

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.322 of 2010

(Against the Judgment dated 16.02.2010 and order dated 19.02.2010 passed by the learned Additional District and Sessions Judge, F.T.C.-3, Madhepura in Sessions Trial No. 79 of 1991 under Sections 302 and 34 IPC.

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Ashok Yadav, son of Shatrughan Yadav, resident of Village- Parmanandpur, Nabdulia, P.S.- Murliganj, District- Madhepura.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (DB) No. 377 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- MADHUBANI

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Shatrughan Yadav, son of Late Manohar Yadav, resident of Village- Parmanandpur, Nabdulia, P.S- Murliganj, District- Madhepura.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

(In both the Appeals)

For the Appellants : Mr. Sharda Nand Mishra, Advocate
Mr. Dhananjay Kumar Gupta, Advocate
Mr. Rananjay Kumar, Advocate
Mr. Rajiv Ranjan, Advocate

For the Respondent : Mr. A.K. Sinha, A.P.P.
Mr. S.C. Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
And

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: **HONOURABLE MR. JUSTICE ARUN KUMAR**)

Date: 05 -07-2017

Since both the Criminal Appeals arise out of the judgment dated 16.02.2010 followed by order of conviction dated



19.02.2010 passed by the learned Additional District and Sessions Judge, F.T.C.3, Madhepura in Sessions Trial No.79 of 1991, they are being disposed of by the common judgment.

2. The Cr. Appeal Nos.322 of 2010 and 377 of 2010 filed by the appellants Shatrughan Yadav and Ashok Yadav respectively against the judgment and order dated 16.2.2010 passed by the Additional District and Sessions Judge, Fast Track Court No.3, Madhepura in Sessions Trial No.79 of 1991 whereby Shatrughan Yadav, one of the appellants have been convicted under Section 302 of the Indian Penal Code and sentenced to undergo life imprisonment and fine of Rs.10,000/-; in case of default further simple imprisonment of six months and another appellant Ashok Yadav has been convicted under Section 302/34 of the Indian Penal Code and sentenced to undergo life imprisonment and to pay Rs.4,000/- as fine and in case of default in paying the said fine to further undergo simple imprisonment of four months however remaining three accused persons, namely, Bihari Yadav, Shankar Yadav and Shitalal Rishideo as not found guilty so acquitted of the charge.

3. The Sessions Trial No.79 of 1991 arises out of Murliganj P.S. Case No.155 of 1983 registered under Sections 302 and 34 of I.P.C. on the basis of fardbeyan, i.e., oral information given by Chhedi Yadav, informant of the case to the police.



4. The prosecution case, in brief, as unraveled by the informant Chhedi Yadav (P.W.7) in the fardbeyan is that in the night of 7.6.1983 he was sleeping on the Varandah of his house after having his dinner, along with his nephew Paltan Yadav, the deceased, on the wooden cot and his daughter Manjula (P.W.2) niece Bhutia were also sleeping there on a mat led on the ground. In the night around 9.00 P.M., he heard some whispering sound from nearby so went in that direction and found some person sitting and chatting outside the house of Bihari Yadav. The informant returned back and asked Laxmi Yadav one of his neighbours to go and identify those persons, who returned after sometime and disclosed that Shatrughan Yadav, Ashok Yadav, Agam Yadav, Shitalal Rishideo, his co-villagers along with Umesh Yadav and Shankar Yadav of village Gangapur were gossiping there. The informant Chhedi Yadav, P.W.7 being apprehensive remained awake though all others fell asleep. In between 12.00 to 1.00 P.M., he heard some whispering sound from nearby so he went to call his brother Basudeo Yadav (P.W.3) with torch in his hand. When he returned back near his house, he saw two persons coming out of his house and seeing the informant and his brother both flee away in the western direction. In the flash of torch light, he identified those two persons as accused Umesh Yadav of village Gangapur and Shatrughan Yadav, his co-villager and both were



having a big knife in their hands. Raising alarm informant and his brother came in their courtyard and further saw 4-5 persons running away in eastern direction. He identified Shatrughan Yadav, Ashok Yadav, Agam Yadav and Shitlal Rishideo in the torch light. Further the informant Chhedi Yadav saw his daughter Manjula (P.W.2) weeping as his nephew Paltan Yadav had sustained injury in his neck and blood oozing out from the injury who died immediately. Manjula Devi (P.w.2) disclosed to her father, (informant) P.W.7 that Umesh Yadav and Shtrughan Yadav, both had killed Paltan Yadav causing injury on his neck with knife and other accused persons, namely, Shankar Yadav, Ashok Yadav, Agam Yadav and Shitlal Rishideo were standing there armed with lathi. She also disclosed that she requested the accused persons not to assault her brother but Umesh Yadav slapped her. It is also stated in the fardbeyan that Basudeo Yadav (P.W.3), father of the deceased also identified accused persons. On alarm raised by the informant and his brother Lalo Yadav, Laxmi Yadav (P.w.5), Mahendra Yadav, Bhupendra Yadav and others reached there, after sometime, local Chaukidar also turned up.

4. On basis of the fardbeyan given on 8.6.1983 at 8.30 A.M., police registered Murliganj P.S. Case No.155 of 1983 under Section 302/34 of I.P.C. and commenced investigation, in the process inspected the place of occurrence, prepared inquest report of the



deceased, examined witnesses and obtained postmortem report. On conclusion of the investigation submitted charge sheet against all accused persons but Umesh Yadav and Agam Yadav died during inquiry and trial so remaining five accused persons were put on trial and on conclusion of the trial, the Sessions Court found only two accused persons, namely, Shatrughan Yadav and Ashok Yadav, father and son respectively guilty for committing offence of murder of Paltan Yadav, however, acquitted rest three accused persons.

5. Now only question to be determined in these two appeals is that whether judgment of the trial court is based on reliable, trustworthy and admissible evidence or is there any mis-appreciation of evidence by the trial court leading to conviction of the accused ?

6. Learned counsel appearing on behalf of the appellants submits that there is considerable delay in lodging the F.I.R. in this case. The occurrence is stated to have taken place in between 12.00 to 1.00 A.M. in the night of 7/8th June, 1983, but the fardbeyan was given by the informant next morning on 8.6.1983 at 8.30 A.M. It is also an admitted position that there is enmity in between the appellants and the informant due to land dispute so on account of this enmity, the informant has falsely implicated the accused persons. Moreover, P.W.1 Bhupendra Yadav, P.W.4, Jwala Prasad Yadav and P.W.5, Jagdish Yadav, three independent witnesses examined in



this case by the prosecution have not supported the case in any manner; they are the persons, who live nearby the place of occurrence but when they reached at the place of occurrence in the midnight neither Manjula Devi (P.W.2) nor any other family members of the deceased disclosed names of assailants of Paltan Yadav, the deceased of this case. Only family members of the deceased have supported the prosecution case but several contradictions are found in their evidence showing their evidence not trust worthy.

7. The evidence of Manjula Devi (P.W.2) is that when her cousin Paltan Yadav cried then she woke up and saw Umesh, Shatrughan and Ashok holding Paltan on the cot and two others assaulting him with knife but in the F.I.R., it is the case of the prosecution that she also saw other accused persons, namely, Shatrughan Yadav, Ashok Yadav, Agam Yadav and Shital Rishideo, who have been acquitted in trial. He further submits that the case of the prosecution is that the informant Chhedi Yadav (P.W.7) was sleeping in Varandah of his house on a wooden cot with his nephew Paltan Yadav and at the time of occurrence, he was still not asleep and heard some whispering sound, thereafter, taking torch went to call his brother Basudeo and soon returned back along with his brother then in the flash of torch light, saw Umesh Yadav and Shatrughan Yadav coming out with knife in their hands from his house but they fled



away. However, Chhedi Yadav (P.W.7) has stated that his brother Basudeo was sleeping on another wooden cot beside him and he woke him up whereas his brother Basudeo Yadav (P.W.3) has deposed that he woke up his brother as some miscreants reached there and thereafter, they went away and hid themselves at a short distance from P.O. Learned counsel also submits that the case of the prosecution as well as the evidence given by the prosecution witnesses that appellants Shatrughan Yadav cut the neck of Paltan Yadav with knife but Dr. J.P. Singh (P.W.9), who did autopsy on the dead body has opined that the injury sustained by the deceased cannot be caused by knife though it can be caused by sword, axe and garansa. Last but not least, it is also submitted that non-examination of the I.O. has also caused prejudice to appellants as place of occurrence has not been established because witnesses sometime say that the dead body was found in the courtyard and sometimes say that Paltan Yadav was killed on the Varandah. Neither the torch nor the Dibia (earthen lamp), the source of light by which accused persons were identified not produced during the trial, so prosecution has failed to establish charge.

8. Learned Additional Public Prosecutor appearing on behalf of the State submits that enmity cuts both ways and in this case, there exists positive evidence that due to enmity, the appellants



have killed Paltan Yadav and the case of the prosecution is supported by witnesses Manjula Devi (P.W.2), Basudeo Yadav (P.W.3), father of the deceased, Chhedi Yadav (P.W.7), the informant and uncle of the deceased. Manjula Devi (P.W.2) is the witness to actual act of murder and his father and uncle P.W.7 and P.W.3 also reached there subsequently, only just before the occurrence, they went away at a short distance from his house to save their life but on alarm raised by Manjula, they reached their house and in the flash of torch light identified the appellants coming out of their house and saw Shatrughan Yadav and Umesh Yadav armed with blood stained knife and Manjula described in detail that Ashok Yadav had gagged mouth of Paltan, thereafter Shatrughan and Umesh cut the neck of Paltan Yadav.

9. Learned Additional Public Prosecutor further submits that there is no major contradiction or discrepancy in the evidence of any eye witnesses however minor discrepancies may creep in their deposition as being examined after lapse of a decade from the date of occurrence. The offence was committed on 7/8.6.1983 and the charge was framed in this case in the year 1993 and witnesses were examined in the year 1993 and 1994 so minor contradictions are bound to creep in evidence of prosecution witnesses being examined after lapse of more than ten years but those contradictions do not go to the root of



the prosecution case.

10. We find that altogether prosecution has examined in this case, nine witnesses out of which Dr. J.P. Singh (P.W.9) is doctor having conducted postmortem examination on the dead body of Paltan Yadav submitted the postmortem report and found the same and marked as Ext.2. Jagdish Yadav (P.W.6) is also a formal witness, who is a witness of the inquest report of the deceased prepared by the police and recognized his signature on that document marked as Ext.1. The inquest report (Ext.1) shows that the dead body of Paltan Yadav was found on wooden cot on the Varandah of the house of Chhedi Yadav. Bhupendra Yadav (P.W.1), Jwala Prasad Yadav (P.W.4) and Laxmi Yadav (P.W.5) have turned hostile to the prosecution case. According to their testimony, they reached in the midnight to the house of the informant and found the deceased murdered there but they have not stated the name of assailant.

11. The trial court relying upon the evidence of Manjula Devi (P.W.2), Basudeo Yadav (P.W.3), father of the deceased and Chhedi Yadav (P.W.7), the informant are eye witnesses of this case. It is a fact that in this case, charge was framed ten years after the occurrence and the witnesses during trial were examined thereafter. Manjula Devi at the time of occurrence was 19 years old as she has deposed that the deceased Paltan was five years younger to her and



the postmortem report of the deceased shows that Paltan was 14 years old at the time of his murder. The case of the prosecution is that she was sleeping on a mat nearby the wooden cot on the Varandah of the house of his father and Varandah is a small Varandah. Evidence shows that behind Varandah there are two rooms without any door. In front of those rooms, Varandah is situated and in continuity is the courtyard. This witness has seen the actual act of murder committed by the appellants along with one Umesh Yadav, who died during the trial.

12. The testimony of Manjula Devi (P.W.2) clearly shows that Paltan Yadav her cousin was sleeping at the Varandah where he was killed by the appellants in the midnight and the courtyard (Aangan and Varandah) is in continuity. The evidence further shows that when anyone enters inside the house of the informant, one first goes to the courtyard and thereafter, there is Varandah and then two rooms are situated.

13. P.W.1, Bhupendra Yadav though hostile of the prosecution case but has stated before the court that he reached at the Darwaza of the informant soon after the occurrence and saw dead body of Paltan Yadav which proves the fact that Paltan was murdered in the midnight.

14. P.W.7, Chhedi Yadav, the informant of this case in



paragraph-13 of the deposition has also explained the place where he was sleeping along with nephew Paltan Yadav and that place is Varandah of his house. The inquest report of the deceased prepared by the police has also described about the place where dead body of Paltan Yadav was found. The dead body was on wooden cot at the Varandah of Chhedi Yadav's (P.W.7, the informant of this case) house.

15. So on critical appraisal of the entire evidence of the prosecution witnesses, we come to the conclusion that prosecution has established the place of occurrence as no major contradiction surfaces even in the cross-examination touching go the root of the prosecution case in order to disbelieve the place of occurrence. Moreover, slight discrepancies are natural particularly in view of inordinate delay in examination of witnesses after lapse of a decade as charge against appellants were framed after lapse of approximately ten years.

16. We also find considering the evidence that there is no delay in lodging the F.I.R. of this case. The occurrence was committed after the midnight in between 7-8th June, 1983 in a remote village and immediately after the outbreak of the morning, the informant went to the police station for lodging the case. In the year 1983, there was no availability of mobile as the communication revolution has not dawned by that time. So communication was to be



given to the police station only by local Chaukidar or the person or family members or other persons so in this background, we also hold that there is no delay in lodging the F.I.R. in this case.

17. The doctor (P.W.9), conducting the postmortem examination on the dead body of Paltan Yadav, has found following ante mortem injury on the person of Paltan Yadav :

“ Incised wound 3 ½ “ x 1” x cutting skin muscle and all vessel including left carotid artery on left side of the neck at the level of hyoid bone nor extending 2” posterior sternomuispadinum 1” interior sternomuispadinum directing down forward and inward deepest at the posterior end cutting with cervical vertibraie artirorly ½” x ¼” x ½”.

Incised wound 1 ½” x ½” x scapula bone deep in the scapula on left shoulder.

Bruise – 6” x 1/3” on left side of chest at the level of 7th rib.”

18. In the opinion of the doctor, Injury No.1 is sufficient to cause death in ordinary course of event. However, in course of examination, his statement that the injury no.1 cannot be caused by knife or dagger does not appear correct, according to him, said injury can only caused by sword, garansa and axe.

19. It is well known that a sharp knife though generally used for causing stabbing wound but it may also be used as a cutting instrument, it depends on the manner and the angle knife or dagger is



used; so in present case it is not a case of beheading or chopping of the neck completely from the body rather it is a case of cutting or causing incised wound of the dimension of 3 ½” x 1” of the muscle deep on the neck including vessels and left carotid artery on the side of the neck so in our considered opinion, this injury can also be done by knife or dagger, moreover Manjula Devi (P.W.2) cousin of deceased in an eye witness to assault on the neck of her brother Paltan by appellants and the injury on neck was caused by a large knife.

20. The factum of enmity between the informant and the appellants are admitted position. However, the investigating agency has failed to seize torch and dibia the source of light in which appellants were identified by Manjula Devi (P.W.2), Chhedi Yadav (P.W.7) and Basudeo Yadav (P.W.3). On this score, due to laches on the part of investigating agency, the prosecution case cannot be disbelieved when there are reliable evidence of eye witnesses proving the case beyond reasonable doubt.

21. Learned counsel for the appellants has also failed to show how non-examination of the I.O. has prejudiced the case of defence in any manner except that place of occurrence has not been proved due to non-examination of the Investigating Officer.

22. Earlier, the evidence on the point of place of occurrence has been discussed particularly the testimony of eye



witnesses, namely, Manjula Devi (P.W.2), Basudeo Yadav (P.W.3), father of the deceased and Chhedi Yadav (P.W.7), the informant, who were sleeping at the place of occurrence and in the presence of Manjula Devi (P.W.2), his cousin Paltan Yadav, a boy of 14 years age was murdered while sleeping on a wooden cot on the Varandah and the said Varandah and the courtyard of the house are in continuity as per the evidence, so in the cross examination some witnesses saying Aangan as a place of occurrence is not a major contradiction relating to place of occurrence.

23. In case of **Ramdeo and another Vrs. State of U.P.**

(1995) Suppl.I SCC 547, the Apex Court has held as follows :

“Before parting with the judgment, we would however like to observe that the prosecution did not examine Bharat Lal Sharma, Sub-Inspector, who was the investigating officer of the case. It was desirable for the prosecution to produce the investigating officer at the trial notwithstanding the fact that the various documents which were to be proved by the investigating officer were accepted by the defence as genuine documents and were not disputed. However, the non-examination of the investigating officer does not in any way create any dent in the prosecution case much less affect the credibility of the otherwise trustworthiness of the oral testimony of the eyewitnesses which we have accepted.”



24. In **Ambika Prasad and another Vrs. State (Delhi Administration) and analogous cases (2000) 2 SCC 646**, the Apex Court has held as follows :

“Further, it is to be borne in mind that a criminal trial is meant for doing justice to the accused, the victim and the society so that law and order is maintained. Hence, as observed by this Court in **State of U.P. v. Anil Sing (1988 Supp SCC 686 : 1989 SCC (Cri) 48 : AIR 1988 SC 1998)** it is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform. Hence, we would only state that it is an unfortunate state of affairs that police officers resiled from their own statements and deposed something contrary before the Court. Equally, it is unfortunate that the investigating officer has not stepped into the witness box without any justifiable ground. But this conduct of the investigating officer or other hostile witnesses cannot be a ground for discarding the evidence of PW 5 and PW 7 whose presence on the spot is established beyond reasonable doubt.”

25. Applying the said principle the non-examination of the I.O. in the present case too cannot be a ground for discarding



credible evidence of P.W.2, P.W.3 and P.W.7 whose presence at the place of occurrence is natural and established by cogent evidence, moreover, their testimony are also reliable and trustworthy as no major contradictions in the cross examination done by the defence is found to discredit their evidence.

26. In view of the aforesaid analytical discussion of evidence on record, we are of the opinion that prosecution has proved the charge of murder against both the appellants, namely, Ashok Yadav and Shatrughan Yadav beyond reasonable doubt. Therefore, finding the appeal bereft of any merit, it is dismissed. Both appellants would serve the remaining part of sentence.

I agree
Samarendra Pratap Singh, J.

(Arun Kumar, J)

N.H./-

(Samarendra Pratap Singh, J)

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