

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.953 of 2012

Arising Out of PS. Case No.-95 Year-1997 Thana- Ramnagar District- West Champaran

1. Rudal Yadav S/o Doma Yadav
2. Buneli Yadav S/o Rudal Yadav

Both residents of village- Sigari Bahuari, Police Station-Ramnagar,
District-West Champaran

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Ravi Shankar Sahay, Adv. Mr. Ajay Nandan Sahay, Adv. Mr. Chandra Mohan Jha, Adv.
For the Respondent/s	:	Mr. Ajay Mishra, A.P.P. Mr. Shivesh Chandra Mishra, A.P.P.

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

Date : 23-11-2017

Two appellants, who are in custody since the date of Judgment, have preferred the present appeal under Sections 374(2) and 389(1) of the Code of Criminal Procedure, 1973 (herein after referred to as "Cr.P.C.") against the Judgment of their conviction and sentence in Sessions Trial no. 576 of 1997 (arising out of Ramnagar P.S. Case No.95 of 1997). Both appellants were convicted on 14.08.2014 for offence under Section 302/34 of the Indian Penal Code and by order of sentence dated 18.08.2012 they have been directed to undergo rigorous imprisonment for life with



fine of Rs.10,000/- each and in default of payment of fine, they were further directed to undergo rigorous imprisonment for one year.

2. Short fact of the case is that on 20.06.1997 at 7.00 A.M. the Sub Inspector of Police, Ramnagar Police Station recorded fardbeyan of Dhodha Yadav(P.W.4) at Sigari Bahuari, Police Station-Ramnagar near the door of Rudal Yadav (appellant no.1). The informant stated that earlier on 19.06.1997 in the night about 10.00 P.M, while he was sitting near his door and his son deceased Lotan Yadav was laying bed on cot, Buneli Yadav(appellant no.2) son of appellant no.1, aged about 20 years arrived there and asked his son Lotan Yadav that his father had asked him to come for eating mutton. After hearing this, the informant restricted his son and said not to go there since animosity with him was going on. After that, the informant went to his Ghota(cattle shed). At about 2.00 in the night, while he was sleeping at cattle shed, Nathu Mahto (P.W.2) awoke him and told that his son had been killed. Thereafter, the informant via his house reached the house of Rudal Yadav (appellant no.1) and he noticed dead body of his son in pool of blood and he (deceased) had received multiple injuries. The informant further stated that there were blood stain on whole of the body of Rudal Yadav (appellant no.1) and his son(appellant no.2



and their clothes also soaked with blood and they were sitting there. The informant further stated that both accused persons were saying that they had killed him, which was heard by number of villagers also. The reason for the occurrence was explained by the informant that about five months back, son of the informant Lotan Yadav was caught red-handed in illicit position with wife of Rudal Yadav (appellant no.1) and since then Rudal Yadav was trying to kill his son Lotan Yadav. The informant claimed that both accused persons after calling his son had killed him by means of lathi, Tawa(Pan) and other articles.

3. After recording fardbeyan, the Sub Inspector of Police read over the same and finding it true the informant put his L.T.I. on his fardbeyan, which was identified by Jamuna Pal (P.W.11) and Lalman Prasad (P.W.8). After recording fardbeyan on 20.06.1997 at 10.00 P.M. a formal F.I.R. vide Ramnagar P.S. Case No.95 of 1997 was registered against aforesaid two appellants for offence under Section 302/34 of the Indian Penal Code. After investigation and finding the case true, the police on 19.09.1997 submitted chargesheet against both appellants under Section 304/34 of the Indian Penal Code. Subsequently, the case was committed to the court of Session on 22.11.1997 and on 24.07.1998 against both appellant, charge was framed under



Section 302/34 of the Indian Penal Code. Since the accused denied the charges and claimed to be tried, the prosecution to prove its case examined altogether 12 (twelve) witnesses. Out of twelve witnesses, P.W.3-Mundrika Pal, P.W.5-Munni Yadav, P.W.6-Harendra Pal, P.W.7-Lal Parikha Pal, P.W.8-Lalman Prasad, P.W.9-Bharat Yadav and P.W.11-Jamuna Pal did not support the prosecution case and, as such, they were declared hostile by the prosecution. P.W.1-Bandhu Ram, P.W.2-Nathu Mahto and P.W.4-Dhodha Yadav had supported the prosecution case. In the case, Dr. Kedar Nath Bhagat, who had conducted postmortem examination on the dead body of the deceased, was examined as P.W.10 and Sri Nandeshwar Das was examined as P.W.12. After completion of prosecution evidence, on 18.10.2011, the evidence and circumstances, which were collected during trial against appellants, were explained to them and their statement under Section 313 of the Cr.P.C. was recorded. However, appellants denied all the charges and claimed that they were falsely implicated.

4. Sri Ravi Shankar Sahay, learned counsel, assisted by Sri Ajay Nandan Sahay, learned counsel for the appellants after placing evidence, oral and documentary, has argued that it is a peculiar case in which though F.I.R. was lodged under Section



302/34 of the Indian Penal Code against both appellants, during investigation the police did not find the case true under Section 302/34 of the Indian Penal Code, rather the case under Section 304/34 of the Indian Penal Code was made out and appellants were forwarded as accused. However, during evidence almost all independent witnesses, who were examined on behalf of the prosecution, to prove the case have turned hostile. He submits that since number of witnesses had not supported the prosecution case, an inference can be drawn that the prosecution had fabricated a false case as if the deceased was done to death by two appellants. However, from the evidence, which has been brought on record, it appears that the deceased son of the informant, who was a habitual criminal and in the habit of entering into the house of villagers and committing offences against women of the villagers, was lynched by the mob. However, since the dead body of the deceased was found outside the house of the appellants, both appellants were named as accused as if both appellants had assaulted son of the informant and due to said assault, he died. By way of referring to Postmortem Examination Report, which was held on the dead body of the deceased, Sri Sahay, learned counsel for the appellants has argued that such multiple injuries were not possible by causing injury only by two appellants, rather injury suggests that the



deceased was lynched by the mob not by only two appellants. He further submits that the informant himself has deposed contrary to his fardbeyan i.e. **Ext.3**. By way of referring to fardbeyan, learned counsel for the appellants submits that the informant has stated that in the night at 2.00 hours, while he was informed by Nathu Mahto(P.W.2) that his son was done to death and, thereafter, he reached the place of occurrence and he noticed that his son had already died and dead body was lying in pool of blood. In the fardbeyan, he had stated that at about 10.00 P.M. on 19.06.1997 he had noticed that appellant no.2 Buneli Yadav was requesting his son as if his father Rudal Yadav (appellant no.1) had called the deceased for eating mutton. However, in the deposition before the court, to the reasons best known to him, he had changed time of first meeting with appellant no.2 and he states that in the night at 8.00 P.M. he had seen that his son was being requested by appellant no.2 for taking meal. In the fardbeyan, the informant had stated that after being informed by P.W.2 Nathu Mahto , while he reached near the house of appellants, he noticed that dead body of his son was lying near the door of appellants. However, during trial, in his deposition he said that when he reached near the house of appellants after being informed by P.W.2 Nathu Mahto, he did not see his son and when Daroga (A.S.I.) arrived, he saw dead



body in the house of the appellants. He admitted that there was complain that his son was having illicit relation with the wife of Rudal Yadav (appellant no.1). In cross-examination, the informant has admitted that his son Lotan Yadav had gone to jail on several occasions in respect of offence of theft and dacoity. He further admits that in the village, often there was murmuring that the deceased used to enter into the house of the villagers and misbehave with female members, for which on number of occasions, Panchayati was held. In paragraph-4 of his cross-examination, he further accepts that after being informed by Nathu Mahto(P.W.2), while he was going to the house of Rudal Yadav (appellant no.2) in the night of occurrence, the villagers were raising hulla that apprehended person was a dacoit and criminal and, as such, kill him. Near the house of Rudal Yadav (appellant no.1), there was large number of mob carrying deadly weapon. However, he did not identify anyone in the mob. In paragraph-5, he further noticed that when the police arrived, the dead body was found near the door of Rudal (appellant no.1). He denied the suggestion in paragraph-7 that since the deceased was apprehended in unpleasant situation, the villagers had killed him.

5. P.W.1-Bandhu Ram, who had tried to support the prosecution case, in his evidence, has tried to develop a story as if



on previous night at about 10.00 P.M. he was near the door of informant Dhodha Yadav (P.W.4). He claimed that appellant no.2 Buneli Yadav had requested Lotan Yadav (deceased) to go to his house for eating mutton, which was restricted by his father Dhodha Yadav. Subsequently, he along with Dhodha Yadav went to cattle shed. At this juncture, it is necessary to indicate that the informant Dhodha Yadav either in his fardbeyan or in his examination-in-chief had not stated that he had gone to his cattle-shed along with Bandhu Ram (P.W.1). He stated that while after getting information that son of the informant was done to death, he along with the informant reached the house of the appellants, they noticed that appellants were trying to remove the dead body of the deceased, but they prevented the appellants from doing the same and they were prevented not to bring the dead body outside of the house of the appellants. Thereafter, one Bishwanath Yadav (not examined) and Bharat Yadav (P.W.9) called Daroga Ji (police). He also states that the deceased was having illicit relation with the wife of Rudal Yadav (appellant no.1) and this was the reason for the occurrence. In paragraph-8 of his cross-examination, he has stated that they were informed by Nathu Mahto (P.W.2) that Lotan Yadav was already done to death by two appellants and when they reached at the place of occurrence, they found dead body in the



house of Rudal Yadav (appellant no.1) and there were no other person near the dead body. He also stated in paragraph-11 that near the dead body, *Farsa*, wooden piece and Tawa (Pan) were found. In paragraph-16, he stated that there was old illicit relation in between the deceased and wife of Rudal Yadav. In paragraph-17, he denied the suggestion that since in the night the deceased was apprehended, villagers had killed the deceased considering him as a criminal.

6. P.W.2-Nathu Mahto in his deposition has stated that his house was near the house of the informant and while on the date of occurrence he was sleeping, he awoke due to cry of mother of Lotan Yadav (deceased), who was saying that Lotan was killed by Rudal and Buneli, both appellants and she asked Nathu Mahto (P.W.2) to call Dhodha Yadav, father of the deceased. Thereafter, he went to cattle-shed and informed the informant, who was sleeping with Bandhu Ram. When they reached the place of occurrence, they noticed that the dead body of Lotan was lying in the kitchen of the appellants and both appellants were sitting there and their clothes were stained with blood. This witness stated that both appellants told them as to for what purpose they had come since the appellants had already killed the deceased. He further stated that about six months back there was rumour that the



deceased was having illicit relation with the wife of Rudal (appellant no.1). This witness has also stated that in the night of the date of occurrence, while he had come out from his house for urinating, he had seen the deceased Lotan Yadav with appellant Buneli Yadav and, thereafter, he had requested for tobacco from Lotan Yadav, which was provided by him. His attention was drawn to his previous statement and in paragraph-12 of his cross-examination, he stated that he had not stated in his statement before the police that when he came out from his house for urinating, he had seen deceased Lotan Yadav with appellant Buneli Yadav. He accepted that he had also not stated that he had requested for tobacco from the deceased. He also stated that he had not disclosed before the police that on being asked deceased said that he was going to eat mutton and, thereafter, both deceased and appellant no.2 went away and at that very time, it was 10 -10.30 P.M. In paragraph-13, he has stated that the distance of cattle-shed of the informant Dhodha Yadav from his house was about more than one Bigha of field, where Dhodha was sleeping. He has stated that while he was going to call Dhodha, alarm was going in the village and when he came to the door of Rudal, dead body of Lotan Yadav was found near the door of Rudal (appellant no.1) and about 50-60 villagers had surrounded him carrying Lathi and



Fattha. The villagers were saying that apprehended person was a criminal and he was in the habit of committing theft and insulting female. This witness further stated that he did not enter inside the mob and he did not identify any members of the mob. In paragraph-15 of his cross-examination, he has admitted that Lotan Yadav (deceased) had gone to jail for committing offence of theft and dacoity.

7. P.W.3-Mundrika Pal in his examination-in-chief has stated that in the night of the occurrence, he heard alarm of *Chor-Chor* and when he reached near the door of Rudal Yadav (appellant no.1) he noticed that about 100-150 villagers had surrounded but he did not enter into the house. This witness was declared hostile and was also cross-examined by the prosecution. In paragraph-5 he stated that among st 50-60 persons were assaulting the deceased. Whoever arrived there, wanted to assault him as if he was accused of theft. In paragraph-6 he stated that the deceased was in the habit of entering into the house of any female.

8. P.W.6-Harendra Pal in his examination-in-chief has stated that on the date of occurrence it was time about 12-1.00 in the nigh. He was sleeping in his house. He heard alarm of *Chor-Chor*. 100 persons arrived there and he had also gone there. Near the door of Rudal Yadav, he noticed the dead body of the deceased. He



was a criminal. He stated that his statement was not recorded by the police. This witness was declared hostile and was cross-examined and in paragraph-3, he stated that when he reached, about 100 persons by way of surrounding Lotan Yadav(deceased) were brutally assaulting with Lathi and Fattha and they were saying that he was a criminal.

9. P.W.7- Lal Parikha Pal was also declared hostile and cross-examined. In paragraph-4 he stated that Lotan Yadav(deceased) was a dacoit, against whom number of cases of dacoity were pending.

10 P.W.8-Lalman Prasad, regarding whom it was stated that he had put his signature on the fardbeyan and same was identified and marked as Ext.1,has also not supported the prosecution case and he was declared hostile and cross-examined. In paragraph-4 he stated that the deceased was a criminal and he was accused in cases of dacoity, kidnapping etc.

11. P.W.9-Bharat Yadav was also declared hostile and cross-examined. He too stated that the deceased was a criminal and he was in the habit of entering into any house of the village and for which Panchayati was held.

12. P.W.11-Jamuna Pal, who was shown to be seizure list witness and signed on the seizure list, in his deposition stated that



no seizure list was prepared in his presence. Sub-Inspector of Police of Ramnagar Police Station Sri N.P. Nirala had taken his signature near a vehicle on a blank paper. He also denied and stated that no inquest report was prepared in his presence and on blank paper his signature was obtained. His signature on the seizure list was marked as **Ext.1/1**.

13. P.W.10- Dr. Kedar Nath Bhagat on 20.06.1997 was posted as Medical Officer at Sub Divisional Hospital, Bagaha. On the same day at about 5.00 P.M. he conducted post-mortem examination on the dead body of Lotan Yadav(deceased) and found following injuries:

1. Lacerated wound 4 in number below right knee. The distance of each wound is 2 inch. Each wound measuring ½” x3/4”x deep up to bone.

2. Lacerated wound 3 in number below left knee. The distance of each wound is 2 inch. Each wound measuring ½” x3/4”x deep up to bone.

3. Bruise 3 in number on right thigh laterally measuring 4” x1”. The distance of each is 2”.

4. Bruise 2 in number on left thigh laterally measuring 5” x1”. The distance of each is 1”.

5. Bruise 5”x1” on left mid auxilliary line .

6. Sharp cut wound left side of chin 2” x 1 ½”x deep up to bone.

7. Sharp cut wound below chin on left side 2” x 1½” x deep up to bone.



8. Sharp cut wound on left maxillary region 1½” x ½” x deep up to bone.

9. Sharp cut wound on right maxillary region 1½” x ½” x deep up to bone.

10. Sharp cut wound 4 in number on forehead measuring 1”x ½” x deep up to bone. Distance of each wound is 1 inch.

11. Fracture of frontal bone of skull.

12. Fracture of parietal bone, occipital bone and brain matter protruded out.

He identified his writing and signature on the post-mortem report, which was marked as **Ext.2**.

14. Sri Nandeshwar Das was examined as P.W.12 and he proved fardbeyan, which was marked as Ext.3. He also proved formal F.I.R, which was marked as Ext.4 and proved seizure list relating to seizure of blood-soaked clothes of both appellants, wooden piece, wooden Belan, iron Tawa (Pan) and one piece of wood with blood stain and also clothes of the deceased besides blood soaked soil. This witness stated that on 20.06.1997, he was posted as Sub-Inspector of Police in Ramnagar Police Station and on the same day i.e. 20.06.1997 he had recorded fardbeyan of Dhodha Yadav, which was also signed by two witnesses i.e. Jamuna Pal (P.W.11) and Lalman Prasad(P.W.8) and, thereafter, he drew formal F.I.R. After taking charge of investigation, he recorded re-statement of the informant and inspected the place of occurrence. The place of occurrence as per the Investigating



Officer was indicated as if it was house of the appellant Rudal Yadav. However, in paragraph-4 he stated as if actual place of occurrence was kitchen of the house of appellant no.1, where blood mark was found. He stated that he had also prepared inquest report, which was signed by Jamunal Prasad Pal (P.W.11) and Sukhi Lal, who has not been examined. At this juncture, it is necessary to indicate that Jamuna Pal (P.W.11) was declared hostile and he categorically stated that his signature was obtained near the police vehicle on a blank paper. Attention of this witness was drawn to the statement of some of the witnesses, who turned hostile i.e. P.W.5-Munni Yadav, P.W.6-Harendra Pal, P.W.7-Lal Parikha Pal, P.W.8- Lalman Prasad and P.W.9-Bharat Yadav. After his examination-in-chief, he was cross-examined only for the sake of cross-examination and he stated that he started writing fardbeyan at 7-00 in the morning on 20.06.1997 and at 7.15 P.M. he returned from the village. Thereafter, due to paucity of time, further cross-examination was deferred. However, on examination of the record, it appears that despite best efforts taken by the trial judge, this witness (P.W.12) Investigating Officer never turned up for his cross-examination and thereby deprived the defence from asking relevant questions even in relation to manner of occurrence, place of occurrence as well as statement of three witnesses i.e.



P.Ws.1,2 and 4, who were not declared hostile and supported the prosecution case. The defence was also deprived to draw attention in respect of previous statement of those witnesses made before the police during investigation under Section 161 of the Cr.P.C. On examination of the aforesaid witnesses, it is evident that the prosecution has miserably failed to establish place of occurrence or exactly the place, at which place the dead body was found by the witnesses or the police. The investigating Officer (P.W.12) had tried to develop story as if the dead body was found in the kitchen of appellant no.1, whereas three witnesses, who tried to support the prosecution case, had said that the dead body was lying near the door of appellant no.1 Rudal Yadav. It is not a case of the prosecution that either of the witnesses had seen both appellants assaulting the deceased, but P.Ws.1,2 and 4 have stated that when they arrived, the deceased had already died. Witnesses, who were produced by the prosecution to prove its case and did not turn hostile, have not denied that the deceased was being assaulted by number of villagers. Meaning thereby that the deceased was lynched by the mob. The injuries, which were found on the person of the deceased, also suggests that it was not a case of assault by only two appellants, but multiple injuries on the person of the deceased suggest that he was assaulted by number of persons. The



prosecution in the present case has miserably failed to establish as to at which place dead body was found. However, this witness i.e. P.W.12 did not bother to prove inquest report, which was necessary to be proved for establishing the case as to at which place the dead body was found, but the witnesses, even the informant have stated that the dead body was lying near the door of the appellants, so that the place of occurrence has exactly not been established by the prosecution. Even there is inconsistency in the evidence of P.Ws.1,2 and 4 itself. They have not supported the prosecution case exactly in similar manner. None of the witnesses has whispered as to whether they had seen both the appellants assaulting the deceased or not, rather the dead body of the deceased was found near the door of the appellants. Only on the ground that the dead body of the deceased was lying near the door of the appellants, conclusively it cannot be said that both appellants were involved in killing the deceased. Moreover, the conduct of the deceased, it has been noticed by number of villagers and witnesses, who were produced by the prosecution as well as the informant, who is father of the deceased itself indicates that the deceased was habitual offender and he was accused in number of cases, particularly offence against female members of the village. Since during investigation, witnesses have stated that the deceased



was lynched by the mob, the police after investigation had not found the case true under Section 302/34 of the Indian Penal Code and Chargesheet was submitted under Section 304/34 of the Indian Penal Code. It is also a fact that the Investigating Officer despite best efforts by the learned trial court has not come forward for his cross-examination and, as such, the case of the defence was prejudiced since they were prevented to draw attention to the Investigating Officer regarding relevant facts, particularly regarding the place, as to at which place dead body was found. The seizure list, which was not proved, has also not been substantiated since witness of the seizure list has not supported the prosecution case and the witnesses said that his signature was obtained near a vehicle outside the house of the appellants, that too on a blank paper.

15. In view of facts and circumstances, the Court is of the opinion that the prosecution has miserably failed to prove its case beyond all reasonable doubt and, as such, extending the benefit of doubt, the judgment of conviction and sentence is required to be interfered with.

16. Accordingly, the Judgment of conviction and Sentence dated 14.08.2012 and 18.08.2012 respectively passed by Sri Subodh Kumar Srivastava, learned 2nd Additional Sessions Judge,



Bagaha, West Champaran in Sessions Trial No. 576 of 1997 (arising out of Ramnagar P.S. Case No. 95 of 1997) is, hereby, set aside and appeal is allowed. Since the judgment of conviction and sentence has been set aside and appellants are inside jail, it is, hereby, directed to release them forthwith, if not required in any other case.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

nawalkrs/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
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