

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.374 of 2015

Arising Out of PS. Case No.-16 Year-2008 Thana- AMARPUR District- Banka

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Lilo Yadav @ Lilo Raut, son of Ghamandi Yadav @ Raut, resident of village-
Amdar, P.S.-Phulidumar, District- Banka.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Manish Kumar No.13, Advocate Mr. Rohit Kumar, Advocate Mrs. Kanchan Jha, Advocate Mrs. Nitu Kumari No.7, Advocate
For the Respondent/s	:	Mr. Shiwesh Chandra Mishra, A.P.P.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 16-09-2017

We have heard parties and have perused the records of this case.

The appellant has filed this jail appeal assailing the judgment of conviction dated 4.12.2009 and order of sentence dated 9.12.2009 passed by Additional Sessions Judge, F.T.C.-V, Banka in Sessions Trial No. 448 of 2008/ 251 of 2009 by which the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code and has been sentenced to undergo imprisonment for life and fine of Rs.25000/- and in



default of payment of fine, he would have to undergo rigorous imprisonment for six months.

The prosecution case, in brief, is that as per fardbeyan, the grandson of the informant Rupesh Kumar aged about 10 years, son of Surendra Yadav went to hill area with his cow for grazing. Till evening, he did not reach the home. In the evening at about 4.00 P.M. the appellant came with bloodstained axe and said the informant that he had cut his grandson in the hill area and threatened that if he lodged a case then he would also kill him. Thereafter, he along with villagers went there, he saw his grandson lying and blood was oozing out from his neck. Due to fear of wild animal, they brought the deceased to his home. The cause of the occurrence is said to be the previous enmity between the parties. Arun Kumar Yadav had seen the occurrence. The accused had jealously committed the murder of the grandson of the informant by blowing the axe on his neck.

On the basis of aforesaid fardbeyan, the police registered Amarpur (Fullidumar) P.S. Case No. 16/2008 against the appellant for the offence punishable under Section 302 of the Indian Penal Code.

After investigation, the police submitted charge sheet against the appellant for the offence punishable under Section 302 of the



Indian Penal Code. Thereafter, the Chief Judicial Magistrate, Banka had taken cognizance of the offence against the appellant under Section 302 of the Indian Penal Code. The case was committed to the court of sessions, where charges were framed, to which, the accused person pleaded not guilty. Thereafter, trial started.

During trial, the prosecution has examined altogether five witnesses in support of its case. P.W.1 is Arjun Yadav, P.W.2 is Arvind Pd. Varnwal, P.W.3 is Makar Yadav, P.W. 4 is Arun Kumar and P.W.5 is Md. Mustafa Ansari.

The defence has not produced either oral or documentary evidence on his behalf.

The trial court after hearing learned counsel for the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charges against the appellant

Now this Court is required to reappraise the prosecution evidence to see as to whether the prosecution has been able to substantiate its case beyond shadow of all reasonable doubts or not?



P.W.1 has stated in his examination that the informant had given fardbeyan regarding the occurrence in his presence. He was merely a witness to the fardbeyan.

P.W. 2 has deposed that on 22.01.2008 at about 4.00 P.M., the occurrence took place. At that time, he was at his home. The accused-appellant Lilo Yadav came there and told the informant that his grandson has been sent over and tomorrow, he would be also there. At that time, an axe was in his hand. In his cross-examination, he has stated that he has not seen the occurrence from his own eyes.

P.W.3 is the informant of the case. He has deposed that reason behind the occurrence was due to land dispute. He has further stated that the deceased and P.W.4 both had gone for grazing the cattle in forest area.

P.W. 4 has deposed that he saw accused Lilo Yadav came there covering his body with a black blanket and he had also kept the axe in his armpit. The accused had assaulted on the head and neck of the deceased with an axe. Thereafter, he again assaulted on the other side and also front side. Thereafter, he ran towards him then he fled away. Thereafter, he went to village and told the mother of the deceased that he recognized Lilo Yadav. In his cross-examination in para 7, he has stated that the moment Lilo Yadav



caught the deceased then he fled away and entered in the house. Subsequently, he told the same to the brother of the deceased. Thereafter, villagers went there. He has also gone there and saw that the deceased was lying dead near the place where she-goats used to graze.

P.W. 5 is the doctor, who conducted the postmortem examination over the dead body of the deceased.

Learned counsel for the appellant has submitted that there is several flaws in the prosecution case and the materials available on record can not lead to his conviction.

It has been recorded by the trial court that P.W. 4 Arun Kumar, who was aged about 8-10 years on the date of occurrence, is the only eye witness in the case who has seen Lilo Yadav (appellant) striking by axe upon the deceased. P.W. 4, in his examination-in-chief, had given graphic account how Lilo Yadav came near the deceased fully covered by blanket keeping axe in armpit and had made several strikes on the deceased, however, he, in his cross-examination, has stated that the entire body of Lilo Yadav was covered with blanket and inside the blanket there was an axe. Such statement creates doubt how could one see what was inside the blanket specially for the reason that he further states in paragraph 7 of his cross-examination that the moment Lilo Yadav



caught hold of the deceased he (P.W. 4) ran away from the place and hid himself in his house. Thereafter, he informed the brother of the deceased. Then other persons of village went there and he also went there and saw the deceased lying dead. Thus, it creates serious doubt regarding P.W. 4 being the eye witness of the occurrence. He can at best be the witness till the said accused Lilo Yadav caught hold of deceased and, thereafter, he had seen nothing.

Secondly, the informant Makar Yadav, who happens to be the grandfather of the deceased, has stated that at about 4.00 P.M. Lilo Yadav came to him putting bloodstained axe on his shoulder and said that I have already killed your grandson and if you lodge a case then you would also be killed with the help of the axe. Then he went at the place of occurrence along with the villagers and saw that dead body of his grandson was lying and blood was oozing out from his neck. They brought the dead body to the house. Regarding cause of death, it is stated in the FIR that out of jealousy, Lilo Yadav had killed his grandson. On the earlier occasions also, Lilo Yadav used to quarrel with them out of jealousy.

P.W. 2 Arvind Prasad Varanwal has stated that he was sitting in his house and he saw Lilo approaching and saying to Makar



Yadav that he had killed his grandson and tomorrow he would also be killed. He was keeping axe in his hand. He has also stated that he has not seen the occurrence. He has stated that Lilo Yadav wanted the land which was sold to the family of the deceased. Though this witness has stated that he has seen Lilo Yadav coming and stating that he had killed his grandson and a similar statement has been made by Makar Yadav in the FIR but he has not stated in the FIR that at that point of time Arvind Pd. Varnwal was also present there and had seen Lilo Yadav coming to him and stating that he had killed his grandson. He has also not stated in the FIR that such statement was made by Lilo Yadav in front of the house of P.W.2. Thus, the evidence of P.W. 2 does not inspire much confidence. In paragraph 1 of his evidence, he has stated that he was at home when Lilo Yadav came and informed to Makar Yadav regarding the occurrence. In his cross-examination, he has stated that he was in his shop when Lilo Yadav approached Makar Yadav and stated all the things, however, he could not even spell out the names of the customers who were present at that point of time.

Further, the informant, who has been examined as P.W. 3, has stated in his cross-examination that the Sub-Inspector of Police has taken his thumb impression on a plain paper. Arjun Yadav (P.W.1), who is son of Makar Yadav and witness of the FIR has stated that



he has only signed on the FIR. He has proved his signature on the FIR and has stated in his cross-examination that he knew nothing regarding the matter written on that paper. This further creates doubt as to whether what has been stated in the FIR was actually stated by Makar Yadav because he has stated in his cross-examination that he merely put his thumb impression on a plain paper. The person, who is witness in the FIR has also stated that he knew nothing regarding the contents of the FIR.

Now, from the aforesaid discussion, it is clear that in fact there is no eye witness to the occurrence as P.W. 4, though has stated in his examination-in-chief that he has seen the occurrence but in his cross-examination he has stated that the moment Lilo Yadav caught hold of deceased he ran away and hid himself in his house. Thus, at best he is a witness of catching hold of the deceased by Lilo Yadav. So it can safely be construed that the case becomes of circumstantial evidence rather than any eye witness of the occurrence. The first circumstantial evidence is that P.W. 4 has said that Lilo Yadav was carrying axe and he caught hold of the deceased. Second circumstantial evidence is that Lilo Yadav came to Makar Yadav keeping a bloodstained axe on his shoulder and said that he had killed the grandson and if he lodges a case then he would also be killed. The dead body was removed from the place



of occurrence by the villagers and it was brought to the house of the informant. From the case diary, it appears that the Investigating Officer went to the place of occurrence and found bloodstain but he did not collect and exhibit the same.

That apart, a vital flaw is that the Investigating Officer has not been examined in the case. He was the best person to say as to whether bloodstained etc. was found at the place of occurrence or not otherwise the occurrence might have taken place in some other manner and at a different place than one which has been described in the FIR.

In our considered view, there are several missing links in the chain of the evidence and the aforesaid discussion raises serious doubt about the occurrence having taken place in the manner which has been stated in the FIR and by the witnesses during their examination. Apart from that, weapon of murder was also not recovered by the police. During the examination of accused under Section 313 Cr. P.C., this specific question was not asked from him regarding the fact that he approached the informant and accepted the guilt that he had killed his grandson and he was carrying a bloodstained axe upon his shoulder which appears from the FIR and the evidence of witnesses recorded during the course of trial. This also gives a vital flow to the prosecution case.



In the result, this appeal succeeds. The judgment of conviction dated 4.12.2009 and order of sentence dated 9.12.2009 are set aside. The appellant, who is admitted in jail custody, would be required to be released forthwith if not wanted in any other case.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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