

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.142 of 2013

Arising Out of PS.Case No. -74 Year- 2005 Thana -MADHEPURA District Madhepura

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1. Yugeshwar Yadav S/o Late Harinandan Yadav R/o Vill-Satokhar, P.S. Singheshwar, Distt-Madhepura
 2. Kamleshwari Yadav S/o Late Bineshwari Yadav R/o Vill-Satokhar, P.S. Singheshwar, Distt-Madhepura
 3. Deo Narayan Yadav @ Deo Naraayan @ Deo Nandan Yadav S/o Maheshwari Pd. Yadav R/o Vill-Satokhar, P.S. Singheshwar, Distt-Madhepura

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s

Mr. Krishna Prasad Singh, Sr. Advocate

Mrs. Meena Singh

Mr. Baxi S.R.P.Sinha, Sr. Advocate

Mr. Pankaj Kumar Sinha

Mr. Mrigendra Pratap 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: 22-06-2017

1. All the three appellants were tried with other five accused persons for the offence punishable under sections 302 and 201/34 IPC for having killed the husband of P.W.5. The Additional Sessions Judge, Adhoc-I, Madhepura vide judgment of conviction and order of sentence dated 28.01.2013 and 04.02.2013 respectively passed in S.Tr. No. 140 of 2007 convicted the appellants under section 302/34 IPC and sentenced them to undergo rigorous life imprisonment with imposition of fine having default clause. The other accused persons put on trial have, however, been acquitted. Assailing the aforesaid



judgment and order of conviction, the present appeal has been filed by the appellants.

2. On the morning of 27.03.2005 at about 6:30 A.M. the village Chaukidar heard the rumour about a dead body deserted in Manhara Canal. He immediately proceeded to that place and found the dead body of a male person who had received bleeding injuries on his head and nose. He could also notice the footprints/mark of the motorcycle tyres close to the dead body suggesting that the accused(s) had brought the dead body on the motorcycle and dumped in the canal. The local villagers could not identify the dead body. On his report, P.W. 9 arrived and recorded the Fardbayan (Ext.2) on 27.03.2005 at 9:00 A.M. The inquest proceeding over the dead body was carried out at the canal itself and thereafter the dead body was taken to the police station where P.W.6 later arrived and identified the dead body of his father. The body was immediately sent for post mortem examination. On 27.03.2005 at 2:10 P.M. P.W.7, Dr. Shilvant Singh conducted the autopsy on the body of the unidentified male person and submitted the post mortem report (Ext.1). On conclusion of investigation, the I.O. (P.W.8) submitted the charge-sheet against the appellants and five other accused persons giving rise to Sessions Trial No. 140 of 2007 which came for trial on the file of the learned Adhoc Sessions Judge-I Madhepura wherein the charges were framed and explained/read over to the appellants to which they pleaded not guilty. The defence of the appellants was a



total denial of the occurrence and their false implication in the crime.

3. In order to bring home the guilt of the appellants, the prosecution, in all, examined 09 witnesses. P.W. 1 Md. Hashim (full brother of the deceased), P.W.5 Nazma Khatoon (wife of the deceased) and P.W. 6 Md. Firoz (son of the deceased) have spoken about the circumstances which led to the homicidal death of Md. Nasiruddin @ Dhodhai. P.W. 2 Md. Hafiz and P.W.8 Bhupendra Narayan Singh have either been declared hostile or are formal witnesses. P.W. 3 Md. Raza is the full brother of the deceased who has not spoken about the relevant aspects of the prosecution case. P.W.4 Umesh Yadav was not relied upon by the prosecution and was declared hostile. P.W. 9 Ajay Kumar is the police officer, who recorded the Fardbayan of the Chaukidar and also conducted the inquest proceeding at the place where the dead body of the deceased was recovered. P.W. 7 is the doctor who held the autopsy on the dead body of the then unidentified male person and submitted the post mortem report which has been proved as Ext. 1. The defence, however, did not adduce any evidence either oral or documentary.

4. On a critical analysis of the evidence adduced by the prosecution, the learned trial court found sufficient evidence against the present appellants and convicted and sentenced them in the manner noted above. The trial court, however, found insufficient evidence against the rest of the accused persons put on trial and they were acquitted of the charges.



5. We have heard Mr. Krishna Prasad Singh and Mr. Buxi S. R. P. Sinha, both Sr. Counsels appearing on behalf of different appellants of the present appeal as well as Mr. S. N. Prasad, APP for the State.

6. Both the learned counsels appearing for the appellants, have criticized the judgment contending, inter alia, that the learned trial court erred in law in acquitting some of the accuseds and convicting the present appellants on the same set of evidence. The learned trial court ought to have discarded the prosecution evidence as against the present appellants also. It is next submitted that if P.W. 6 claims to have reached the police station and identified the dead body of his father then how in his post mortem report (Ext.1) said that he held the post mortem on the dead body of an unidentified male person. They have also urged that it is a case based on the circumstantial evidence. There is no convincing/credible evidence on record conclusively proving only the guilt of the appellants. The prosecution witnesses on which the learned trial court has relied are family members of the victim. It is contended that P.W. 6 cannot be fully relied upon/trusted as certain facts disclosed by him relating to the incident at Singheshwar Bazar have not been proved by producing the relevant evidence. It is next argued that P.W. 1, being the full brother of the deceased, has clearly spoken to have left the said Bazar in the evening and then went to Madhepura in connection with the treatment of his family member and returned only 3-4 days



thereafter. In the circumstances, it would be inappropriate to fully rely on his evidence. Although the prosecution witnesses have spoken about the motive but the same has not been firmly established. Considering the above, the only theory of the appellants last seen with the deceased would not legally justify their connection.

7. Mr. S.N. Prasad, APP, on the other hand, supported the judgment of conviction and order of sentence contending that the prosecution has fully established the motive as well as the factum of the appellants having been last seen with the deceased going from the Singheshwar Bazar and on the following morning his dead body was found having received injuries caused by hard and blunt substance which opined to be the cause of death by the doctor. The proximity of the time between the last seen and the recovery of the dead body suggests that it was the appellants who had committed the murder of the deceased, particularly when the appellants have not set up any defence explaining the circumstances under which the deceased died of the injuries caused to him by hard and blunt object/substance.

8. In view of submissions of both sides, the point arises for consideration whether the prosecution has been able to prove the guilt of the appellants beyond shadow of doubts.

9. The death of Md. Nasiruddin alias Dhodhai was homicidal is not much in dispute. The dead body was recovered at about 06:30



AM in the morning of 27.03.2005 and autopsy was conducted on the same day by P.W.7 at 02:10 PM. The doctor found the following ante-mortem injuries on the deceased:

- 1) Lacerated wound on the face measuring 1.5 cm x 0.3cm x 0.2 cm (Rt side).
- 2) Left side of the Head (Parieto-Temporal bone) – skull fractured.
- 3) Haematoma on the left side of the head.
- 4) Abrasion of the knee (left side) measuring 6 cm x 0.3 cm.
- 5) Abrasion on the Rt. knee measuring 4.5 cm x 0.5 cm.
- 6) Bruise on the front of the neck measuring 3 cm x 2 cm.
on dissection Hyoid bone was intact.
- 7) Lacerated wound on the left temple measuring 1.4 cm x 0.5 cm x 0.2 cm.

On opening the skull- cranial cavity was full of blood and left brain matter lacerated

Cause of death- due to shock & haemorrhage due to above mentioned injuries (on the head).

Weapon used- Hard blunt substance.

10. Thus, we find that in all, the victim sustained seven injuries on different parts of his body and they were caused by hard blunt substance which resulted in his death. The death inquest report Ext. 4 and evidence on record suggest that the victim was done to death in the intervening night of 26.03.2005 and 27.03.2005 and the dead body was dumped in the canal at a far off distance.



11. By adducing oral evidence the prosecution has projected a case based on last seen of the deceased in the company of appellants and also the enmity that existed between them from before. The witnesses who supported the case of last seen of deceased in the company of appellants/accuseds are the family members. P.Ws. 1, 5 and 6 are brother, widow and son respectively of the deceased. It has come in the evidence that the victim was a Ferry man. He along with these three appellants had taken settlement of ferry ghat on the local river. They were doing ferry work on partnership basis and the period of settlement was to end on 31.03.2005. The victim had entered into new partnership and had taken settlement of the ghat along with three new partners for the next term commencing from 01.04.2005. On account of their ouster, the accuseds/appellants were aggrieved. They had earlier in the day forcibly collected toll at the rate of Rs. 10/- per pair of cattle instead of Rs. 5/-. The collection of ferry charge at the enhanced rate by the accuseds ignited quarrel and the accuseds had assaulted the victim in the morning of 26.03.2005 and also held out threats to kill him. All the witnesses i.e. P.Ws. 1, 5 and 6 have supported this fact in one tone. P.W.5 at paragraphs 4 and 5 has stated that the appellants assaulted her husband and on account of intervention of local people, her husband returned home from their clutches. The accuseds after the assault had threatened to do away with his life. She has further stated that on the same day in the evening, her husband proceeded to Singheshwar Bazar with an



amount of Rs. 20,000/- on his bicycle. On the way at Durga Chowk, the appellants and other co-accuseds met her husband and took him away. P.W.6 at paragraph 3 has stated that he was also present in the Bazar at that time when the appellants/accuseds asked his father to compromise the case. The appellants asked him (P.W.6) to stay there and took his father towards Saw Mill in north direction. This witness remained waiting for his father for long time but his father did not return till late night. He informed local people and on the following morning he could learn about a dead body thrown in Manhara Canal. This witness visited at Manhara Canal and thereafter to Police Station where he saw and identified the dead body of his father. Another witness to the last seen is P.W.5 who is widow of the deceased. She stated at paragraph 4 that a quarrel had taken place in the morning for ferry collection and settlement of collection of money so far collected and the appellants assaulted her husband by means of lathi. The local people intervened and pacified the matter and thereafter accuseds had come to her house and had openly threatened to kill the deceased. She has further stated that in the evening, her husband left the house with a sum of Rs. 20,000/- and the accuseds took him to some place from the Durga Chowk on the plea to settle their differences. Since thereafter, her husband got traceless and his dead body was recovered from Manhara Canal on the following morning.

12. P.W. 1 is full brother of deceased. He had witnessed the occurrence that had taken place earlier in the day in which the



deceased was thrashed by the appellants. He has stated that the victim was a partner of the appellants for collecting ferry and the victim had discarded the appellants and obtained settlement of the ghat for the next year with new partners. On the date of occurrence, the appellants picked up quarrel and assaulted the victim. This witness pacified their quarrel and thereafter they all left the place. He has stated that the appellants had hurled open threats of dire consequence to the deceased and in the evening the appellants took the victim from Durga Chowk and proceeded towards Saw Mill in north direction.

13. On careful examination of the aforesaid three witnesses, we find their evidence quite consistent on the point of quarrel and assault which took place between the appellants/accuseds and the victim in the morning preceding to the occurrence and that the appellants/accuseds had taken the victim from the Durga Chowk in the evening. On the following morning his dead body was recovered from a canal.

14. The learned counsel for the appellants contended that all the three witnesses who supported the case are partisan witnesses related as brother, wife and son of the deceased. In this case, not a single independent witness has been examined although the witnesses examined in this case have stated that quarrel had taken place in Bajar which was witnessed and pacified by the local people. In this regard, we have minutely examined the evidence on record. There is no legal principle that a related witness should always be treated as partisan



witness. The evidence of the three witnesses on this aspect is consistent and we have no reason to discard their evidence. They all have stated that the appellants took the victim towards Saw Mill in the evening of 26.03.2005 and on the following morning his dead body was recovered. All the witnesses have been cross-examined at length but nothing glaring has been elicited so as to discredit their testimony. It is true that some contradiction and discrepancy in their evidence have occurred, but they are minor and insignificant. The court is required to see the veracity of the evidence on record. If the witnesses have fully supported the prosecution case and are found to be truthful their testimony is reliable. The fact that other probable witnesses have not been examined, would not create any doubt regarding the veracity of the prosecution case. Moreover, it is generally seen that the public are generally reluctant to come forward to depose before the investigating agency or court. In such circumstances, the interested persons generally figure as witness and thus their evidence cannot be discarded.

15. Thus the circumstances showing complicity of appellants emerging from the evidence on record may be summarised as follows:

- (i) That the victim and all the three appellants had partnership business of collecting ferry tolls at ghat and the said partnership business was to terminate on 31.03.2005.
- (ii) That the victim had entered into a fresh partnership



with three new persons excluding the appellants for collecting ferry.

- (iii) That there was verbal duel between the victim and the appellants in the morning of 26.03.2005 for collecting ferry.
- (iv) That the appellants assaulted the victim and on intervention of local people, the appellants spared him, but had openly threatened to do away with his life.
- (v) That the appellants on the pretext of getting their dispute settled, took the victim from Durga Chowk and proceeded towards Saw Mill in northern direction in presence of PWs. 1 and 6.
- (vi) That the victim was lastly seen in the company of appellants by P.Ws. 1 and 6 in the evening of 26.03.2005 and on the following morning his dead body was recovered at Manhara Canal.
- (vii) That the death of victim was homicidal.
- (viii) That there is no explanation from the side of appellants as to what happened to the victim after they took him towards Saw Mill.
- (ix) There is no explanation from the side of appellants as regard their false implication.
- (x) That except the appellants, nobody had any grudge against the deceased.

16. We may usefully refer here the provisions of law under Section 106 of the Evidence Act which obligates the appellants to explain the circumstances in which the deceased received fatal assault by hard and blunt substance. Unfortunately, the appellants have failed even to set up a defence on this point.



17. The chain of circumstances proved at trial show that it was none else than the appellants, who committed murder of the deceased and dumped the dead body in a canal in furtherance of their common intention. The prosecution has established the charges under Section 302 and 201/34 of the I.P.C. beyond shadow of doubt. The trial court rightly found and held the appellants guilty and convicted.
18. For the reasons stated above, we do not find any merit in the appeal. Accordingly, the appeal is dismissed.

(Sanjay Kumar, J)

(Kishore Kumar Mandal, J)

rohit/-

AFR/NAFR	AFR
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