

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.621 of 2011

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Binod Yadav, S/o Bishambhar Yadav, R/o Vill. Amarpur, P.S. Rafiganj, District – Aurangabad.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bachan Jha, Advocate

For the Respondent/s : Mr. A.K. Sinha, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 05-04-2016

Heard learned counsel for the Appellant and
learned counsel appearing on behalf of the Additional Public
Prosecutor.

2. The Appellant has been convicted under
Section 302 I.P.C. and sentenced to undergo Rigorous
Imprisonment for life and fine of Rs. 5000/-, in default of
which, Simple Imprisonment for 6 months. Further he has
been convicted under section 323 I.P.C. and sentenced to
undergo Simple Imprisonment for one year by a Judgment
dated 06.05.2011 passed by the Additional Sessions Judge,
Aurangabad in Sessions Trial No. 299 of 2008 arising out of
Rafiganj P.S. Case No. 146 of 2007.

3. The case of the prosecution, according to



P.W.8 Lalo Devi, mother of the deceased Prem Kumar, is that on 13.11.2007 at about 5.00 pm. the Appellant and some others variously armed came to her door and thereafter, the Appellant started to abuse and assault her and when her son Prem Kumar and another son Anirudh Kumar came to save her, the Appellant is said to have given *Chura* blow upon Prem Kumar, whereas another accused Arjun Yadav gave *Chhura* blow to her another son Anirudh Kumar causing grievous injury. The reason was that the accused persons tried to outrage the modesty of her daughter and when they protested, the occurrence took place. The present First Information Report was instituted the next morning when her son Prem Kumar died at the hospital at 7.15 am.

4. During trial, the prosecution examined 13 witnesses. P.W. 1 Anjani Kumari is the daughter of the informant, who stated that on 13/11/2007 at about 5:00 pm., Appellant Binod Yadav started to abuse and threaten them at her door. Then her mother went to complain about this to the parents of Appellant Binod Yadav. While her mother was returning from their house at T-Junction, Appellant Binod Yadav started to abuse and assault her. On hearing her cries, her brother Anirudh Kumar (P.W. 5) and deceased Prem

Kumar reached there at which Binod Yadav assaulted both of them. Other accused persons also came there. After first aid, the injured were removed to the Hospital, where in course of treatment her brother Prem Kumar died.

In cross-examination, several questions were asked with regard to her relationship with some persons, but it has no relevance in the present case. She was also asked to explain the place of occurrence, which was to the South of the village at a T Junction. In cross-examination, she also stated that when she reached there, she saw her mother and brother injured.

Her attention was drawn to the earlier statement recorded under Section 161 Cr. P.C. but we find that the Investigating Officer has not been confronted with the said statement. Hence, it has no merit. It was suggested to her on account of previous case pending between the parties, she had falsely deposed against the Appellant but she denied the same.

5. P.W. 2 Awadh Yadav, P.W. 3 Gupteshwar Yadav, P.W. 4 Ram Bilash Yadav, P.W. 6 Ramashish Singh and P.W. 10 Dhirendra Yadav @ Nagendra have been declared hostile and they were confronted with the earlier statement given under Section 161 Cr. P.C. but since the

statements were not put to the Investigating Officer, the evidence of these witnesses either way is irrelevant.

6. P.W. 5 Anirudh Kumar is the son of the Informant and an injured witness, who stated that on 13.11.2007 at 5:00 pm. Appellant Binod Yadav was abusing them at which his mother while went to complain to his parents but they did not restrain him and instead when she was coming back from the house assaulted her. He and deceased brother heard about it so they tried to intervene but they were also assaulted by dragger, on account of which both of them were seriously injured. The rest of the family members of the Appellant were also pelting stones upon them. When they were removed to the Hospital, his brother Prem Kumar died next morning upon which the *fardbeyan* was recorded. He stated that he had given statement on 15.07.2007 at the Hospital itself which delay is quite reasonable since we find that he had suffered very grievous injuries at the hands of the Appellant.

In cross-examination, we do not find anything of relevance except that there is no corroboration in regard to the injuries having been caused to the Informant.

7. P.W. 7, Dr. Vinod Kumar Singh examined

Animesh Kumar, the injured, on 13.11.2007 at 10.45 pm. and found the following injuries on his person.

(i) Stab wound over right side of abdomen was outer to umbilicus, cavity deep wound with oozing of blood – 3 cm x 1 cm.

(ii) The age of injury was within six hours. The nature of wound was grievous. On laparotomy internal injury was found. The injury was caused by sharp penetrating weapon, such as dagger, knife, etc.

We, thus, find that the injuries substantially corroborate the prosecution case so far as the injured witness P.W. 5 Anurudh Kumar is concerned.

8. P.W. 8 Lalo Devi, is the Informant, who stated that on the date of occurrence, the Appellant and the rest of the family members had come and abused them. When she came out of the house, she was assaulted by them. When her sons Prem Kumar and Anurudh Kumar intervened, they were also assaulted seriously on vital parts by the Appellant, on account of which, they were taken to the Hospital and in course of treatment, her son Prem Kumar died. She then instituted the present First Information Report.

In cross-examination, the antecedents of the family members have been mentioned but since it has no relevance in the present case, we do not wish to dwell upon the same. She once again asserted that she was also injured but there is no corroboration in this regard. It was suggested to her that the occurrence had taken place in another manner but she denied the same.

9. P.W. 9 Munesh Yadav is merely on the factum of Prem Kumar and Anurudh Kumar being injured and being removed to the Hospital and that he had heard the Appellant had caused injuries to them. In his cross-examination, there is nothing of note.

10. P.W. 11 Dr. Rajiv Ranjan Das performed the Postmortem of the deceased Prem Kumar at 12:15 pm. and found the following injuries on his person :

(i) Stab (penetrating wound) 1 ½" x ½" x cavity deep with regular margin and coils of intestine portending on left side of abdomen 2" above left anterior superior iliac spine. Internally, there was tear in small intestine with blood and blood clots in abdomen.

(ii) Incised wound 1" x ½" on left forearm

laterally.

(iii) Stab wound on right eye with cornea, sclera and lens penetrated by sharp pointed weapon.

The above injuries were caused by sharp cutting and pointed weapon, such as dagger. Death was due to shock and hemorrhage.

11. P.W. 12 Jai Bahadur Ram is a formal Police Officer, who merely submitted charge-sheet.

12. P.W. 13 Ramji Prasad is the Investigating Officer, who instituted the First Information Report, which he proves as Exhibit-4. He also proves the signature of the relevant officer as Exhibit-4/1 and the Formal F.I.R. as Exhibit-5. He proves Inquest Report of the deceased Prem Kumar as Exhibit-6. Injury Report and the Requisition Slip for medical examination of Anirudh Kumar, injured, which he proves as Exhibit-7. He stated that thereafter, he inspected the place of occurrence, which was in the south of the village in a narrow lane and nearby the house of the Appellant Binod Yadav was located. He also found a *gumti* made of wood in front of the house of the Informant.

In cross-examination, he stated that he was not the person who recorded the *fardbeyan* of the Informant nor

did he know as to when the First Information Report was sent to the Court. However, we find that the endorsement is of the next day i.e. 16.11.2007, which is not an undue delay.

13. The learned counsel appearing on behalf of the Appellant submits that in the facts of the case, it does not appear that the Appellant had any motive to kill the deceased Prem Kumar. He relies on a Judgment reported in 2016 (1) PLJR 847.

14. However, as discussed above, we find that the motive of the Appellant was clear and the decision relied upon by the Appellant is not applicable to the facts of the present case.

15. Also on going through the evidence, which we have enumerated above, we find that the consistent evidence of all the relevant witnesses, such as P.W. 5 Anurudh Kumar and P.W.8 Lalo Devi, is that on the date of occurrence, the Appellant assaulted both P.W. 5 Anurudh Kumar as well as the deceased Prem Kumar on a vital part causing serious injuries to them. Prem Kumar lost his life next morning in course of treatment. From the Doctor's evidence, we find that the deceased had sustained three injuries on his person and also corroborative injuries on the person of the P.W. 5

Anurudh Kumar, thus, leaving no scope for interfere with the conviction of the Appellant on both counts.

16. In the result, this Criminal Appeal is dismissed.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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