonelal Dome, accused Nirmohi Dome exhorted his companions, namely, Sheo Kumar Dome, Kamta Dome, Surya Dome, Dara Dome and Shiya Dome to do away with Sonelal Dome, whereupon accused Kamta Dome, Surya Dome, Dara Dome and Shiya Dome caught hold of Sonelal Dome and accused Sheo Kumar Dome took out a knife from his pocket and stabbed Sonelal Dome on his chest. Sonelal Dome fell down on the ground and started bleeding profusely. As Sonelal's brother, Jarman Dome (i.e. the first informant), Rajmuni Devi, wife of Jarman Dome, and Surendra Ram, son of the first informant, raised *hulla*, people from the neighbourhood arrived and the accused persons fled away. Someone informed the police and on receiving the information about the fact that someone had been stabbed, the Investigating Officer (PW 7)

arrived at the place of occurrence and recorded there the statement of Jarman Dome as his *fardbeyan*. The police also held *inquest* over the said dead body which was, later on, subjected to *post mortem* examination.

(v) Based on the *fardbeyan* so recorded, Barhara Police Station Case No. 06 of 1991, for the offence, under Section 302 read with Section 34 of the Indian Penal Code, was registered against the accused persons.

(v) On completion of investigation, a *charge sheet* was laid, under Section 302 read with Section 34 of the Indian Penal Code against accused persons.

3. At the trial, a charge, under Section 302 read with Section 34 of the Indian Penal Code, was framed against all the accused. To the charge so framed, all the accused persons pleaded not guilty.

4. In support of their case, prosecution examined altogether 08 (eight) witnesses. The accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure, wherein the accused denied that they had committed the offence, which were alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced by the defence.

5. Having, however, found the accused guilty of the offence, which they stood charged with, learned trial Court

convicted them accordingly and passed sentence against them as mentioned above.

6. Aggrieved by their conviction and the sentence, which has been passed against them, the accused persons, as convicts, have preferred this appeal.

7. We have heard Mr. Vikram Deo Singh, learned Counsel, appearing for the appellants, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State. We have also heard Mr. Suneil Kumar Thakur and Mr. Anshuman Singh, learned Counsel, appearing as *Amicus Curiae*.

8. While considering the present appeal, what needs to be noted is that though the prosecution examined as many as 8 (eight) witnesses, there are only three witnesses, who have been examined as eyewitnesses, namely, the first informant, Jarman Dome (PW 3), his wife, Rajamuni Devi (PW 2) and his son, Surendra Kumar Ram (PW 1). Baikunth Prasad Yadav (PW 6) is the doctor, who had conducted the *post mortem* examination and Md. Aley (PW 7) is the Investigating Officer of this case.

9. Let us, first, take note of the evidence of the doctor (PW 6), who had, admittedly, performed *post mortem* examination on the dead body of Sonelal Dome, on 11.01.1991, at 10.30 A.M. According to the doctor, on

conducting *post mortem* examination, he found as follows:-

"(i) *Rigor mortis* were present in all over limbs.

External Wound:-

(ii) *One incised wound 2" x ½" x chest cavity deep on the left side of the chest.*

On dissection of the chest :-

(iii) *Pericardium is full of blood.*

Right auricle I is punctured 1" x ¼" x heart cavity deep.

The external wound leads to the heart cavity. Liver, lungs and kidneys are pale. Stomach contains about 6 ounces of semi digested food, bladder is empty."

10. In the opinion of the doctor (PW 6), death was due to shock and haemorrhage resulting from the abovementioned injuries, the injuries being sufficient, in the ordinary course of nature, to cause death. The doctor has also opined that the injuries, sustained by the said deceased, would have been caused by a knife. The *post mortem* report has been proved and marked as Exhibit 2.

11. While cross-examining the doctor (PW 6), nothing could be elicited by the defence to show that his findings were incorrect and/or improbable.

12. The finding of the doctor and/or his opinion, with regard to cause of death of the said deceased and/or his

opinion with regard to the nature of weapon, which might have been used, for causing assault on, and death of, the said deceased, were disputed either by the prosecution or by the defence. This apart, we, too, do not notice anything inherently incorrect or improbable in the evidence given by the doctor (PW 6).

13. The question, however, remains: whether the accused-appellants had caused the death of Sonelal Dome and thereby committed the offence of *murder* punishable under Section 302 read with section 34 of the Indian Penal Code?

14. Our quest for an answer to the above question brings us to the evidence of PW 1, son of the first informant (PW 3). This witness has deposed that on 10.01.1991, when they were returning from Dashuchak *Ghat*, where a Panchayati was scheduled to be held between the two parties with regard to collection of toll from Cremation Ghat and though he had accompanied his father, Jarman dome, his uncle, Sonelal Dome (since deceased), and his mother, Rajamuni Devi, to attend the said Panchayati and accused Nirmohi Dome, Kamta Dome, Sheo Kumar Dome, Dara Dome, Siya Dome, Suraj Dome, too, came to the place of Panchayati, the people of their community from Nandgram Nathmanpur and Madhudahi, who were to arrive to attend the said Panchayati, did not turn up. Consequently, according to the



evidence of PW 1, both the parties started returning home at about 4.30 P.M. and when they reached Keshopur Bridge, accused Kamta Dome told Sonelal Dome that he (Sonelal Dome) would not be given any share in the collection of toll at the Cremation Ghat. On the remarks so made, Sonelal Dome responded by saying as to why he would not be given his share and as soon as Sonelal Dome so responded to the remarks made by accused Kamta Dome, accused Nirmohi Dome exhorted his companions to do away with Sonelal Dome and, on being so exhorted, accused Kamta, Shiya, Dara, Suraj and Nirmohi Dome caught hold of Sonelal Dome and Sheo Kumar Dome took out a knife from his pocket and stabbed on the left side of the chest of Sonelal Dome. It is in the evidence of PW 1 that his uncle died on the spot and all the accused fled away. It is also in the evidence of PW 1 that when he shouted, many people came there and, later on, the police also arrived there and recorded his father's statement.

15. Close on the heels of the evidence of PW 1, Rajmuni Devi (PW 2) has deposed that while returning from Panchayati at about 5.30 P.M., accused Kamta Dome told Sonelal Dome that the latter would not be given any share and to the remarks so made by accused Kamta Dome, Sonelal Dome asked him as to why he would not be given share and, on this very utterance of Sonelal Dome, accused Nirmohi Dome

asked others to do away with Sonelal Dome, whereupon Suraj, Dara, Shiya, Nirmohi caught hold of Sonelal Dome and Sheo Kumar Dome took out a knife from his packet and stabbed Sonelal Dome on the chest, Sonelal died within two minutes of receiving the knife blow and the accused fled away.

16. Lending some support to the evidence of PW 1 and PW 2, PW 3 (Jarman Dome) has deposed that on returning from Dashuchak *Ghat* at 5.30 P.M., accused Kamta Dome told Sonelal Dome that he (Sonelal Dome) would not be given any share from the collection of the toll tax from Dashuchak Ghat and when Sonelal Dome asked accused Kamta Dome as to why he would not be given the share, accused Nirmohi ordered to kill Sonelal Dome and, on being so exhorted, accused Nirmohi, Shiya, Suraj, Dara and Kamta caught hold of the deceased Sonelal and, accused Sheo Kumar brought out a knife from his pocket and stabbed on the chest of Sonelal.

17. From the evidence given by PW 1, PW2 and PW 3, what transpires, broadly speaking, in their evidence, with regard to the occurrence, is that while they were returning from Panchayati on account of the fact that those, who were to mediate in the Panchayati, had not arrived, accused Kamta Dome told Sonelal Dome that he (Sonelal Dome) would not be given any share in the collection of tolls and when Sonelal



Dome asked as to why he would not be given his share, accused Kamta Dome exhorted others to do away with Sonelal Dome and, then, accused Nirmohi, Shiya, Suraj, Dara and Kamta caught hold of Sonelal Dome and accused Sheo Kumar took out a knife from his pocket and stabbed in the chest of Sonelal Dome. It is also in the evidence of these witnesses that they were only ones, who had witnessed the occurrence.

18. While considering the above evidence of PW 1, PW 2 and PW 3, what attracts our attention, most prominently, is that according to Exhibit-3, which has been treated as First Information report, apart from his wife, Rajmuni Devi (PW 2), and his son, Surendra Kumar Ram (PW 3), others came from nearby places, they witnessed the occurrence and if enquiring from them too, the people would reveal the truth, whereas, none other than PW 1, PW 2 and PW 3 has been examined as eyewitness as if none other than the three prosecution witnesses, namely, PW 1, PW 2 and PW 3, were came to the place of occurrence till the time the accused-appellants had run away.

19. Belying, however, what the first information report conveys, the evidence of PW 1 is that though there was *hulla*, nobody turned up and nobody responded. Not only PW 1, but even PW 2 and PW 3 have asserted that on the *hulla*, which was raised by them, no one turned up.



20. What logically follows from the evidence discussed above is that PW 1, PW 2 and PW 3 have sought to project, contrary to what the First Information Report conveys, that none other than PW 1, PW 2 and PW 3 had seen the occurrence and none arrived even when *hulla* was raised; whereas the First Information Report, as already indicated above, shows that the people from the neighbourhood did arrive at the place of occurrence.

21. Considering the fact that there was, admittedly, enmity between the first informant and his, brother Sonelal Dome, on the one hand, and the accused-appellants, on the other hand. Enmity is a double-edged weapon, which cuts both the ways. While enmity may be a reason for committing an offence, such as, murder, enmity may also be a reason for either falsely implicating an enemy as an accused or roping in an enemy, who may be innocent, along with the guilty ones.

22. In view of what has been indicated above, no implicit reliance can be placed on the evidence of PW 1, PW 2 and PW 3 unless they are found to be wholly reliable witnesses. In this regard, it is noteworthy that contrary to what was conveyed in the First Information Report, PW 1, PW 2 and PW 3 have, as indicated above, sought to project, at the trial, that none other than PW 1, PW 2 and PW 3 had either seen the

occurrence or had seen the accused-appellants fleeing away. Why PW 1, PW 2 and PW 3 have sought to project, contrary to what was conveyed by the First Information Report that they were the only ones who had witnessed the occurrence and none had arrived before the accused-appellants fled away? The evidence on record furnishes no answer.

23. Yet another question, which arises for determination, is whether the place, where dead body was found by the police, was the place, where occurrence had taken place?

24. While considering the above aspect of the case, it may be noted that it is in the evidence of PW 1 that the occurrence had taken place in the agricultural field where seeds had been sown. It is the specific evidence of PW 1 that the marks of foot-steps of the accused-appellants were left at the field, where occurrence had taken place, i.e. where Sonelal Dome had been caught hold of by accused Kamta, Shiya, Dara, Suraj and Nirmohi Dome and he was stabbed to death by accused Sheo Kumar Dome. In fact, not only PW 1, but even PW 2 has deposed that in the said field, seeds had already been sown. However, the Investigating Officer (PW 7) did not find any mark of foot-steps at the said place of occurrence nor did he find that the seeds, sown in the field, had been trampled over. This clearly shows that the description of the occurrence



given by PW 1, PW 2 and PW 3, alleging as many as 5 persons who had caught hold of the deceased and one person had stabbed the deceased to death, while all of them were standing in the agricultural field where seeds stood sown, no mark of foot-steps or seeds having been trampled over were found by the Investigating Officer (PW 7). The evidence of PW 1, PW 2 and PW 3 cannot, therefore, be readily believed.

25. The inference that the evidence of PW 1, PW 2 and PW 3 suffers from an admixture of half-truth and untruth and the truth, if any, is so inextricable mixed with the half-truth that it has become wholly impossible to disengage the truth from falsehood also becomes evident from the fact that the First Information Report clearly mentions that from the stab injury, which Sonelal Dome had sustained on his chest, profuse bleeding had taken place.

26. Completely belying the description of the occurrence given by the first informant to the effect that there was profuse bleeding from the injury, which was caused to Sonelal, it is in the evidence of PW 2, wife of the first informant, that no blood oozed out from the chest of Sonelal, who was found lying dead. It is in the evidence of PW 2 that she covered the injury of the deceased with the help of a *gamacha* (i.e., country towel) and though she claims that she had shown the blood-stained *gamacha* (i.e., country towel) to

the police, no such cloth, bearing blood-stained, was seized by the police. This apart, the Investigating Officer (PW 7) has denied that he had found any mark of blood at the place of occurrence or noticed any foot-step of anyone having trampled over the seeds sown at the place of occurrence.

27. Situated thus, we have no escape from the conclusion that the evidence, adduced by the prosecution, is unsafe and cannot be relied upon.

28. Apart from the evidence, which we have culled out, it is also equally important to note that there is no clear evidence as to what information has been received by the Investigating Officer (PW 7) which brought him to the place of occurrence inasmuch as the Investigating officer (PW7) has deposed that on 10.01.1991, he reached the place of occurrence on receiving information and recorded the *fardbeyan* of Jarman Dome (PW 3). What was the information received by the police remains a mystery inasmuch as the prosecution's evidence furnishes no answer thereto.

29. Even if, therefore, the evidence of PW 1, PW 2 and PW3 is not rejected outright, as evidence of wholly unreliable witnesses, their evidence would fall, at best, in the category of those witnesses, who are neither wholly reliable nor wholly unreliable.

30. 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.

31. The evidence of PW 1, PW 2 and PW 3, 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.

32. It is also an undisputed proposition 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.

33. 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 SC 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)

34. Situated thus, it becomes clear that merely because PW 1, PW 2 and PW 3 have given evidence corroborating each other's evidence, their evidence cannot be made basis for holding them truthful witnesses, when each one

of them is a witness, who is neither wholly reliable nor wholly unreliable, for, one infirm witness cannot be treated to have corroborated the evidence of another infirm witness.

35. Because of what has been discussed and pointed out above, we do not find that the evidence of PW 1, PW 2 and PW 3 could have been regarded as reliable evidence and their evidence could not have been made foundation for conviction of the accused-appellant. This apart, what was the information given to the police, which brought the police to the place of occurrence, remains a mystery. The question as to whether the accused-appellants' names have been revealed to the police, as the assailants, at the first point of time, is also not answered by the evidence on record.

36. Situated thus, we are clearly of the view that in the facts and attending circumstances of the present case, the accused-appellants, namely, Nirmohi Dom, Sheo Kumar Dom, Kamta Dom, Suraj Dom, Dara Dom and Shiya Dom, deserve to be accorded, at least, benefit of doubt.

37. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellants and the sentence passed against them by the judgment, under appeal, are hereby set aside. The accused-appellants, namely, Nirmohi Dom, Sheo Kumar Dom, Kamta Dom, Suraj Dom, Dara Dom and Shiya Dom, are held not guilty

of the offences, which they stood convicted of, and they are hereby acquitted of the same under benefit of doubt.

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

39. Let the *Amicus Curiae* be paid a fee of Rs. 5,000/- each.

40. 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.)

B.T/-

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