

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 329 of 1994

Appeal against the judgment of conviction and sentence passed on 16.05.1994 by the Court of Mr. Ashim Kumar Dutta, learned 7th Additional Sessions Judge, Munger in Sessions Trial No. 258 of 1993 arising out of Dharhara P.S. Case No. 133 of 1992

=====

1. Ashok Bind, Son of Tilakdhari Bind
2. Kuruna Bind, Son of Bodhi Bind
Both resident of village – Amari, P.S. – Dharhara, District Munger
..... Appellants

Versus

The State of Bihar
..... Respondent

=====

Appearance :

For the Appellants : Mr. Animesh Kumar Mishra, Amicus Curiae
For the Respondent : Mr. A. K. Sinha, A.P.P.

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIRENDRA KUMAR)

Date: 09-03-2018

Both the appellants above named faced trial and were convicted and have been directed to undergo rigorous imprisonment for life for the offence under Section 302 of the Indian Penal Code and rigorous imprisonment for two years for the offence under Section 27 of the Arms Act. The sentences have been ordered to run concurrently.

2. The appellants have questioned the correctness of the judgment on two grounds; First that the learned trial Judge did not properly considered the serious inconsistency between the medical



evidence and the ocular evidence produced by the prosecution, which belies the trustworthiness of the ocular evidence. Secondly, on the ground that the prosecution has examined only interested and partisan witnesses and on careful scrutiny of their testimony, it would be evident that the prosecution has miserably failed to establish the charges against the appellants.

3. *Fardbeyan* (Ext.2) of P.W. 7 Kusheshwar Yadav was recorded by P.W. 9 Mangal Pandey, the Sub-Inspector of Police on 22.11.1992 at about 05:45 p.m. in village Lakra Patal wherein the informant disclosed that on the same day, at about 03.30 p.m., the informant was collecting paddy in his field adjacent to the south of his village Lakra Patal. He heard sound of firing of four shots from the northern side of the village. Thereafter, the informant rushed to his village and came to know that some unidentified person has committed murder of one Umesh Bind of neighbouring village Amari when Umesh Bind was coming along with his two friends. The friends of Umesh Bind escaped unhurt and fled away towards their village Amari. It is further disclosed that soon thereafter some people were seen coming up from village Amari armed with musket and guns. The appellants were identified who were leading the mob. The appellants along with others went near the dead body of Umesh Bind and thereafter chased to the murderer of Umesh Bind up to the railway lines towards north.



Thereafter, they were returning back. On the way, Sudhir Yadav nephew of the informant who was going towards village Aura Bagicha for the purpose of treatment of some one, the three miscreants including the appellants caught him and dragged towards the road near the godown of one Saudi Chaudhary. At the same place, the appellants fired two shots causing instant death of Sudhir Yadav. According to the informant, the occurrence took place as retaliation to the murder of Umesh Bind.

4. On the basis of *fardbeyan* aforesaid, Dharhara P.S. Case No. 133 of 1992 was registered. It is worth to mention that for the murder of Umesh Bind Dharhara P.S. Case No. 132 of 1992 was registered which has come in the evidence of the Investigating Officer.

5. From the trend of cross-examination to the prosecution witnesses, the defence is that, in fact, during firing at Umesh Bind, Sudhir Yadav also sustained injury at the hands of the murderers of Umesh Bind and he succumbed to the injuries. However, the prosecution, just to save the skin of the murderer of Umesh Bind, has lodged the false case.

6. Thus, in the present case, there is no dispute that the murder of Sudhir Yadav was committed at the said place and on the same day and time as alleged by the prosecution which finds corroboration from the prosecution evidence and the material exhibits seized by the Investigating Officer and fully referred in the trial court judgment.



7. Thus, the point for consideration is whether P.Ws. 1 to 4 and P.W. 7 who claims to be eye-witnesses of the occurrence are reliable witnesses. All these prosecution witnesses P.W. 1 Kapildeo Yadav, P.W. 2 Lakhan Yadav, P.W. 3 Kameshwar Yadav, P.W. 4 Barun Kumar and P.W. 7 Kusheshwar Yadav have consistently deposed that first the appellants caught Sudhir Yadav and dragged him near the godown of Saudi Chaudhary and thereafter fired at him causing his death. On closure and careful scrutiny of the evidence of these eye-witnesses, it does not appear that they were carrying any motive to falsely depose against the appellants or their presence at the time of occurrence was doubtful.

8. Learned counsel for the appellants submits that P.W. 8 Dr. Mani Lal Singh, who performed the post-mortem examination on the dead body of Sudhir Yadav, is of definite opinion that three shots were fired and hit the deceased which caused three injuries at the deceased. One shot caused injury of entry and exit, another caused injury of entry only and bullet was noticed inside the body, whereas the third shot was caused by quite a different shot. Whereas the eye-witnesses have deposed that only the appellants fired one after another which had caused injury and death of Sudhir Yadav. Therefore, the testimony of the eye-witnesses creates doubt regarding their presence at the time of occurrence.



9. In the case of **Abdul Syeed Vs. State of Madhya Pradesh** reported in **2010(10) SCC 259**, the Hon'ble Apex Court in para 39 of the judgment held as follows in the matter of appreciation of contradiction between the ocular and the medical evidence:

“Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallized to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibilities of the ocular evidence being true, the ocular evidence may be disbelieved.”

10. Again in **Darbara Singh Vs. the State of Punjab** reported in **2012(10) SCC 476**, the Hon'ble Apex Court in para 10 of the judgment held as follows:

“So far as the question of inconsistency between the medical evidence and the ocular evidence is concerned, the law is well settled that, unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy. In the event of contradictions between medical and ocular evidence, the ocular testimony of a witness will have greater evidentiary value vis-à-vis medical evidence and when medical evidence makes the oral testimony improbable, the same becomes a relevant factor in the process of evaluation of such evidence. It is only when the contradiction between the two is so extreme that the



medical evidence completely rules out all possibilities of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved.”

11. P.W. 7 Kusheshwar Yadav, the informant of this case has deposed that after hearing the sound of firing from the northern side of the village, when he reached to his village, he found that a lot of people were coming up towards his village Amari. He could identify only the appellants who were carrying gun. All came near the dead body of Umesh Bind and thereafter moved towards the railway station chasing the murderer of Umesh Bind. The appellants along with three returned back. In that course, they found Sudhir Yadav who was going to his medical duty and the three persons caught Sudhir Yadav brought him near the dead body of Umesh Bind and thereafter took near the godown of Saudi Chaudhary and both the appellants fired from their gun causing death of Sudhir Yadav.

12. Likewise, P.W. 1 Kapildeo Yadav has deposed that a crowd headed by the appellants was coming up after murder of Umesh Bind and both the appellants were carrying gun. The crowd went near the dead body of Umesh Bind and thereafter moved towards railway line. Again, they returned back towards the village Lakra Patal. Sudhir Yadav met on the way. Thereafter, the appellants caught Sudhir Yadav and took him near the godown of Mr. Chaudhary. Both the appellants fired at him causing his death. Similar is the testimony of P.W. 2 Lakhan



Yadav, P.W. 3 Kameshwar Yadav and P.W. 4 Barun Kumar. It is worth to mention that Barun Kumar is a witness on the *fardbeyan* as well as witness of seizure. There is nothing in the whole testimony of the witnesses that even there was suggestion to the witnesses or admission of the witnesses that no third shot was fired at the time of occurrence either by any of the appellants or any other person. Moreover, there is evidence that some other persons were also carrying firearm along with the crowd. Therefore, the testimony of the eye-witnesses cannot be discarded only for the reason that the Doctor has found one more firearm injury than alleged by the prosecution witnesses. The Court is of the considered view that medical opinion is not so inconsistent or so irreconcilable with the testimony of eye-witnesses that it creates doubt on the trustworthiness of ocular evidence.

13. Next contention of the learned counsel for the appellants is that no independent witness has been brought by the prosecution to prove the charges, especially, when the occurrence took place near the village. No one has been examined who was available at the godown of Mr. Chaudhary. Only the interested witnesses have been examined.

Submission of the learned counsel for the appellants is that though P.W. 7 has stated that P.W. 1 to P.W. 4 were also present at the time of occurrence but this fact has not been corroborated by P.W. 1 to



P.W. 4, rather P.W. 1 to P.W. 4 have not deposed regarding presence of any other eye-witnesses including the informant.

14. The testimony of the aforesaid P.Ws. does not reveal that they were specifically asked and they denied regarding presence of other eye-witnesses. Only for this minor discrepancy their testimony cannot be discarded.

15. Learned counsel for the appellants submits that the informant is consistent in the *fardbeyan* as well as before the court that besides the appellants, unknown person were also there, who had caught the deceased but other eye-witnesses does not say that unknown person were also present at the time of murder of Sudhir Yadav which creates doubt on the presence of other eye-witnesses.

16. Since specific roll was played by the appellants i.e. firing and causing of death which have been supported by the eye-witnesses and they have not been cross-examined or have specifically denied regarding presence of unknown persons along with the appellants. Therefore, their testimony cannot be discarded for this reason.

17. There is no other material on the record to create even suspicion that murder of Sudhir Yadav took place while murder of Umesh Bind was committed. Both are separate occurrences though committed within hours and in the same locality.



18. On careful scrutiny of the prosecution evidence, we find that there is nothing to suggest why the prosecution witnesses will falsely depose against the appellants or to doubt their presence at the time of occurrence. Neither plurality of the witness nor independence of the witness is requirement of law to prove the criminal charges. The only requirement is that the evidence of prosecution witnesses should be scrutinized with more care and caution when it is said that they are interested witnesses. What the Court finds that the prosecution witnesses are natural and trustworthy witnesses. They are not hostile to the appellants nor there is any enmity even suggested. Moreover, the circumstances of the case and the evidence appearing on the record does not show that presence of the eye-witnesses at the time of occurrence was doubtful, rather the eye-witnesses are consistent with their statement before the police recorded at the earliest occasion, in material particulars. Therefore, we do not find any merit in the submission aforesaid that the eye-witnesses of this case are not reliable as they are not independent. There is no evidence that anyone was there in the godown of Mr. Chaudhary at the time of occurrence who could have been produced in the case.

19. In the result, this appeal has got no merit. The judgment of conviction and sentence is hereby affirmed. The bail granted to the appellants during the pendency of this appeal stands cancelled. Let the



learned trial Judge take necessary step so that the appellants may serve out the remaining sentences. The appellants are also directed to surrender within four weeks from today to serve out the sentences.

20. Accordingly, this appeal stands dismissed.

21. Let the Amicus Curiae be paid a fee of Rs.5,000/-.

(Birendra Kumar, J)

Dr. Ravi Ranjan, J.:- I agree.

(Dr. Ravi Ranjan, J)

Kundan/-

AFR/NAFR	AFR
CAV DATE	06.01.2018
Uploading Date	09.03.2018
Transmission Date	09.03.2018

