

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 349 of 2013

Against the judgment of conviction dated 18.1.2013 and order of sentence dated 23.1.2013, passed by the Additional Sessions Judge, *Ad-hoc* No. 2, Madhepura in Sessions Trial No. 62 of 2011, arising Out of PS.Case No. -24 Year- 2011 Thana -KUMARGHAND District-MADHEPURA

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Nandan @ Nandani Devi @ Nandan Devi W/O Dhanushdhari Yadav Resident Of Village- Bhathni, O.P- Bathni, P.S- Kumarkhand, District- Madhepura

.... Appellant

With

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Criminal Appeal (DB) No. 923 of 2013

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Dhanushdhari Yadav Son Of Late Bil Topi @ Gyani Topi Yadav @ Gyani Yadav Resident Of Village- Bhatani, Police Station- Kumar Khand, District- Madhepura

.... Appellant

Versus

The State Of Bihar

.... Respondent in both appeals

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Appearance : in both appeals

For the Appellants : Mr. Shekhar Kumar Singh, Advocate

For the State : Mr. S.N.Prasad, Additional Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 18-10-2017

Appellant Nandan @ Nandani Devi @ Nandan Devi

(herein after referred to as ‘the accused no.1’) of Cr. Appeal (DB)

No. 349 of 2013 is the wife of appellant Dhanushdhari Yadav of Cr.

Appeal (DB) No. 923 of 2013 (herein after referred to as ‘the

accused no.2’). Accused no.1 has been held guilty of offence under

sections 302/34 IPC, whereas accused no.2 has been held guilty for

offence under section 302 IPC. Both of them, however, have been



sentenced to suffer RI for life with fine of Rs.5000/- each having default clause vide judgment of conviction dated 18.1.2013 and order of sentence dated 23.1.2013, passed by the learned Additional Sessions Judge, *Ad-hoc* No. 2, Madhepura in Sessions Trial No. 62 of 2011. They have assailed the aforesaid judgment and order of their sentence.

2. PW 4 Prabhas Yadav, aged about 35 years, being full brother of the deceased Subhash Yadav, aged about 40 years, lodged a fard beyan (Exhibit 3) on 18.2.2011 at 7.40 PM alleging that on 18.2.2011 the deceased came to his shop at 6 PM and asked him to accompany the deceased to village Bhathni for participating in panchayati, as accused no.1 Nandini Devi, wife of accused no.2 Dhanushdhari Yadav had come earlier in the day to come for panchayati. Both brothers proceeded on cycle to village Bhathni. On way, at about 7 PM when they reached near Bhathni Dhar (river), his brother got down from the cycle and started crossing the Chachari pul (Bamboo bridge) on foot, while the informant was following him with cycle. All of a sudden, accused no.1 appeared and caught Subhash Yadav by waist. Thereafter, accused no.2 along with his son, co-accused Rajeev Kumar (declared juvenile) assaulted the victim by khanti and danda. Seeing the assault, the informant ran to the nearby village and informed the wife of the victim on phone as



also other persons of the incident. Within half an hour, he returned to the place of occurrence along with PW 1 Shyam Kumar, PW 2 Ram Babu Yadav and PW 3 Wakil Yadav, where police had also reached on getting the information about the murder of informant's brother. Promptly, First Information Report (FIR) was lodged at the place of occurrence, a formal FIR (Exhibit 4) was drawn. PW 11 Satya Narayan Singh, immediately conducted the death inquest proceeding (Exhibit 7) over the dead body, seized the cycle (Exhibit 5), blood stained soil from the place of occurrence (Exhibit 5/2). As all the accused persons were known to the informant, he immediately went to the house of the appellants, wherefrom a blood stained vest and freshly cleaned trouser (Exhibit 5/1) were recovered from the backyard of the appellants' house. The dead body was dispatched for post mortem. PW 10 Dr. Bipin Kumar Gupta held the autopsy on 19.2.2011 and submitted the post mortem report (Exhibit 6). Finding the allegations true against the appellants, charge sheet was submitted against them. Cognizance of the offence was taken thereon and the case was committed to the court of sessions. On transfer, the case came on the file of the learned trial judge for disposal. Charges were framed and read over to the appellants which were denied. Defence of the appellants is complete denial of the prosecution case and their false implication merely on suspicion.



3. With a view to prove the charge beyond shadow of reasonable doubt, the prosecution examined three witnesses, namely, PW 1 Shyam Kumar, PW 2 Rambabu Yadav and PW 3 Wakil Yadav, who had reached at the place of occurrence within half an hour along with PW 4 (the informant). The description of the occurrence was narrated to them by PW 4, the full brother of the deceased. Their statements were recorded by the IO at the place of occurrence itself. PW 4 is full brother of the deceased. According to the prosecution case, the deceased was travelling with PW 4 to the village Bhatni on a request made by accused no.1. PW 1 Shyam Kumar is also a witness to the recording of the FIR. PW 5 Mahendra Yadav and PW 12 Shib Narayan Yadav are witnesses to the seizure of the incriminating articles by the IO either from the place of occurrence or from the house of the accused nos. 1 and 2. PW 6 Amod Kumar Verma, PW 7 Shambhu Yadav and PW 8 Munilal Yadav have not supported the prosecution case and have been declared hostile. PW 9 Vijay Singh is the Station House Officer (S.H.O.) of Bhatne OP. He was handed over the investigation of the case by S.I. Satyanarayan Singh (PW 11). On completing the investigation, he laid the charge sheet. PW 13 Gajendra Yadav is a formal witness who has proved the signature of the witness on the seizure memos (Exhibits 2/4 and 2/5 respectively). The appellants



took a defence of their false implication in the case. From the trend of cross examination, an effort was made to reflect that the deceased was done to death at the instance of his brother, i.e., the informant owing to the family feud. Learned trial court, in appreciation of the evidence of PWs. 1, 2, 3 and 4 read along with the evidence of PWs. 10 (the doctor) and PW 11 (the I.O.) held the charges proved beyond reasonable doubts and convicted the appellants.

4. We have heard Mr. Shekhar Kumar Singh, counsel for the appellants as well as Mr. Satya Narayan Prasad, Additional Public Prosecutor representing the State.

5. Learned counsel for the appellants has contended that even according to the trial court the case rests on the sole testimony of the informant (PW 4). His evidence, in the facts of the case, cannot be said to be above board. In the fard beyan, nothing about the source of identification has been disclosed. However, in court PW 4 has stated about the moonlit night when the gory incident took place at 7 PM but the evidence of the I.O. indicates otherwise. He had to requisition light to proceed with the investigation at the place of occurrence at 7.45 PM on 11.2.2011. In a case, where there is only one eye witness to the occurrence, the same must get corroboration from an independent source, which is lacking in the case in hand. PWs 1, 2 and 3 have admitted that they gathered information about



the involvement of the appellants in the crime through PW 4, as such, they are hearsay witness. He also argued that the conduct of PW 4 was not natural as he did not raise any alarm to save his brother from assault or tried to save his brother from assault. Instead he fled away from the scene of occurrence. He next that in the evening of a winter season, shawl, muffler etc. might have been used by the accused persons and in such a situation it was not possible for the informant to identify the appellants and narrate their participation in the commission of offence. If the evidence of PW 4 does not get corroboration from an independent source and there are serious infirmities in the evidence on record, the conviction recorded against the appellants does not merit to be sustained.

6. The counsel for the appellants has also urged that the prosecution has not been able to prove the motive of the occurrence by cogent/reliable evidence for committing murder of the informant's brother by the appellants. In support of the submissions, learned counsel for the appellants has relied upon decisions in cases of **Anil Phukan Vs. State of Assam**, reported in **AIR 1993 SC 1462**, paragraphs 4, 5 & 6; **State of Rajasthan Vs. Bhola Singh and another**, reported in **AIR 1994 SC 542** and **Harijana Thirupala and others Vs. Public Prosecutor, High Court of A.P., Hyderabad**, reported in **AIR 2002 SC 2821**.



7. The Additional Public Prosecutor, in contra, defends the impugned judgment of guilt recorded by the learned trial court. He submits that the factum of occurrence has not been disputed by the appellants. The evidence of PW 4, the informant as well as PWs. 1, 2 and 3 conclusively prove the place, time of occurrence as well as manner of occurrence. The presence of the solitary eye witness, i.e., the informant with his brother was natural. The prosecution case is that the deceased had come to his shop and requested him to go along with him to the village Bhatani to participate in the panchayati. The allegation of causing injury by khanti and lathi gets full corroboration from the evidence of PW 12, Dr. Bipin Kumar Gupta, who found four lacerated wounds on the person of the deceased caused by hard and blunt substance. If the ocular account given by PW 4 gets full corroboration from the medical evidence, the court should place reliance on the testimony of such eye witness, who has no reason to falsely implicate the appellants in the crime. Combating the submission of the appellants with regard to non-presence of source of identification at the place of occurrence, learned Addl.P.P. has referred to the evidence of PW 4 wherein he has clearly stated that it was a moonlit night when the occurrence had taken place. Both the parties were well known to each others for the last five years. The time of occurrence was around 7 PM of



18.2.2011. The informant was present less than 15 feet away from his brother when he was attacked by the appellants. It is thus not a case where there was absolutely no source of identification.

8. There is no dispute that the case primarily hinges on the testimony of a single eye witness account of PW 4. He is the own brother of the deceased. On the relevant date, he was carrying the victim on his cycle. When they reached the bamboo bridge, the deceased left the cycle and was proceeding ahead of the informant. As they were passing through the bamboo bridge, the appellants, already lying there in ambush, attacked the victim. According to PW 4, appellant Dhanushdhari Yadav was armed with khanti, while his son Rajeev Kumar was armed with lathi. Appellant Dhanushdhari Yadav started assaulting the victim on his head by khanti, whereas his son Rajeev Kumar assaulted the victim by lathi. Appellant Nandni Devi was holding the victim by his waist to facilitate the assault.

9. We turn to the evidence of PW 10 Dr. Bipin Kumar Gupta to find out his objective findings on the autopsy. He held the autopsy on 19.2.2011 while posted as the Medical officer at Sadar Hospital, Madhepura and found the following ante mortem injuries on the person of the victim:-

“1. Bruise 6” x 4” red color with deprison of right



side fore head middle cheek and nose.

- 2. Lacerated wound 3" x ½" deep to bone behind right ear red in colour.*
- 3. Lacerated wound 2" x ½" deep to scalp red in colour in middle.*
- 4. Lacerated wound 3" x ½" deep to bone in left side of skull and red in colour.*

On opening of scalp, there was hematoma under scalp of right side of injury. There was fracture of Rt partial bone in multiple. Fracture of left parietal and temporal bone.

On opening skull cavity there was dark collection of clotted blood, brain was confused on right frontal and temporal parietal lobe with punctate hemorrhage spot on brain surface."

10. Although the factum of occurrence has not been disputed before us, but we have considered the findings of the doctor to explore whether those findings allign with the allegations attributed to the appellants by PW 4. We have no hesitation to conclude that the medical evidence of the doctor fully supports the prosecution case, as described by the informant (PW 4). There can be no dispute that the conviction can be based on the testimony of a single eye witness and there is no rule of law or evidence which says to the contrary, provided the sole witness passed the test of the reliability. If the findings of the single eye witness inspires confidence of the court, it is not difficult in basing the conviction on his testimony alone. The law in this regard, has been propounded in a catena of



decisions including one in case of **Anil Phukan Vs. State of Assam**, reported in **AIR 1993 SC 1462**, paragraphs 4, 5 & 6 cited at the Bar by the counsel for the appellants.

11. It has been urged on behalf of the appellants that the motive of the appellants behind the murder has not been proved. If it is so, the evidence of the sole eye witness becomes doubtful. In this regard, reliance has been placed on a decision rendered in case of **Harijana Thirupala (supra)**.

12. We have carefully gone through the pronouncement of the Hon'ble Supreme Court rendered in the aforesaid case. The accused was acquitted by the trial court and on appeal the High court set aside the order and convicted the accused under sections 302/34 IPC. The matter was carried to the Hon'ble Supreme Court. Wife and daughter of the deceased were found eye witness to the occurrence. The Apex court on re-evaluation of the evidence found that there evidence run counter to the medical evidence. In that context, non-proving the motive of the occurrence was considered as an additional circumstance for interfering with the order of the appellate court.

13. So far as motive in the present case is concerned, the consistent case of the prosecution is that the appellant Dhanusdhari



Yadav had become friendly to the deceased. For solemnizing the marriage of his daughter, he had taken a loan of Rs.50,000/- from the victim which was not being returned even after persistent demand. PW 4 has stated that the purpose of coming to the village of the appellants was two folds. Firstly, the deceased had to take part in the panchayati on that day called to resolve a land dispute between the appellants and co-villagers and, secondly for demanding the loan money from the appellant Dhanushdhari Yadav who was evading its payment. It has been argued by the defence that the victim was running a small betel shop and so it is improbable that he had enough money to lend Rs.50,000/- to the appellants. PW 4 has thrown light on this aspect also in his evidence stating that only few years back, the father of the victim had sold a piece of land and the proceeds thereof was lying with the deceased for securing employment. He further stated that the aforesaid amount had been advanced to the appellant Dhanusdhari Yadav in his presence. We find no reason to disbelieve this part of his deposition. The defence, too, has not extracted any material contradiction during trial in the cross examination of PW 4. The motive alleged by the prosecution for the occurrence is well proved. The motive for occurrence is not an essential aspect of the prosecution case to be proved but once it has been alleged then the



court insists on production of some reliable evidence to prove the same. The burden cast on the prosecution has adequately been discharged.

14. Criticizing the evidence of PW 4 it has also been argued on behalf of the appellants that there was no source of identification available at the place of occurrence. The darkness had set in as the incident had occurred at 7 O'clock in the evening of a winter night. Claim of identification of the appellants by PW 4 is wholly questionable. We have gone through his evidence. The witness has specifically stated that it was a moonlit night. Moreover, the evidence on record indicates that the appellants had become friendly to the victim and PW 4, his brother. They used to visit the house of the deceased every now and then. Appellants were known to PW 4 from before. It was thus not difficult for PW 4 to identify the appellants in the moonlit night as he was following the deceased with cycle on the bamboo bridge. He claimed to be present less than 15 feet away from his brother when the deceased was overpowered by appellant Nandini Devi and assaulted by appellant Dhanushdhari Yadav and his son Rajeev Kumar by means of *khanti* and *lathi*, respectively. We find no force in the said contention of the learned counsel for the appellants. PWs 1, 2 and 3 are the independent witnesses. They reached the place of occurrence along with the



informant within half an hour of the occurrence. They have stated about the disclosure of the entire prosecution case by the informant including the name(s) of the appellants and the manner the assault was perpetrated on the brother of PW 4. The I.O. PW 11 reached the place of occurrence within 40 minutes of the incident and recorded the fard beyan at the place of occurrence itself at 7.45 PM. It is difficult to accept the contention of the appellants that within 45 minutes of the occurrence a story was fabricated to implicate the appellants showing them real culprits. The courts have always held that a close relative of the victim would not spare the real culprit implicating others falsely. There is nothing on the record to show a strong motive on the part of PW 4 to falsely implicate the appellants.

15. The rule of prudence, however, mandates the court, in a case which hinges on the sole testimony of eye witness to look for corroboration of the prosecution case, in material particulars. In the present case, the medical evidence fully corroborates the testimony of PW 4. Immediate narration of the prosecution case by PW 4 to PWs. 1, 2 and 3 gives required assurance to the court to conclude on their guilt as found by the trial court. In the considered view of the court, the ocular account narrated by PW 4 is wholly reliable and bears the ring of truth.



16. Learned counsel for the appellants has also argued that the presence of several other witnesses at the scene of occurrence is established by the evidence of the I.O. PW 11 as well as some other witnesses. Yet no one has been produced by the prosecution. There is a fallacy in such argument. Those found present at the place of occurrence when the I.O. reached there, were not the eye witness. They had assembled on hearing the killing of the victim on the bamboo bridge. We take notice of the evidence of the I.O. who had made thorough inspection of the place of occurrence and found no house present in the vicinity of the PO. The nearest house was several hundred yards away from the PO. We have already noticed that although PWs 1, 2 and 3 are hearsay witness but they are not relatives to the informant. They have deposed about the immediate disclosure of the entire occurrence to them by PW 4.

17. Counsel for the appellants has next contended that the seizure of the cycle, blood stained soil, clothes from the house of appellants were not sent for forensic examination. The prosecution case on this account should be disbelieved. It is difficult to accept the contention. The seizure of the incriminating articles have been proved by the seizure witnesses, namely, PW 5, 12 and 13. These witnesses to the seizure have not denied their signature/LTI on those documents. If the articles have not been sent for forensic test



it was the fault on the part of the I.O. for which the prosecution case shall not suffer. Law in this regard is well settled. The defence has not been able to show that such non-examination of those seized articles has prejudiced the case of the defence.

18. In view of the discussions of the relevant evidence on record made above, we entertain no doubt that the prosecution case has been successfully established beyond shadow of reasonable doubt. The charges levelled against the appellants are proved. Both appeals fail.

19. Appellant Nandani Devi is stated to be on bail. Her bail bond is cancelled. She shall surrender and undergo the sentence as directed by the learned trial court.

(Kishore Kumar Mandal, J)

I agree.

Shashi.

(Madhuresh Prasad, J)

N A F R	
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