

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.685 of 2014

Arising Out of PS. Case No.-40 Year-2009 Thana- JAGDISHPUR District- Bhagalpur

Subhash Paswan, son of Late Naresh Paswan, Resident of village- Itwa,
Police Station- Gouradih, District- Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 727 of 2014

Arising Out of PS. Case No.-40 Year-2009 Thana- JAGDISHPUR District- Bhagalpur

Bibhash Paswan, son of Late Naresh Paswan, Resident of village- Itwa,
Police Station- Gouradih, District- Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 757 of 2014

Arising Out of PS. Case No.-40 Year-2009 Thana- JAGDISHPUR District- Bhagalpur

Deep Narayan Paswan @ Deep Narain @ Deepu Paswan @ Deepu, Son of
Late Naresh Paswan, resident of Itwa, Police Station- Goradih (Jagdishpur),
District- Bhagalpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 685 of 2014)

For the Appellant/s : Mr. Anamul Haque, Advocate



Mr. Najmul Hoda, Advocate
Mr. Pranjal Kumar, Advocate
For the Respondent/s : Mr. Binod Bihari Singh, APP
(In CRIMINAL APPEAL (DB) No. 727 of 2014)
For the Appellant/s : Mr. Md. Najmul Hoda, Advocate
For the Respondent/s : Mr. Binod Bihari Singh, APP
(In CRIMINAL APPEAL (DB) No. 757 of 2014)
For the Appellant/s : Mrs. Sweety Sinha, Advocate
Mr. Dr. Manoj Kumar, Advocate
For the Respondent/s : Mr. Bipin Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR**

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 07-07-2023

We have heard Mr. Najmul Hoda, learned counsel for the appellant in Cr. Appeal (DB) No. 685 of 2014 and Cr. Appeal (DB) No. 727 of 2014; Mrs. Sweety Sinha in Cr. Appeal (DB) No. 757 of 2014 and Mr. Binod Bihari Singh, learned APP for the State in all the three appeals.

2. All the three appeals are arising out of S.T. No. 859 of 2009 / Tr. No. 68 of 2013 emanates from Jagdishpur (Goradih) P.S. Case No. 40 of 2009, disposed of vide judgment of conviction and sentence by the learned 1st Additional Sessions Judge, Bhagalpur and, as such, the same have been heard together with the consent of the



parties and being disposed of by this common judgment.

3. The appellants have challenged the judgment of conviction dated 09.07.2014 and the consequent order of sentence dated 17.07.2014 passed by the learned 1st Additional Sessions Judge, Bhagalpur in S.T. No. 859 of 2009 / Tr. No. 68 of 2013, arising out of Jagdishpur (Goradih) P.S. Case No. 40 of 2009, whereby and whereunder they have been found guilty and convicted for the offences under Sections 302/34 of the Indian Penal Code and sentenced to undergo Imprisonment for life and to pay a fine of Rs.10,000/- to each convict for the offence under Section 302/34 of the Indian Penal Code. In default of payment of fine to undergo Simple Imprisonment for a period of six months.

4. The prosecution case, as disclosed in the Fardbeyan of Pankaj Kumar Paswan (P.W.6), son of late Suresh Paswan resident of Village Etawa, P.S. Goradih, District Bhagalpur recorded by S.I., R.B. Singh of Goradih O.P. (P.W.12) on 24.02.2009 at 15.30 hours at village Etawa, is that on 24.02.2009, the informant (P.W.-6) along with his father Suresh Paswan (deceased) in the morning



went for preparing Labour Card at the house of the Mukhiya at village Kasimpur and thereafter they returned to their house at 12.30 P.M. After taking meal, the father of P.W. 6 went to *Gohal* and slept in the *Palani*. In the meantime, at about 1.30 P.M., the cousin (brother) of P.W.6, namely, Subhash Paswan (appellant in Cr. Appeal (DB) No. 685 of 2014), Bibhash Paswan (appellant in Cr. Appeal (DB) No. 727 of 2014), Deep Narayan @ Dipu Paswan (appellant in Cr. Appeal (DB) No. 757 of 2014) and Surendra Paswan armed with Bhala, Lathi and Garasa came there. The appellant Subhash Paswan caught hold both the legs of his father and Bibhash Paswan caught hold the head and thereafter the appellant Deepu Paswan @ Deep Narayan Paswan assaulted on the neck of his father by means of *Garasa*, due to which his neck was cut down. When the father of the informant tried to save himself, the appellant Deepu Paswan @ Deep Narayan Paswan again assaulted him, due to which he sustained cut injury over the palm of his left hand. The father of the informant even after sustaining the aforementioned injuries anyhow stood up from the cot, but he fell down in the *Palani*, where he died. Surendra



Paswan armed with Bhala was standing there and giving threatening to the persons, who were coming there and due to fear none of the persons tried to come there. On hulla, several other persons came there and then all the accused persons/appellants fled away.

5. The reason behind the said occurrence is said to be that appellant Deepu Paswan @ Deep Narayan Paswan used to make allegation against the father of the informant that he was keeping ill eyes on his wife and due to which by making false allegation against the father of the informant they have killed him by sharp cutting weapon. Several persons witnessed this occurrence.

6. After having recorded the fardbeyan of the P.W.6, the same was forwarded to SHO, Jagdishpur Police Station for institution of a case and, accordingly, Jagdishpur P.S. Case No. 40 of 2009 was registered on 25.02.2009 for the offences punishable under Sections 302/34 of the Indian Penal Code.

7. After completion of the investigation, the police submitted charge-sheet under Section 173 of the Cr.P.C. for the offence under Section 302/34 of the Indian Penal Code,



thereafter the Magistrate took cognizance of the offences and the case has been committed to the Court of Sessions for trial.

8. All the appellants have been charged under Sections 302/34 of the Indian Penal Code for committing murder of Suresh Paswan (father of the informant) in furtherance of their common intention. The aforementioned charges was duly explained to the appellants to which they pleaded not guilty and claimed to be tried.

9. The prosecution has examined altogether 12 witnesses and they are: (P.W.1) Bichhu Paswan, (P.W.2) Harchu Paswan, (P.W.3) Shanti Devi, (P.W.4) Rajeev Kumar Ranjan, (P.W.5) Tribhuvan @ Tifin Paswan, (P.W.6) Pankaj Paswan (informant), (P.W.7) Manoj Kumar, (P.W.8) Ajay Kumar Mandal, (P.W.9) Dr. Sandeep Lal, (P.W.10) Shaligram Mandal, (P.W.11) Surya Narayan Pandey and (P.W.12) Raj Ballabh Singh.

10. The prosecution has also exhibited certain documents in its support, which are as follows: Ext.1 is signature of the informant on Fardbeyan, Ext.1/1 is signature of witness on seizure list, Ext.1/A is the



Fardbeyan, Ext.2 is postmortem report of deceased Suresh Paswan, Ext. 3 is signature of Md. Ashraf (S.I.) on the formal F.I.R., Ext.4 is the inquest report of the deceased, Ext.5 is seizure list, Ext.6 and 6/1 are the FSL reports.

11. The defence has neither examined any witness nor any document has been brought on record in this case.

12. Before making any discussion of the testimonies of the witnesses, this Court deems it appropriate to observe that out of the 12 witnesses, two of the witnesses, namely, Bichhu Paswan and Harchu Paswan, who were examined as P.W.1 and P.W.2, they have been refused to be cross-examined by the defence, hence they have been discharged by the learned trial court without they being cross-examined.

13. From the record it appears that after their examination-in-chief, the counsel for the appellants did not turn up for cross-examination and the appellants also refused for the same.

14. On a query made by this Court as to in such a situation what would be the procedure required to be followed. Learned counsel appearing on behalf of the State



submitted that since the appellants refused to cross-examine, therefore, their statement made in the examination-in-chief may be taken into consideration.

15. Section 304 of the Cr. P.C. deals with the subject of legal aid to the accused at State expenses in certain cases where in a trial before the Court of Session, the accused is not represented by a pleader and where it appears to the Court that the accused has not sufficient means to engage the pleader, the Court shall assign a pleader for his defence at the expenses of the State. The provision of law clearly demonstrates that the duty is assigned to the trial court to appoint a pleader for the defence of an accused in a Session Case, where the accused is not represented by a pleader.

16. The Apex Court in **Suk Das and Anr. Vs. Union Territory of Arunachal Pradesh (1986) 2 SCC 401** while taking into consideration the earlier decisions in **M.H. Hoskot Vs. State of Maharashtra (1978) 3 SCC 544** as well as **Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna (1980) 1 SCC 98** held as follows:

“...the right to free legal service is...



clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held to be implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require; provided of course the accused person does not object to the provision of such lawyer". This Court pointed out that it is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court's process that he should have legal service, available to him. The same view was taken by a Bench of this Court in M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544 : (AIR 1978 SC 1548). It may therefore now be taken as settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty as this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21. Of course, it must be recognised that there may : be cases involving offences, such as, economic offences or offences



against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal service may not be provided by the State. There can in the circumstances be no doubt that the appellants were entitled to free legal assistance at State cost when they were placed on peril of their personal liberty by reason of being accused of an offence which if proved would clearly entail imprisonment for a term of two years”

17. The provisions of law as enunciated under Section 304 of the Code of Criminal Procedure as also the law settled by the Apex Court it mandates that a duty has been cast upon the Sessions Court to ensure that unrepresented accused is provided with necessary legal assistance. Undoubtedly such legal assistance cannot be thrust upon the accused person against his will.

18. The Division Bench of Bombay High Court in the case of **Baliram Madhukar Dalvi Vs. State of Maharashtra 2007 SCC OnLine Bom.1583** while considering the similar issue in connection with the provision of Section 304 of the Cr.P.C. read with Legal Aid To Unrepresented Accused Person In Cases Before The Court Of Sessions. Rules, 1982 has been pleased to hold



that “even in a case where the accused person declines to avail the legal assistance while recording the plea in an answer to the charge framed in a Sessions Case, if in the course of the recording of the evidence the accused remains unrepresented, or is found to be without any legal assistance, certainly it is the duty of the Sessions Court to enquire as to whether the accused needs any legal assistance to be provided in terms of the said rules read with Section 304 of the Cr. P.C. Failure on the part of the Sessions Judge in this regard would thus be denial of the statutory right guaranteed to the accused person in a Sessions Case. Besides, denial of legal assistance would also result in violation of constitutional mandate under Article 21 of the Constitution of India”.

19. In view of the aforesaid legal position, prima facie, it appears to the Court that the mandate, as required under Section 304 of the Cr.P.C. is completely discarded by the learned trial court and, thus, in such a situation this Court left with no option but to discard the testimonies of P.W.1 and P.W.2.

20. Now coming to the evidence of Tribhuwan @



Tifin Pawan, son of late Suresh Paswan, who was aged about 10 years at the time of his deposition, his testimonies was recorded by the prosecution as P.W.5.

21. P.W.5, on being found competent after evaluation by the learned trial Court, in his examination-in-chief, stated that the occurrence took place on 24.02.2009 at 1.30 P.M., while he was in *Palani*. He stated that after offering *JILEBI* to his father he was asked to bring water and when he proceeded to bring water, his father raised hulla to save him. He saw that appellant Subhash Paswan was catching hold the legs of his father and appellant Bibhash was catching hold the head and appellant Deepu Paswan cut down the neck of his father by *Garasa*. Surendra, armed with Bhala, was giving threatening and not allowing anybody to come there. When the persons assembled, the accused persons fled away and his father died. The P.W.5 was cross-examined by the defence at length. In his cross-examination, he stated that *Palani* is situated just 6-7 steps from his house. He further stated that in the morning, he had gone to Mela (fair) alone from where he brought *JALEBI* which he had offered to his father. He



further stated that after offering *JALEBI* to his father, he was told by his father to bring water and when he was proceeded to bring water, in the meantime, the accused persons surrounded his father. At that time, he was just at the distance of 6-7 steps. Having seen the appellants, he raised hulla and fled away to some distance. In para. 15 he stated that he had seen while his father was done to death. He also stated that his statement was recorded by the police. He has further stated that at that time so much blood was fallen on the cot and bed.

22. Now coming to the testimony of the informant Pankaj Kumar Paswan, who was examined as P.W.6, he has supported the prosecution case and stated that at the time of occurrence he was in his house and when his brother Tifin Paswan raised Hulla, he went to the *Palani* and saw that Subhash Paswan, Bibhash Paswan, Deepu Paswan and Surendra Paswan armed with Lathi, Bhala and Garasa surrounded his father. He further stated that Surendra Paswan having Bhala in his hand not allowed any one to come near his father and Subhash Paswan caught hold the legs of his father, whereas Bibhash Paswan caught hold the



head and Deepu Paswan cut his father's neck by Garasa. When the second Garasa blow was made over right hand of his father, his father fell down from cot and there he died.

23. In cross-examination he has stated that while he saw the dead body of his father he remain perturbed for half an hour. This witness also stated that the *Palani* was situated at the distance of 5-7 steps away from his house towards north-east side. At the time of occurrence he was alone in his brother and taking meal inside the house and when he heard hulla, he rushed to the *Palani* where he saw the occurrence. He further deposed that he saw the *JILEBI* in the throat portion of the neck of his father, however, he did not show the *JILEBI* to the police personnel.

24. P.W. 3 Shanti Devi is the wife of the deceased Suresh Paswan, who has also supported the prosecution case in her examination-in-chief and identified all the appellants and deposed that the appellants are her own nephew, whose house is in front of her house. She also stated that her son had raised hulla that the father was killed. In her cross-examination, she has stated that at the time of alleged occurrence, P.W.1, P.W.2 and P.W.6 were



present in the house and her husband was also there. When she went there after taking meal, she found her husband dead.

25 P.W. 4 Rajeev Kumar Ranjan is a hearsay witness and thus his evidence is not being discussed at length.

26. P.W.7 Manoj Kumar and P.W.8 Ajay Kumar Mandal are the witnesses of the inquest report, besides the P.W.7 was also witness to the seizure list. They have identified their signatures on the inquest report. In addition P.W.7 in his cross-examination stated that at the time of alleged occurrence the appellant Subhash Paswan was distributing labour card at the Darwaja of Mukhiya Jee.

27. Now coming to the evidence of P.W.9, Dr. Sandeep Lal, who conducted postmortem examination of the dead body of Suresh Paswan. In his deposition, he stated before the court that on 25.02.2009 at 2.30 P.M. he conducted post-mortem examination and found the following injuries:

Incised wound 6"x2" situated over neck front cutting skin, soft tissues all major blood vessels of both



sides, trachea and oesophagus 4th cervical vertebra was also found partially cut. Wound was infiltrated with blood and blood clots. In the opinion of the doctor, the above injury was ante-mortem, dangerous and grievous to life in ordinary course of nature, caused by heavy sharp cutting weapon and the cause of death due to haemorrhage and shock. He has also proved the post-mortem report as Ext.2.

In para. 3 of his cross-examination, he said that it is a case of single blow, caused by sharp edged weapon.

28. P.W.10 Shaligram Mandal deposed before the court that he is ignorant of the fact that who has killed the deceased. However, he heard that appellant Deepu Paswan had killed the deceased Suresh Paswan. He is also claiming himself as a hearsay witness.

29. P.W.11 Surya Narayan Pandey, who was posted as ASI at Goradih O.P., has stated in his deposition that on the alleged date of occurrence he received an information that at village Itba some person is killed. He entered the information in Sanha diary and proceeded for verification along with officer-in-charge. He stated that the fardbeyan of the informant was recorded by Officer-in-



charge R.B. Singh and he identified the fardbeyan (Ext.1/A) and also proved the formal F.I.R. as Ext.3. The inquest report is in his hand writing on which R.B Singh put his signature, which was marked as Ext.4. He further stated that at the place of occurrence, blood stained soil was also seized and the seizure list was prepared in his hand writing and the officer-in-charge, R.B. Singh had also put his signature thereupon.

In his cross-examination, he shown his inability to state that who had given information about the occurrence.

30. Now lastly coming to the evidence of the Investigating Officer of the case, namely, R. B. Singh, who was examined as P.W.12 in this case. On 24.02.2009 he was posted as Sub-inspector of Police at Goradih O.P. and on information he reached at the place of occurrence along with police personnel. He recorded the fardbeyan of P.W.6 Pankaj Kumar Paswan, who had put his signature on his fardbeyan, which was also marked as Ext.-1/A. The formal F.I.R. was also proved and exhibited as Ext.3. During investigation, he recorded the re-statement of the informant (P.W.6) and prepared inquest report of the deceased Suresh



Paswan and signed on it, which was prepared by Surya Narayan Pandey in carbon process, which was marked as Ext.4. During investigation he inspected the place of occurrence, which is at village Itaba in the *Gohal* of the informant, made of Bamboo and straw (*Palani*), which is open from all four sides and in that *Palani*, the deceased Suresh Paswan is stated to be slept on cot and was assaulted by the accused persons and found the dead body of the deceased (Suresh Paswan) in the *Palani*. He has also recorded the statement of witnesses Bichhu Paswan, Harchu Paswan, Shanti Devi, Tifin Paswan, Ajay Kumar Mandal, Manoj Kumar, Rajeev Kumar Ranjan and Shaligram Mandal. He also obtained postmortem report of the deceased and submitted charge-sheet against all the three accused/appellants under Sections 302/34 of the Indian Penal Code and the investigation remained continued against one co-accused.

31. In cross-examination, he stated that he has not prepared the map of the place of occurrence and has not written in the case diary that blood was found on the cot and not seized the cot. When the sample was sent to FSL, it



could not be mentioned in the case diary, but the same was written in the supplementary case diary. He has also stated that the informant in his fardbeyan and restatement not stated that his father received injury on the right hand and also not stated about he had eaten *Jilebi* and Tiffin Paswan had gone for taking water.

32. All the appellants were examined under Section 313 of the Cr.P.C. where they shown their complete ignorance denying incriminating evidences explained to them. No witness was examined on behalf of the defence.

33. It is submitted by the learned counsel appearing on behalf of the appellants that none of the witnesses are eye witness to the alleged occurrence, as from the testimonies of the witnesses, who are non-else but the sons and wife of the deceased, have deposed that they reached at the place of occurrence on hulla. Furthermore, there are various inconsistencies, apart from improvement and exaggeration in their testimonies and as such not reliable. It is further submitted that P.W.5 was only aged about 10 years at the time of his deposition and from his statement he appears to be a tutored one. So far P.W. 6



Pankaj Paswan is concerned, his presence at the place of occurrence appears to be quite doubtful from the deposition of P.W.5, as noted hereinabove. Further submission has been made that the prosecution has not been able to prove the motive behind the occurrence. The appellant Subhash Paswan, as has been deposed by P.W.7, on the date and alleged time of occurrence, was present and distributing Labour Cards at the door of Mukhiya Jee. The cot, on which the deceased was slept, has also not been seized and as such the prosecution has not been able to prove as to where the deceased was killed.

34. Learned counsels representing the appellants next submitted that from the deposition of the witnesses it is established that dispute was going on between the appellant Deep Narayan Paswan and the deceased, thus false implication of the appellants, who are own nephews, cannot be denied.

35. Per contra, learned Additional Public Prosecutor appearing on behalf of the State submitted that the conviction of appellants through judgment under challenge does not suffer from any perversity and the same



is based on the basis of the depositions of P.W.1, P.W.2, P.W.3, P.W.5 and P.W.6, whose statements have also been corroborated by the Investigating Officer. The post-mortem report (Ext.-2) clearly suggests that the death was homicidal and an incised injury has been found over the neck of the deceased, which was caused by heavy sharp cutting weapon. Further, the blood stained soil seized from the place of occurrence was also sent to the Forensic Science Laboratory, the report of which are Exts. 6 and 6/1 show that the blood was of human. He next submitted that from the evidences of witnesses, the case against all the three appellants is well proved and they in furtherance of their common intention committed this occurrence and the appellant Deep Narayan Paswan @ Deepu Paswan cut the neck of the deceased by *Garasa* whereas the accused/appellant Subhash Paswan and Bibhash Paswan were caught hold of legs and head of the deceased respectively, due to which Suresh Paswan, the father of the informant (P.W.6) died on spot.

36. We have carefully heard the submissions as advanced by the learned advocates appearing on behalf of



the appellants and learned APP for the State and have also perused the materials available on record.

37. Having carefully analysis of the evidences and materials, as available on record, it appears to us that P.W.1, P.W.2, P.W.3, P.W.5 and P.W.6 are claiming themselves to be eye witnesses to the alleged occurrence, out of the aforementioned P.Ws., the testimonies of P.W.1 and P.W.2 have been ignored by this Court on account of the grounds and reasons mentioned in the foregoing paragraphs.

38. So far the testimonies of P.W.5 is concerned, who at the time of his deposition was only 10 years, needless to observe that the competency of a witness, as governed by Section 118 of the Indian Evidence Act in an uncertain terms stipulates that a person of any age is competent to give evidence if he/she is able to understand questions put as a witness and give such answers to the questions that can be understood. A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction.

39. The Supreme Court in catena of judgments in the case of **Dattu Ramrao Sakhare and Others Vs. State**



of Maharashtra (1997) 5 SCC 341, Ratansinh Dalsukhbhai Nayak Vs. State of Gujarat (2004) 1 SCC 64 and P. Ramesh Vs State Represented By Inspector of Police (2019) 20 SCC 593 in clear terms held that the evidence of a child witness is not required to be rejected per se; but the Court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. The testimony of a child witness cannot be discarded if the witness has intellectual capacity to understand the questions and able to give rational answers thereof. The only precaution which the learned court should bear in mind that while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness. The trial court is at liberty to test the capacity of a child witness and no precise rule can be laid down regarding the degree of intelligence and knowledge which will render the child a competent witness.

40. Having carefully gone through the testimonies of P.W.5 Tribhuban @ Tifin Paswan, this Court is of



conscious view that P.W.5 had the capacity to understand the questions put by the Court and has given rational answers to those questions and as such in view of the aforementioned facts and the proposition of law, as discussed, his testimonies cannot be discarded because of his tender age.

41. The P.W.5 in his cross-examination categorically stated that at the time of alleged occurrence he was present along with his father Suresh Paswan (deceased). When the accused/appellants surrounded his father, he was just 6 to 7 steps away from the *Palani*. He has categorically deposed that he had seen the occurrence while the appellants were assaulting his father. He also denied the suggestions that Panchayati had been taken place because the mother of Subhash Paswan was told as *Witch*. P.W.5 in his cross-examination deposed about the presence of P.W.6 and his mother P.W.3.

42. Be it also noted that a rustic boy of tender age might not be always conversant with the exact date and the duration of the time; and only because the fact that he has deposed that he fled away after raising hulla at the door of another person and thereafter came after 15 minutes, his



trustworthiness cannot be doubted.

43. Time without number the Supreme Court in so many words observed that the basic principle of appreciation of evidence of a rustic witness, who is not educated and comes from a poor strata of society is that the evidence of such a witness should be appreciated as a whole. The rustic witness as compared to an educated witness is not expected to remember every small details of the incident and the manner in which the incident had happened more particularly when his evidence is recorded after a lapse of time. Further, a witness is bound to face shock of the untimely death of his near relatives. The rustic witnesses cannot be expected to have an exact sense of time and so cannot be expected to lay down with precision the chain of events.

44. Before appreciating the evidence of the witnesses examined in the case, the principles enunciated for appreciation of oral evidence must be highlighted herein. In this regard, it would be useful to quote para. 15, 16 and 17 of the judgment rendered by the Apex Court in the case of **State of Uttar Pradesh Vs. Krishna Master**



and Others (2010) 12 SCC 324.

“15. Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

16. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate



court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/Trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.

17. In the deposition of witnesses, there are always normal discrepancies, howsoever honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock



and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. Therefore, it is the duty of the court to separate falsehood from the truth. In sifting the evidence, the court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eyewitnesses examined in this case proves the prosecution case.”

45. Further from the deposition of P.W.3, P.W.5 and P.W.6, one-thing which is quite evident is that the place of occurrence, which is said to be a *Palani*, was only at the distance of only 5-6 steps to their house. The aforementioned witnesses also consistently stated that the occurrence took place at 1.30 on 24.02.2009 in the *Palani*, which was made of *Phus* open from all the sides. P.W.12, the Investigating Officer of this case in his deposition also stated that he collected blood stained soil from the *Palani* and prepared seizure list. Thus, there is no inconsistencies found in the



testimonies of the aforementioned witnesses with regard to the date and time of occurrence as well as place of occurrence where the (deceased) Suresh Paswan was killed.

46. P.W.6, who is the informant of the case, in his cross-examination stated that at the time of alleged occurrence, he was present at his house and when he heard hulla that accused persons have surrounded his father and assaulting, he reached at the place of occurrence, which is just 6-7 steps adjacent to his house and saw that all the three appellants and one Surendra Paswan armed with Lathi, Bhala and Garasa surrounded his father and the appellant Subhash Paswan caught hold the legs and appellant Bibhash Paswan caught hold of the head of his father (Suresh Paswan) and thereafter appellant Deep Narayan Paswan @ Deepu assaulted his father by means of Garasa on his neck. Similar statement has also been given by P.W.3 Shanti Devi. All the aforementioned witnesses have denied the suggestion that there was any enmity and conversely P.W.6 in his fardbeyan disclosed the motive behind the occurrence was that the appellant Deepu Paswan was alleged against his father Suresh Paswan that he used to see his wife with bad



intention due to which the occurrence took place.

47. The Doctor P.W.9 in his opinion, on postmortem, found that the death was homicidal and the injury on the neck of the body of the deceased was incised wound, caused by heavy sharp cutting weapon and the cause of death was due to shock and haemorrhage; the injury inflicted upon Suresh Paswan was sufficient in the ordinary course of nature to cause his death.

48. The testimonies of the witnesses, as discussed hereinabove, also corroborated by the medical evidence and the postmortem report (Ext.2).

49. It is trite principle of criminal jurisprudence that testimony of an eye witness must not be pendulous. There should not be vital contradiction or inconsistency in the testimony of witnesses and it must be free from blemish and devoid of any ambiguity and uncertainty. In criminal law, contradictory and uncorroborated statements cannot be relied upon, much less than forming the basis of conviction.

50. In the case in hand, the testimonies of the witnesses are quite consistent and except some minor discrepancies or inconsistencies nothing has been found,



which discredited the truthfulness and credibility of the witnesses touching the very foundation of the prosecution case.

51. Thus from the analysis of the evidence on record, especially the testimonies of P.W.4 and P.W.5, coupled with the medical evidence, we find that the prosecution has been able to prove the case beyond all its reasonable doubt and there is no perversity in the judgment of conviction.

52. Accordingly, all the aforementioned appeals stand dismissed upholding the judgment of conviction and the order of sentence dated 09.07.2014 and 17.07.2014 respectively passed by the learned 1st Additional Sessions Judge, Bhagalpur in S.T. No. 859 of 2009 / Tr. No. 68 of 2013, arising out of Jagdishpur (Goradih) P.S. Case No. 40 of 2009.

53. Since the appellants Subhash Paswan (Cr. Appeal (DB) No. 685 of 2014) and Bibhash Paswan (Cr. Appeal (DB) No. 727 of 2014) are on bail, their bail bonds stand cancelled and they are directed to surrender before the learned trial court within four weeks' from today for serving



the remaining sentence, failing which the learned trial court will take necessary steps for their arrest and be sent to judicial custody to serve out the sentence as was imposed.

(Harish Kumar, J)

A. M. Badar, J: I agree

(A. M. Badar, J)

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AFR/NAFR	NAFR
CAV DATE	26.06.2023
Uploading Date	07.07.2023
Transmission Date	07.07.2023

