

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1152 of 2012

Arising Out of PS. Case No.-112 Year-2010 Thana- MURLIGANJ District- Madhepura

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Arun Yadav, son of Babuan Yadav, resident of village, Arar (Bhitta Tola), P.S.:
Murliganj (Arar O.P.) , District, Madhepura . .. Appellant/s

Versus

The State of Bihar ... Opposite Party

===== **A**

Appearance :

For the Appellant/s : Ms. Surya Nilambari, Amicus Curiae
For the Respondent/s : Mr. A.K.Sinha (App)

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 05-04-2018

Heard parties.

The appellant has filed this appeal assailing the judgment of conviction and order of sentence dated 10.10.2012 passed by the Ad hoc Additional Sessions Judge-IV, Madhepura in Sessions Trial No.01 of 2011 arising out of Muraliganj P.S. Case No.112/2010 by which the appellant, Arun Yadav, has been convicted for the offence punishable under Section 302 of the Indian Penal Code and he has been sentenced to undergo imprisonment for life with a fine of Rs.10,000/- and in default of payment of fine, he has further been sentenced to undergo simple imprisonment for one year.



The prosecution case, in brief, is that on 12.06.2010 at about 4 P:M, the wife of the informant, namely, Sushila Devi, was going to her 'Aangan'. In the meantime, the appellant, Arun Yadav, armed with axe, Babuan Yadav, Kumkum Devi, armed with 'Karahi' and Sunita Devi came to the house of the informant. It is alleged that some altercation took place between the ladies and when the informant's wife told that why are you abusing me, Kumkum Devi along with Sunita Devi caught her hair. Thereafter, Babuan Yadav gave the order to ArunYadav to kill her by axe upon which, Arun Yadav assaulted the deceased by axe, as a result of which, the deceased fell down and ultimately, she died.

On the basis of aforesaid fardbeyan, the FIR was registered under Sections 302/34 of the Indian Penal Code vide Muraliganj P.S. Case No.112/2010. The police took up the investigation of the case. After investigation, the police submitted charge sheet. Thereafter, cognizance was taken and the case was committed to the court of sessions, where charges were framed, to which, the accused persons pleaded not guilty. Thereafter, trial started.



During trial, the prosecution has examined altogether eleven witnesses in support of its case. P.W. 1 is Poonam Devi, P.W.2 is Ranjeet Yadav, P.W. 3 is Abhinandan Yadav, P.W. 4 is Ramesh Yadav, P.W. 5 is Rajeev Prasad Yadav, P.W. 6 is Anil Kumar Yadav, P.W. 7 is Rajendra Yadav, P.W. 8 is Bilash Sao, P.W. 9 is Ganauri Paswan, P.W. 10 is Dr. Akhilesh Kumar and P.W. 11 is Ashok Kumar Singh.

The defence has not examined any witness in support of its case.

The trial court after hearing learned counsel for the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charges against the appellant and, as such, the judgment of conviction and order of sentence has been passed.

Now this Court is required to reappraise the prosecution evidence to see as to whether the prosecution has been able to substantiate its case beyond shadow of all reasonable doubts or not?

From perusal of the materials on record, such as, First information report and the deposition of the witnesses, in our view,



there is a marked variation in respective statements which has proved lethal or fatal to the prosecution story.

Four witnesses out of eleven have been declared hostile by the prosecution. The informant (P.W.7) is the husband of the deceased and claims to be an eye witness.

However, a question arises after appreciation of the materials on record as to whether he can be accepted as an eye witness? The answer has to be in negative. Serious doubt stands created regarding his being the eye witness inasmuch as none of the eye witnesses, who have been named in the F.I.R., for example, the daughter, P.W. 1, Poonam Devi and son, P.W. 2, namely, Ranjit Yadav, have stated in their evidence that informant was present at the time of occurrence. That apart, it is stated in paragraph no. 21 of the deposition of P.W. 2, i.e., the son of the deceased and the informant that the villagers usually go to the fields in the evening for the purpose of grazing their buffaloes. In his house his father does that and when his father falls ill then his brother-in-law does that. They go for that purpose out of the house at about 2 to 3 p.m. The question is, as per the materials on record and admittedly as stated in his evidence, the son-in-law, Anil Kumar Yadav, who has been examined as P.W. 6, was not present in the house on that day as he reached there only after hearing



about the incident at about 5.15 p.m. and that will definitely take us to a situation that father must have already gone for that purpose with the buffaloes at about 2 to 3 p.m. as this is nobody's case that he remained in house on the fateful day. That leaves only two eye witnesses, P.W. 1, Poonam Devi and P.W. 2, Ranjeet Yadav, i.e, the daughter and son of the deceased. Some doubt has also been created regarding the presence of P.W. 2, Ranjeet Yadav as he admits that he stays in Madhepura for his studies but his case is that when he came to his village home found that his sister, Poonam Devi, his brother-in-law, Anil Kumar Yadav and their children were present at the house, whereas, the case of Anil Kumar Yadav, i.e, the brother-in-law (P.W.6) is that he came only in the evening at about 5.15 on the fateful day after the occurrence. This may be minor variation but still creates doubt regarding presence of P.W. 2 at the time of occurrence.

However, on aforesaid analysis, it is writ large that fardebyan has been recorded on the statement of a person who was not an eye witness even then the occurrence as has been explained by him in the first information report as also in the deposition of P.W. 1, Poonam Devi. Her presence cannot be doubted by anybody. But at the same time, she has categorically stated that it was a quarrel involving her mother and ladies of other side which



continued for about ten minutes. She tried to pacify the matter but she failed then the appellant, Arun Yadav, came with axe started assaulting her on the order given by the Babuwan Yadav, however, Babuwan Yadav has not been convicted. It has also been stated in paragraph no.13 that there was no dispute or quarrel with the accused persons before the occurrence and the quarrel was between the ladies. It is also stated in paragraph no. 16 that though she was present and her brother was also present at the place of occurrence but the appellant never tried to assault them.

In the aforesaid factual matrix, it has to be seen as to whether the occurrence was the result of sudden provocation resulting in culpable homicide not amounting to murder and whether it may come within the ambit of five exceptions carved out under Section 300 of the I.P.C.?

On deeper scrutiny, we are of the opinion that this occurrence would be covered under exception 4 of Section 300 and, thus, it can be considered to be culpable homicide not amounting to murder as, in our opinion, offence has been committed without premeditation in the hit of passion due to sudden quarrel.

Having held so, we come to the conclusion that in place of Section 302, the conviction should be under Section 304



Part II of the Indian Penal Code, as in our opinion, the person who was assaulting had knowledge that the action is likely to cause death but he was under sudden provocation and lost control of his mind, therefore, it cannot be said that there was intention to kill or cause such bodily injury as is likely to cause death.

Considering the facts and circumstances of the case, the appeal preferred by the appellant is dismissed with alternation/modification in conviction from Section 302 of the Indian Penal Code to Section 304 Part II of the Indian Penal Code and his sentence is reduced to the period already undergone by him in custody as office has reported that he has already remained in jail custody for 7 years 9 months and 13 days.

Let a copy of the first page and the last page be given to Ms. Surya Nilambari, Amicus Curiae so that she would be able to get the prescribed fee from the Patna High Court Legal Services Committee.

(Dr. Ravi Ranjan, J)

(Prakash Chandra Jaiswal, J)

Sanjay/-

AFR/NAFR	NAFR
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