

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.103 of 2009

Arising Out of PS.Case No. -176 Year- 1984 Thana –Rupouli, District- PURNIA

Radha Yadav, son of Bhuneshwar Yadav, resident of village-Balia, P.S.-Rupauli, District- Purnea.

.... Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 114 of 2009

Arising Out of PS.Case No. -176 Year- 1984 Thana –Rupouli, District- PURNIA

Ratan Singh @ Ratneshwar Singh, son of Ram Prakash Singh, resident of village-Vwua Parwal, P.S.-Rupauli, District- Purnea.

.... Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 205 of 2009

Arising Out of PS.Case No. -176 Year- 1984 Thana –Rupouli, District- PURNIA

Moula Yadav, son of Late Budhu Yadav, resident of village- Baliya, P.S.-Rupauli, District- Purnea.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

(In CR. APP (DB) No. 103 of 2009)

For the Appellant : Shri Bhola Prasad, Advocate
Shri Mukesh Kumar Jha, Advocate

For the Respondent/s : Shri Dilip Kumar Sinha, A.P.P.

(In CR. APP (DB) No. 114 of 2009)

For the Appellant : Dr. Bidhu Ranjan, Advocate

For the Respondent : Shri Dilip Kumar Sinha, A.P.P.

(In CR. APP (DB) No. 205 of 2009)

For the Appellant : Shri B.P. Pandey, Senior Advocate

For the Respondent : Shri Dilip Kumar Sinha, A.P.P.

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 30-03-2015



The three appellants, one in each of the three appeals, were put on trial by the learned Presiding Officer of Fast Track Court No.VI, Purnea by being indicted of committing offences under Sections 302/34 and 302/149 Indian Penal Code in Sessions Trial No.284 of 1990/Trial No.06 of 2007. The learned trial Judge handed out the judgment of conviction to the three appellants on 23.12.2008 by holding each of them guilty of committing the offence under Sections 302/149 Indian Penal Code. The appellants were heard on sentence on 24.12.2008 and each of them was directed to suffer rigorous imprisonment for life. This is how the appellants have come up before us to challenge the correctness of the findings of their guilt and the appropriateness of the sentence passed upon each of them. The three appeals were heard together and they are being disposed of by this common judgment.

2. There were originally five accused persons including the three appellants who had been named as accused in the fardbeyan which was given by P.W.1 Most. Dulari Devi who happened to be the wife of deceased Prithvi Sharma. However, it appears that accused Barna Thakur and Chhedi Sharma died during investigation, leaving the three appellants to be put on trial.

3. The prosecution story was that the deceased Prithvi Sharma had set out from his house taking Rs.200/- with him by his



cycle to attend the court proceedings in Purnea on 27.11.1984 at about 12.15 P.M. When he reached west of village- Bhaua Parwal and in the fields, the five accused persons including the three appellants appeared there. The accused persons were carrying lathi, pistol, country made gun, tengari (small axe) and chhura. They caught the deceased. Appellant Moula Yadav took out the amount of money, the deceased was carrying from his pocket and appellant Ratan Singh who was described in the FIR as Ratan Kumar relieved the deceased of his bicycle. The other three accused persons forcibly put the deceased on ground, east of the school situated in the village and, it was alleged that appellant Moula Yadav fired a shot from his country made pistol into the throat of the deceased. The informant stated that by that time, she had reached there and she forbid them to do anything whereupon deceased Prithvi Sharma, accused Barna Thakur gave *lathi* blows on her left leg, as a result of which, she received minor injuries. The deceased, thereafter, was dragged into the field just by the side of the road and his throat was slit. The dead body was picked up by the accused persons and carried towards river Koshi. The informant stated that her father-in-law P.W.3 and her Sautan P.W.2, who were also there were assaulted by the accused persons.

4. The investigating officer has not been examined. As such, we do not know as to how the investigation had started or

proceeded but what we find is that the dead body was sent to Dr. Gaya Prasad Diwakar (P.W.4) and he held postmortem examination on it. During the course of holding postmortem examination, P.W.4 found the following ante-mortem injuries on the dead body of deceased Prithvi Sharma:-

(i) Five lacerated wounds on both sides and back of head. The size of wounds was varying from 1" x ½" x scalp to ½" x ¼" x scalp.

(ii) Compound fracture of lower jaw with fracture and dislocation of four lower incisor teeth.

In the opinion of P.W.4, it was the wound of entry which was accompanied by a circular wound on hard palate of ½" diameter communicating with the skull cavity.

On dissection of the skull cavity and the brain matter, a bullet was taken out and preserved.

(iii) Punctured wound with clean margin ½"x1/4"x1/2" over right side of cheek in front of tragus.

(iv) Punctured wound with clean margin ¾"x1/4"x3/4" over left side of cheek one inch away from the pinna.

(v) Multiple wounds over back of chest 10"x1/2" to 3"x3/4".

(vi) Bruise with abrasions lying horizontally over lower side of chest extending on both sides measuring 8"x1/2".

(vii) Bruise measuring 3"x1/2" over back of neck lying horizontally.

On dissection of the wound, P.W.4 found fracture of 3rd and 4th cervical vertebrae.

(viii) Bruise 1"x1/2", over back of right palm.

In the opinion of P.W.4, the weapon used for causing injury no.2 was fire arm, whereas, injuries no.3 and 4 were caused by sharp cutting and pointed weapon. The other injuries were caused by

hard and blunt substance. In the further opinion of P.W.4, death was caused due to shock and haemorrhage, as a result of injury no.2 within 48 hours though the doctor has wrongly stated in his deposition as 28 hours, which is against his recorded opinion in Ext-1, the postmortem examination report.

5. We do not have further evidence as to where from the dead body was taken out into and the custody by the investigation officer but we do believe that in order to sending the same for postmortem examination, the police must have held inquest upon it and had transmitted the dead body to mortuary. At any rate, we have to note that on close of the investigation, the three appellants were sent up for trial and that ultimately ended in the impugned judgment of conviction and order of sentence.

6. The defence of the appellants was that the deceased Prithvi Sharma was a hardened criminal, having been associated with many murders and dacoity. He was murdered by some of his staunch enemies and it was the appellants who had been falsely implicated in the case.

7. Four witnesses were examined by the prosecution in support of the charges. P.W.1 Most Dulari Devi was the wife of the deceased and informant of the case, P.W.2 Nankhi Devi was the other wife of the deceased and *Sautan* of P.W.1 and P.W.3 Chhutahru Das



was the father of the deceased. We have already noted that Dr. Gaya Prasad Diwakar (P.W.4) had held postmortem examination on the dead body of deceased Prithvi Sharma. P.W.2 Nankhi Devi turned hostile and did not support even a word of the prosecution narration. P.W.3 Chhutahru Das, the father of the deceased was merely tendered for cross-examination. It was the solitary evidence of P.W.1 Most Dulari Devi and that of the doctor P.W.4 Dr. Gaya Prasad Diwakar which were considered by the learned trial Judge to render the impugned judgment.

8. It was contended by the learned senior counsel appearing on behalf of the appellants that the solitary evidence of P.W.1 Most. Dulari Devi was not trustworthy and there were many other pitfalls in the prosecution case as the investigating officer had not been examined and even the father and wife of the deceased had not chosen to support the story narrated by P.W.1. It is unknown to the Court as to from where the dead body had been found whereas the story told by P.W.1 was that it was retrieved from the streams of river Koshi and further as to whether the murder had been committed indeed in a tobacco field which was the place of occurrence as per P.W.1. Submission was that not examining the investigating officer was a serious defect in the prosecution case which left many questions un-answered as submitted above.



9. Sri Dilip Kumar Sinha, learned counsel appearing on behalf of the State has submitted that the solitary evidence of P.W.1 was being corroborated by the evidence of P.W.4 Dr. Gaya Prasad Diwakar and the evidence of P.W.1 appeared trustworthy. Submission was that in spite of the defects pointed out by the defence, it appears that sufficient evidence was available to the court below for recording the findings of guilty and passing the sentence.

10. Before we go ahead to consider the pitfalls pointed out by the learned senior counsel appearing on behalf of the appellants which could have their own bearing on the merits of the appeal, we acknowledge the fact that except P.W.1 Most. Dulari Devi, there was no support coming from any one. P.W.1 Most. Dulari Devi was the first wife of the deceased Prithvi Sharma who had another wife P.W.2 Nankhi Devi. As appears from the evidence of P.W.1, when the deceased had set out from his house after taking some money with him, the informant might be present either inside her house as was suggested to her by the defence or she could be sitting as per her own claim at the *Darwaja*. We do not have any clarity of evidence that the place of occurrence which was as per the fardbeyan west of the village and east of a school, could be visible from the *Darwaja* or house of P.W.1. We do not have anything to clarify as to what was the distance between the two places, i.e., the house of the informant and the place



where the deceased was brutalized to death. The other thing is that as per the fardbeyan, the deceased was forcibly put down on the ground, probably on the road over which he was paddling his cycle, but that part of the story was given up by P.W.1 in her evidence. P.W.1 stated that the deceased Prithvi Sharma was caught and was assaulted amidst tobacco plants in a tobacco-field and the scuffle between the accused persons and the deceased either to over power him or on account of the deceased attempting to wriggle himself out of their clutches, had trampled the tobacco plants. The description of the place of occurrence which was initially contained in the fardbeyan and which subsequently came through the evidence of P.W.1 was important as to be requiring corroboration from the investigating officer. It could have been the investigating officer, other than the other persons, who could have narrated upon his objective findings which he would have recorded in his records of investigation after he had inspected the place of occurrence. We find ourselves handicapped on that aspect of the prosecution story on account of the non-examination of the police officer.

11. Now, it is the case of a solitary witness and the learned trial Judge has held her (P.W.1) trustworthy. If a witness is wholly reliable then, there is no bar that a court proceeds to place reliance upon his or her evidence to hold the charges established



beyond all reasonable doubts so as to holding an accused guilty of committing a particular offence. But, then what are the tests upon which the reliability of a witness wholly could be judged? In our opinion, there could be three tests upon which the reliability in its entirety of a witness could be tested. The first test, in our opinion, is the consistency in evidence of the witness in examination-in-chief and cross-examination. The other test is that generally the witness appears inspiring confidence, after giving him allowances due to natural human pit-falls. The third test, in our opinion, could be testing the consistent evidence of the witness by putting it opposite to the evidence of the doctor and then, seeking the corroboration on the manner of occurrence by reading the medical evidence vis-à-vis the oral testimony of the witness. These are the three tests which, in our opinion, could be applied in judging the reliability of the solitary witness who could have been examined by the prosecution.

12. While considering the evidence of P.W.1 in the light of her initial version, i.e., the fardbeyan, we have noted that there was some shift made by the witness as regards the place of occurrence when the witness was giving up the story that her husband was forcibly put down on the road and thereafter was dragged down the road into the tobacco-field. On a careful consideration of the evidence of P.W.1, what we find is that P.W.1 had described the whole

occurrence in the tobacco-field. Besides that aspect of the evidence of P.W.1, what we further find is that as per her evidence, it was appellant Moula Yadav who had fired only a shot at the deceased Prithvi Sharma. Thereafter, accused Barna Thakur (since dead and not put on trial) had slit the throat of the deceased Prithvi Sharma. This evidence comes in paragraph-1 of P.W.1. Now, if we test this evidence so as to acceptable to us due to being consistent with the medical evidence, we find that indeed there was an injury described by P.W.4 as injury no.(ii) which had been caused by a gun shot, but there was no injury found on the dead body indicating that the throat of the deceased Prithvi Sharma had at all been slit open. It is the vital defect which we find when we compare the evidence of P.W.1 with that of P.W.4, the doctor. In addition to the above, what appears further is that P.W.1 had not assigned any role to any other accused except that one or the other particular accused had assaulted her or her father-in-law or her *Sautan*. However, when we look to the evidence of P.W.4, we find that there were numerous bruises laceration and cut wounds, again quit good in number, which were found by doctor P.W.4 at different parts of the dead body. The first group of lacerated wounds were somewhere on the back of the head. The other wound was punctured wound just in front of the tragus, i.e., at the root of the right ear. Yet another punctured wound was found by P.W.4 over the



left side of cheek, 1" away from the pinna. There were multiple wounds over back of chest but there is no particular weapon scribed by P.W.4 which could have caused those injuries. We assume that those injuries had resulted from blows given to the deceased by some hard and blunt object as was the case with other bruises or group of bruises which were found by P.W.4 on the dead body. Dragging as per the evidence of P.W.1 was just for the purpose of taking the deceased into the tobacco field. We could treat injury no.(v) multiple wounds over back of chest resulting from that dragging, but other bruises or lacerations, we could not explain away from the evidence of P.W.1. Thus, what we find is that the evidence of P.W.1 does not get corroboration even on its material parts from that of P.W.4. The evidence of P.W.4, we must find, indicates towards the manner of occurrence other than what was narrated by P.W.1. Thus, on testing the reliability of the witness P.W.1 on parameters, we have just fixed, we find that the witness may not be wholly reliable.

13. We have already noted in the early part of the judgment that we are handicapped on account of the non-examination of the investigating officer whose evidence could have thrown immense light on the issues which remain un-answered. We could have known from his evidence as to what was the real place of occurrence; we could have very well found out as to from where the

dead body was retrieved. Was it indeed found out from the streams of river Koshi as we do not have it coming from the doctor P.W.4 that he found any signs on the dead body suggesting as if the same could have been retrieved from the streams of water. These create further perplexity in our mind as regards the genuineness of the story.

14. In the result, all the three appeals succeed, because in our opinion, the prosecution had not succeeded in establishing the charges to the hilt. The three appellants are acquitted of the charge they had been held guilty of by setting aside the judgment of conviction and the order of sentence. Appellant Moula Yadav of Cr.Appeal (DB) No.205 of 2009 is in custody. He shall be released forthwith, if not wanted in any other case. The two appellants Radha Yadav and Ratan Singh @ Ratneshwar Singh, one each in the two remaining appeals, are on bail. They shall stand discharged from the liabilities of their respective bonds.

(Dharnidhar Jha, J)

(Amaresh Kumar Lal, J)

Brajesh kr/V.K.Pandey.

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