

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.771 of 2013

Arising Out of PS. Case No.-19 Year-1992 Thana- BALRAMPUR District- Katihar

Kalu Yadav @ Kalua, Son of Late Yogi Lal Yadav, residents of Village- Sri Rampur, P.S.- Balrampur, District- Katihar

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 754 of 2013

Arising Out of PS. Case No.-19 Year-1992 Thana- BALRAMPUR District- Katihar

1. Bhelu Yadav @ Bhelua
2. Kartik Lal Yadav
Both sons of Late Yogi Lal Yadav, residents of Village - Sri Rampur, P.S.- Balrampur, District -Katihar.

... .. Appellants

Versus

The State Of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 771 of 2013)

For the Appellant/s : Dr. Shashi Shekhar Kishore, Advocate
Shri Shivpujan Sahay, Advocate
Shri Sushil Jhunhunwala, Advocate
Shri Jairaj Dutta Pd., Advocate

For the Respondent/s : Shri Ajay Mishra, A.P.P.

(In CRIMINAL APPEAL (DB) No. 754 of 2013)

For the Appellant/s : Mr. Dr. Shashi Shekhar Kishore, Advocate
Shri Shivpujan Sahay, Advocate
Shri Sushil Jhunhunwala, Advocate
Shri Jairaj Dutta Pd., Advocate

For the Respondent/s : Shri Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 20-08-2019



1. Three appellants in both the appeals were tried together and convicted and sentenced by the common judgment of the trial court, and as such, both appeals were taken up together under the heading 'For Hearing' and are being disposed of by this common judgment.

2. The sole appellant – Kalu Yadav @ Kalua in Cr. Appeal (D.B.) No. 771 of 2013 by judgment dated- 22.05.2013 was convicted for the offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as the "I.P.C.") whereas, two appellants in Cr. Appeal (D.B.) No. 754 of 2013 were convicted for the offence under Section 302/34 of the I.P.C. By order dated 25.05.2013 all the aforesaid three appellants were sentenced to undergo imprisonment for life and to pay fine of Rs. 10,000/- each. In case of default in payment of fine they were further directed to undergo imprisonment for six months. The judgment of conviction and sentence was passed by Shri Housila Prasad Tripathi, learned Adhoc Additional Sessions Judge II, Katihar [hereinafter referred to as the 'trial judge'] in Sessions Trial No. 120 of 1992 [arising out of Balrampur P.S. Case No. 19 of 1992, G.R. Case No. 423 of 1992].

3. The case has been initiated on the basis of *fardbyan* of one Choha Lal Yadav (P.W. 3), which was recorded at the



residence of the informant by Sub Inspector of Police-cum- Officer in-charge of Balrampur Police Station namely: Shri A.K. Thakur (not examined). The *fardbyan* was recorded on 06.03.1992 at about 11.30 A.M. As per *fardbyan* the informant disclosed that in the preceding night after taking meal on the Western side of the village his son -Mahadeo Yadav had gone to see the *khesari* field due to the reason that his *khesari* field was earlier grazed through the cattles by some of the persons. In the same night at about 12.00 Hours his son Mahadeo Yadav (deceased) in the field intercepted the She -buffalo of Yogilal Yadav on which his son -Kalu Yadav @ Kalua (sole appellant in Cr. Appeal (D.B.) No. 771 of 2013) was sitting. Considering the fact that Kalua through his She -buffalo was engaged in grazing *khesari* field of the informant, he started assaulting She -buffalo and pushing the She-buffalo towards his house and while he reached near the house of Yogilal Yadav; Kalu Yadav @ Kalua, Bhelua @ Bhelu Yadav, Kartik Lal Yadav all forcibly taken possession of the She -buffalo and assaulted Mahadeo Yadav [son of the informant]. Thereafter, his son -Mahadeo Yadav returned back to his house and explained about the occurrence and subsequently with a view of inform villagers he went outside the house. As soon he proceeded about 100 yards on the Eastern side of the Chowk accused persons namely: (1) Yogilal



Yadav; (2) Kalu Yadav @ Kalua , (3) Bhelu Yadav @ Bhelua, (4) Kartik Lal Yadav [all sons of Yogilal Yadav], (5) Rashmani Devi, W/o Yogilal Yadav, (6) Bokiya Devi, wife of Kartik Lal Yadav, (7) Kaushalya Devi, D/o Yogilal Yadav, all residents of village- Sri Rampur, P.S.- Balrampur, District – Katihar surrounded his son and started assaulting him. The informant runningly visited there and saw that all the aforesaid accused persons were brutally assaulting his son. Wife of Mahadeo Yadav namely: Basanti Devi (P.W. 4) with a view to save his life laid herself on the body of Mahadeo Yadav. At that very time Kalua from his pocket took out a knife and gave knife blow on the body of the deceased whereafter he started bleeding and the injured started squirming. In the meanwhile, son of informant Ramdeo Yadav (P.W. 1), co-villager: Jyotish Yadav (P.W. 6), Lobin Yadav (not examined), Parmanand Yadav (not examined), Kaila Yadav (not examined), Basant Yadav (not examined), Md. Salim (P.W. 5), Md. Saifuddin (not examined) and number of other villagers arrived there and thereafter, accused persons fled away. While accused persons were fleeing away, from the pocket of the deceased (son of the informant), appellant – Kalua took away Rs. 3,000/- from the pocket of his son as well as his wrist watch. After noticing critical condition of his son, the informant with the help of villagers



keeping the injured on a cot proceeded towards Dalkola for his treatment however before his arrival at Dalkola his son succumbed to his injuries and subsequently, the informant brought the dead body of his son to his house where his *fardbyan* was recorded. The informant claimed that aforesaid accused persons since their She-buffalo was intercepted by son of the informant and there was initiation for holding *Panchyati* with a common intention and object had thrashed his son and with intent to kill him had brutally assaulted his son -Mahadeo Yadav in which his son died. In the occurrence the accused persons had taken away currency notes as well as wrist watch. The said *fardbyan* was read over to him and after finding it correct the informant put his signature on the bottom of the *fardbyan*. As a witness to the *fardbyan* one Md. Fazli Rahman [not examined] also put his signature. On the basis of the said *fardbyan* on the same day i.e. on 06.03.1992 at 18.30 hours [6.30 P.M.] a formal F.I.R. vide Balrampur P.S. Case No. 19 of 1992 was drawn up for the offence under Section 302, 379/34 of the I.P.C. and Section 24 of the Cattle- Trespass Act, 1871 against 7 accused persons namely:-

“(1) Yogilal Yadav (died during trial),
(2) Rashmani Devi (died during trial),
(3) Bokia Devi (died during trial),
(4) Kartik Lal Yadav [appellant no. 2 in Cr.
Appeal (D.B.) No. 754 of 2013],
(5) Bhelu Yadav @ Bhelua [appellant no. 1 in
Cr. Appeal (D.B.) No. 754 of 2013],



*(6) Kalu Yadav @ Kalua [sole appellant in
Cr. Appeal (D.B.) No. 771 of 2013] and
(7) Kaushalya Devi (who was acquitted by the
trial judge).*

4. After registering F.I.R. Police investigated the case and finding the case true submitted charge-sheet on 19.06.1992 against all the seven F.I.R. named accused *persons*. Thereafter, on 22.06.1992 learned Chief Judicial Magistrate, Katihar took cognizance of offence and the case was committed to the court of Sessions on 03.07.1992. After commitment the case was numbered as Sessions Trial No. 120 of 1992. After commitment, on 04.01.1993 charge under Section 302 of the I.P.C. was framed against the sole appellant namely Kalu Yadav @ Kalua in Cr. Appeal (D.B.) No. 771 of 2013, whereas charge under Section 302/34, 379/34 of the I.P.C. and Section 24 of the Cattle Trespass Act, 1871 was framed against all the seven accused persons, which includes the sole appellant -Kalu Yadav @ Kalua of Cr. Appeal (D.B.) No. 771 of 2013.

5. During the trial to establish its case on behalf of the prosecution altogether eight witnesses were examined. Out of eight witnesses, P.W. 1 – Ram Dev Lal Yadav (brother of the deceased), P.W. 2 (Sail Devi) wife of younger brother of the deceased i.e. wife of P.W. 1, P.W. 3- Choha Lal Yadav (informant and father of the deceased) and P.W. 4 -Basanti Devi (wife of



deceased) were examined as eye witnesses to the occurrence, whereas P.W. 5 (Md. Salim) and P.W. 6 (Jyotish Lal Yadav) were examined as hearsay witnesses. P.W. 7 (Prem Lal Yadav) was only tendered for cross examination, and as such there is no relevance of his evidence. P.W. 8 (Md. Rais Azam) who was a Laboratory Technician in Sadar Hospital, Kishanganj was examined and he proved post -mortem report, which was marked as Ext. 2. However, during the trial without any plausible explanation the Investigating Officer was not examined.

6. After completion of prosecution evidence, on 30.04.2012 evidences and circumstances which were brought against the appellants were explained to them and their statement under Section 313 of the Cr.P.C. was recorded on 30.04.2012 in which they claimed regarding false implication.

7. Dr. Shashi Shekhar Kishore, learned counsel for the appellants in both the appeals after placing entire evidence has argued that prosecution has miserably failed to establish its case beyond all reasonable doubts, however, the learned trial judge in a mechanical manner, has passed impugned judgment of conviction and sentence. He submits that the very initial version of prosecution appears to be not believable considering the fact that it was asserted by the informant that in the night at 12.00 Hours his



son carrying Rs. 3000/- currency notes in the year 1992 had gone to his *khesari* field to locate the culprits who were involved in grazing his field through their cattles. By way of referring to the *fardbyan* it has been argued that informant has stated as if he was following the deceased to the field in the night where his son intercepted the She-buffalo over which appellant / Kalu Yadav @ Kalua [Cr. Appeal (D.B.) No. 771 of 2013] was sitting. He submits that it is completely unbelievable that at odd hour in the night at 12.00 Hours the son of the informant had gone carrying such huge currency notes. Dr. Kishore, learned counsel for the appellants has further argued that though it is case of prosecution that in the village occurrence had taken place in which the son of the informant was brutally assaulted causing his death, during evidence no independent witness has come forward to support the prosecution case. In the case all the witnesses are none else but close relatives of the informant and deceased, and as such, their evidence is required to be examined cautiously. He submits that on examination of their evidence it is evident that a false case was instituted against the appellants.

8. Learned counsel for the appellants by way of referring to evidence has argued that it appears that deceased was assaulted in an another manner not the manner which was claimed by



prosecution. He further submits that it has come in evidence that deceased was keeping ill eye on the sister of appellant - Kalu Yadav @ Kalua and daughter of Yogilal Yadav and it has come that he was having illicit relation with her. Kaushalya Devi was a widow with whom the deceased had developed relationship and it appears that he was apprehended by the villagers and assaulted by the villagers and a case was made out that appellants were involved. He further submits that in the evidence it has come that there was old animosity in between family of informant and the appellants' side. Earlier also a case was initiated from the side of the appellant- Kalu Yadav @ Kalua by his father namely: Yogilal Yadav in which Police had also arrived in the village. This fact has come in the evidence of P.W. 5. It has been argued that due to non examination of the Investigating Officer the case of defence has seriously been prejudiced. The prosecution has not been able to establish the place of occurrence nor any material exhibit was either seized or produced during the trial. Dr. Kishore, learned counsel for the appellant has further argued that prosecution has miserably failed to establish even the place of occurrence. He further submits that there is no explanation by the prosecution as to why the *fardbyan* was lodged at such belated stage, whereas as per prosecution, occurrence had taken place in the night in



between 12.00- 12.30 Hours however on examination of entire evidence it is clear that no effort was taken by the prosecution side to inform the Police. Belatedly in the next morning at 11.30 A.M i.e. on 6th March, 1992 *fardbyan* was shown to be recorded which was recorded with deep consultation and it was a result of afterthought and due to old animosity the appellants were framed as accused. He further submits that oral evidence has not been corroborated by medical evidence. It is case of prosecution that son of the informant was brutally assaulted and in the occurrence he was given knife blows however post mortem report depicts only one injury which was caused by knife. He submits that had it been a case of brutal assault on the son of the informant there was every possibility of noticing some more injuries on the person of the deceased however post mortem examination report only explains about one injury that was caused by knife. On aforesaid grounds it has been argued that though prosecution has miserably failed to establish its case, the learned trial judge in a mechanical manner, has passed impugned judgment of conviction and sentence, which is required to be interfered with.

9. Shri Ajay Mishra, learned Additional Public Prosecutor opposing the appeals has argued that in the case at least there are four witnesses who had seen the occurrence and they are



consistent in their evidence and as such, oral evidence may not be ignored and the learned trial judge has rightly passed the judgment of conviction and sentence.

10. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record and after going through the same *prima facie* we are of opinion that prosecution has not been able to establish its case beyond reasonable doubt, however, before proceeding it is necessary to discuss the evidence which has been brought on record.

11. The informant in the present case Choha Lal Yadav was examined as P.W. 3. Informant is the father of the deceased namely: Mahadeo Yadav. In his evidence he reiterated the fact disclosed in the *fardbyan* however in the evidence there are certain serious deviations and exaggerations. In the examination- in- chief P.W. 3 has stated that on the date of occurrence in the night at 12.00 Hours his son Mahadeo Yadav had gone to watch his *khesari* field where he intercepted the She-buffalo of Yogilal Yadav which was caught by him and he was carrying the said She-buffalo towards his house, however opposite the house of Yogilal Yadav while he reached accused – Kalu Yadav @ Kalua, Yogilal Yadav, BheluYadav @ Bhelua , Kartik Lal Yadav all apprehended his son -Mahadeo Yadav and assaulted him and snatched the She



-buffalo. Mahadeo Yadav then returned back to his house and gave information regarding the occurrence and told that he will hold *Panchayati* and thereafter he proceeded towards *Chowk* for informing Panchas, whereas in the *fardbyan* this witness has stated that in the night while his son went to his *khesari* field he saw Kalu Yadav @ Kalua sitting on the She-buffalo thereafter he apprehended She-buffalo with Kalu Yadav @ Kalua and he was proceeding towards his house. Near the house of Yogilal Yadav other accused persons came and assaulted him. The evidence of this witness to the extent that after the occurrence his deceased son proceeded to inform *Panchas* appears to be not believable. Admittedly, as per prosecution at 12.00 Hours in the night the son of informant had gone to his field where after he intercepted the She- buffalo of Yogilal Yadav and thereafter assault had taken place in the night at 12.00 or after 12.00. It appears to be not convincing that in such situation when the deceased was assaulted he returned back to his house, gave intimation and in the night he alone proceeded to inform *Panchas* for holding *Panchayati* in the night in such situation. This act appears to be not natural. Moreover, there is serious deviation and inconsistency in the evidence during trial of P.W. 3 as well as in his *fardbyan*. Almost in similar manner, Basanti Devi (P.W. 4) has deposed. Her



evidence also to some extent is inconsistent so far naming accused persons are concerned, otherwise she has deposed like P.W. 3. In evidence of P.W. 4 suggestion was given that accused had dragged Kaushalya Devi [sister of appellant - Kalu Yadav @ Kalua in Cr. Appeal (D.B.) No. 771 of 2013] to his house, however he was apprehended by the villagers and thereafter he was assaulted and also suggestion was given that the deceased was anti-social element and forcibly he had lifted Kaushalya Devi however this suggestion was denied by her.

12. P.W. 1 - Ram Dev Lal Yadav (brother of the deceased) and P.W. 2 - Sail Devi (wife of P.W. 1 i.e. wife of younger brother of deceased) too have deposed almost in similar manner like P.W. 3 -informant. Of -course, there is some inconsistency regarding participation of accused in the occurrence.

13. P.W. 5 (Md. Salim) in his evidence has stated that on the date of occurrence in the night in between 12.00 - 12.30 Hours he heard *hulla* then he went to *Chowk* of his village and saw that Mahadeo was lying there and his father and brother were lifting him. On being asked he was informed regarding involvement of Kartik Lal Yadav, Kalu Yadav @ Kalua, Bhelu Yadav @ Bhelua and three female members. This witness further saw that those persons were standing near their gates. The injured



was carried to hospital however, he had already died. On examination of his evidence this fact is clear that while this witness had noticed the dead body which was being lifted by informant and his son, the appellants were standing near the door. This appears to be not normal. Had it been a case that appellants had committed the crime, after death there was every possibility of fleeing away, not to witness entire thing i.e. lifting or carrying the injured to hospital. In cross examination this witness in paragraph 2 stated that Kaushalya Devi was the daughter of Yogilal Yadav [father of appellant - Kalu Yadav (@ Kalua) whose marriage was solemnized prior to the date of occurrence. He further stated that deceased Mahadeo Yadav was having illicit relation with Kaushalya Devi and after noticing this fact Yogilal Yadav had persuaded for *Panchayati* and *Panchayati* was held. In paragraph 4 of his cross- examination he further stated that in the case which was lodged by Yogilal Yadav Police had come. This indicates that the deceased was having illicit relation with sister of the appellant – Kalu Yadav (@ Kalua and he was also made accused in the present case. It is also evident that since prior to the date of occurrence litigation was already going on in between informant's side as well as appellants' side.



14. P.W. 6 (Jyotish Lal Yadav) is another co -villager. He is also a hearsay witness however he has not specifically stated as to who informed him regarding involvement of the accused persons, and as such, his evidence, though hearsay, may not be taken into account.

15. P.W. 7 (Prem Lal Yadav) was a co-villager but he was only tendered for cross examination, and as such, there is no relevance for his evidence.

16. P.W. 8 (Md. Rais Azam) is a formal witness who at the relevant time was Laboratory Technician in Sadar Hospital, Kishanganj and he had produced photo copy of the post mortem report, which has been marked as Ext. 2. During post mortem examination following anti mortem injuries were found on the person of the deceased:-

“(1) One penetrating wound over left scapular region 1” x 1/4” x chest cavity deep.

On dissection of thorax - 6th rib of left side was found fractured. Left lung was found punctured (penetrated) laterally. The chest cavity is full of blood and clots. On further dissection neck muscles and fascia cive were found congested”

17. On examination of the post- mortem examination report it is evident that on the person of the deceased only one injury was noticed that was caused by inflicting knife blow. During the trial the Investigating Officer was not produced nor any



plausible explanation has been given. Since learned counsel for the appellants has emphasized that place of occurrence was not established by the prosecution due to absence of Investigating Officer, the Court was persuaded to examine case diary to see as to whether Investigating Officer had found any material at the place of occurrence or not. On examination of the case diary particularly to the extent where Investigating Officer had inspected the place of occurrence, it appears that Investigating Officer had not noticed any material evidence nor any material evidence was seized or seizure list was prepared. Accordingly, on perusal of the case diary we found substance in the submission of learned counsel for the appellants that prosecution has miserably failed to establish the place of occurrence. Moreover, on examination of the entire evidence it is evident that none of the independent witness has come forward to support the prosecution case. In the evidence of P.W. 5 at least it has come that there was animosity in between two families i.e. family of informant as well as appellants' side. Since there was already animosity in between the parties, we have cautiously examined the evidence of close relatives of the deceased, who are none else i.e. P.W. 1 (own brother of deceased), P.W. 2 (wife of P.W. 1), P.W. 3 (father of the deceased) and P.W. 4 (wife of the deceased). Of -course it is settled that evidence of



witnesses who are relatives may not be ignored, but while placing reliance on such evidence the Court is required to examine entire evidence and after examining the evidence we are of opinion that evidence of those witnesses lacks credence. Moreover, no explanation has been given by prosecution regarding non-production of the Investigating Officer. On examination of the record also it is evident that prosecution has not been able to establish the place of occurrence nor any material evidence has been brought on record. Accordingly, only on the basis of so-called oral evidence, that too, of close relatives of deceased, it would not be safe for us to approve the judgment of conviction and sentence.

18. Accordingly, in view of evidence, which we have discussed hereinabove, we are of opinion that the prosecution has not been able to establish its case beyond all reasonable doubts, and as such, by way of extending benefit of doubt it is desirable to interfere with the impugned judgment.

19. Accordingly, the judgment of conviction dated 22.05.2013 and sentence dated 25.05.2013 passed by Shri Housila Pd. Tripathi, learned Adhoc Addl. Sessions Judge II, Katihar in Sessions Trial No. 120 of 1992 (arising out of Balrampur P.S. Case No. 19 of 1992, G.R. Case No. 423 of 1992) is hereby set aside and appellants are acquitted from the charges and both appeals are



allowed. Appellant -Kalu Yadav @ Kalua in Cr. Appeal (D.B.) No. 771 of 2013 is in jail and since judgment of conviction and sentence has been set aside, it is desirable to direct for his release. Accordingly, it is hereby directed to release Kalu Yadav @ Kalua [sole appellant in Cr. Appeal (D.B.) No. 771 of 2013] forthwith, if not wanted in any other case. Two appellants Bhelu Yadav @ Bhelua and Kartik Lal Yadav in Cr. Appeal (D.B.) No. 754 of 2013 are on bail, and as such, they are hereby discharged from liability of their bail bonds. Both appeals are allowed.

(Rakesh Kumar, J)

(Anjani Kumar Sharan, J)

praful/-

AFR/NAFR	AFR
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