

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.656 of 2007

Arising Out of PS.Case No. -218 Year- 1989 Thana –Banka (Barahat) District- BANKA

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1. Bhudeo Chouhan son of Kali Charan Chouhan
2. Banarsi Chouhan son of Kali Charan Chouhan
Both resident of village Siripur, P.S. Barahat Dist. Banka

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr.Ram Adya Singh, Advocate.
For the State : Mr. Satyanarayan Prasad, APP.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 07-04-2015

I.A. No. 436 of 2015 has been filed stating therein that the appellant no.2, namely, Banarsi Chouhan, while serving the sentence, died on 24.04.2013, and in support thereof, the death certificate (Annexure-A) has been enclosed. However, the appellant no.2 was also inflicted fine with default clause. The appeal on his behalf, therefore, would not abate in toto.

Appellant Bhudeo Chouhan was tried with appellant Banarsi Chouhan by the Additional District and Sessions Judge, Fast Track Court-I, Banka, in Sessions Trial No. 33 of 1990/Tr. No. 119 of 2007, arising out of Banka (Barahat) P.S. case no. 218 of 1989 and held guilty under Sections 302/34 and sentenced to undergo R.I. for

life besides imposition of fine of Rs. 5000/- with default clause. Bhudeo Chouhan was also held guilty under Section 27 of the Arms Act and sentenced to suffer R.I. for five years. Both the sentences were directed to run concurrently.

The prosecution case as unfolded in the 'fardbeyan' of Jaso Devi (PW-6) recorded on 14.6.1989 at 05.30 hours at Barahat police station by the Sub Inspector of Police, in brief, is that she along with her husband (since deceased) arrived by train at Bhagalpur station at 8 PM. and thereafter boarded Mandar Hill train at 9.15 PM and reached Barahat station at about 10.30 PM. They alighted from the train and set out on foot for their village along with one Mewa Lal Das (PW-5), who was also going towards the same village. As they reached near the Gahira river, four accused persons sitting in ambush emerged from the bank of the river and surrounded them. One of them caught the informant and made her to sit at some distance. Two of them surrounded her husband and snatched torch from his hand. The informant claimed to have identified them as Bhudeo Chouhan and Banarsi Chouhan. Bhudeo Chouhan was holding pistol in his hand, whereas the appellant Banarsi Chouhan was carrying a dagger. Bhudeo Chauhan was grudging that her husband harboured several litigations against them and, therefore, he is to be killed. The informant beseeched them to spare his life and offered all her belongings but the accused



persons did not relent. Bhudeo Chouhan fired at her husband with pistol near his temple, whereas Banarsi Chouhan gave him a dagger blow. Two unknown accomplice assaulted her husband with lathi. On account of the injuries her husband fell on the ground. The accused persons thereafter snatched cash, nose pin and other belongings of the informant and escaped towards west. The informant noticed injury and blood oozing from right side temple of her husband. He was groaning under pain. With the help of Mewa Lal Das, she carried him to the upper bank of the river and sent Mewa Lal Das to village Siripur situated at a distance of 1.00 K.M. for help. Mewa Lal Das on reaching the village, informed the relatives, whereafter Suresh Chouhan (PW-1), Arbind Chouhan (PW-4), Kapil Chouhan (PW-3) and Rajendra Prasad Chouhan (PW-7) came for help. They had also brought a cot on which the injured was carried to the Barahat hospital for treatment. On way, the injured disclosed the names of his assailants as Bhudeo Chouhan and Banarsi Chouhan. At the hospital, the Doctor refused to treat and advised him to go first to the police station. On way to the police station, the husband of the informant died.

Sub Inspector of police recorded the fard beyan of the informant at the police station itself, which set the criminal law in motion. Inquest report was prepared immediately and the body was sent for post-mortem. The statement of the witnesses were recorded

and on conclusion of investigation charge sheet was submitted on 21.12.1989, whereon the learned A.C.J.M. Banka took cognizance and later committed the case to the Court of Session on 3.1.1990 which gave rise to the present trial. As noticed the trial judge on appreciation of evidence brought on record by the prosecution, found the charge(s) proved beyond reasonable doubt and convicted Bhudeo Chouhan and Banarsi Chouhan and sentenced as noted above. Being aggrieved thereby the present appeal has been preferred.

Heard Mr. Ram Adya Singh learned counsel for the appellant(s) and Mr. Satyanarayan Prasad learned APP for the State.

In order to prove its case, the prosecution examined 08 witnesses out of the 12 cited in the charge sheet. The Investigating officer of the case and the doctor who conducted the post mortem examination, however, were not examined. The post mortem examination report prepared on 14.06.1989 by the Medical Officer, Sub Divisional Hospital, Banka was produced at the trial and admitted in evidence as Ext.2 vide section 294 of the Cr.P.C. From the evidence on record, it transpires that the deceased and the appellant(s) are close agnate(s) and PW-2 is own brother of the deceased, whereas PW-1 is son of PW-2. PW-3 is also related to the deceased. PW-4 has been declared hostile.

Before we proceed to scan the evidence, we find it



advisable to consider the inquest report and the post mortem report (Ext-2). The inquest report was drawn at the police station itself on 14.06.1989 at 6.30 hours by the Sub Inspector of Police, who also had recorded the fard beyan which has been proved by PW-1 as Ext. 1, PW-1 is also a signatory to the preparation of the inquest report. As per the inquest report there was a hole near about the right temple of the deceased stained with blood and also a sharp cut injury around the right knee of the deceased. Some scratches on the back of the body were also found.

We would now examine post mortem report which was proved as Exhibit 1. The Doctor in his post-mortem report recorded that the body of the deceased was identified by PW-1. The post mortem examination was held on 14.6.1989 at 12.45 P.M., wherein the following ante mortem injuries were found on the cadaver:-

(i) Lacerated wound 1 ½" x ½"x1/2" starting behind the tragus of right ear up to angle of mandible with lacerated irregular margins, rupturing part, auricular artery and branch of facial artery.

(ii) Incised wound 1"x1/2"x 1/3" over upper part of right leg.

The doctor while expressing his opinion on the injuries noted that the injury no.1 was caused by hard and blunt substance whereas injury no.2 was caused by sharp cutting weapon. The death was due to shock and haemorrhage caused by above noted injuries.

Time elapse since death was within 24 hrs.

P.W.6 is the informant and wife of the deceased, who was accompanying him when the occurrence took place. As per her deposition, on 13.6.1989 at 10 P.M. she along with her husband was coming from 'Naihar' and de-boarded Mandar Hill train at Barahat station at about 9 pm. They proceeded to village on foot along with Mewa Lal Das (PW-5), who had also de-boarded the train at the station for his village. As they walked some distance on way to village and reached near Gahira river, four criminals who were hiding suddenly emerged. She identified the appellant and co-accused Banarsi Chouhan. Bhudeo Chouhan snatched torch from the hands of her husband and fired at his right temple, whereas accused Banarsi Chouhan gave dagger blow on the back and leg. While assaulting, the appellant said that her husband has to pay the price for fighting litigations against them. After committing the occurrence, they also robbed her of her belongings. With the help of Mewa Lal Das (PW-5), she carried the body to the bank of the river, and thereafter sent Mewa Lal Das to village to inform the people of the incident. On hearing the news, the witnesses Suresh Chouhan (PW-1), Arbind Chouhan (PW4), Mahendra Chouhan (not examined), Rajendra Chouhan (PW7) and Kapil deo (PW-3) arrived. They were followed by mother of Suresh Chouhan (gotni of the informant) who brought a cot, whereon the injured was carried to



the Barahat hospital. Regrettably, first aid was not offered to the husband and the doctor advised them to go first to the Barahat police station. On way, the victim/injured succumbed to the injuries and immediately thereafter the fard beyan was recorded at the police station itself. She has proved her L.T.I. on the fard beyan. In her cross-examination, she admitted that the deceased was her second husband, as the first marriage did not last long. In para 5, she disclosed that the accused were in litigations with her family since 1976. Earlier a case of loot of wheat crop was lodged which resulted into acquittal. In paragraph 6, this witness explains the circumstances, under which they met Mewa Lal at the station who accompanied them and was with them, when the incident took place. She has detailed the weapons carried by the appellants. The defence has not elicited from her anything which could shake the credibility of this witness.

PW-5 in his deposition too supported the prosecution case. He belongs to the adjoining village and not directly related to the prosecution. However, from his evidence, it appears that the both parties are known to him as he used to visit the village of the informant. In his deposition, he has stated that he along with the informant and her husband alighted from the train at Barahat station and set out on foot towards the village. The victim and his wife were walking ahead of him and as they reached near the river, the

appellants along with unidentified criminals, surfaced. Bhudeo Chouhan shot Tej Narayan (the deceased), near his ear, whereafter he fell on the ground. The other accused persons also assaulted him with lathi. Seeing the occurrence, he tried to escape, but the two accused persons stopped him at pistol point and commanded to keep mum. He further alleged that accused Banarsi gave dagger blow to Tej Narayan. Believing the injured dead, they escaped from the scene. He along with the informant carried the injured to the road side and thereafter he went to the village to give informations to his family members, whereafter they came with cot and the injured was carried to Barahat. Like the informant, this witness too has identified the appellant in Court. He opined that old land dispute between the parties might be the reason behind the occurrence. It, thus, appears that this witness has supported the prosecution case. In cross-examination, he stated that since 14-15 years, his eye sight has become poor and he could identify the accused persons from near the dock. Emphasizing on this part of his evidence, the defence argued that since the occurrence took place in dark night, there was no scope for this witness to identify the accused persons. He further stated that on witnessing the incident, he became awfully frightened and sat at one place. He could walk only with the help of stick because of old age and poor eye sight. It has been argued on behalf of the counsel for the appellant to discard the testimony of this

witness as he did not reveal the names of the accused to any one, which was not a natural behaviour.

PWs-1 and 3, in their respective depositions, have supported the prosecution case. They stated that the appellants are agnate(s) of the victim and was locked in dispute over 7 bighas of land, which breded several litigations. They stated that on coming to learn about the incident through PW-5 at about 11 pm in the night, they rushed to the place of occurrence and carried the injured to the Barahat hospital and from there to the police station, where the informant made her fard byan as the injured had died.

The evidence of PW-4 need not be adverted to in detail, as he has been declared hostile by the prosecution. However, in the examination-in-chief, he stated that on receiving information through Mewa Lal Das, he went to the place of occurrence and found wound on the right temple of the victim, which was bleeding.

PW-7, similarly has deposed that on receiving information from Mewa Lal Das (PW-5), he along with PWs-3, 4 and 1 rushed to the place of occurrence and saw the victim lying in an injured conditions, and from where the victim was carried to the hospital. The injured was in pain, but had not completely lost his senses. They covered distance of nearly 5 to 7 KM to reach the hospital. The doctor did not treat him and advised to go to the police station first. On way to the police station the victim died, whereafter

the fard beyan was lodged at the police station itself. In para 5, he has denied the suggestion that he was locked in any land dispute with the appellant.

PW-8 has deposed that he received the information about the incident at his village and went to the place of occurrence in the night itself, when the name of the appellant and other identified accused were disclosed by the informant. The injured was carried to the hospital and on way the injured revealed that the appellant and Banarsi had assaulted him. In his cross-examination, he denied being directly related to the victim. The first information about the participation of the appellant was given to him by the informant, when he reached the place of occurrence. He noticed the victim having sustained bleeding injuries near his right temple caused by fire arms and also some injuries caused by lathi and dagger. Along with the victim, the other witnesses also proceeded to the hospital. However, the doctor instead of treating the injured, advised them to go to the police station, and in course whereof he died. He has denied the suggestion that a case was lodged against him by the appellant.

What emerges from the evidence adduced by the prosecution, in short, is as follows:-

(i) PW-6 the informant of the case has supported the prosecution case in the FIR that Bhudeo Chouhan fired at her husband's head with pistol which hit her head and accused Banarsi

Chouhan (since deceased) gave a churra blow on the right knee of the deceased. Thereafter other accused also assaulted with lathi.

(ii) Even PW-5 has in his examination-in-chief has supported the prosecution case as well as the place of occurrence and time of occurrence

(iii) The inquest report also supports the prosecution case that the deceased was fired upon at his temple and was also struck with 'churra' on his left knee.

On the other hand, the case of the defence is that the post mortem report does not fully support the prosecution case in so much so, no fire-arm injury was found on the temple of the deceased. PW-5 in his examination-in-chief has not named Banarsi chouhan as one of the accused persons assaulting the deceased. Besides, in his cross-examination, he does not support his statement made in examination-in-chief that he had identified Bhudeo Chouhan as one of the accused who opened fire at his temple. The case of the prosecution that PW-6 was deprived of her cash and other belongings has been disbelieved by the trial Court.

In the backdrop of these criticism, we would now examine the case of the prosecution whether it has been able to prove the charge beyond all reasonable shadow of doubt.

The defence has argued that PW-5 Mewa Lal Das is not a trustworthy witness and his evidence should not be taken into



consideration while fastening the guilt on the accused. It has been argued by the defence that PW-5 stated that he along with the informant and her husband proceeded from Barahat for their home at about 10.30 PM. He stated in his examination-in-chief that as soon as they reached the bank of Gahira river, the accused persons surrounded them and made him sit at a nearby place and thereafter Bhudeo Chouhan fired at Tej Narayan severely injuring him. Learned counsel submits that it has come in evidence of PW-5 that he had a poor vision. He submits that this is the reason this witness in his cross-examination stated that he did not identify any of the accused persons, at least Bhudeo Chouhan. We further find that PW-5 has not named one of the two appellants, namely, Banarsi Chouhan. Learned counsel for the defence also submits that just after the occurrence, this witness at 11 O'clock went to his village home and informed the villagers that Tej Narayan has been attacked. However, he did not disclose the name of the accused persons. On this basis, he submits that had he seen the occurrence, he would have definitely narrated the names of the accused persons who are own close relatives. Mr. Satya Narayan Prasad, learned counsel appearing for the prosecution is not in a position to controvert the submission of the learned counsel for the defence that this witness conspicuously did not disclose the name of the accused persons to the villagers., However, he submits that in village generally on account of fear of

backlash and retaliation, one may not disclose the name of the accused persons, particularly, when accused happen to be persons from the neighbouring villages and are own relatives.

It appears that this witness initially had supported the prosecution case but subsequently retracted from his earlier version in so much so that he denied in his evidence of having identified the appellant at all. However, presence of this witness, at the place of occurrence, has not been outrightly questioned even by the accused persons. PW's 1,2,3,7 and 8, have all stated that this witness came to the village and informed them about the assault on Tej Narayan. The evidence of PW-6 at least corroborates the prosecution case that occurrence took place at the bank of the river Gahira at about 11 P.M. in the night.

This leaves alone the evidence of PW-6 Jaso Devi, the wife of the deceased. It is well -settled principle of law that conviction can be sustained on the evidence of a solitary witness if it is free of doubts or it is an unflinching nature. The Hon'ble Apex Court in the case of **Jose vs. The State of Kerala AIR 1973 SC 944** laying down the law in para 5 observed that conviction in murder case can be sustained on honest and trustworthy testimony of a single witness.

In the light of the settled principle, as enunciated by the Hon'ble Apex Court, we would now proceed to examine whether the evidence of PW-6 is of such a nature that conviction can be based

on her solitary testimony.

PW-6 (Janki Devi) in the FIR stated that on 13.6.1989 she was returning from her parental house along with her husband where they had gone to attend the Sraadh ceremony of her brother. At about 8 pm they caught a train for Barahat where they got down at 10.30 P.M. In Barahat they were joined by PW-5 Mewa Lal Das who was also returning to his village by the same train. As soon as they approached river Gahira, four persons including the two appellants surrounded them. Bhudeo Chouhan snatched torch from the hand of her husband and forced PW-5 and her to take their place nearby on the ground. Thereafter the two appellants stated that the deceased has troubled them beyond all endurance by fighting continuous litigations against them, and as such, they would kill him finally. It has come in her evidence that Bhudeo Chouhan fired at his temple, whereas Banarsi Chouhan struck with churra on his left knee followed by assault with lathi by other two accused accompanying them. Blood started oozing from the wounded portion of the temple. Considering him to be dead, the accused fled away. According to her, they lifted the injured Tej Narayan to the road side, whereafter PW-5 Mewa Lal Das proceeded to the village to inform the people about the occurrence. On hearing the news witnesses arrived, to whom also her husband disclosed the names of the assailants. We find that this witness has fully supported the

prosecution case in her evidence before the Court. Even PWs 1,2,3,7 and 8 who came to the place of occurrence after learning about the incident from PW-5 stated that the deceased divulged the names of the assailants, namely Bhudeo Chouhan and Banarsi Chouhan (since deceased).

Mr. Ram Adya Singh, learned counsel for the defence, submits that evidence of PW-6 is not of such an unflinching nature on the basis of which conviction can be sustained. He pointed out two circumstances to discredit the evidence of PW-6. Firstly, the evidence of PW-6 does not tally with the post mortem report, particularly, the firing upon the temple of the deceased by Bhudeo Chouhan. Secondly, the story of snatching of cash and ornaments has been disbelieved by the trial Court.

At the foremost, we will deal with the first submission of the learned counsel for the defence that the postmortem discredits the version of the PW-6. In order to appreciate the submission of the defence, it would be necessary to refer to the inquest report dated 14.6.1989 (Anexure-1). It would appear from column no. 5 of the inquest report that a hole was found near the right side of the ear of the deceased which was smeared with blood. There were injuries on the right knee as well as bruises on different parts of the body of the deceased. As per column 9 of the inquest report, the injuries were caused by fire arm, knife and lathi. The inquest report (Ext.1)

prepared by the police at the earliest, fully supports the prosecution case that the deceased sustained fire arm injury on his temple. Much emphasis has been laid by the defence on the post mortem report which has been marked as Ext.2 under Section 294 of the Cr. P.C. Post mortem report of the deceased reflects that injury no.(i) was a lacerated wound 1 ½" x ½" x ½" starting behind the tragus of right ear up to angle of mandible with lacerated irregular margins, rupturing part, auricular artery and branch of facial artery. Injury no.(ii) was incised wound 1" x ½" x 1/3" over upper part of right leg caused by sharp cutting weapon. We find that as per the opinion of the Doctor, injury no (i) was caused by hard and blunt substance. Further, the counsel for the State has pointed out that the dimension of the injury is such which cannot rule out having been caused by fire arm. It is equally settled law that in case of conflict between the ocular evidence and the medical evidence, the opinion of the Doctor would not override the unimpeachable ocular evidence of witness, otherwise free of all doubts. In the instant case, we find that not only the PW-6 (informant) has specifically stated that the accused Bhudeo Chouhan fired at her husband on the temple with pistol causing injury. Even the doctor too has found injury on the temple. The ocular evidence is even supported by documentary evidence i.e. inquest report, according to which, there was a hole like injury on the temple of the deceased caused by firing. The trial Court while rejecting the

argument of the defence that injury no.1 is not by fire arm, noticed that the dimension of the injury was such which did not rule out having been caused by fire arm. It is possible that the doctor may have erred in his opinion that injury was caused by hard blunt substance. In view of substantial evidence to the contrary, we do not have any reason to take a different view than the trial Court.

Learned counsel for the defence next argued that the evidence of PW-6 cannot be said to be fully reliable as the prosecution case of snatching of cash of Rs. 500/- and theft of some ornaments have been disbelieved by the trial Court. It is true that the trial Court has disbelieved part of the evidence of PW-6. However, the defence has not been able to point out any infirmity or contradiction in the statement of this witness with respect to theft, with respect to FIR and with respect to statement of the victim before the police under section 161 of the Cr. P.C. and her testimony before the Court. The trial Court has disbelieved a part of her evidence only on the ground that PW-5 did not disclose in his statement that the accused persons snatched some cash and some ornaments and other belongings of PW-6. We have already observed in the earlier paragraphs that PW-5 is not fully reliable and trustworthy. He had poor vision. It is quite possible that on account of poor vision, he may not have witnessed the snatching of some money and nose pin of PW-6. Furthermore, the commission of theft was not the dominant



motive of the accused persons, as they did not attempt theft at the first instance itself. On the contrary, they were annoyed with the deceased as he was fighting litigation since 1976 and they were tired of it. The informant in her statement disclosed that the appellants stated they would finish him straightway and thereafter they killed him. Only while retreating, the accused snatched some cash and articles of the informant which demonstrates that snatching of ornaments was not their primal motive. Thus, the snatching of ornaments cannot be said to be the integral part of the prosecution case. The dominant intention of the accuseds was to kill the deceased, as he persisted with litigation all these years.

In the back drop of the aforesaid facts we find and hold that PW-6 was consistent in her evidence which was of an unimpeachable nature. In this view of the matter, we find that the prosecution has been able to bring home the charge(s) against the surviving appellant (Bhudeo Chouhan) under Section 302/34 of the Indian Penal Code. We have already observed that the appeal against the other appellant Banarsi Chouhan who too was convicted under Section 302/34 of the Indian Penal Code has abated, and the sentence of imprisonment is rendered futile. However, we find that apart from sentence, Banarsi Chouhan has been awarded a fine of Rs. 5000/- which is recoverable from his own estate.

In the result, the appeal filed by Bhudeo Chouhan fails

and is accordingly dismissed. He is directed to surrender to serve out the rest part of his sentence. His bail bonds are cancelled.

(Samarendra Pratap Singh, J)

(Kishore Kumar Mandal, J)

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