

IN THE HIGH COURT OF JUDICATURE AT PATNA
(Against the judgment of conviction and order of sentence, dated 23.10.2013, passed by Shri Ravi Shankar Tiwary, learned 2nd Additional District and Sessions Judge- Buxar in S.T. No. 204 of 2011, arising out of Brahampur P.S. Case No. 79 of 2011)

Criminal Appeal (DB) No.140 of 2014

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Gudum Dome son of Late Dukhan Dome, R/o Nuwan, P.S. Krishna Brahama,
District-Buxar

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 106 of 2016

Arising Out of PS.Case No. -79 Year- 2011 Thana -BRAHMPUR District- BUXAR

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Sabita Devi wife of Sri Guddum Dom, R/o Village+P.O.- Nuwan, (Dom Tola),
P.S.- Krishna Brahama, District- Buxar.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance:

(In CR. APP (DB) No.140 of 2014)

For the Appellant/s : Mr. Mr. R.R.K. Pandey, Advocate
Mr. K.N. Jha, Advocate

For the Respondent/s : Mr. S.A. Ahmad, APP

(In CR. APP (DB) No.106 of 2016)

For the Appellant/s : Mr. R.R.K. Pandey, Advocate
Mr. K.N. Jha, Advocate

For the Respondent/s : Mrs. Shashi Bala Verma, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 16-09-2017

Challenging the conviction vide judgment dated 23rd of
October, 2013 in Sessions Trial No. 204 of 2011 for offences under
Section 302/34 IPC and convicting them to RI for life, these appeals



have been filed by the appellants herein. Appellant Gudum Dome in Criminal Appeal No. 140 of 2014, is the husband and appellant Sabita Devi in Criminal Appeal No. 106 of 2014 is his wife and they are accused of having murdered their step son Anil Dome.

It is the case of the prosecution that P.W.1 informant Ramjee Dome recorded a fardbeyan / FIR on 12.04.2011 at 20:00 hours to the effect that on the same day at 7:00 P.M. in the evening when he was laying down in his house on a *gamchcha*, he saw his father appellant Gudum Dome and his brother Anil Dome arguing and fighting with each other with regard to partition of their ***Jajmanka*** in the village. When this was going on, appellant Sabita Devi, step mother of deceased Anil Dome came with a knife and gave it to her husband Gudum Dome who stabbed Anil Dome and he succumbed and died on the spot. The aforesaid information was recorded and both the appellants were prosecuted for the same and in the trial in question six witnesses were examined. P.W. 1 is the informant Ramjee Dome, P.W. 2 is Rajendra Dome, P.W. 3 is Manager Dome, P.W. 4 is Bora Dome, P.W. 5 is Santokhia Devi and P.W. 6 is Dr. Anil Kumar Singh who examined the deceased.

Learned counsel for the appellants took us through the fardbeyan and the FIR and argued that the informant Ramjee Dome even though was present at the spot and eye witness to the same but when he was examined in the Court he said that he had gone to the



village and when he came back he found his brother dead. It is stated that this witness does not support the story of the prosecution. Thereafter the prosecution have produced P.W. 4 Bora Dome and P.W. 5 Santokhia Devi as eye witness to the incident but in the FIR P.W. 1 Ramjee Dome does not speak about anyone present at the spot except himself. Further learned counsel invites our attention to the cross-examination of P.W. 5 Santokhia Devi, where, in para-5, 6 and 7, she speaks about coming to the place of incident when 50-60 persons were present. He argued that these witnesses who are not shown present in the FIR are introduced by the prosecution and even though it is stated that their statement under section 161 Cr.P.C. was recorded such statement is neither available on record nor the Investigating Officer examined to prove recording of the statement under section 161. That apart, learned counsel invites our attention to the fact that P.W. 1 who could be the sole eye witness of the entire incident as recorded in the FIR, has turned hostile. Learned counsel argues that the prosecution has miserably failed to prove the case and conviction in the facts and circumstances is not warranted.

Learned counsel for the State took us through the FIR, statement of P.Ws. 4 and 5, implications made by them and the statement of P.Ws. 4 and 5 under section 161 Cr.P.C. available in the case diary to make out a case that in the light of the evidence of eye witnesses P.Ws. 4 and 5, the conviction has to be sustained and the



appeal dismissed.

We have heard learned counsel for the parties and perused the record.

Even though there has been an investigation into the matter and various materials are available in the case diary but neither the Investigation Officer is examined in this case at the time of trial nor, except the post mortem report and the FIR, any document brought on record in the trial by way of examination of the evidence. Even the so called 161 Cr.P.C. statement recorded at the time of investigation said to be available in the case diary is produced and put to witnesses P.W. 4 and P.W.5 and proved in accordance with the requirement of law. The informant P.W. 1 Ramjee Dome has turned hostile and even if the FIR is taken note of, it would be seen that he does not speak about anybody present at the place of the incident except him, there is no whisper in the FIR that when the incident took place, P.Ws. 4 and 5 were present. We also find that even after the declaration of P.W. 1 as hostile, he has not been cross-examined and statement properly recorded. That apart, P.W. 5 Santokhia Devi who is said to be an eye witness to the incident, in para-8 of the cross-examination, speaks about herself coming at the spot when about 50-60 persons were present and the dead body of Anil Dome was found lying there. The statement of this witness being an eyewitness to the incident becomes suspicious apart from the fact that her name is not shown present



when the incident took place in the FIR recorded by P.W. 1 Ramjee Dome.

Taking note of all these circumstances and lacunae in the proceedings, we find that there is no evidence available on record to bring home the guilt of the accused. The prosecution has miserably failed to establish the case beyond all reasonable doubt. The appellant, namely, Sabita Devi in Criminal Appeal No. 106 of 2016 is already on bail, hence, she is discharged from the liabilities of bail bond. So far appellant, namely, Gudum Dome in Criminal Appeal No. 140 of 2014 is concerned, he is directed to be set free forthwith, if he is not required in any other case.

Accordingly, both the appeals are allowed and the judgment of conviction and order of sentence dated 23rd October, 2013 passed in Sessions Trial No. 204/2011 by learned Additional District and Sessions Judge-2, Buxar is set aside and the appellant, namely, Gudum Dome and the appellant Sabita Devi are acquitted of the charges levelled against them.

(Rajendra Menon, CJ)

S.Sb/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	
CAV DATE	
Uploading Date	20.09.2017
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