

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.117 of 2014

Arising Out of PS.Case No. -2 Year- 2002 Thana -ARA MUFFSIL District- BHOJPUR

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1. Shivadhar Yadav Son of Duja Yadav
2. Gabudan Yadav Son of Kamta Yadav Both Residents of Village-Bara Basantpur,
P.S.-Ara Mufassil, district Bhojpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikramdeo Singh
For the State Mr. S.N. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
And

HONOURABLE MR. JUSTICE SANJAY KUMAR

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SANJAY KUMAR)

Date: 29-06-2017

1. The appellant Shivadhar Yadav has been held guilty under section 302 IPC whereas the appellant Gabudan Yadav is held guilty under section 302/34 IPC. By the impugned judgment dated 23rd January, 2014 passed by the learned 3rd Ad hoc Addl. Sessions Judge, Bhojpur, Ara in S.T. No. 282 of 2002/Supplementary Tr. No. 176 of 2013 (arising out of Ara Mufassil P.S. Case No. 02 of 2002), they have been sentenced to suffer R.I. for life besides imposition of fine with default clause. The appellants have assailed the aforesaid judgment of conviction and order of sentence.

2. On the night of 1st of January, 2002, while the informant was



at her house, along with her husband (deceased) and father-in-law (P.W. 1), it is alleged that late in the evening, the appellants along with other co accuseds entered through the main door of the house armed with fire arms and other lethal weapons. The deceased questioned their entry whereafter all the accused persons including the appellants surrounded the deceased and co accused Sabudan Yadav opened fire at the deceased which however did not hit him. Thereafter the appellant Gabudan Yadav who was armed with a Khanti (pointed iron rod) assaulted the husband on his face. The appellant Shivadhar Yadav thereafter again assaulted the deceased on his head with Danda. Seeing the assault on her husband, the informant Anita Kuer (P.W.3) intervened and tried to save her husband. Two of the accused persons (not the appellants) caught hold of her and one of them (co accused Anil Yadav) assaulted on her head with the reverse part of Fasuli causing injury on her head. The informant alleged previous land dispute between the parties as the motive for the occurrence. The Fardbayan Ext-3 was recorded on 02.01.2002 at 10:30 hours at the house of the informant which gave rise to a formal FIR (Ext.4) which, in turn, ensued investigation. It may be noted that both the injured (deceased and P.W. 3) were taken to Ara Hospital where treatment was given to P.W.3. The husband of the informant was referred to the P.M.C.H.



P.W. 1, being the father of the victim, accompanied the injured to the P.M.C.H where in course of treatment the victim died on 2nd of January, 2002 at about 5.30 P.M. A police officer from Pirbahore police station upon death recorded the statement of P.W. 1, prepared the inquest report (Ext.7) and dispatched the dead body for autopsy. On 3rd January, 2002, at about 12.15 P.M. the autopsy was conducted at the P.M.C.H. The post mortem report furnished by the autopsy surgeon is placed on record (Ext.2) proved by Dr. Arun Kumar (P.W. 5). As noticed, on 2nd of January, 2002 when P.W. 3, after getting the treatment at Ara Hospital, returned to her village home the police officer of the local police station arrived and her Fardbayan (Ext.3) was recorded on the same day at 10.30 A.M. On conclusion of investigation, the police laid the charge-sheet against the present appellants and two other accused persons. After taking cognizance, the case was committed to the court of sessions whereafter the trial (S.T. No. 282 of 2002) commenced and several witnesses were examined. In the meanwhile, an application seems to have been filed by the prosecution under section 319 of the Code of Criminal Procedure (for short 'the Code') for summoning few more accuseds to stand trial. By the time 08 witnesses were examined on behalf of the prosecution. The record indicates that the said application, on consideration, was allowed and co accused Anil



Yadav, Sabodhan Yadav and Ajay Yadav were summoned to face trial. Upon their appearance the trial court chose to start the trial *de novo* and prosecution witnesses were again called upon to appear and depose.

3. In order to bring home the guilt of the appellants the prosecution after summoning and appearance of the accuseds under section 319 of the Code produced 08 witnesses besides exhibiting relevant documents such as injury report of Anita Kuer (Ext.1), post mortem report (Ext.2), Fardbayan (Ext.3), formal FIR (Ext.4), protest petition (Ext.6) and the inquest report prepared on 3rd of January, 2002 (Ext.7). P.W. 1 (father of the deceased), P.W. 2 (brother of the deceased) and P.W. 3 (informant and widow of the deceased) narrated the ocular version of the prosecution case. Rest of the witnesses were formal in nature as they proved different documents. Few defence witnesses were examined to prove the alibi of one of the accuseds (since dead). Exts. B, B/1 and B/2 were produced which are the depositions of P.Ws. 1,2 and 3 prior to summoning of some other co accuseds. The learned trial court, on critical analysis of the evidence adduced by the prosecution in the *de novo* trial placing reliance on the evidence of P.Ws 1,2 and 3, held the appellant guilty. The trial court after splitting the evidence of these witnesses, however, held that the charges levelled against



four other co accuseds could not be proved beyond shadow of reasonable doubts. They were acquitted.

4. We have heard Mr. Vikramdeo Singh for the appellants and Mr. S.N. Prasad, APP for the State.

5. The main thrust of the argument of the appellants is the trial court having discarded the prosecution witnesses in material part committed error in relying on the rest part of their evidence to convict the appellants. There is delay of more than 02 days in sending the FIR to the court which give speculation of the prosecution having manipulated with the FIR. The credence usually given to the first version of the prosecution in the present case loses its credibility. P.W. 1 is a witness who has not claimed himself as eye-witness to the occurrence in his C.D. statements. It is further submitted that P.Ws.1 and 2 although claimed to be eye-witnesses but actually are not eye-witnesses. In his statements made under section 161 of the Code of Criminal Procedure, P.W.1 has not claimed himself as an eye-witness. For the first time in court he proclaimed himself as an eye-witness. P.W. 2 is also not an eye-witness to the occurrence. If their testimonies are excluded then it becomes a case of solitary eye-witness account narrated by P.W. 3. Criticizing the testimony of P.W. 3, it is argued that the charge under section 307 IPC for having caused injury to her by other co-



accuseds has been disbelieved by the trial court and they have been acquitted. The rest part of her evidence is so intermingled that the same cannot be sifted and relied upon to convict the appellants. It is also submitted that these witnesses are family members of the deceased.

6. Learned APP, in opposition, has urged that the case of the present appellants is quite different from those who have been acquitted by the trial court. At least P.Ws 2 and 3 are consistent so far as their complicity in the crime is concerned. The finding of the doctor supports the allegation levelled against the appellants. The trial court has rightly convicted them.

7. Before we delve into the relevant evidence, it may be noted that from the deposition of P.W.1 (at para 22) it is apparent that the appellants along with other co-accuseds put on trial belong to one family. Their ancestor Firangi Yadav had one son called Duj Narayan. Duj Narayan had three sons namely Kamta Prasad, an accused who faced the trial, Ramadhar Yadav and Shivadhar Yadav (appellant no.1). Two of the sons of appellant no.1 namely Sanjay Yadav and Anil Yadav were also accuseds who faced the trial. Kamta Yadav has two sons namely Gabudan Yadav (appellant no.2) and Sabudan Yadav @ Subodh Kumar who was one of the accuseds (since dead).



8. One of the contentions of the defence is that the evidence of P.Ws. 1, 2 and 3 who have narrated the prosecution case in court as an eye witness should be discarded as they have also stated about the injury caused to the informant (P.W.3) by some of the co-accused for which they were specifically charged under Section 307 of the Indian Penal Code and the trial court, on appraisal of their evidence, did not find the said charge proved. *The maxim falsus in uno, falsus in omnibus* has not received general acceptance in our criminology. The Supreme Court has repeatedly observed that this *maxim* has not occupied the status of a rule of law. It is merely a rule of caution. The said doctrine merely involves the question of weight of evidence which the court has to apply in a given set of circumstance. Reference in this regard be made to the case of *Nisar Ali Vs. State of Uttar Pradesh (A.I.R. 1957 SC 366)*.

9. Prosecution has based its case mainly on the evidence of P.W.1, 2 and 3, who are father, brother and widow respectively of the deceased. They have been projected as eye witnesses to the occurrence. The main attack of the defence is that the P.W.1 is not the eyewitness to the occurrence as he was sleeping at his *Dalan* situating at some distance from the place of occurrence. In this case, Investigating Officer has not been examined. So, in order to ascertain this fact, we examined the case diary to find out his earlier



version which was recorded by Investigating Officer under Section 161 of the Cr.P.C. P.W.1, in court, has stated that at the time of occurrence, he along with his two sons Binod Yadav, Sheo Shankar Yadav and daughter-in-law Anita Devi (informant) were sitting in the court yard when the appellants and other co-accuseds armed with weapon entered into the house and assaulted his son Binod Yadav. The wife of the informant when intervened to rescue the victim, she too was assaulted by the accuseds. On perusal of the statement of this witness recorded under Section 161 of the Cr.P.C. (marked as Ext-5), we find that at the time of investigation, P.W.1 had not claimed to be an eye witness to the occurrence. He had stated that he was sleeping at *Dalan* situating at a distance of 100 yards. He heard sound of quarrel between the accuseds and his son and thereafter he came and saw his son having bleeding injuries on his head and nose. His daughter-in-law (informant) was also injured and she narrated him the entire episode. Thus, we find that this witness P.W.1 is not an eye witness rather he reached at the place of occurrence immediately after the occurrence and carried the victim to hospital for his treatment. His evidence, in court, as an eye witness to the occurrence cannot be relied.

10. We are now left with the evidence of only two eye witnesses namely, P.Ws.2 and 3, who were present in the house when the



accuseds entered into the house, abused and assaulted the victim and the informant.

11. P.W.3 is the informant of this case and also the wife of deceased. Her statement was recorded on 02.01.2002 at 10.30 AM. She has stated that on the preceding night at about 10-11 P.M., the appellants along with other accuseds entered into her court yard and assaulted her husband and when she tried to save him, they assaulted on her head. The motive behind the occurrence has been alleged to be land dispute. P.W.2 Sheo Shankar Yadav is full brother of the deceased. He was aged about 9 years. He has stated that on hearing the sound of commotion, he woke up and saw the accuseds assaulting his brother and Bhabhi (informant) in the courtyard. Appellant (Gabudan) assaulted the victim by *Khanti* on his eye brow and appellant Shivadhar Yadav assaulted on his head by *Lathi*. They further assaulted the informant and she was treated at local P.H.C. The defence has not disputed much on the presence of P.Ws.2 and 3 inside the house on the relevant date and time of occurrence. The wife and minor brother of victim (P.W. 3 and 2) are supposed to be present in their house at the late night (9-10 PM) in the winter season. The defence has criticized their evidence by eliciting some contradictions in their statement recorded under Section 161 of the Cr.P.C. as well as recorded by court below for the first time when



trial commenced against four accused persons (i.e. before summoning few more accuseds). P.W.3 (informant) of this case is an illiterate lady. She was aged about 18 years at the time of occurrence. She has stated at paragraph 8 that she is illiterate and was married with the victim at the age of 12-13 years. At paragraph 13, she has stated that after murder of her husband, she started domestic work outside the house. She did not even move outside the house during the life time of her husband. She has put her thumb impression on her *fardbeyan* (Ext.3) P.W. 2 is full brother of the deceased. He was aged about 9 years at the time of occurrence. He is also an illiterate person as it appears from his deposition over which he has put his thumb impression instead of his signature. P.W. 1 is the father of the deceased and he also appears to be illiterate as he also affixed his thumb impression on his deposition. In the evidence of all these three witnesses, it has come that the deceased was a labourer and used to earn livelihood by *Palledari* (work of carrying heavy load). These facts indicate that the informant (P.W.3) her Dewar (P.W.2) and Father-in-law (P.W.1) are rustic. These witnesses deposed in the court after more than 7 years of the occurrence. In such circumstance, some discrepancies in their evidence are bound to occur. The informant herself is an injured witness who sustained injury at the instance of accuseds when she



tried to save her husband. In such circumstance, her presence at place of occurrence cannot be doubted. These two witnesses have been cross-examined at length, but nothing material has been elicited to discredit their testimony on the point of the manner of assault committed by both the appellants. The defence has given suggestion to P.W. 1 and 2 that the deceased fell down from the roof in a drunken stage and further, he assaulted his wife also while he was intoxicated. A different suggestion has been given to P.W. 3 that she has deposed falsely and no such type of occurrence had taken place. The evidence of P.Ws. 2 and 3 fully support the prosecution case in so far the manner of assault on the deceased by the appellants are concerned which is quite separable from the allegation of causing injury to the informant at the hands of other accuseds. The time and place of occurrence also stand established from their evidence.

12. We have perused the evidence of doctor as well as autopsy report (Ext.2). The doctor (P.W.5) has reported following ante-mortem external and internal injuries on the person of the deceased:

- (i) One abrasion of 1"x ½" on right side of face and forehead and ½" right from midline.
- (ii) One contusion of 7"x6 on left side of face and forehead.

On dissection-



Massive haematoma was found in frontal, left temporal, left and right parietal region. One depressed fracture of 3"x1 ½" size in frontal and parietal region. 4" behind from nose bridge and 4" from left and right ears. One linear fracture of 1 ¼" from depressed fracture to front ½" right from midline and 2 ½" behind from right orbit. Extradural haematoma was found in 6"x6" area on left side of brain involving frontal left temporal, left parietal and right parietal region.

Brain was depressed in left frontal region. Sub dural haematoma was found on both side of brain.

Cause of death has been reported to be head injury caused by hard and blunt object and its impact.

13. At the time of cross-examination of doctor, it was suggested that such type of injuries are possible if the victim would have fallen on hard surface. This suggestion does not fit in the nature of injuries sustained by the victim. In this case, the victim has sustained several injuries on his head and forehead (eyebrow) in different direction at the same time which is not possible in a case of falling on hard surface. The doctor has not found any foul smell or intoxicating substance at the time of examination of dead body. So the medical evidence on record establish the fact that the death of deceased was homicidal and not the accidental.

14. Another submission on behalf of the defence is that the witnesses are family members of the deceased and they had reason to



falsely implicate the accuseds on account of land dispute. The occurrence, in question, took place in the house of informant at about 9-10 PM on 1st January, 2002 which was a winter day. At such, late night in winter season, nobody is supposed to be available near the place of occurrence which is the inside of the house. All the accuseds (including appellants) belong to one family having their house adjoining to the house of informant. P.W. 1 at paragraph 19 and P.W. 2 at paragraph 14 have stated that the accuseds are their next door neighbours. The informant (P.W.3) at Paragraph 2 and 3 has stated that some more persons namely, Rama Shankar, Chandra Kala Devi, Ravi Dayal and Musafir Yadav had also witnessed the occurrence, but on account of threat hurled by the appellants/accuseds, they were not prepared to depose in court. Another witness Sinshashan Yadav has died during the trial. They are also agnates of the deceased having their houses adjoining to the houses of the victim and appellants. Except the aforesaid persons nobody appeared at the place of occurrence at the time of occurrence. It was natural too. In such circumstance, non-examination of other independent witness would not shatter the prosecution case in any way. There is no principle in law that evidence of relative should be discarded as partisan. So far evidence of P.W. 1 is concerned, his arrival at the place of occurrence soon after the occurrence cannot be



ruled out as he was the person who immediately reached at the place of occurrence and moved his son to hospital for his treatment. He was supposed to be at his *Dalan* which situates at a distance of 100 yards as submitted by defence also. The evidence of P.W.2 and 3 are consistent on the manner of assault and participation of the appellants in the assault. We find no reason to disbelieve them. On careful scrutiny of their evidence, we find that there are very few minor contradictions in their evidence which are of little consequences as the court is required to scrutinise the veracity of the evidence on record. If the witnesses have fully supported the prosecution case and they are found to be truthful and reliable, the fact that other probable witnesses have not been examined would not create any doubt regarding the veracity of the prosecution case. The Apex Court in ruling reported in AIR 1983 S.C. 573 has observed that “.....much importance cannot be attached with the minor discrepancies because of the fact that a witness though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by the counsel and out of nervousness mixing facts, got confused regarding sequence of events or filling details from imagination on the spur of the moment”. We find the evidence of P.Ws. 2 and 3 reliable and they clearly prove the guilt of appellants beyond reasonable doubt.



15. So far motive is concerned, the land dispute between the parties is admitted. We would like to refer paragraphs 11, 12 and 13 of P.W.1, wherein he has categorically stated that he had his ancestral land measuring 17 decimals adjoining to which one Sheo Nandan Yadav had 16 decimals land. P.W.1 purchased adjoining southern land measuring 10 decimals from Sheo Nandan Yadav and amalgamated the same in his land. The said Sheo Nandan Yadav was left with 6 decimals land only. The father of accused Kamta, purchased the remaining land measuring 6 decimals from Sheo Nandan Yadav, but in the sale deed, he fraudulently got an area 10 decimals mentioned instead of 6 decimals. The accused persons then started claiming 10 decimals land instead of their actual purchase of 6 decimals land. P.W.2 at paragraph 14 has stated that in the morning of the occurrence, verbal duo had taken place between the deceased and accuseds for the said land. P.W.3 at paragraph 54 has also stated about the land dispute. The defence has given suggestion to P.W.2 that the accuseds have been implicated falsely on account of enmity. P.W.1 has also been given suggestion of false implication on account of land dispute. The defence has not given any explanation of their false implication in their statements given under Section 313 of the Cr.P.C. Thus, we find that the prosecution has been able to establish the motive of the appellants also to commit the



occurrence in which the victim died.

16. In view of the discussions made above, we do not find any merit in the appeal. Accordingly, the appeal is dismissed.

(Sanjay Kumar, J)

I agree.

rohit/-

(Kishore Kumar Mandal, J)

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