

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.442 of 2016

Arising Out of PS. Case No.-5 Year-2013 Thana- DUMARIYA District- Gaya

1. Savitri Devi, wife of Budhan Bhuiyan, aged about 45 years.
2. Budhan Bhuiyan, son of Munshi Bhuiyan, aged about 50 years, both resident of village -
Baliya, P.S. Dumariya, District- Gaya.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Kumar Nikhil, Advocate
Mrs. Ghunghroo Anand, Advocate
For the State : Mr. Binod Bihari Singh, Addl. P.P.

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 28-11-2023

The present appeal has been filed by the appellant/convict under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as the 'Code') challenging the order of conviction dated 20.04.2016 and order of sentence dated 21.04.2016 passed by learned VIth Additional Sessions Judge, Gaya in Sessions Trial No. 37 of 2015 arising out of Dumariya P.S. Case No. 05 of 2013 whereby the concerned Trial Court has convicted both the appellants for the offences punishable under Sections 341, 323, 504, 302/34 of the Indian Penal Code (hereinafter referred as the 'I.P.C.'). Both the appellants were convicted with sentence of life imprisonment and fine of Rs. 10,000/- each and in case of default of payment of fine, they will



undergo rigorous imprisonment for one year each. No separate sentence was passed for the offences under Sections 341, 323, 504/34 of the I.P.C.

2. The factual matrix of the present case is as under:-

“The informant, Sita Ram Bhuiyan, submitted a written complaint on 19.01.2013 before the Police Station Officer of Dumaria Police Station, District-Gaya, in which it has been stated by the informant that on 18.01.2013 at about 08:00 p.m., he was at his house when Budhan Bhuiyan and Savitri Devi came out of their house and started abusing and intended to assault him. Thereafter, it is alleged that all the accused persons entered his house and finding informant’s mother alone, they assaulted her and killed her. When the informant came back with Chaukidaar, he found the dead body of his mother which was lying in the courtyard “Angan” of accused.”

2.1. On the basis of the aforesaid written complaint given by the complainant Sita Ram Bhuiyan, a formal F.I.R. came to be registered on 19.01.2013 at about 16:30 hrs. against the four accused including the present appellants.

2.2. After the registration of the F.I.R., the Investigating Officer carried out the investigation. During the course of investigation, the Investigating Officer recorded the statement of the witnesses and also collected the documentary evidence and prepared the map. Prior to that, the Inquest Report was prepared and the *post mortem* of the dead body of the deceased was also conducted. After completion of the investigation, the Investigating Officer filed the charge-sheet against the present appellants before the concerned Magistrate Court. However, the case was



exclusively triable by the Court of Sessions and, therefore, the learned Magistrate committed the same to the concerned Sessions Court, where the same was registered as Sessions Trial No. 37 of 2015.

2.3. During the course of trial, the prosecution had examined eight witnesses, whereas the defence had examined two witnesses. Documentary evidence was also produced by the prosecution. Further statement of the accused under Section 313 of the Code was also recorded. After conclusion of the trial, the Trial Court passed the impugned order against which the appellants have preferred the present appeal.

3. Heard learned advocate Mr. Kumar Nikhil assisted by Mrs. Ghunghroo Anand for the appellants and Mr. Binod Bihari Singh, learned Addl. P.P. for the Respondent-State.

4. Learned advocate for the appellant would mainly contend that there is a gross delay in lodging the F.I.R. It is submitted that the occurrence in question took place at about 08:00 p.m. on 18.01.2013. However, the written complaint was given by the informant on the next date i.e. on 19.01.2013 which was registered as F.I.R. at about 16:13 hrs. It is further submitted that the informant is not an eye-witness to the occurrence in question and though the prosecution had projected three witnesses as eye-



witnesses, there are major contradictions in the deposition given by the said witnesses and, in fact, from the evidence led by the prosecution itself, it can be said that the said three witnesses are not the eye-witnesses. It is also submitted that the medical evidence does not support the case of the eye-witnesses. Learned advocate for the appellants, therefore, urged that the impugned order passed by the Trial Court be quashed and set aside and thereby both these appellants be acquitted.

5. On the other hand, learned A.P.P. has opposed this appeal. It has been stated that there are three eye-witnesses to the occurrence in question and the presence of the said witnesses is natural at the place of occurrence. It is further submitted that even the Doctor has supported the version given by the eye-witnesses and, therefore, the Trial Court has not committed any error while passing the impugned order of conviction against the present appellants. Learned A.P.P., therefore, urged that this appeal be dismissed.

6. We have considered the submissions canvassed by the learned counsels. We have also perused the material placed on record, including the deposition of the prosecution witnesses as well as the defence witnesses and the other evidence produced before the Trial Court. It is revealed from the record that PW-5



Sita Ram Bhuiyan is the informant who had given the written complaint on 19.01.2013 before the Police Station Officer of Dumariya Police Station, District- Gaya. During the course of trial, as observed hereinabove, the prosecution had examined eight witnesses.

7. PW-1 Ravindra Bhuiyan is admittedly not an eye-witness to the occurrence in question and he got information on telephone when he was at Indore. Thus, on the basis of the information received by him on telephone, the said witness has given his deposition before the Court.

8. PW-2 Devanti Devi is the wife of Ravindra Bhuiyan. The said witness has stated in her examination-in-chief that the deceased Kabutari Devi was her mother-in-law. The occurrence took place on 18.01.2013 at about 08:00 p.m. At that time, she was present in the house. Savitri Devi, Budhan Bhuiyan, Munshi Bhuiyan and Jasmatiya Devi came to their house and dragged her mother-in-law. She was taken to the courtyard of the accused. She had seen the said incident in the light of a lantern. She had seen that Savitri Devi had pressed the neck of her mother-in-law, whereas Budhan Bhuiyan caught hold of her whereas two other persons had caught the hands of the deceased. She had identified all the four accused at the time of occurrence.



8.1. During cross-examination, the said witness has stated that at the time of occurrence one Nanhu Bhuiyan and Pradeep Bhuiyan were also present. The scuffle took place near the house for about 15 minutes. She has further stated that Sita Ram Bhuiyan was not present at the time of occurrence and after 10 minutes, he came back to his house.

9. PW-3 Nanhu Bhuiyan has also projected himself as an eye-witness to the occurrence. The said witness has stated in his examination-in-chief that the occurrence took place on 18.01.2013. At that time, he was also in his house. He further stated that Savitri Devi and Budhan Bhuiyan dragged Kabutari Devi to their courtyard, caught hold of the deceased and thereafter, Savitri Devi pressed the neck of the deceased, as a result of which, she died. The said witness has specifically stated in the examination-in-chief that except the aforesaid two persons, no other persons were present in the said assault and at the time of occurrence.

9.1. During cross-examination, PW-3 Nanhu Bhuiyan has stated that when he heard the *hulla*, after 10 minutes he reached the house of Kabutari Devi. After he reached the place of occurrence, the accused were using abusive language for 10-15 minutes. The said witness has specifically admitted that he had not given his statement before *Darogaji*.



10. PW-4 Pradeep Bhuiyan is the brother of the informant and the son of the deceased. The said witness has stated in his examination-in-chief that the occurrence took place at about 08:00 p.m. on 18.01.2013. At that time, he was in his house. Savitri Devi, Budhan Bhuiyan, Jasmatiya Devi and Munshi Bhuiyan all the four persons took her mother in the courtyard of the house of Budhan Bhuiyan and at that place, his mother was killed. Savitri Devi pressed the neck of his mother whereas Budhan Bhuiyan caught the legs of his mother whereas the other accused caught the hands of his mother.

10.1. During cross-examination, the said witness has stated that there is no enmity with Savitri Devi and Budhan Bhuiyan. The said witness has further stated that at the time of occurrence, Rammanti Devi was in the kitchen whereas his brother was in the village. The said witness has also stated that there is no enmity with the accused. However, they suddenly, without any reason, entered into the house of the said witness. The said witness has stated that his mother was not dragged but she was lifted by the accused. The said witness further stated that when he tried to intervene, the accused tried to make an assault on him. Therefore, he left the said place and came at the place of occurrence after 10 minutes and thereafter, he had noticed that his mother is killed.



11. PW-5 Sita Ram Bhuiyan is the informant who had given the written complaint before the concerned Police Station with regard to the killing of his mother. The said witness has stated in his examination-in-chief that at that time he was present in his house when Savitri Devi and Budhan Bhuiyan came to their house and tried to kill him and, therefore, he left the said place. When he returned after 10-15 minutes, he came to know from Devanti Devi and Pradeep Bhuiyan that his mother Kabutari Devi was dragged from their house and she was taken to the courtyard of the house of the accused and by pressing her neck, she had been killed. Thereafter, he went to the Police Station and complaint was filed. The said witness identified the signature.

11.1. During cross-examination when he returned from the village, Pradeep Bhuiyan and Devanti Devi informed him that the accused have killed his mother. At the time of occurrence, he left the place and went to the house of *mukhiya*. He further stated that during night hours only, he went to the Police Station at about 10-11 p.m. and informed the Police. The Police did not record his statement nor F.I.R. was filed and, therefore, he returned to his house and on the next day, once again, he went to the Police Station at about 11:00 a.m. and informed in detail to the Police and his written complaint was thereafter taken by the Police. The said



witness has also stated that prior to the occurrence, there was no enmity with the accused.

12. PW-6 Binod Kumar is the Police Officer who had filed the charge-sheet against the present appellants/accused.

13. PW-7 Manoj Kumar is the Police Officer who had carried out the investigation of the present case. During the course of the investigation, he had recorded the statement of the witnesses, visited the place of occurrence and also prepared the sketch map.

13.1. During the course of cross-examination, the said witness has specifically stated that witness Devanti Devi had not given statement before the Police that Kabutari Devi was dragged from the house and was taken to the courtyard of the house of the accused and Savitri Devi and Budhan Bhuiyan pressed the neck of Kabutari Devi. Similarly, the said witness has also stated that the witness Pradeep Bhuiyan has also not stated before him in his statement that Savitri Devi, Jasmatiya Devi, Budhan Bhuiyan and Munshi Bhuiyan dragged his mother from their house and she was taken to the courtyard of the house of the accused where she was killed. He has further admitted that he did not seize the lantern nor he found any sign of dragging at the place of occurrence.



14. PW-8 Dr. Arvind Kumar is the Medical Officer who had conducted the *post mortem* of the dead body of the deceased. The said witness found the following *ante mortem* injuries:-

“A. Abrasion:- Right elbow back 1 size $\frac{1}{2}$ x $\frac{1}{2}$, 1 x $\frac{1}{2}$ c.m., $\frac{1}{2}$ x $\frac{1}{2}$ c.m.

Right knee anterior (3 $\frac{1}{2}$ x 1 c.m.), left knee anterior (3 x 1 c.m., 1 x $\frac{1}{2}$ c.m., 2 x 1 c.m.).

B. On further dissection:-

Head- scalp internally contused in left parital and temporal (7 x 6 c.m.). Occipital (6 x 6 c.m.) regions. Brain was congested.

Neck- Subcutaneously tissues were contused in anterior lower part (6 x 4 c.m.) of neck and also in right lower part (3 x 3 c.m.). Respiratory tract congested.

Chest- Chest cavity had blood (approx. 200 ml.). Right second to fourth ribs fractured anteriolaterally, right lung contused and ruptured, left lung pale. Heart was empty.

Abdomen- Stomach was pale, had semi-digested paste food and watery fluid, (approx. 150 ml.). Intestine having gas and faeces other viscera were pale, bladder was empty, uterus small and pale.

Viscera including whole of the stomach with contents and portion of intestine, liver spleen, kidney, lung and heart were preserved in saturated solution of common salt.

C. Opinion- I. Injuries were ante-mortem caused by hard and blunt forces.

II. Death appears to be due to above noted injuries and asphyxia as a result of pressure over neck and chest. Preserved viscera to be sent to F.S.L. for analysis and further opinion.

III. Time since death- 01 to 03 days approx. since P.M. examination.”



15. DW-1 Sona Devi was working as *sarpanch*. The said witness has stated that Budhan Bhuiyan (accused) gave representation/complaint against Pradeep and Sita Ram etc. with regard to the land dispute. On the basis of the said representation/complaint, the said witness issued notice to both the parties. Pradeep did not remained present.

16. DW-2 Rameshwar Singh was working as Deputy *Sarpanch*. The said witness has also stated about the representation given by Budhan Bhuiyan against the three sons of Shiv Lochan Bhuiyan. The said representation was with regard to the land dispute.

17. From the aforesaid evidence led by the prosecution, it would emerge that the informant is not an eye-witness to the occurrence. As per the written complaint given by the informant, when he was in his house with his mother, all the accused, in a drunken condition, came to their house and started beating the informant and, therefore, he ran away from the place of occurrence. After 15 minutes, when he returned to the house, he came to know that as his mother was alone in the house, all the accused killed her. It is pertinent to note that, as per the case of the prosecution, the occurrence took place at about 08:00 p.m. on 18.01.2013 whereas the written complaint was given by the



informant on the next date i.e. on 19.01.2013. In the written complaint, the informant has not at all stated about the presence of his brother Pradeep and his sister-in-law i.e. Devanti Devi in the house. It is the specific case in the written complaint given by the informant that her mother alone was present in the house and, therefore, she has been killed by the accused. The informant has improved his case while giving deposition before the Court by stating that when he returned to the house, his brother Budhan Bhuiyan and Devanti Devi informed him that his mother has been killed by the accused. At this stage, it is to be recalled that it is the specific case of the informant that he returned after 15 minutes and at that time, Pradeep Bhuiyan and Devanti Devi were present and they informed him about the occurrence. However, surprisingly, when the informant has given the written complaint on the next day i.e. on 19.01.2013 after approximately 20 hours, the said aspect is not stated by him in his written complaint.

18. If the deposition of PW-2 Devanti Devi is carefully examined, it can be said that the said witness has tried to project herself as an eye-witness to the occurrence and narrated the occurrence before the Court. However, there are major contradictions in her deposition. At this stage, if the deposition of PW-7 Binod Kumar is carefully seen, in Para 5 and 6 of his cross-



examination, the said witness has specifically admitted that Devanti Devi and Pradeep Bhuiyan had not stated about the aspect of Kabutari Devi being dragged from her house to the courtyard of the house of the accused and the allegations with regard to pressing the neck of Kabutari Devi by Savitri Devi and Budhan Bhuiyan. Thus, we are of the view that PW-2 and PW-4 were, though not present at the place of occurrence, they were projected as an eye-witness to the occurrence in question and, therefore, their deposition cannot be believed.

19. PW-3 Nanhu Bhuiyan has put forward some different story before the Court. He has specifically stated in his examination-in-chief that only two accused namely, Savitri Devi and Budhan Bhuiyan, were present and both of them dragged Kabutari Devi and she was taken to the courtyard. Budhan Bhuiyan caught her and Savitri Devi pressed her neck, as a result of which, Kabutari Devi died. Thus, this witness has stated about the presence of only two accused whereas the other two so called eye-witnesses have stated about the presence of all the four accused and specific role has been attributed to all the four accused. Further, this witness has specifically stated in Para-5 of his cross-examination that he had not given his statement before *Darogaji*. Thus, it appears that, for the first time, the said



witnesses deposed before the Court. Even otherwise, during cross-examination, the said witness has specifically stated that after hearing *hulla* he had gone to the place of occurrence after 10 minutes and the accused were using abusive language. The said occurrence continued for 10-15 minutes. However, the aforesaid story is also not believable in view of the deposition given by the informant, PW-2 and PW-4. Thus, there are major contradictions and improvement in the deposition given by the so called eye-witnesses.

20. PW-8 Dr. Arvind Kumar who had conducted the *post mortem* of the dead body of the deceased. If his deposition is carefully seen, it is revealed that the injury sustained by the deceased can be caused by hard and blunt substance and not by hands. At this stage, once again, it is to be recalled that it is a specific case of the so called eye-witness that the accused Savitri Devi pressed the neck of the deceased whereas two other accused caught hands and legs of the deceased. However, it is not the case of the prosecution that any of the accused had used any hard and blunt substance and caused injuries with the same to the deceased.

21. Thus, we have appreciated and re-appreciated the entire evidence led by the prosecution and we are of the view that the prosecution has failed to prove the case against the



appellants/accused beyond reasonable doubt despite which the learned Trial Court has passed the order of conviction and, therefore, we are of the view that the impugned judgment and order passed by the learned Trial Court is required to be quashed and set aside.

22. The impugned judgment of conviction dated 20.04.2016 and order of sentence dated 21.04.2016 passed by learned VIth Additional Sessions Judge, Gaya in Sessions Trial No. 37 of 2015 arising out of Dumariya P.S. Case No. 05 of 2013 is quashed and set aside. The appellant No. 1 namely, Savitri Devi, is already on bail. She is discharged from the liabilities of her bail bond. The appellants, namely, Savitri Devi and Budhan Bhuiyan, are acquitted of the charges levelled against them by the learned Trial Court. The appellant No. 2 namely, Budhan Bhuiyan, is directed to be released forthwith, if not required in any other case.

23. Accordingly, the appeal is allowed.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

Sachin/-

AFR/NAFR	A.F.R.
CAV DATE	NA
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