

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 487 of 1994

Arising Out of PS.Case No. -null Year- null Thana -null District- BHABHUA (KAIMUR)

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Banwari Yadav, Son of Late Sitaram Yadav, resident of village-Mahuat P.S.
Sonhan, District-Kaimur (Bhabhua)

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Ramesh Chand Sinha, Adv.
Mr. Jai Prakash Singh, Adv.
Mrs. Arti Kumari, Adv.
Mrs. Lisha Rai, Adv.
For the State : Mr. Shiwesh Chandra Mishra, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 27-02-2018

1. Heard learned counsel for the appellant as well as
learned Additional Public Prosecutor for the State.

2. The sole appellant has been convicted for the offence
punishable under Section 302 of the I.P.C. and has been sentenced to
undergo rigorous imprisonment for life by the impugned judgment of
conviction and sentence order dated 22.08.1994 passed by learned 3rd
Additional Sessions Judge, Bhabua in Sessions Trial No. 68 of 1992/
34 of 1993.

3. PW-6, namely, Sheo Kumari Devi gave her ferdbeyan
on 04.07.1991 at about 08:10 A.M. at her village before Sri A.K.P.
Singh, Officer in charge of Sonhan police station (PW-12) to this



effect that in the previous night at about 07:00 P.M., appellant Banwari Yadav came to her home and asked her husband to accompany him. She requested her husband to leave the house after taking meal but her husband along with appellant left the home. She further stated that at about 10:00 P.M., she heard the noise of “chor-chor” coming from southern side of her village. Thereafter, she sent her son, namely, Ram Gahan Pal (PW-7) to the house of appellant. Her son left the house and after awhile he returned and informed that dead body of his father was lying in the courtyard of the appellant. She further stated that she got information from the villagers that the appellant had cut the neck of her husband by means of garasa and raised alarm of “chor-chor”. She further stated that appellant and her husband used to cultivate lands jointly and due to dispute of accounting of money, the appellant committed the alleged crime.

4. On the basis of ferdbeyan of PW-6, Bhabua (Sonhan) P.S. Case No. 143 of 1991 under Section 302 of the Indian Penal Code was registered and on 04.07.1991 formal F.I.R. was drawn up. Formal F.I.R. was sent to the court on 05.07.1991 which was put up before the concerned Magistrate on the same day. PW-12 took the charge of investigation and in course of investigation, he recovered dead body of the deceased from the courtyard of the appellant, seized blood stained garasa from near the dead body, recorded the statements of prosecution witnesses, inspected the place of occurrence and after



completion of the investigation, submitted charge sheet against the sole appellant. The cognizance of the offence was taken and the case was committed to the court of sessions, in usual way. The sole appellant stood charged for the offence punishable under Section 302 of the I.P.C.

5. In course of trial, prosecution got examined, altogether, 12 witnesses and also proved inquest report, post mortem report etc. The statement of appellant was recorded under Section 313 of the Cr.P.C. in which he claimed his false implication and stated that on the alleged date of occurrence he was not present.

6. No evidence was adduced by the appellant in support of his defence but from perusal of trends of cross examination of prosecution witnesses as well as statement recorded under Section 313 of the Cr.P.C. it appears that defence of the appellant was total denial of the prosecution story.

7. The learned court below having relied upon the prosecution evidences, particularly, on the circumstantial evidences convicted and sentenced the appellant in the manner as we have already stated.

8. Learned counsel appearing for the appellant challenged the impugned judgment of conviction and sentence order arguing that learned court below based his finding on the basis of surmises and conjectures. He further submitted that learned court



below failed to take note of the fact that the courtyard of the appellant had two accesses but only one access had door whereas another access was open. He further submitted that in course of trial, witnesses stated that noise of chor-chor was raised and furthermore, PW-5, specifically, stated that when he reached at the house of the appellant, he found that dead body of the deceased was lying in the courtyard of the appellant and four persons were present in the said courtyard. Learned counsel further submitted that PW-8 is doctor, who had conducted the post mortem examination and the aforesaid witness also admitted at para-2 of his cross examination that injuries found on the person of the deceased were not possible by assault of a single person. He submitted that learned court below failed to take note of the above stated circumstances as a result whereof came to wrong conclusion.

9. On the other hand, learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction and sentence order arguing that the prosecution brought strong circumstantial evidence to show the involvement of the appellant in the alleged crime. He further submitted that admittedly, the dead body of the deceased was found in the courtyard of the appellant and the appellant could not explain as to how the dead body of the deceased was lying in his courtyard, particularly, in the circumstance, when burden of proof was upon the appellant.

10. Having heard the contentions of both the parties, we



went through the record. We find that PW-1, Ramakant Upadhyay is a witness of inquest report and stated that dead body of the deceased was recovered from the courtyard of the appellant and inquest report was prepared in his presence. PW-3 Kailash Ram, PW-4 Ram Nagina Sah, PW-5 Ram Sakal Singh, PW-7 Ram Gahan Pal, PW-9 Bhagirathi Singh, PW-11 Rajaram Singh claimed that they had seen the dead body of the deceased lying in the courtyard of the appellant. PW-12 the investigating officer stated that when he went on the place of occurrence, he found the dead body of the deceased lying in the courtyard of the appellant. This witness further stated that he prepared the inquest report in presence of the witnesses and also seized blood stained farsa from near the dead body. Therefore, it is obvious from the aforesaid evidence that prosecution succeeded to prove this fact that dead body of the deceased as well as blood stained farsa were recovered from the courtyard of the appellant. Moreover, the recovery of dead body and blood stained farsa from the courtyard of the appellant has not been challenged by the appellant.

11. Admittedly, not a single prosecution witness claims to have seen the actual killing of the deceased and almost all the prosecution witnesses stated only to this extent that having heard the noise of chor-chor, they rushed to the place of occurrence where they found the dead body of the deceased lying in the courtyard of the appellant having injuries on the neck and other parts of the body.



12. PW-2 Sonia Devi is wife of the appellant. She stated that she heard some sound coming from her courtyard and she along with her husband came out from the room and saw the dead body of the deceased lying in her courtyard.

13. PW-4 Ram Nagina Sah stated that when he reached at the house of the appellant, he saw that chowkidar of the village was present and chowkidar informed him that appellant had closed the door of his room from inside and thereafter, he put the lock on the door of room of the appellant from outside and the police came on next morning.

14. The above stated evidence goes to show that at the time of alleged occurrence, the appellant along with his wife was present in his house.

15. PW-6 the informant at para 4 of her cross examination admitted that after three hours of departure of her husband, she heard sound of chor-chor. Therefore, it appears that alleged killing of the deceased took place after three hours of leaving the house.

16. PW-1 at para 2 of his cross examination has admitted that house of the appellant had two access and one access had no door. Therefore, it is obvious from the aforesaid admission of PW-1 that courtyard of the appellant had easy access and anyone could enter the courtyard of appellant without any hurdle. Furthermore, PW-5



stated that when he reached on the place of occurrence, he saw four persons in the courtyard of the appellant. It is also evident from the testimonies of prosecution witnesses that when they reached on the place of occurrence, the appellant along with his wife was inside the room and had locked his room from inside. Therefore, it is obvious that two persons were present in the house of the appellant and the prosecution failed to prove who committed the murder of the deceased. No doubt, the dead body of the deceased was found lying in the courtyard of the appellant but we have already discussed that courtyard of the appellant had easy access and PW-2, the wife of the appellant, specifically, stated that when she along with appellant came out of the room, she saw the dead body of the deceased lying in her courtyard. Therefore, the explanation regarding the presence of dead body of the deceased in the courtyard of the appellant has been given by PW-2.

17. It is settled law that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature and all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case, it is obvious that even if the circumstances brought by the prosecution are taken into consideration,



then also, the aforesaid circumstances are not sufficient to conclude that it was only appellant who committed the alleged crime.

18. On the basis of aforesaid discussions, we are of the opinion that prosecution could not succeed to prove the charge levelled against the appellant beyond all shadow of reasonable doubts and the appellant deserves benefit of doubt. Accordingly, this criminal appeal is allowed and the impugned judgment of conviction and sentence order is hereby set aside. The appellant is on bail. He is discharged from the liabilities of his bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

SHAHZAD/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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