# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Criminal Appeal (DB) No.661 of 2012**

Arising Out of PS. Case No.-39 Year-2009 Thana- TARAPUR District- Munger

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1. Rukma Devi, wife of Yogendra Choudhary.
2. Radha Devi, wife of Pramod Choudhary.
   Both resident of Village-Nawada, P.S. Tarapur, District Munger.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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with

**Criminal Appeal (DB) No. 907 of 2012**

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Yogendra Choudhary @ Jogo @ Jago, son of Late Taken Choudhary, resident of village- Nawadah, P.S. Tarapur, District Munger

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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**Appearance :**
(In Criminal Appeal (DB) No. 661 of 2012)
For the Appellant/s : Mr. Subodh Kumar Jha, Advocate
: Mr. Pranav Kumar Jha, Advocate
For the State : Mr. A. Sharma (APP)
(In Criminal Appeal (DB) No. 907 of 2012)
For the Appellant/s : Mr. Subodh Kumar Jha, Advocate
For the State : Mr. A.K. Sinha (APP)
: Mr. S.N. Prasad (APP)

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**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN**
**and**
**HONOURABLE MR. JUSTICE S. KUMAR**

**ORAL JUDGMENT**
**(Per: HONOURABLE MR. JUSTICE S. KUMAR)**

**Date : 17-05-2018**

We have heard parties and have perused the records of this case.

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The appellants have preferred these appeals assailing the judgment of conviction dated 23.06.2012 and order of sentence dated 26.06.2012 passed by Ad-hoc Additional Sessions Judge-II, Munger in Sessions Trial No. 581 of 2010 arising out of Tarapur P.S. Case No.39 of 2009 by which they have been convicted for the offences punishable under Sections 302/34 and 448 of the Indian Penal Code and they have been sentenced to undergo rigorous imprisonment for life for the offences punishable under Section 302/34 of the I.P.C. with a fine of Rs. 5,000/- each and, in default of payment of fine, they have been sentenced to undergo rigorous imprisonment for two months. They have further been sentenced to undergo rigorous imprisonment for six months for the offence punishable under Section 448 of the I.P.C. However, all the sentences have been directed to run concurrently. The period already undergone by the convicts during trial and investigation have been directed to set off as per Section 428 of the Cr.P.C.

The prosecution case, as per fardbeyan of the informant Adhik Lal Chaudhary, in brief, is that on 11.04.2009 at about 6.30 A.M. his wife was cleaning utensils on the well. His neighbour Radha Devi and Rukama Devi were also cleaning the utensils at the well. In course of cleaning utensils, due to fall of dirty water, a

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quarrel was started between Neelam Devi and Radha Devi, Rukma Devi. It is further alleged that Rukama Devi and Radha Devi returned their home and both called Joginder Chaudhary, who came with knife and all three accused, namely, Radha Devi, Rukma Devi and Joginder Chaudhary entered into the house of informant where his daughter-in-law Minki Devi was sleeping and feeding milk to her child, then Rukma Devi and Radha Devi caught her legs and hand and ordered Joginder Chaudhary to kill her. Thereafter, Joginder Chaudhary gave knife blow on the neck of Minki Devi, as a result of which, she died. It is further stated that all the accused persons with common intention entered into the house of the informant and killed Minki Devi.

On the basis of aforesaid fardbeyan, the FIR was registered under Sections 448, 341, 324, 302, 34 of the Indian Penal Code vide Tarapur P.S. Case No. 39 of 2009. The police took up the investigation of the case. After investigation, the police submitted charge sheet against the appellants. Thereafter, the learned C.J.M., Munger took cognizance and committed the case to the court of sessions, where charges were framed under Section 302/34 of the Indian Penal Code, to which, the accused persons pleaded not guilty. Thereafter, trial started against the appellants.

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Defence of the accused is completely denial of the occurrence.

During trial, the prosecution has examined altogether nineteen witnesses in support of its case. P.W. 1 is Madho Singh, P.W. 2 is Arbind Singh, P.W. 3 is Sarwan Kumar, P.W. 4 is Chano Chaudhary, P.W. 5 is Vinodanand Chaudhary @ Amika Chaudhary, P.W. 6 is Wakil Mandal, P.W. 7 is Raju Chaudhary, P.W. 8 is Biran Singh, P.W. 9 is Prabhakar Chaudhary, P.W. 10 is Sanjeev Kumar, P.W. 11 is Gautam Chaudhary, P.W. 12 is Dr. Vijay Kumar, P.W. 13 is Umeshwar Jha, P.W. 14 is Arun Chaudhary, P.W. 15 is Adhik Lal Chaudhary, P.W. 16 is Neelam Devi, P.W. 17 is Gita Devi, P.W. 18 is Binod Paswan and P.W. 19 is Ram Nagina Ram.

The defence has examined two witnesses in support of its case. D.W. 1 is Mahesh Prasad Singh and D.W. 2 is Uchit Singh.

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 appellants and, as such, the judgment of conviction and order of sentence have been passed, as aforesaid.

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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 the shadow of all reasonable doubts?

P.Ws. 1, 2, 3, 6, 7 and 8 have been declared hostile by the prosecution. P.Ws. 4, 5, 10, 11, 14 and 16 are hearsay witnesses. P.Ws. 18 and 19 are the formal witnesses.

P.W. 9 Prabhakar Chaudhary in his examination-in-chief has stated that on 11.04.2009 at about 6.30 P.M. he was in his house and his mother had gone to wash utensils at the well. Rukma Devi and Radha Devi had also come to the well to wash utensils. Due to sprinkling of the dirty water near the well, there was exchange of filthy words. He and his brother went there and tried to pacify the matter but they did not agree and started quarreling. His mother raised alarm then he and his brother went there where his mother told that daughter-in-law Minki Devi had been killed. When he reached there, he saw Radha Devi, Rukma Devi and Yogendra Chaudhary were fleeing from there. Yogendra Chaudhary had a knife in his hand which was bloodstained. While fleeing from the place of occurrence, Yogendra Chaudhary threw his knife near a Papaya tree. Both of brothers thereafter went to the house to see injured Minki Devi. His mother told that Radha Devi and Rukma Devi had caught hold of her and Yogendra Chaudhary

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inflicted knife blow in her neck. Blood was oozing out from the neck and she died. The police came there. In his cross-examination, he has stated that the police had taken statement of him, his brother and his mother. He had not seen commission of murder from his own eyes. Quarreling continued for ten minutes. When he had gone near the well at that point of time there was only exchange of hot words. He returned to his house. Villagers assembled suo motu. The accused persons fled away after killing. He had seen the accused fleeing away with weapon in their hands.

P.W. 12 is Dr. Vijay Kumar, who had conducted the post mortem examination on the dead body of the deceased. In his examination-in-chief, he has stated that on 11.04.2009, he was posted at Sadar Hospital, Munger as Medical Officer and on the said day, he performed the post mortem examination on the dead body of Minki Devi, aged about 22 years and found the following ante mortem injuries :

“Incised wound over middle part of the neck size 1” x 1/2” muscle deep. Bleeding coming out from wound.

On dissection of neck blood and blood clots were present. Trachea was found cut, Trachea was full of blood and blood clots.

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The doctor has opined that death was due to haemorrhage shock as a result of above mentioned injures caused by sharp cutting weapons. Time elapse since death within 24 hours".

In his cross-examination, he has stated that dagger and Bhala caused penetrating wound. He did not find any penetrating wound on the body of the deceased. Incised injury has no irregular edge.

P.W. 13 is Officer-in-charge of Tarapur Police Station. He has stated that he had instituted the FIR, which has been marked as Exhibit '2'. He investigated the case. He received rumour that an incident had taken place in the village and to verify the said information, he reached there and recorded the fardbeyan of Adhik Lal Yadav and also prepared the inquest report of Minki Devi and inspected the place of occurrence and has given a description of place of occurrence and he recovered a bloodstained knife adjacent place to the place of occurrence and he seized the knife and prepared a seizure list which has been marked as Exhibit '1/1'. He sent the dead body of Minki Devi for post mortem in Sadar Hospital, Munger and, thereafter, reached the police station and instituted the FIR. He took the re-statement of informant at the place of occurrence. During investigation, on

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15.04.2009 he took the statement of witnesses Neelam Devi, Prabhakar Chaudhary, Geeta Devi, Chanho Chaudhary, Wakil Mandal, Sakhan Kumar, Rajeev Chaudhary, Madho Singh, Arvind Kumar Singh. On conclusion of investigation, he submitted the charge sheet under Sections 448, 341, 324, 302/34 of the Indian Penal Code. He did not find any drop of blood near the place of occurrence. He did not find any foot print. He recovered the knife at a distance of 10 hands from the place of occurrence near a Papaya tree. He seized the knife at 9.30 A.M. He did not send the knife to verify whether the blood is of human being or of animal.

P.W. 14 is Arun Chaudhary, who in his examination-in-chief has stated that on the date of occurrence, he was in his house at 6.30 A.M. He heard that on the well, there was quarreling between his mother and Rukma Devi and Radha Devi. He and his younger brother went there to pacify the matter but they did not agree and, thereafter, went to relatives so that they could be persuaded not to quarrel. His mother started shouting that she has been assaulted. He went to the place of occurrence where he saw Radha Devi, Rukma Devi and Yogendra Choudhary fleeing with knife. When he went to the house, he found the deceased was lying dead. In his cross-examination, he has stated that with him the statement of his mother Neelam Devi and Prabhakar Choudhary

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was also recorded. The Investigating Officer had recorded the statement of all at one time. He has stated that at the time of occurrence, he was on the road and mother told that due to sprinkling of water, a quarrel took place at the well. Both the sides were cleaning utensils there. Quarrel took place for five minutes and, thereafter, there was scuffle between the parties. He had not stated before the Investigating Officer that he had heard that his Mami Minki Devi was stabbed by the accused. He had not stated to the police that he saw the accused fleeing away from the place of occurrence. No one tried to chase the accused. Ten peoples assembled there.

P.W. 15 is Adhiklal Chaudhary, who in his examination-in-chief has stated that on the date of occurrence at 6.30 A.M, when he was in his 'Bathan', he heard the noise. His wife Neelam Devi was cleaning utensils. Radha Devi and Rukma Devi also came there to clean utensils. During cleaning utensils, some dirty water sprinkled upon which quarreling started between the parties. Thereafter, Rukma Devi and Radha Devi went to their house and his wife also went to her house. Radha Devi and Rukma Devi called Yogendra Chaudhary and entered the house and inflicted knife blow on Minki Devi on right side of her neck. His wife shouted rush as knife was inflicted and when he came running, he

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saw Yogendra Chaudhary fleeing away with knife. Rukma Devi and Radha Devi were also fleeing. His daughter-in-law died on the spot. The police came at 7.00 A.M. and recorded his fardbeyan. In his cross-examination, he has stated that his daughter-in-law had no quarrel with accused previously. His wife was in the house prior to the occurrence and he rushed towards daughter-in-law. When Minki Devi was injured at that time only his wife was there. He lifted Minki Devi and his clothes were also bloodstained. He had not shown bloodstained clothes to the police. He does not remember whether blood was spread in the room or not. In blanket there was bloodstained. At the time of occurrence, the husband of Minki Devi was in jail. The house of the accused is 10 steps south of his house and there is street in between. On the date of occurrence, he had gone near the well and saw that there was scuffle exchange of filthy words between the parties for five minutes. He has denied that there was scuffle between mother-in-law and daughter-in-law in which Minki Devi received injuries and subsequently she died.

P.W. 16 is Neelam Devi, who in her examination-in-chief has stated that on the date of occurrence, she was near the well and was cleaning the utensils. It was 6.30 A.M. During cleaning of utensils, some water had sprinkled on Rukmi Devi and

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Radha Devi then both of them started abusing them. Rukmi Devi and Radha Devi then went to her house and came with Yogendra Choudhary. Rukmi Devi caught hold of hand. Radha Devi caught hold of her legs. Thereafter, Yogendra Chaudhary inflicted knife blow on her daughter-in-law and fled away. Yogendra Chaudhary threw the knife near Papaya tree while fleeing away. Daughter-in-law died of knife injuries. In her cross-examination, she has stated that her statement was recorded by the police on the fourth day. The scuffle at the well was for 2-3 minutes. Thereafter, she returned to her house. Rukmi Devi and Radha Devi also returned to their house. She told her daughter-in-law that there was quarreling with her and to accompany her at the well. The daughter-in-law did not go to the well. When Minki Devi was murdered, she was on the cot. She was by the side of the cot.

P.W. 17 is Gita Devi, who in her examination-in-chief has stated that on the date of occurrence, he was sleeping and awoke after hearing the noise and saw Radha Devi and Rukmi Devi was quarreling with her mother. After quarreling, Yogendra Chaudhary, Radha Devi and Rukmi Devi went to their house. All the three killed Minki Devi and fled away. She came to know about all these incidents from her mother.

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D.W. 1 is Mahesh Prasad Singh, who in his examination-in-chief has stated that he knows villager Adhiklal Chaudhary, his wife and daughter-in-law. On 11.04.2009 at about 6.00 A.M., he was in his house an after hearing shouting at the well between Neelam Devi and Minki Devi, he went there and pacified the matter and, thereafter, Neelam Devi and Minki Devi went to their house. Subsequently, he heard that Minki Devi had received injuries and when he went there, he found that Minki Devi had fallen and blood was oozing out and, thereafter, she died. In his cross-examination, he has stated that Minki Devi had fallen in her house.

D.W. 2 is Uchit Singh, who in his examination-in-chief has stated that he knows Adhiklal Chaudhary and his family and on the date of occurrence at about 6.00 A.M. there was noise coming from the house of Adhik Lal Chaudhary. When he went there, he saw that there was quarreling between mother-in-law and daughter-in-law and Minki Devi fell down and got injured and when he went there, she died. In his cross-examination, he has stated that his house is half KM from the house of the informant and after hearing the noise when he went there, he found Minki Devi was quarreling at the well.

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After hearing the parties and considering the evidence and materials available on record, it appears that the prosecution could not establish the place of occurrence whether the occurrence took place at the well or in the house. The Investigating Officer has stated that he did not find any bloodstained near the well and witnesses have also stated that the appellant accused Yogendra Chaudhary inflicted knife blow on the neck of the deceased at the well or in the house. Witnesses have deposed that Yogendra Chaudhary had inflicted the knife blow on the well and as a consequence thereafter the injured was taken to the house and she succumbed to the injury in her room, whereas, P.Ws. 9, 14, 15, 16 and 17 have stated that after the quarreling Rukma Devi and Radha Devi went to their house and, thereafter, Yogendra Chaudhary came along with them and entered into the house and inflicted knife blow on the neck of the deceased as a consequence of which she died in the house itself. The prosecution has failed to establish the place of occurrence, time of occurrence and manner of occurrence and witnesses, who are the family members of the deceased, have given different description of crime and there is much contradiction in their testimonies, as such, the prosecution has not been able to prove the charges framed against the appellants beyond reasonable doubt, as such, benefit of doubt is given to them.

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As a result, both these appeals succeed. The judgment of the conviction and order of sentence are set aside. The appellants are acquitted of the charges. Since, the appellants of Cr. Appeal (DB) No.661 of 2012 are on bail, they are discharged from the liabilities of their bail bonds. Since the appellant of Criminal Appeal (DB) No.907 of 2012, namely, Yogendra Choudhary @ Jogo @ Jago, is in custody, he would be required to be released forthwith, if not wanted in any other case.

**(Dr. Ravi Ranjan, J)**

**( S. Kumar, J)**

V.K.Pandey/-

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