

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.562 of 2013

Arising Out of PS. Case No.-65 Year-2010 Thana- MURLIGANJ District- Madhepura

Chandeshwari Yadav, Son Of Late Chhedi Yadav, Resident Of Village-
Chheka Tola Pokhram, Police Station- Murliganj, District- Madhepura

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Criminal Appeal (DB) No. 433 of 2013

Arising Out of PS. Case No.-65 Year-2010 Thana- MURLIGANJ District- Madhepura

Binod Yadav , son of Late Chhedi Yadav, Resident Of Village -Chheka Tola
Pokhram, Police Station -Murliganj, District -Madhepura.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Criminal Appeal (DB) No. 537 of 2013

Arising Out of PS. Case No.-65 Year-2010 Thana- MURLIGANJ District- Madhepura

Pramod Yadav , son of Late Chhedi Yadav, Resident Of Village- Chheka
Tola Pokhram, Police Station- Murliganj, District- Madhepura.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 562 of 2013)

For the Appellant/s : Sri Kanhaiya Prasad Singh, Sr. Advocate
Mr. Shailendra Kumar Singh, Adv.
Mr. Pratik Mishra, Adv.

For the Respondent/s : Mr. Ajay Mishra (APP)

(In Criminal Appeal (DB) No. 433 of 2013)

For the Appellant/s : Sri Kanhaiya Prasad Singh ,Sr. Advocate
Mr. Shailendra Kumar Singh, Adv.
Mr. Pratik Mishra, Adv.

For the Respondent/s : Mr. Ajay Mishra, (APP)

(In Criminal Appeal (DB) No. 537 of 2013)

For the Appellant/s : Sri Kanhaiya Prasad Singh, Sr. Advocate
Mr. Shailendra kumar Singh, Adv.



For the Respondent/s : Mr. Pratik Mishra,
Mr. Ajay Mishra (APP)

**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)**

Date : 25-08-2017

In all the three appeals, judgment of conviction and sentence dated 23.04.2013 and 30.04.2013 respectively passed in Sessions Trial No. 121 of 2010 by Sri Manoj Shankar, learned Additional District & Sessions Judge, Adhoc Court No. III, Madhepura is under challenge and as such, all the three appeals were heard together and are being disposed of by this common judgment.

All the three appellants are full brothers. Appellant / Chandeshwari Yadav in Cr. Appeal (DB) No. 562 of 2013 has been convicted under Section 302 of the IPC, sentenced to undergo rigorous imprisonment for life. He has further been imposed fine of Rs. 5000/- and in default he was directed to undergo rigorous imprisonment for six month whereas, remaining two appellants i.e. appellant/ Pramod Yadav [in Cr. Appeal (DB) No. 537 of 2013)] and appellant / Binod Yadav [in Cr. Appeal (DB) No. 433 of 2013] have been held guilty and convicted under Section 302/ 34 of the IPC and sentenced to undergo rigorous imprisonment for life. They were further



imposed fine of Rs. 5000 /- and in default they have been directed to undergo rigorous imprisonment for three months.

Short fact of the case is that on 14.4.2010 at about 11.30 A.M. Sub Inspector of Police of Murliganj Police Station namely Sri Ashok Kumar Singh (P.W. 10) recorded fardbyan of Budh Sen Kumar (P.W. 5) in the vacant land of one Sri Chitnarayan Yadav of Gopali Tola , village - Chheka Tola Pokhram , P.S. - Murliganj , district – Madhepura. In the fardbyan informant stated that on 13.04.2010 at about 12.00 noon he along with his father went to Purvariya Badh for the purposes of grazing their buffaloes and oxes. Thereafter , his father told him that he was going for sale and purchase of buffaloes and he went towards Gangapur. The informant remained in the field while his oxes and buffaloes were grazing . On the same day i.e. on 13.04.2010 at about 6.30 P.M. he noticed that while his father Sudist Yadav (deceased) reached in the field of Chitnarayan Yadav in Gopali Tola , the appellant/ Pramod Yadav , Binod Yadav and Chandeshwari Yadav came out from the field of maize. He stated that Chandeshwari Yadav / appellant was carrying one ‘katta’ in his hand. After arriving near his father, appellant/ Pramod Yadav caught his father. Thereafter, Binod Yadav asked Chandeshwari



Yadav to slit the neck of his father. Thereafter , Chandeshwari Yadav with his weapon 'katta' which he was carrying in his hand gave blow on the neck and also on his chest where after blood started oozing from his body and his father died at the place of occurrence itself. The informant further disclosed that after noticing the occurrence he proceeded to save his father but he was threatened by the accused persons. Accordingly, due to apprehension he fled away. He returned back. After some time there was heavy storm and rain and he narrated the story to his mother Badni Devi. He stated that prior to the occurrence all the three appellants in respect of homestead land had threatened him and asked his father to leave half portion of the land. He stated that due to the said animosity all the three appellants had killed his father . After recording fardbyan on the same date i.e. on 14.04.2010 at about 2.15 P.M. a formal F.I.R. vide Murliganj P.S. Case no. 65 of 2010 was registered for the offence under section 302 / 34 of the IPC naming all the aforesaid three appellants as accused in the FIR and after investigation in the case charge -sheet was submitted on 15.7.2010 and thereafter, the learned Magistrate took cognizance of offence and on 23.7.2010 after completion of formalities under Section 207 of the Cr.P.C. the case was



committed to the court of Sessions and thereafter the case was numbered as Sessions Trial No. 121 of 2010 . Subsequently, on 8th September 2010 against all the three appellants charge was framed under Section 302 read with Section 34 of the IPC. Since they denied the charges they were put on trial and to prove the case from the prosecution side altogether ten witnesses were examined. Out of ten witnesses, only one witness, who is the informant namely Budhsen Kumar has come forward as witness to the occurrence, whereas P.W. 1/ Shivan Yadav who was the co-villager of the informant and appellants had stated that he had not seen the occurrence. Similarly, P.W. 3 /Ashok Yadav [co- villager] and Suresh Yadav /P.W. 4 have stated that they were not confirm as to how Sudist Yadav (father of the informant) was killed.

P.W. 2 /Pankaj Kumar has proved his signature on the inquest report , which has been marked as Exhibit -1. However, this witness was declared hostile by the prosecution.

P.W. 7/ Amrendra Singh and P.W. 8 / Gajendar Yadav are witnesses to the seizure list ,which was prepared in respect of seizure of a bucket containing pant of the appellant /Chandeshwari Yadav , which was soaked with the blood.

P.W. 6 /Dr. Vijay Prasad Modak was posted at the



relevant time in the Sadar Hospital, Madhepura and had conducted post- mortem examination on the dead body of the deceased -Sudishtha Yadav.

P.W. 9 /Arvind Kumar Singh had partly investigated the case and submitted charge -sheet, whereas P.W. 10 / Ashok Kumar Singh had recorded fardbyan of the informant and conducted almost complete investigation, however charge-sheet was submitted by P.W. 9.

Sri Kanhaiya Prasad Singh, learned senior counsel, assisted by Sri Shailendra Kumar Singh , learned counsel for the appellants by way of referring to aforesaid evidences has argued that the prosecution story appears to be not believable. He submits that the informant (son of the deceased) had claimed that in his presence on 13.04.2010 in the field his father was caught by all the three appellants and in his presence he was brutally killed, even then, he did not bother to inform the Police for the whole night nor he informed any of the villagers regarding the said occurrence. He has also argued that the informant in his fardbyan has stated that after returning from the place of occurrence in the night he narrated the story to his mother Badni Devi regarding the occurrence. However, his mother namely Badni Devi was withhold by the



prosecution. She was not produced for examination as prosecution witness. Sri Singh, learned senior counsel by way of referring to the evidence of P.W. 10/ the investigating officer submits that in first paragraph of his deposition before the trial court this witness has stated that on 14.04.2010 he got information while he was in Police Station that one person was killed in Gopali Tola Baadh and after getting said information he made station diary entry and thereafter he proceeded to the place of occurrence and seen the dead body. According to learned senior counsel once in the evening the occurrence was seen by the informant, the information regarding murder by three appellants would have spread in the entire area, but the evidence of P.W. 10 suggests that till the information was received by the investigating officer on 14.04.2010 it was not known to anyone as to how father of the informant was killed. He has further argued that even witnesses who were examined by the prosecution namely P.W. 1 , P.W. 3 and P.W. 4 have categorically stated that till the date of their deposition during trial they were not knowing as to how Sudist Yadav was killed. He submits that though they were examined as prosecution witness and stated regarding not knowing of name of any of the culprits, the prosecution had



not bothered to declare them hostile. Meaning thereby, that evidence of P.W. 1, P.W. 3 and P.W. 4 is sufficient to draw an inference that regarding the murder of Sudist Yadav no one was knowing as to how and who had killed him. He has further argued that of- course during investigation the investigating officer had tried to make out a case as if a pant soaked with blood was seized from the house of the appellant /Chandeshwari Yadav, in absence of examination of those clothes by the chemical examiner or forensic science laboratory it is difficult to draw an inference as to whether the blood, which was found on the pant of appellant/ Chandeshwari Yadav was the blood of the deceased or whether the said blood was of human being or animal. He has further drawn our attention to paragraph no. 27 of the evidence of P.W. 10 /Ashok Kumar Singh who has admitted in paragraph no. 27 of his cross -examination that seized pant was never sent for chemical examination. He has concluded that in view of entire evidence brought on record it is difficult to come to a definite conclusion that in the occurrence three appellants were involved and as such, it is a fit case at least for extending the benefit of doubt to all the appellants. Accordingly, the judgment impugned may be set aside.



Sri Ajay Mishra , learned A.P.P. has argued that in a criminal trial quantity of witness is not required to be examined rather it is the quality of witness which is required to be examined. He submits that P.W. 5 , who is informant of the case and in whose presence entire occurrence had taken place has made consistent deposition before the trial court as to how his father was brutally killed by all the three appellants and as such, on the basis of evidence of P.W. 5 which has been corroborated in the post -mortem examination report, which was conducted by P.W. 6 the learned trial judge has rightly held all the appellants guilty and passed the order of sentence. According to Sri Mishra all the three appeals are required to be rejected only on the ground of specific evidence of P.W. 5 corroborated with the medical evidence.

Besides hearing learned counsel for the parties, we have also perused the entire evidence on record. It would be appropriate to reiterate as to what witnesses have stated during the trial.

P.W. 1 /Shivan Yadav who is co-villager of both appellants and prosecution side in paragraph no. 1 has stated that on the next date of the occurrence he got information that Sudist was murdered. He had seen the dead body in 'ramni'.



He has further stated that Police had not enquired from him since he was not in the village. Similarly, P.W. 2/ Pankaj Kumar is the co -villager who had put signature on the inquest report and his signature has been marked as Exhibit -1 . This witness had not supported the prosecution case and as such he was declared hostile by the prosecution.

P.W. 3 /Ashok Yadav is also a co -villager and in paragraph no. 1 of his examination -in -chief he stated that on the next date of the occurrence he got knowledge that Sudist Yadav was killed . Of -course he went, but it was not known as to who had killed him. In paragraph no. 3 of his cross -examination he has made specific statement that even till the date of his deposition he was not knowing as to who had killed Sudist. Though this witness has stated that he was not knowing about the culprit the prosecution had not bothered to declare him hostile and draw his attention to his previous statement.

P.W. 4 /Suresh Yadav is also a co -villager . In paragraph no. 1 he has stated that he was not knowing about anything in respect of the occurrence . In paragraph no. 2 he has stated that when he came back from Punjab he heard in the village that Sudist Yadav was killed. In paragraph no. 5 he made categorical statement that he was not knowing as to who killed



Sudist. In cross -examination in paragraph no. 7 he further stated that till the date of his cross -examination he was not knowing as to who had killed Sudist.

P.W. 5 / Budhsen Kumar (informant) is the son of the deceased and the sole eye witness to the occurrence. He has proved his signature on the fardbyan which was marked as Exhibit -2 and also signature on the fardbyan of one Tejnarayan which was marked as Exhibit -2/1 . In paragraph no. 1 of his examination in chief he stated that on 13th April 2010 at about 6.30 P.M. he was present in village near the 'dhar' at the place of occurrence and his buffalo was grazing. At that very time on the same date at 12.00 noon he had come along with his father for the purposes of grazing buffalo. After they arrived in the Baadh (field) his father told him that he was going for sale and purchase of animals and asked him to return back after grazing buffalo. While he was in the field he noticed that his father was returning and he was moving towards him . In the meanwhile three appellants came out from maize field . Appellant /Chandeshwari Yadav was carrying 'katta'. Thereafter all the three appellants stopped his father P.W. 5 further stated that appellant / Pramod caught his father . Thereafter , appellant/ Binod asked to cut his neck. He



was about ten steps away and from there he asked the accused not to do so . Thereafter, he was threatened by the accused persons to flee away from the place of occurrence. This witness claimed that he had seen that appellant/ Chandeshwari had given blow from his 'katta' and due to said injury his father fell down. His neck was cut. Thereafter accused persons tied hands of his father and gave 3-4 more blow by the 'katta'. On the chest also assault was made and his father died. After he raised alarm witnesses came. All the occurrence had taken place by the side of the road in the field. He claimed that accused persons had threatened prior to the occurrence. He stated that land dispute had taken place earlier. In paragraph no. 4 he stated that about 10 days back accused persons had threatened him. In paragraph no. 6 he accepted that appellant /Binod and Pramod were his cousin. In paragraph no. 12 he stated that there was land dispute in between the parties. He denied the suggestion that land of one Sundari Devi and Baun Devi was in possession of the appellant/ Pramod . In paragraph no. 36 of his cross- examination this witness has stated that since the accused persons had threatened he abstained and returned. He further stated that due to storm and rain none of the villagers had come . In the morning at 6.00 he



with his mother and several villages went to the place of occurrence where he found the dead body. He stated that at the place of occurrence there was blood stain. In paragraph no. 55 of his cross -examination he had denied that he had ever filed any protest petition and he further denied suggestion in paragraph no. 61 that some unknown person had killed his father. He had further denied that with a view to usurp land of Sundari Devi and Baun Devi he had falsely implicated the appellants.

P.W. 6 / Dr. Vijay Prasad Modak had conducted the post-mortem examination on the dead body of deceased and he proved his signature on post- mortem examination report , which was marked as Exhibit -3. While conducting post -mortem examination he found following injuries on the person of the deceased:-

(I) Sharp cut injury on the right side of face extending from angle of mouth to right ear lobe size 5" x 1 1/2" into muscle deep with cutting on vessels.

(II) Sharp cutting injury 3" x 1 1/2" into muscle deep extending from back of right ear to the neck with cutting of vessels.

(III) Sharp cut injury 5"x 3" into bony deep on the back of the neck with cutting of the body of 6th vertebra and cutting of vessels.

(IV) Sharp cut injury 5"x 3" into muscle deep with cutting of vessels on the right supra clavicular fossa.



(V) Sharp cutting injury 3" x 1" into bony deep on the left hand with fracture of fifth & sixth metacarpal bone.

(VI) Sharp cut injury 3" x 1" on the back of right chest

(VII) Sharp cutting injury 2" x 1/2" into body deep on the left wrist with fracture of left side of radial and ulnar bone.

(VIII) Sharp cut injury on the nose 1 1/2" x 1/2" into muscle deep

(IX) Sharp cut injury 3" x 1 1/2" into muscle deep on the right - upper arm on the flexor surface

(x) Sharp cut injury on the back of the right shoulder 2" x 1 1/2" into muscle deep"

He opined that death was caused due to haemorrhage and shock due to above injuries.

P.W. 7 /Amrendra Singh is hear say witness and also a witness to the seizure list which was in relation to recovery of blood stained pant from the house of appellant/ Chandeshwari Yadav . He proved his signature on the said seizure list, which was marked as Exhibit- 4 . He also proved signature of another witness i.e. Govind, which was marked as Exhibit - 4/1. However, in paragraph no. 4 of his examination- in- chief he categorically stated that he was not aware as to the seized article was of whom . In paragraph no. 6 of his cross-examination he stated that he was present in cremation of deceased (Sudist) and further in paragraph no. 6 he stated that in the cremation all the three appellants had participated and he



further stated in paragraph no. 7 that the appellants were from the family ('khandan') of the accused persons. Similarly Gajendar Yadav / P.W. 8 is a witness to seizure list pertaining to seizure of blood stained pant from the house of appellant /Chandeshwari Yadav whose signature was also got exhibited as Exhibit - 4/1. In paragraph no. 3 he made specific statement that seizure of the said article was not done in his presence. He further stated in paragraph no. 7 that he heard that all the appellant had also gone in cremation.

P.W. 9/ Arvind Kumar Singh is the investigating officer who had taken charge of the investigation and thereafter he had submitted charge -sheet in the case, whereas P.W. 10/ Ashok Kumar Singh on the date of recording fardbyan was posted in Murliganj police station and he stated that on 14.4.2010 while he was in police station he got information that one person was killed in Gopali Tola Baadh and thereafter he recorded station diary entry and proceeded to the place of occurrence and at the place of occurrence on the same day i.e. on 14.4.2010 at 11.30 A.M. he recorded fardbyan of the informant (P.W. 5). He took charge of the dead body and inquest report was prepared and he proved the inquest report, which was marked as Exhibit - 1/1. He further proved his signature



on fardbyan, which was marked as Exhibit -2/4. After recording fardbyan on the same day at 2.15 P.M. he drew formal F.I.R. and he proved the formal F.I.R., which was marked as Exhibit -2/3 .He also proved the seizure list relating to seizure affected from the house of Chandeshwari Yadav/ appellant which was marked as Exhibit -4/2 . In paragraph no. 7 he stated that he inspected place of occurrence and place of occurrence was the field of one Narayan Yadav . He further stated that during investigation he recorded statement of Badamo Devi (not examined) /mother of the informant; Pankaj Kumar (P.W. 2); Mahanand Yadav @ Mohan Yadav (not -examined), Gajendra Yadav (P.W. 8), Amrendra Singh (P.W. 7), Shivan Yadav (P.W. 1) , Surendra Yadav (not examined), Ashok Yadav (P.W. 3) , Ramdeo Sharma (not -examined). In paragraph no. 29 of his cross -examination he has stated that he had examined witness Shivan Yadav /P.W. 1, Surendra Yadav (not -examined), Ashok Yadav (P.W. 3) ; Ramdeo Sharma (not examined) . This witness in the same paragraph has made categorical statement that those witnesses before him had stated that appellant /Pramod and Binod was not having any relation in respect of the said murder. He further stated in the same paragraph that all the aforesaid witnesses in their statement



had stated that Pramod and Binod were in the business of sale and purchase of 'banana' in Shaharsa district. This witness has further stated that the aforesaid witnesses in their statement before him had stated that the informant had named Pramod and Binod who were brother of Chandeshwari in the present case. P.W. 10 in paragraph no. 31 of his cross-examination has further stated that in paragraph no. 46 of the case diary it was mentioned that in the said case informant on appearing in the court had filed an application in which he had stated that appellant/ Pramod and Binod were not involved in the said occurrence. During cross-examination of P.W. 10 his attention was drawn to the previous statement of the informant recorded under Section 161 of the Cr.P.C. and in paragraph no. 36 he stated that informant / Budhsen had not stated before him that his father on the date of occurrence had also gone for the purposes of grazing of buffalo. In paragraph no. 37 he further stated that informant /Budhsen in his further statement in his presence had not stated that after noticing that his father was coming he said that he will also go. In paragraph no. 38 of his cross-examination P.W. 10 has further stated that informant/ Budhsen in his re-statement had not stated that at the time of occurrence Binod had told to cut the head. In paragraph no.



20 of his cross -examination P.W. 10 has stated that at the place of occurrence he had not seen blood mark and explained that the reason was storm and rain . However , in paragraph no. 22 he accepted that the said fact was not recorded in the case diary. He also accepts that in the case diary there was no mentioning of rain.

On minute examination of the aforesaid evidences this fact is not in dispute that at the place of occurrence the investigating officer had found no mark of blood nor he has stated anything corroborating that actually at the place of occurrence incident had taken place or not. Of -course the investigating officer has tried to justify that due to storm and rain he did not find any blood stain, this suggestion may not be accepted due to the reason that this witness / investigating officer has accepted that the fact regarding storm and rain was not mentioned in the case diary. The prosecution case is further doubted since the conduct of the informant appears to be not believable . The informant right from the very beginning has stated that entire occurrence had taken place in his presence . Informant's father was brutally done to death as alleged by the informant in his presence and occurrence had taken place at 6.30 P.M. on 13.4.2010. If such occurrence was witnessed by



the informant it is difficult to comprehend that after several hours on the next day the Police Officer in Murliganj police station which was only about 10 K.M. away had got information regarding killing of unknown person at the place of occurrence and thereafter he prepared station diary entry and proceeded to the place of occurrence. In normal course, if such occurrence was witnessed by the informant, it was expected that he would have informed the villager and he would have taken step to inform the Police, but he stated that he narrated the story to his mother only and Police on the next date directly arrived at the place of occurrence where fardbyan of the informant was recorded at 11.30 A.M. on 14.04.2010. No plausible explanation has been given by the prosecution for belated information given to Police. Moreover, it is not the case of the prosecution that Police was informed by the informant's side rather the investigating officer has stated that on 14.4.2010 he got an information regarding one murder. Besides the evidence of P.W. 5, who is informant, none of the villagers had come forward to support the prosecution case, rather the witnesses who were got examined by the prosecution are very much categorical that till the date of their deposition they were not aware as to who had killed Sudist



Yadav (deceased) / father of the informant. On this point evidence of P.W. 1, P.W. 2 , P.W. 3, P.W. 4 and P.W. 8 is very much relevant which has already been discussed in preceding paragraphs of this judgment.

Considering the facts as discussed above it is difficult to place reliance on the evidence of P.W. 5 for approving the conviction . The conduct of the informant creates serious doubt on the prosecution case. Moreover, the informant was already suggested regarding false implication of the appellants due to land dispute. Considering the fact that prosecution case is not beyond the cloud of doubt, certainly the appellants may not be held guilty, and as such, extending the benefit of doubt , the appellants are required to be acquitted . Accordingly , in view of entire evidence, which has been discussed hereinabove, we are of the considered opinion that the appellants deserve to be extended the benefit of doubt. Accordingly, by way of extending the benefit of doubt , the judgment of conviction and sentence dated 23.04.2013 and 30.04.2013 passed by Sri Sri Manoj Shankar , learned Additional District & Sessions Judge, Adhoc Court No. III ,Madhepura is hereby set aside and all the three appeals are allowed. Appellant/ Pramod Yadav and appellant/ Binod Yadav are already on bail , they are



discharged from their liability of bail bond. The appellant/
Chandeshwari Yadav of Cr. Appeal (DB) No. 562 of 2013 is in
custody, accordingly he is hereby directed to be released
forthwith, if not required in any other case.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

praful/-

AFR/NAFR	AFR
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