

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.897 of 2016

Arising Out of PS. Case No.-166 Year-2013 Thana- ISLAMPUR District- Nalanda

Raj Kishore Yadav, son of Chandrika Yadav, Resident of Village- Barbigha,
P.S.- Islampur, District- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sunil Kumar Pathak-Advocate
For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

21-08-2019

Vide judgment of conviction dated 29.09.2016

and order of sentence dated 30.09.2016, appellant Raj Kishore Yadav has been found guilty for an offence punishable under Section 307/34 of the I.P.C. and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo S.I. for one year, additionally, under Section 498A of the I.P.C. and sentenced to undergo R.I. for two years as well as to pay fine appertaining to Rs.2,000/- and in default thereof, to undergo S.I. for three months, under Section 27 of the Arms Act and sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for six months, additionally, with a further direction to run the sentences concurrently, by the 2nd Additional Sessions Judge, Hilsa, Nalanda in Sessions Trial



No.409 of 2014 arising out of Islampur P. S. Case No.166 of 2013.

2. Kamla Devi (PW-4) gave her fard-bayan on 09.09.2013 at about 3.30 A.M. while she was admitted at Primary Health Centre, Islampur in an injured condition, disclosing therein that her husband Raj Kishore Yadav, father-in-law Chandrika Yadav and Dhananjay Kumar, for the last one week were engaged in torturing her and during course thereof, used to assault. Then thereafter, they ousted. Her husband is engaged in torturing her and used to say that you happen to be black, ugly responsible for begotting only daughter, so after killing you, he will re-marry, otherwise leave the place. In the aforesaid background, he had attempted upon her life at an earlier occasion, but escaped. Today i.e. 09.09.2013 at about 1.00 A.M. while she was asleep along with her daughter Seema Kumari aged about four years, her husband Raj Kishore Yadav, father-in-law Chanrika Yadav came, abused and during course thereof, ordered to kill. Her husband, who was armed with a countrymade pistol, fired causing injury over her left hand. She fell down. They both fled away. Anyhow, she rushed there from in order to save her life and during midst thereof, met with the police patrolling party, who got her admitted at the hospital.



3. On the basis of the aforesaid fard-bayan, Islampur P. S. Case No.166 of 2013 has been registered and during course thereof, two accused namely Chanrika Yadav and Dhananjay Kumar were apprehended, whereupon chargesheet was submitted against them keeping investigation pending against the appellant. It is not known with regard to result of the trial relating to aforesaid two accused persons. Subsequently, appellant has been arrested, thereafter charge sheet has been submitted, facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. There happens to be specific defence at the end of the appellant that so alleged victim was not residing at his place. She was residing somewhere else and had sustained injury at that very place, but in the background of the strained relationship, got the appellant implicated and for that, produced oral as well as documentary evidence.

5. In order to substantiate its case, prosecution has examined altogether eight PWs, who are PW-1, Mahendra Yadav, PW-2, Sakli Devi, PW-3, Ranju Devi, PW-4, Kamla



Devi, PW-5, Ram Babu Prasad, PW-6, Bishundeo Kumar, PW-7, Dr. Shreekant Prasad and PW-8, Dr. Dwarika Prasad. Furthermore, also exhibited documentary evidence as chargesheet as Exhibit-1, Injury reports as Exhibit-2 and Exhibit-3, F.I.R. as Exhibit-4. In likewise manner, two DWs have been examined, who are DW-1, Rajendra Prasad and DW-2, Satendra Prasad. The defence has also exhibited Complaint Petition No.287C of 2008, Compromise Petition as Exhibit-A, petition under Section 311 of the Cr.P.C. in Complaint Petition No.287C of 2008 as Exhibit-B, Certified copy of Complaint petition no.287C of 2008 as Exhibit-C, certified copy of order dated 30.04.2015 passed in Complaint Case No.346C of 2013 as Exhibit-D, Certified Copy of Complaint Case No.34C of 2013 as Exhibit-E.

6. It has been submitted at the end of the learned counsel for the appellant that no offence as alleged has been committed at the end of the appellant, whereupon the conviction and sentence recorded by the learned lower Court is fit to be set aside. In order to substantiate the same, it has been submitted that evidence of all the witnesses if is taken together, it is crystal clear that there was no possibility of the informant to remain at the place of the appellant in the background of presence of



summary cases amongst them. That being so, there was no occasion for her to sustain injury at the place of the appellant and for that, referred so many exhibit. It has further been urged that from Exhibit-A, it is evident that the compromise in the Complaint Case No.287C of 2008 has been filed on 18.04.2011. There happens to be no disclosure at the end of the prosecution that since thereafter, the informant was residing at the place of the appellant. Whereupon, there was no opportunity for the informant to have sustained injury allegedly at the end of the appellant by means of firearm at the hands of appellant. It has also been submitted that another petition, which happens to be dated 16.05.2013 filed on behalf of informant (PW-4) under Section 311 Cr.P.C. relating to Complaint Case No.287C of 2008 discloses the fact that she has been ousted from the house of the appellant, whereupon the matter has been reported before the Court on 13.05.2013, then in that circumstance, presence of informant at the place of appellant on 09.09.2013, really appears to be ridiculous and that being so, the version advanced on behalf of appellant could not be relied upon.

7. It has also been argued that there happens to be specific defence suggested to the informant that she is residing at Hulasganj after re-marrying. Furthermore, it has also



been suggested that informant had not sustained injury in a manner and at the place as disclosed rather she had sustained injury at different place in different manner by different persons and in the background, the prosecution would have proved its case beyond reasonable doubt, more particularly, after having a petition dated 16.05.2013, under Section 311 Cr.P.C. on the ground that she has been ousted from her matrimonial place.

8. Furthermore, it has also been submitted that not even a single independent witness has been examined. PW-1, is brother, PW-2, is the mother and PW-3 is the Bhabhi of the informant (PW-4). PW-5 has turned hostile. PW-6 is the I.O., who has not supported the version of the prosecution, more particularly, with regard to the P.O. and with regard to injury sustained by the informant, that has not been controverted. So examination of PW-7 and PW-8 are of no use. From the evidence of PW-1, PW-2 and PW-3, it is evident that they are merely hearsay. So the case rest upon the testimony of PW-4, the informant. After going through the same, it is apparent that it is full of mawkishness.

9. In an alternative, it has also been submitted that no offence under Section 307 of the I.P.C. is made out, because of the fact that there happens to be specific disclosure at



the end of the informant that she had sustained only one shot. Had there been an intention, then in that circumstance, victim was alone, victim was inside the room, so many accused persons were there, there was every opportunity available before them to have killed the informant. That being so, having no intervening circumstance, but simply making firing that too, causing injury over the hand, did not justify the conviction under Section 307 of the I.P.C. as it rules out intention or knowledge during course of commission of crime. Furthermore, appellant happens to be under custody since 04.01.2014. In the aforesaid background, considering the period of detention in worst case, the sentences be modified as period already undergone for modifying the finding recorded by the lower Court.

10. On the other hand, learned Additional Public Prosecutor vehemently opposed the argument raised on behalf of appellant and has submitted that when the evidence of DW is taken together with the evidence of the prosecution witnesses, it is apparent that I.O. has gone to the camp of the accused and so, he has deposed in a manner, favourable to the accused. Furthermore, it has also been submitted that actually I.O. has gone in camp of accused and on account thereof, did not visit the room, the real place of occurrence had not seen the bed,



otherwise the passing of the cartridge would have been properly perceived, the trailing mark of blood, when there happens to be an admission at his end that he was not the member of the patrolling party, then in that circumstance, would have traced out the members of the patrolling party, who could have enlightened the issue, more particularly in the background of statement given by him under Para-7 of the cross-examination wherein he has stated that he was not on the patrolling and further, he was entrusted with the investigation on the same day at about 4.30 A.M. The second aspect happens to be during course of cross-examination in Para-13, it is evident that he had visited the P.O. on 05.09.2013 at about 5.15 A.M., which is found falsified from the evidence of PW-7 as well as PW-8, who had examined the victim at P.H.C., Islampur as well as Sadar Hospital, Biharsharif in consonance with the evidence of the DW-1, who had shown presence of I.O. on 10.09.2013 at the P.O. and in the aforesaid background, the finding of the I.O., no blood spot was found, has got no bearing over the prosecution case. So, judgment of conviction and sentence recorded by the learned lower Court is fit to be confirmed.

11. Victim was examined on 09.09.2013 at 2.10 A.M. at Referral Hospital, Islampur by PW-8, Dr. Dwarika



Prasad, who found the following:-

- 1) Lacerated wound with profused bleeding on medial part of left arm tearing all muscles upto bone. Patient referred to Biharsharif Sadar Hospital for better treatment, investigation and also for injury report.*
- 2) Age of injury within one hour from time of examination.*

During cross-examination at Para-5, he has stated that he had not mentioned the size of the injury. In Para-6, he has stated that on account of profuse bleeding, the patient was referred to Biharsharif. In Para-7, he has disclosed that neither he had mentioned the nature of the injury nor the weapon by which, injury was caused.

12. PW-7 is the Dr. Shreekant Prasad, who had examined the victim on 09.09.2013 itself at Sadar Hospital, Biharsharif. From the evidence, it is apparent that no timing is there, which is also found supported with the injury (Exhibit-2).

The doctor after examining the injured found as follows:-

- 1) Lacerated wound 5" x 3" x muscle deep with charring of margin present on left arm suggested X-ray of left arm. A/P lateral view and nothing abnormal has been found. Although, the reference was for nature of injury, weapon so used, but these these have not been*



mentioned.

During cross-examination, at Para-4, he has stated that charring injury may be possible from 3-4". This injury is not possible by hard blunt substance. This injury is also not possible by falling on hard blunt substance and so, the doctor had given indication by which weapon, this injury could have been caused, being firearm.

13. PW-4 is the victim/ informant. Her status also happens to be that of wife of the appellant. She has deposed that the occurrence is about two years two months ago. It was 1.00 A.M. At that very moment, she was sleeping at her sasural. Her father-in-law Chandrika Yadav, Raj Kishore and Dhananjay Kumar came inside her room and began to abuse by saying that not only you are an ugly rather you only begot daughter on account thereof, you would not be allowed to remain. After eliminating you, Raj Kishore will be re-married. She got down from the bed and protested, whereupon they directed to leave the place, otherwise also threatened that she will be murdered. On an order of Chandrika Yadav, Raj Kishore Yadav shot at causing injury over her left hand (the scar mark has been shown to the Court). Just after firing, all the three escaped. After sustaining injury, she fell down even then in order to save her life, she ran there from towards the hospital. At hospital, doctor



was not present while Compounder was there, who bandaged. Her mother, brother and bhabhi arrived and then thereafter, police came, who recorded her fard-bayan, whereupon she had put her R.T.I. In order to provide better treatment, she has been referred to Sadar Hospital, Biharsharif. It has further been disclosed that at an earlier occasion, against the torturous activity of her husband, she had instituted a case wherein the accused persons asked for an excuse followed with compromise and under garb of compromise, she was taken to her sasural. Identified the accused. During cross-examination at Para-7, she has been tested over topography of the house. In Para-8, she has stated that her father-in-law, mother-in-law and Nanad Rinku Devi reside at her sasural. Then has shown presence of the neighbours, shown boundary as Eastern side-house of Krishna Sao, West-Rajendra Yadav, North-land of Kileshwarpati and South-land of Ram Babu. Then, it has been disclosed that Raj Kishore Yadav has got two more brothers and a sister. Doman Yadav is his elder brother, whose house lies north to the house of Raj Kishore. In Para-9, she has disclosed the length and breadth of the room in which, she resides. At Para-10, she has stated that she was living at her sasural for the last 20 days. Her husband Raj Kishore had taken her away. On the day of



occurrence, she along with her daughter was sleeping in the room. Her husband was sleeping along with her father-in-law outside the house. In Para-11, she has stated that on account of being the summer season, the doors were not closed. Lamp was burning. At Para-12, again she has been cross-examined with regard to physical feature of the room occupied by her. In Para-13, she has stated that how the accused persons have entered inside the house, she is unable to say as her mother-in-law, sister-in-law after closing the main gate, were also sleeping inside the house. Who opened the main gate, she was unable to say. When they began to abuse, then she woke up and then, had seen her husband, father-in-law and Dhananjay Kumar. At that very time, Raj Kishore was armed with pistol, rest were empty hand. In Para-15, she has stated that before firing, there was marpit. She was struck over her hand by the pistol. At the time of firing, she as well as her husband was in front of each other. At that very time, her daughter was sleeping over bed. In Para-16, she has stated that first of all, she lifted her daughter, but after hearing order of her father-in-law to kill, pushed her daughter away, whereupon she also woke up and stood up. Firing was made from a distance of two hands. In Para-17, she has stated that after firing, there was uproar, but she is unable to



say whether any person has arrived or not, because of the fact that in order to save herself, she ran there from. She was unable to disclose whether cartridge has passed through her hand. Blood began to ooze and so, she ran. She had not taken her daughter at that very moment. Later on, her daughter was brought by her mother at the hospital. There was no second firing. Chandrika Yadav disclosed that now, she is dead, then all fled away. In Para-18, she has stated that the hospital is coverable within 10-15 minutes from her sasural. Police met with her at hospital. She had given fard-bayan at the hospital. Statement of her brother, mother, Bhabhi was taken by the police at hospital itself. She had not come to her sasural along with police, but she is knowing that police had gone to her sasural. In Para-19, she has stated that she had instituted two cases before this case. She has also admitted that Raj Kishore had also instituted a case. She has further stated that she is not remembering whether any petition has been filed before the learned lower Court after breakage of the compromise. She has further stated that her Naihar is coverable within half an hour from her sasural. She has further stated that she has come from her Naihar to depose. Then has denied the suggestion that no occurrence had taken place. She has further been suggested that



she met with the aforesaid incident at somewhere else and falsely implicated the members of her sasuralwala. She has further been suggested that she is residing at Hulasganj after solemnization of second marriage. She has further been suggested that at the time of occurrence, she was at her Naihar.

14. PW-6 is the I.O. He has deposed that on 09.09.2013, he was S.I. of Islampur Police Station. After registration of Islampur P. S. Case No.166 of 2013, the O/c has entrusted the investigation to him. After taking of investigation, he proceeded towards P.O. Inspected the place of occurrence, recorded further statement of the informant, inspected the P.O. as pointed out by the informant, which happens to be house of the informant lying at Gwartoli of Barbigha lying at a distance of two kilometer south from Islampur P.S. Boundary of the P.O. has been shown as North-land of the informant, South-land of Ram Babu Yadav, East-house of Krishna Yadav, West-house of Rajendra Yadav. He also recorded statement of mother of the informant at that very moment. Also recorded statement of Mahendra Yadav and Ranju Devi, procured injury report, received supervision note and then, after completing investigation, submitted charge-sheet against Chandrika Yadav and Dhananjay Kumar (exhibited all the relevant documents).



During cross-examination at Para-7, he has stated that the date of occurrence is 09.09.2013, on that day, he had not conducted night patrolling. He was entrusted with the investigation on 09th day itself at about 4.30 A.M. Then disclosed that he met with the informant on 09.09.2013 at about 4.30 A.M. at hospital. At that very moment, her mother Sakli Devi was present. At Para-8, he has stated that he had recorded fard-bayan of Kamla Devi at the hospital itself. He had examined other witnesses at Barbigha. In Para-9, he has stated that he had not informed the family members of Kamla Devi, after recording of the fard-bayan at the hospital. Then, there happens to be contradiction relating to statement of the witness Mahendra Yadav (PW-1). In Para-11, he has stated that Kamla Devi stated in her statement that she was a litigating term with Raj Kishore since before. In Para-12, he had not inquired into whether both persons were litigating since before. In Para-13, he has stated that he arrived at the P.O. on 09.09.2013 at about 5.15 A.M. P.O. was shown to him by the informant. In Para-14, he has stated that P.O. happens to be the courtyard of the house of the informant. He had not found blood, he had not found empty cartridge. In Para-15, he has stated that he had not recorded statement of those persons having presence in the surrounding. In Para-16, he has stated



that he had not taken statement of the independent witnesses. Then, he has denied the suggestion that he has conducted perfunctory, collusive investigation.

15. PW-1 is the brother of the informant, PW-2 is the mother of the informant and PW-3 is the Bhabhi of the informant. Admittedly, all of them are not an eye witness to occurrence rather they have corroborated what they have listened from the informant. However, they have substantiated the conduct of the appellant whereunder he along with his family members have treated the informant with cruelty and torture and in the aforesaid background, cases were filed at the end of both parties.

16. There happens to be specific disclosure at the end of the I.O. (PW-6) that P.O. was shown by the informant. As per evidence of the informant (PW-4) after sustaining injury, there was profused bleeding from the wound. There also happens to be specific disclosure that she ran there from to the hospital in order to save her life. The evidence of PW-8, the doctor present at Referral Hospital, Islampur suggest examination of the victim on 09.09.2013 at about 2.10 A.M. and further, from his evidence, it is evident that doctor has found bleeding injury at the time of examination and so, was referred



to Sadar Hospital, Biharsharif. It is further evident that fard-bayan was recorded on 09.09.2013 at about 3.00 A.M. From the evidence of the PW-7, it is evident that victim was at the Sadar Hospital, Biharsharif on 09.09.2013 itself. There happens to be no evidence on record either at the end of prosecution or at the end of accused with regard to leaving of hospital by the injured/informant on 09.09.2013, nor the informant (PW-4) was cross-examined on that very score, that she, after leaving hospital accompanied the I.O. and she was present while I.O. was inspecting P.O., which was nor the I.O. has deposed that from the hospital he directly reached at P.O. along with informant shown by her. In the aforesaid background, not only the evidence of I.O. has become sketchy rather the proper identification of the P.O. is found doubtful. Whatever been incorporated at the end of the I.O., non-presence of blood or empty cartridge at the P.O. has got no relevance as, the I.O. has shown the P.O. at courtyard while P.O. is a room of the house, which is found exposed from the evidence of injured, PW-4, which never been visited by the I.O.

17. It is needless to say that the faulty investigation will not cause dent in the prosecution case and that happens to be consistent view by the Apex Court. In *Yogesh*



Singh vs. Mahabeer Singh and others reported in (2017) 11

SCC 195, it has been held:-

“30. *In C. Muniappan and Others vs. State of Tamil Nadu*, (2010) 9 SCC 567, this Court explained the law on this point in the following manner:

“55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of



investigation.”

18. Now, coming to other evidence, certainly PW-1, PW-2 and PW-3 are the Naiharwala of the victim (PW-4). PW-5 is the person belonging to the P.O. village, has been declared hostile. Therefore, the evidence of injured (PW-4) only remains. In ***Chandrasekar and another vs. State with Balasubramanian vs. State of Tamil Nadu reported in (2017) 13 SCC 585***, it has been held:-

“10. Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to Brahm Swaroop v. State of U.P., (2011) 6 SCC 288 observing as follows:

"28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone."

19. When the evidence of PW-4 has minutely



been gone through, it is apparent that from the suggestion having been given at the end of the appellant under Para-20 is suffice to acknowledge whereunder they have not controverted the firearm injury having over the person of the informant. The only contention is that she had sustained the same at some other place, more particularly, while she was staying at her Naihar and on that very score, the examination-in-chief as well as cross-examination has minutely been scrutinized.

20. It is also evident that two DWs have been examined at the end of the appellant. DW-1, Rajendra Prasad and DW-2, Satyendra Prasad. DW-1 has stated that appellant/accused happens to be his elder brother. He has been married with Kamla Devi. Kamla Devi used to live at her Naihar. He has further stated that his house lies west to the house of Raj Kishore. He has further stated that on 09.09.2013, he was at his house. Kamla Devi was not present at the house of Raj Kishore. He has further stated that the wall of house of brother of Raj Kishore as well as his house are adjacent to each other, though they have separate passage to ingress and outgress. In Para-4, he has stated that six months prior to 09.09.2013, Kamla Devi was living at her Naihar. In the night of 10.09.2013, police had come to the house of Raj Kishore at about 9-10 P.M. Police had come



to inquire about the firearm injury sustained by Kamla Devi. Police had not inquired from him. Kamla Devi had instituted a case at an earlier occasion also. At the time of occurrence, Raj Kishore was employee at a company within Orissa province. During cross-examination, he has stated that he is deposing in a case relating to injury caused by firearm over the informant. So, from the evidence of this DW, two things are visible, the first thing with regard to houses being contiguous to each other, but having separate place of ingress-outgress, he has not said that the house is connected with door, window, then in that circumstance, how he has come to know about the same and plea of alibi has been shown. It is just to remember that whenever a plea of alibi is taken, then in that circumstance, it happens to be a burden over the accused to explain and in case of failure, it gives an impression with regard to presence of the accused at the P.O. in a manner as suggested by the prosecution.

21. DW-2 is Satyendra Prasad, who has deposed that the house of Raj Kishore Yadav lies nearby his house. Raj Kishore has been married at village-Budhanagar. He is not remembering the name of his wife, but she primarily resides at her Naihar. On the date of occurrence, he was at his house. He had not seen Kamla Devi at the house. She was residing at her



Naihar for the last 4-5 months. Police had not inquired from him. Kamla Devi had instituted a case against Raj Kishore. At that very moment, Raj Kishore was living at Orissa. He was not present at the house. During cross-examination at Para-6, he has stated that the occurrence is of dated 09.09.2013. He is not knowing what kind of treatment was offered to Kamla Devi. Then, he denied the suggestion that Kamla Devi was taken to her sasural after having the earlier case compromised.

22. Though, there happens to be an admitted position that both the parties are on loggers-head since before the occurrence, resultantly cases having at both the end. While cross-examining PW-4, informant/ victim, she has not been cross-examined over the factum of compromise relating to a case for torture and cruelty and further, taking her to sasural after effecting compromise nor during course of suggestion the same has been controverted. Furthermore, the parties are none else rather spouse. From the evidence of doctor as well as informant, it is abundantly clear that PW-4 had sustained firearm injury. It is further evident from the cross-examination of PW-4, that she has been properly tested over place of occurrence, the room being occupied by her. Defence could not be able to controvert the same. That being so, considering the



sole evidence of PW-4, being an injured as recognized under Section 134 of Evidence Act, corroborated by PW-7, PW-8 did justify the finding recorded by the lower Court.

23. Consequent thereupon, this appeal is found devoid of merit and is accordingly, dismissed. The Appellant is under custody, which he will remain till saturation of the period of sentence.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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