

IN THE HIGH COURT OF JUDICATURE AT PATNA
GOVT. APPEAL (DB) No.5 of 1997

The State of Bihar

... .. Appellant/s

Versus

1. Prakash Yadav
2. Dhirendra Yadav
3. Bhushan Yadav
sons of Satya Narayan Yadav
4. Manik Lal Yadav
5. Tanik Lal Yadav
sons of Kapildeo Yadav
6. Satya Narayan Yadav, son of late Ram Charitar Yadav,
All of village Kumarsar, P.S. -Sangrampur, District-Munger

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Shashi Bala Verma, Adv.
For the Respondent/s : Ms. Surya Nilambari, Adv.

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 01-10-2020

Heard Mrs. Shashi Bala Verma, learned counsel for the appellant and Ms. Surya Nilambari, who was requested to assist the Court as Amicus Curiae vide order dated 21.6.2019 since none appeared on behalf of the respondents.

The present appeal has been preferred by the State of Bihar against the judgment dated 23.9.1996 passed in S.T. No. 329 of 1994 arising out of Sangrampur P.S. Case No. 22 of 1994 by the learned ^{1st} Additional Sessions Judge, Munger whereby



the respondents have been acquitted of the charge under Sections 302/149 of the IPC.

The prosecution case as per the fardbeyan of Prabin Kumar, P.W. 6 recorded by SI of Police-cum-SHO, Sangrampur Police Station on 20.3.1994 at 8.30 P.M., is to the effect that while the informant along with Manoj Yadav (deceased), Sudhir Yadav, P.W. 1, Anil Yadav P.W. 4 and Shambhu Yadav P.W. 2 were returning to their home from village Janakpur and reached near the field of Bhagwan Yadav, the respondents Prakash Yadav, Dharendra Yadav, Bhushan Yadav, Manik Lal Yadav, Tanik Lal Yadav and Satya Narayan Yadav came out from the bush and surrounded them. They all caught hold of Manoj Yadav the nephew of the informant. On the order of respondent no. 6 Satya Narayan Yadav to kill Manoj, respondents Prakash Yadav, Dharendra Yadav and Bhushan Yadav assaulted on the head of Manoj with Khanti. Thereafter, Manoj Yadav fell down and was in a restless condition. The informant and others tried to rescue him then Manik Lal Yadav (respondent no.4) pointed pistol towards the informant and others and threatened to kill. Thereafter, the informant and three others ran away from there. Respondent no.5, Tanik Lal Yadav assaulted with lathi to Manoj Yadav and thereafter the accused persons fled away. After some



time, several persons reached on the spot, the informant also came and saw the injury on the head of the deceased caused with Khanti, while Manoj Yadav was dead. The genesis of the occurrence is three criminal cases were going on between the accused persons and the informant's side, leading to registration of Sangrampur P.S. Case No. 22 of 1994 under Sections 302, 324, 147, 148 and 149 of the IPC on the basis of Fardbeyan (Ext. 6) of P.W. 6 recorded by P.W. 9.

On conclusion of investigation charge sheet was submitted and on cognizance being taken, the case was committed to the Court of Sessions. Charges were framed against all the accused respondents under Sections 302/149, whereas, respondents Prakash Yadav, Dharendra Yadav and Bhushan Yadav stood further charged under Section 302 of the IPC and along with aforesaid three respondents, respondent Manik Lal Yadav was charged under Section 148 of the IPC. Further respondents Tanik Lal Yadav and Satyanarayan Yadav also stood charged under Section 147 of the IPC and respondent Manik Lal Yadav stood charged under Section 27 of the Arms Act.

The prosecution examined altogether 9 witnesses out of which, P.W. 1 Sudhir Yadav, PW 2 Shambhu Yadav, P.W. 4



Anil Yadav and P.W. 6 Prabin Yadav are eye witnesses of the occurrence. P.W. 3 Jaikaran, the father of the deceased, is a witness to fleeing away of the accused persons being variously armed, from the place of occurrence. P.W. 7 Narendra Yadav, the uncle of the deceased, happens to be witness of inquest. P.W. 8 is doctor who conducted postmortem and has proved the same. P.W. 9 is the IO who proved the fardbeyan (Ext.5, which is actually Ext.3 but it has also been marked as Ext.5).

The defence examined four witnesses, all of them are formal in nature and have proved either formal FIR, fardbeyan, written report showing complicity of the deceased in numerous cases. Apart from the same, the defence also adduced documentary evidence by producing FIR and complaint petition suggesting that the deceased was a notorious criminal.

The learned trial Court after examining evidence on record, came to a definite finding that the medical opinion substantially negates the ocular evidence and the present of eye witnesses namely, P.Ws 1,2,4 and 6 at the place of occurrence to be doubtful. It has further been opined that the prosecution has failed to prove the manner of occurrence as it is alleged that three accused respondents Dhirendra, Bhushan and Prakash only assaulted with Khanti on the head of the victim and two persons



assaulted with lathi whereas the cut injury has been found on the the parts of the body of the deceased but injury nos. 4 to 9 are on the other parts of the body and injury nos. 10 and 11 are abrasions superficial in nature. Hence, the judgment of acquittal was recorded.

Learned counsel for the appellant submits that the specific case of P. Ws. 1,2,4 and 6 is that they went to Janakpur village to attend the marriage and while returning three accused assaulted with Khanti on the head of the deceased Manoj Yadav and two assaulted with lathi. Hence, the judgment of acquittal is against the weight of evidence.

So far as the contradiction between the medical evidence and ocular evidence is concerned, the specific case of all the eye witnesses is that when they were threatened to be killed, by the accused respondent Manik Lal Yadav, they fled away from the place of occurrence but the accused persons continued assaulting Manoj, the deceased. It is further submitted that the medical opinion cannot override the ocular evidence. The evidence of P.W. 3 also proves the circumstance that the accused persons, variously armed, were seen fleeing away from the place of occurrence.

Ms. Surya Nilambari, learned Amicus Curiae submits



that the medical opinion substantially negates the oral evidence. The prosecution has failed to prove the case beyond reason of substantial doubt. The specific case of the eye witnesses that they went to Janakpur to attend the marriage of the son of Kamlakant but said Kamlakant has not been examined. The witnesses have stated that they did not receive any invitation from said Kamlakant.

It is further submitted that the defence also adduced documentary evidence, like, FIR and complaints and the charge sheets which have been marked as C-1, C-2, C-3, C-4, B, B-1 and H to prove that the deceased Manoj was a notorious criminal and he died while committing some offence and due to old enmity for which the respondents have wrongly been implicated.

Considering the rival submissions of the parties and the materials on record, no doubt, in the FIR it is alleged that on the order of respondent Satya Narayan Yadav, respondents Prakash, Dharendra and Bhushan assaulted Manoj with Khanti on his head while respondent Tanik Lal assaulted Manoj by lathi, whereas P.W. 6 in paragraph 2 of his evidence stated that Tanik Lal Yadav and Satya Narayan assaulted with lathi. P.W. 1 in paragraph 2 and 3 of his evidence also stated that Prakash and



Dhirendra assaulted with Khanti and Satya Narayan and Tanik Lal assaulted with lathi. P.W. 1 in paragraph 1 and 30 of his evidence has stated that Tanik and Satya Narayan assaulted four times with lathi but no corresponding injury has been found on the dead body of the victim during postmortem examination. So, there is serious inconsistency with regard to the manner of assault in the evidence of so called eye witnesses.

P.W. 6 has been examined as Prabin Kumar, son of Ramdeo Prasad Yadav whereas in paragraph 25 of his evidence, he has admitted that his actual name is Gangadhar. There is material on record to suggest that since Gangadhar has numerous cases on his head, he changed his name, hence, the learned trial Court has rightly disbelieved the evidence of P.W. 6. P.W. 6 in paragraph 26 of his evidence has admitted that he did not see the actual assault. So far as P.W. 3 is concerned, he is father of the deceased Manoj Yadav and has stated that he heard the alarm and reached at the place of occurrence and claims that he saw the dead body but on the way he saw the accused persons fleeing away along with arms. In his evidence, he has stated that his house is about fifty steps from the place of occurrence, whereas P.W. 1 in paragraph 18 of his evidence has stated that the house of P.W. 3 is one kilometer away from the



place of occurrence. The conduct of the eye witnesses also appears to be unreasonable that they did not go to inform the police. P.W. 6 the informant in paragraph 9 of his evidence has stated that P.W. 7 Narendra Yadav who happens to be the uncle of the deceased, saw the occurrence and went to the place of occurrence but he has not supported the prosecution case in his evidence. The I.O. P.W. 9 in his evidence has stated that one knife (Rampuri Chakoo) was recovered from the place of occurrence and out of eleven injuries, nine have been caused by sharp cutting weapon. The specific case of eye witnesses is that assault was made by Khanti but Khanti is a semi pointed weapon and the injury caused does not appear to be caused by Khanti as has been admitted by the doctor in his cross-examination that it was not caused by pointed weapon. Consistent evidence of eye witness is that after taking meal within one and half hour, the occurrence took place but during postmortem examination, semi digested food was found which also suggests that the eye witness account is not trustworthy.

It is well settled law that the medical evidence cannot override the ocular evidence but in the present case, out of 11 injuries, ten have been caused on different part of the body of the deceased and one abrasion superficial in nature has been



found, hence, neither the injury no. 4 to 9 gets explained from the evidence of eye witnesses nor the evidence of eye witnesses that two persons assaulted with lathi gets corroborated with the medical opinion.

It is trite law that medical evidence cannot override the ocular evidence but when it completely negates the ocular evidence, then it changes its character from opinionative to direct evidence. Ordinarily the value of medical evidence only corroborative as has been held by the Hon'ble Supreme Court in the case of Solanki Chimanbhai Ukabhai Vs. State of Gujrat, reported in (1983) 2 SCC 174. Paragraph 13 of the judgement reads as follows:

“13.Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency



between it and the medical evidence.”

Further, it has been held by the Supreme Court in the case of State of U.P. Vs. Hari Chand (2009) 13 SCC 542 that unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy. Part of paragraph 13 of the judgement reads as follows:

“13..... In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy.”

When the ocular evidence is totally inconsistent with the medical evidence then it amounts to fundamental defects in the prosecution case as has been held in the case of Ram Narain Singh Vs. State of Punjab, reported in (1975) 4 SCC 497. Paragraph 14 reads as follows:

“14. Where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistic expert, this is a most fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit the entire case. In *Mohinder Singh v. State* [AIR 1953 SC 415 : 1950 SCR 821] this Court observed in similar circumstances as follows:

“In a case where death is due to injuries or wounds caused by a lethal weapon, it has always



been considered to be the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. It is elementary that where the prosecution has a definite or positive case, it is doubtful whether the injuries which are attributed to the appellant were caused by a gun or by a rifle.”

It is obvious that where the direct evidence is not supported by the expert evidence, then the evidence is wanting in the most material part of the prosecution case and it would be difficult to convict the accused on the basis of such evidence. While appreciating the evidence of the witnesses, the High Court does not appear to have considered this important aspect, but readily accepted the prosecution case without noticing that the evidence of the eyewitnesses in the Court was a belated attempt to improve their testimony and bring the same in line with the doctor's evidence with a view to support an incorrect case.”

The cardinal principle of criminal jurisprudence pertaining to burden of proof is that the same is on the prosecution. The guilt of accused must be proved beyond reasonable doubt. However, the burden on the prosecution is only to establish his case beyond reasonable doubt and not all



doubts. The reasonable doubt has been defined by the Hon'ble Supreme Court in the case of State of U.P. Vs. Krishna Gopal and Anr., reported in (1988) 4 SCC 302. Paragraph 25 of the judgment reads as follows:

“25. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to “proof” is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another a learned Author says [See: “The Mathematics of Proof-II” : Glanville Williams: Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)] :

“The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But



since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other.”

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded,



at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice.”

In view of the discussions made above, we do not find any reason to interfere with the finding and the judgment of the learned trial Court. It is well settled principle that the presumption of innocence gets re-enforced with the acquittal of the accused persons. The appellate Court only because he differs in opinion on certain points, should not interfere with the judgment of acquittal unless there is substantial reason is there.

Accordingly, we do not find any merit in the appeal. It is, accordingly, dismissed.

Registry is expected to take steps for payment of admissible fee to Ms. Surya Nilambari, amicus curiae appearing on behalf of the respondents.

(Dinesh Kumar Singh, J)

(Prabhat Kumar Singh, J)

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