

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.927 of 2015**

Arising Out of PS. Case No.-141 Year-2011 Thana- CHHATAPUR District- Supaul

Dhanik Lal Uraon son of Matuk Lal Uraon, Resident of village- Sohra, P.s.-
Chhatapur, District- Supaul

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anil Kumar Mukund, Advocate
	:	Mr. Purnendu Keshav, Advocate
	:	Mr. Anirudh Pandey, Advocate
For the Respondent/s	:	Ms. S.B.Verma, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR)

Date : 12-04-2022

This instant appeal has been preferred by the appellant, namely, Dhanik Lal Uraon against the judgment of conviction dated 04.08.2015 and order of conviction dated 06.08.2015 passed by the learned 2nd Additional Sessions Judge, Supaul in connection with Sessions Trial No.229 of 2011 arising out of Chhatapur P.S. Case No.141 of 2011 whereby and whereunder the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code and after hearing the convict on the point of sentence vide consequential order dated 06.08.2015, the trial Court sentenced the appellant



to undergo imprisonment for life and fine of Rs.20,000/- for the offence committed under Section 302 of the Indian Penal Code.

2. On the basis of the fardbeyan, the informant, namely, Laxmi Uraon, the prosecution case as recapitulated is hereunder that on 24.09.2011 at about 2.30 P.M., informant's wife Ramni Devi aged about 50 years was sleeping over Chauki in her veranda, then the appellant Dhanik Lal Uraon came with iron rod and started assaulting her. His wife tried to escape and ran over brick soiling road but after being chased, she was captured by the appellant and forced her to lie on the road and pressed her neck with leg and brutally assaulted her by iron rod and bricks over her head and damaged her both eyes. As such, his wife died on spot. The motive behind this occurrence is that one week before the occurrence, some altercation took place between the appellant and the deceased regarding grazing of cattle in the field of the appellant.

3. After recording the fardbeyan of the informant, a formal FIR was recorded and the investigation accordingly initiated. After completing the investigation, chargesheet has been submitted against the appellant after finding the case true. The case was committed to the court of Sessions for trial and disposal. The charge was read over and explained to the



appellant to which he pleaded not guilty and claimed to be tried. The defence is of total innocence and the appellant has falsely been implicated in this case.

4. We have heard the learned counsel for the appellant as well as learned APP for the State.

5. It is submitted on behalf of the appellant that the judgment of conviction and order of sentence are bad in law as well as in the fact and liable to be set aside which is based on conjecture and surmises. The learned court below failed to consider that there is vital contradictions in ocular version which were made by the prosecution witnesses. All prosecution witnesses are interested and related to each other and belong to same family of the informant.

6. In contra, learned APP for the State submitted that the prosecution succeeded in totality to prove its case beyond all reasonable doubt and the prosecution witnesses are all consistent in their evidence regarding place of occurrence, manner of occurrence and the weapons used in the occurrence for committing the murder of the deceased and so this appeal is fit to be dismissed.

7. To substantiate the charge levelled against the accused, altogether eight witnesses have been examined on



behalf of the prosecution.

8. P.W-1 Jai Kumar Uraon, PW-2 Saheb Uraon, PW-3 Afishlal Kumar Uraon, PW-4 Foolchand Uraon, PW-5 Laxmi Uraon (informant and husband of the deceased), PW-6 Dharmendra Uraon, PW-7 Srikant Prasad Sinha, I.O. of this case and PW-8 Dr. Anit Kumar Chaudhary, Medical Officer, Supaul.

9. In contra, appellant has not examined any witness nor adduced any document in support of his defence.

10. PW-8 Dr. Anit Kumar Chaudhary who conducted postmortem of deceased and prepared a postmortem report which is marked as Ext-6. He found in col.7 of postmortem report “Scalp frontal region lacerated with commuted fracture frontal bone with commuted fracture of bone forming orbit bilaterally with depressed fracture both masculla, soft tissue of both eye boll lacerated.” He also found scalp frontal region lacerated 2”x1” bone deep, lower lips lacerated wound 1/2” x 1/4” x skin deep. Abrasion at abdomen two side 1”x 1 and 1”x1/2” superficially. The reason of death cardio respiratory failure due to above wound cause by hard and blunt substance. During his cross-examination, this witness has deposed that these injuries sustained by the deceased may occur by falling



on the ground by the side of face.

11. Now we shall proceed to take into consideration the nature of evidence brought on record whether the evidence is proved and establish the charge levelled against the appellant beyond shadow of reasonable doubts or not.

12. Some following factors require for determining the credibility of testimony of the witnesses.

- (i) The witness had personal knowledge.
- (ii) He or she was actually present at the scene.
- (iv) The witness pay attention at the scene
- (iv) He or she told the truth.

13. PW-1 has claimed to be an witness of this occurrence. He deposed that on 24.09.2011 on Saturday at 2.30 in day time, he was engaged in preparing the jute crop in ditch. On hearing Hulla, he ran towards the place of occurrence, meanwhile, appellant Dhanik Lal Uraon, Baboolal and Mahendra Singh jointly committed the murder of Ramni Devi by means of iron rod and bricks.

14. PW-2 Saheb Uraon also deposed about the prosecution version in his deposition before the trial Court but this witness deposed about the occurrence differently that the deceased went to make complaint and convince the appellant



Dhanik Lal Uraon in respect of grazing his cattle in her field. The appellant asked as to why she complained it meanwhile appellant Dhanik Lal Uraon, Babulal and Mahendra Singh began to assault her by means of rod and bricks due to which she was defaced and thereafter she succumbed to her injuries. This witness deposed that the incident occurred after 25 minutes of 2.30 P.M. in the day time.

15. PW-3 Afishlal Kumar Uraon who is minor and aged about 12 years stated about the occurrence that the incident occurred when he was studying in his veranda he saw that Dhanik Lal assaulted her aunt with iron rod and pushed her to the ground by holding her hairs and Babulal and Mahendra Singh also assaulted her with bricks. During cross-examination, there was approximately 2 to 400 persons were assembled but no one was sprinkling water in order to regain her consciousness. After murder of her aunti the information has been given to Laxmi Uraon. He further stated that on the day of occurrence, police enquired him at about 2.30 P.M. in respect of the occurrence. But according to the prosecution case, the information of the occurrence was given to the police at about 4 P.M.

16. PW-4 Foolchand Uraon who is the father of PW-3



has deposed the prosecution version on the basis of hearsay. During cross-examination, he deposed that the informant Laxmi Uraon was not at the place of occurrence. Jai Kumar (PW-1) and others went on the field at the time of occurrence. They are not present at the place of occurrence. At the time of occurrence, only Ramni Devi (deceased) and wife of Bal Kumar (Bhabhoo) were present at the house of deceased.

17. PW-5 Laxmi Uraon is the star witness of this case. Pall of gloom was descended on him because his wife, namely, Ramni Devi was murdered in the occurrence. It is worth to be mentioned here that this witness claims to be an eye witness of the occurrence in his fardbayan. He mentioned in his fardbayan that he tried to save his wife in the occurrence from the assault made by the appellant but he namely, Dhanik Lal Uraon chased him by means of iron rod. This witness deposed that on 24.09.2011 at about 2.30 P.M. on day, appellant Dhanik Lal Uraon assaulted his wife at his house. Thereafter, when she tried to save herself, she ran over pitch road, the appellant pushed the deceased on the pitch road and assaulted her by means of rod. The appellant pressed her neck by his legs and also assaulted by bricks due to which her eyes were punctured and lastly, his wife died. This witness at the time of his



deposition, he had not claimed to be an eye witness himself. In his cross-examination, he deposed that on the alleged time of occurrence all his family members went to prepare and assemble the jute crop at pond which situated 150 yards away from his house. The house was closed. On alarm, a boy came and informed him. He reached there and found his wife in unconscious condition. Approximately 100 to 150 persons surrounded her dead body. He alongwith his brother and nephew entered into the circle, meanwhile she was died. In his cross-examination, he further deposed that he stated to the police that at the time of alarm, he was present at pond. All persons, namely, Saheb Uraon (PW-2), Foolchand Uraon (PW-4), Dharmendra Uraon (PW-6) and Afishlal Kumar Uraon (PW-3) reached there on that day. We all went at pond about 8 A.M. for preparing the jute crops. Thereafter, we all have seen his wife in dead position. His wife remained at home on that day because all persons had gone from the house. So it is clear that this witness is not an eye witness. We are of this view that at the time of occurrence, only informant's wife, namely, Ramni Devi was present at her house and the prosecution witnesses no.1, 2, 3, 4, 5 and 6 were not present at the place of occurrence.

18. PW-6 Dharmendra Uraon deposed about the



prosecution case and claims to be an eye witness. He deposed in his cross-examination that when he reached at the place of occurrence, crowd was there. He supported the informant's version that all family members are not present at the house and they went to the pond for assembling and preparing jute crops. Only Ramni Devi (deceased) was present at home. He has not introduced with Ramni Devi on that day. He went there when the dead body was taken away by police. He further deposed in his cross-examination that he had not seen Ramni Devi on Chowki in sleeping position. It shows that he was not present at the time of occurrence.

19. PW-7 Srikant Prasad Sinha is the Investigating Officer of this case and after recording the statement of the witnesses, he submitted the chargesheet after finding the case to be true against the appellant. In his cross-examination, he deposed that the witnesses during investigation have not stated about the complicity of Babulal and Mahendra Singh in committing the murder. The witnesses also had not stated that Babulal and Mahendra Singh assaulted the deceased by means of bricks.

20. From scrutinizing the evidence of this witness, it is apparent that the prosecution witnesses deposed that appellant



Dhanik Lal Uraon along with Mahendra Singh and Babulal assaulted the deceased. They made exaggerated evidence because of PW-5 who is believable and star witness of this occurrence. He has not whispered in his evidence that Babulal and Mahendra Singh also assaulted his wife by means of bricks and also he has not named Babulal and Mahendra Singh in the complicity of the occurrence for committing the murder of deceased Ramni Devi (informant's wife). So it seems that all the prosecution witnesses except PW-5 (informant) have deposed about the complicity of Babulal and Mahendra Singh as accused.

21. PW-8 Dr. Anish Kumar has opined that the death may occur by falling on the land by frontal side of the face.

22. We have gone through the entire prosecution evidence which available on record, it reveals that none of the witnesses has claimed to be an eye witness in their deposition, but pretending to be an eye witnesses of the occurrence. It reveals also from the prosecution evidence that witnesses came forward to depose before the Court but none of them has deposed that they tried to save the deceased while the accused appellant had assaulted to the deceased only by means of bricks and iron rod, as such, their evidence does not inspire confidence



of the involvement of the appellant in the instant occurrence.

23. It is a trite law that a contradiction is set to take place when any witness takes oath and testifies something which is contrary or totally different in the improvements or contradicts with regard to previous statement of said witness which relied on by depart adducing the said witness.

24. After scrutinizing the entire prosecution evidence, we are of the affirm view, that the credibility of testimonies of the witnesses have not created and inspired confidence in our mind and are not be free from contradictions and discrepancies. In this case, the contradictions, inconsistencies, embellishments or making material improvements on the point of manner of occurrence and complicity of accused persons, creates a serious doubt about the truthfulness of the witnesses while deposing in the trial court, such evidence is not safe to be relied upon. The prosecution witnesses have deliberately deposed, improved their original statement in order to cause prejudice to the accused.

25. On careful consideration of the evidence brought on record, arguments of the learned counsel for the appellant as well as learned APP for the State, we are of the view that the prosecution miserably failed to prove and establish the charge



levelled against the appellant beyond all shadow of reasonable doubts. Therefore, this appeal appears to have merits.

26. In the result, this appeal is allowed.

27. The judgment of conviction dated 04.08.2015 and order of sentence dated 06.08.2015 passed by the learned 2nd Additional Sessions Judge, Supaul in connection with Sessions Trial No. 229 of 2011 arising out of Chhatapur P.S. Case No. 141 of 2011 is quashed.

28. The appellant is acquitted for the offence punishable under Section 302 of the Indian Penal Code and he is directed to be set free forthwith.

29. The appellant is in jail. He is directed to be released forthwith, if not wanted, in any other case.

(Sunil Kumar Panwar, J)

(A. M. Badar, J)

(A. M. Badar, J)

Brajesh Kumar/-

AFR/NAFR	
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