

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.365 of 2020

Arising Out of PS. Case No.-3 Year-2013 Thana- SIMRA District- West Champaran

Suresh Yadav, Son of Dahari Yadav, Resident of Ramavaliya, P.S.- Semera,
District- West Champaran.

... .. Appellant

Versus

1. The State of Bihar
2. Bhagiraath Yadav, Son of Laljee Yadav Resident of Ramavaliya, P.S.-
Semera, District- West Champaran.
3. Lootan Yadav, Son of Late Sheosharan Yadav, Resident of Ramavaliya, P.S.-
Semera, District- West Champaran.
4. Pahavari Yadav, Son of Sitaram Yadav, Resident of Ramavaliya, P.S.-
Semera, District- West Champaran.
5. Baidhya Nath Yadav, Son of Hira Lal Yadav, Resident of Ramavaliya, P.S.-
Semera, District- West Champaran.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Prithvi Nath Mishra, Advocate
For the State	:	Mr. Satya Narayan Prasad, Addl PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 22-10-2024

Heard Mr. Prithvi Nath Mishra, learned counsel for the
appellant and Mr. Satya Narayan Prasad, learned Additional Public
Prosecutor for the State.

2. The present appeal has been preferred for setting
aside the judgment of acquittal dated 07.01.2020 (hereinafter
referred to as the ‘impugned judgment’) passed by learned
Additional Sessions Judge-I, Bagaha, West Champaran
(hereinafter referred to as the ‘learned trial court’) in Sessions Trial

No. 158 of 2015 arising out of Simra P.S. Case No. 03 of 2013 whereby and whereunder the learned trial court has held that the prosecution had failed to establish the guilt of the accused persons under Section 302/34 of the Indian Penal Code (in short 'IPC'). The learned trial court has acquitted the accused persons.

3. The prosecution case is based on the fardebyan of the uncle of the deceased who has been examined as PW-13 in course of trial. According to the informant, his nephew Rajan Yadav (since deceased) aged about 23-24 years had gone to the neighbouring village Semarahani with the co-villager boys to watch a dance. He had gone there in the night of 16.01.2013 but did not return in the morning. It is stated that when the informant had gone in connection with the irrigation work of his field to village- Sawna, there he got an information that the dead body of his nephew has been found thrown in the Sareh which is east to the Semarahani village. On receipt of the information, he went to the place of occurrence where he found the dead body of his nephew. The informant disclosed that he is not aware as to with whom the deceased had gone. He also stated that he did not know who murdered his nephew. The informant stated that on looking at the dead body, it appears that somebody has killed his nephew by throttling him.

4. On the basis of the fardebyan of the informant, namely, Suresh Yadav (PW-13), Simra P.S. Case No. 3 of 2013 was registered under Section 302 IPC on 17.01.2013 against unknown persons. After investigation, the I.O. (PW-15) submitted a chargesheet. Four accused persons were chargesheeted who faced the trial for the charge under Section 302/34 IPC.

5. In course of trial, the prosecution examined as many as 15 witnesses and exhibited 3 documentary evidences. The description of the prosecution witnesses and the documents brought in evidence are being provided hereunder for a ready reference:-

List of Prosecution Witnesses

PW-1	Radha Kishun Uraon
PW-2	Satyanarayan Yadav
PW-3	Shambhu Uraon
PW-4	Azad Khan
PW-5	Lambu Uraon
PW-6	Umesh Yadav
PW-7	Mahesh Yadav
PW-8	Manoj Uraon
PW-9	Sawan Uraon
PW-10	Bachchi Devi
PW-11	Birendra Yadav
PW-12	Avadhesh Yadav
PW-13	Suresh Yadav
PW-14	Dr. Ashok Kumar Tiwary
PW-15	Rajesh Kumar

List of Exhibits produced on behalf of the Prosecution

Exhibit 1	Signature of Umesh Yadav on seizure list
Exhibit 2	Signature of Birendra Yadav on seizure list
Exhibit 3	Signature of Dr. Ashok Kumar Tiwary on the postmortem report

Findings of the Learned Trial Court

6. The learned trial court analysed the evidence of the prosecution witnesses. In course of trial, the informant who deposed as PW-13 has stated in paragraph ‘14’ of his deposition that he had received information with regard to the occurrence from Bachchi Devi (mother of the deceased). He had not seen the occurrence and in paragraph ‘6’ of his deposition, he has stated that in his fardebyan, he had not disclosed the name of any accused. Bachchi Devi who is mother of the deceased has been examined in this case as PW-10. She has stated in her examination-in-chief that the deceased had gone to watch the dance with Manoj, Lambu and Chhote in village Semrauli. Bhagirathi had made a telephone call to Rajan and took him to watch the dance whereafter Rajan did not return. In her cross-examination, she has stated that she had given the name of the accused persons on the basis of suspicion and those who had come

to call the deceased for watching the dance are not involved in this occurrence. Her son had no enmity with anyone.

7. The learned trial court found that PW-1 is not a witness to the facts and circumstances of the case. He heard about the occurrence from the villagers. PW-2, PW-3 and PW-4 have not supported the prosecution case as they have been declared hostile. PW-5 is a hearsay witness who has stated in his cross-examination that he has no personal information with regard to the occurrence and he had heard about the occurrence on the basis of which he had deposed. He was brought to depose in the court by Sunil Yadav who is own brother of the deceased. PW-6 is the formal witness who has proved the seizure list as Exhibit '1'. PW-7, PW-8 and PW-9 have not supported the prosecution case, hence, they have been declared hostile. PW-11 is the seizure list witness who has not stated anything about the facts and circumstances of the case. PW-12 is again a hostile witness. PW-14 is the Doctor who had conducted the postmortem on the dead body of the deceased. In his opinion, he has stated that the time since death was within 24 to 36 hours. PW-15 is the I.O. of the case who has stated that he had prepared the seizure list which he proved as Exhibit '1/1' and Exhibit '2/1' respectively. He also proved the seizure list of one Bakua which was of one feet one inch having a handle of 3 ½ inch

wood which was marked Exhibit '4'. The I.O. has stated that in course of investigation, he had firstly arrested Bhagirathi Yadav and Pahavari Yadav who had made confessional statements and Pahavari Yadav had made a statement under Section 164 Cr.P.C. It, however, appears that in course of trial, the said Section 164 Cr.P.C. statement of Pahavari Yadav has not been exhibited and the learned Magistrate before whom he is said to have made his statement has not come to depose.

8. The learned trial court has upon analysis of the entire evidences held that the prosecution has failed to prove the guilt of the accused persons.

Submissions on behalf of the Appellant

9. Before this Court, learned counsel for the appellant heavily relies upon the deposition of PW-5. Learned counsel submits that PW-5 has stated in his examination-in-chief that he, Chhote Lal, Manoj Uraon, Sarvan Uraon, Jitendra Shah, Pravesh Uraon and Manjeet Uraon had gone to watch the dance. At about 10:00 PM, they had gone there, at that time, a call was received by Rajan Yadav (deceased) whereafter he rose and went away. Pahavari and Bhagirathi were standing beside the stage. Rajan, Pahavari and Bhagirathi went away somewhere at about 01:00 AM (in night), Bhagirathi and Pahavari came back and said that now

they should go back to home whereupon this witness asked them that where is Rajan then they said that he had already gone to the house. This witness has stated that they had returned home and in the morning, they came to know that Rajan has been murdered. It is submitted that PW-5 has truly deposed and from his deposition, it would appear that the deceased had gone in the company of the accused whereafter he did not return.

Submissions on behalf of the State

10. On the other hand, learned Additional Public Prosecutor for the State submits that the learned trial court has rightly appreciated the entire evidences on the record. PW-5 on whose deposition the appellant relies has not sustained the test of cross-examination. Attention of this Court has been drawn towards his statement in paragraph '3' of his deposition where he has stated that Rajan Yadav happens to be his friend. Rajan had never disclosed about any enmity with the accused. This witness has further stated that he had no personal information with regard to the occurrence. He had not gone to see the dead body. He has stated that he heard about the occurrence and has given his deposition on that basis. He had not even gone in the cremation of the dead body. This witness has stated that he was brought to depose in course of trial by Sunil Yadav.

11. Learned Additional Public Prosecutor submits that it is evident from his deposition that PW-5 is not an eye witness and had not seen the deceased going in the company of the accused. His conduct may also be noticed by this Court inasmuch as on the one hand, he claimed that he was a friend of the deceased but he had not even gone to see the dead body and had not participated in the cremation.

12. It is submitted that, in fact, the persons whose names have been disclosed by PW-5, some of them have deposed but they have not supported the prosecution case. Attention of this Court has been drawn towards the deposition of Manoj Uraon (PW-8) and Sawan Uraon (PW-9), both have been declared hostile.

13. It is further pointed out that the mother of the deceased has deposed as PW-10 who has stated that she had given the name of the accused persons on the basis of suspicion and the persons who had come to call the deceased are not involved in the murder of her son. She has repeatedly stated in her cross-examination that no role has been played by the accused persons in the murder of her son. At the same time, the informant (PW-13) has deposed that it was Bachchi Devi (PW-10) who had told him everything, he had not seen the occurrence and in his fardebyan, he had not disclosed the name of the accused persons.

14. Learned Additional Public Prosecutor also points out that from the postmortem report, it would appear that the death had taken place within 24 to 36 hours. If the deceased had gone in the company of the accused in the night hour at about 10:00 PM and in the morning, his dead body was found, the opinion of the Doctor (PW-14) would create a doubt on the date and time of the occurrence.

Consideration

15. We have heard learned counsel for the appellant as well as learned Additional Public Prosecutor for the State and perused the learned trial court's records. It is evident from the discussions made hereinabove and what transpired from the records is that in this case, the informant who is the uncle of the deceased has categorically stated that he had given his fardebyan on the basis of the information furnished by his '*Bhabhi*' who is mother of the deceased and has been examined as PW-10 in this case. The informant has categorically stated that he did not disclose the name of the accused in his fardebyan. This Court finds that so far as PW-10 is concerned, she being mother of the deceased is the most important witness but she has categorically stated that the name of these accused persons were given on the basis of suspicion. According to her deposition, the accused persons who had called the deceased were not involved in his murder. PW-5 is apparently a

hearsay witness. He admits in his cross-examination that he has no personal information about the occurrence and he was deposing on the basis of whatever he had heard. The evidence of PW-5 is neither clinching nor would be a safe piece of evidence to rely upon for purpose of conviction of the accused.

16. This Court finds that the independent witnesses have not supported the prosecution case and almost all of them have been declared hostile. The prosecution has cross-examined them but nothing material could be elicited from their deposition. The postmortem report and the evidence of the Doctor (PW-14) would show that the time elapsed since death was between 24 to 36 hours. An overall analysis and close scrutiny of the evidences on the record would lead this Court to conclude that the learned trial court has not committed any error in appreciation of the evidences available on the record.

17. This appeal has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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CAV DATE	
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