

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.911 of 2006

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Ram Chandra Yadav Son of Tej Narayan Yadav, Resident of Village- Rampur
Tilak, P.S.- Janki Nagar, District- Purnea.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Kumar Uday Singh
For the Respondent/s : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 20-03-2024

Heard Mr. Kumar Uday Singh, learned counsel
appearing for the appellant as well as Mr. Abhay Kumar,
learned Additional Public Prosecutor for the State.

2. This appeal has been preferred by the appellant
being aggrieved and dissatisfied with the judgment of
conviction dated 22.09.2006 and order of sentence dated
25.09.2006 passed by learned Additional Sessions Judge-
Fast Track Court No.-6, Purnea in Sessions Trial no. 435 of
1996 and 164 of 2006 arising out of Banmankhi (Janki
Nagar) P.S. Case No. 202 of 1995 whereby and whereunder
appellant- Ram Chandra Yadav has been convicted for the
offence punishable under Section 304 of the Indian Penal
Code and sentenced him to undergo rigorous imprisonment



for 10 years.

3. The FIR was registered on the basis of fardbeyan given by informant, namely, Chandeshwari Yadav (P.W.-2) recapitulating the prosecution case, in short, is that on 15.09.1995 at about 3PM he along with his family members were at their house in the meantime, accused persons including this appellant having formed unlawful assembly came to the house of the informant in which present accused Ram Chandra Yadav(appellant) who had a country made pistol and started to abuse the informant and his family members stating that why they have returned Sunita Devi to her maternal house by which the informant and his family members have perturbed as such the accused persons became furious and started assaulting him, his elder brother Maheshwari Yadav(P.W.-7) and their 75 years old mother Maruti Devi. By the said assault, blood started oozing out from the mouth of his mother(Murti Devi) and she became senseless then the informant raised alarm on which the witnesses Deep Narayan Yadav (P.W.-1), Shiv Dutt Yadav (not examined), Bhumi Sah (not examined), Tanuk Mandal (P.W.-6) and others had come there and



saved the informant from further assault. In the meantime, Ram Chandra Yadav (appellant) had entered in his house and took away clothes, cash of Rs. 5,000/- along with some ornaments from the box of the informant.

4. On the basis of fardbeyan of the informant (P.W.-2) in Banmankhi (Janki Nagar) P.S. Case No. 202 of 1995 was registered and after completing the investigation, I.O. has submitted charge sheet against the appellant. Thereafter cognizance has been taken and the case was committed to the court of Sessions for trial and disposal.

5. Charge has been framed against the appellant. Trial court explained the charge to the accused(appellant) to which he pleaded not guilty and claimed to be tried.

6. To substantiate the charge leveled against the accused, altogether nine chargesheeted witnesses have been examined by the prosecution. Out of them P.W.-1, Deep Narayan Yadav, P.W.-3 Ashok Kumar Yadav, P.W.-4 Bhubneshwari Sah, P.W.-5 Deo Narayan Choudhary, P.W.-6 Tanuk Mandal, P.W.-7 Maheshwari Yadav(injured) and P.W.-8 Rukmani Devi wife of the informant have been declared hostile by the prosecution. Only P.W-2(informant)



who deposed during trial and he supported the prosecution case. P.W.-9 Satyendra Prasad Singh is the doctor.

7. Learned counsel appearing on behalf of the appellant has submitted that learned trial Court wrongly drawn the inference that the prosecution has established the charge levelled against the appellant and illegally relied upon the evidence of P.W.-2(informant) who is the sole eye witness. The evidence of the P.W.-2(informant) has not been supported by any other prosecution witnesses. The main cause of this scuffle is the illicit relation of Sunita Devi with this appellant but Sunita Devi has not been examined by the Court during trial. It is further submitted that Investigating Officer recorded the statement of the witnesses during investigation under Section 161 of the Cr.P.C., has not been examined. So, the defense has caused serious prejudice and prevent to ask the contradictory question which was given by the witnesses during trial which is the valuable right of the defense. The defense prevented his valuable right to ask the contradiction which elicited during trial from the evidence of the witnesses which might be cleared on the examination of the



Investigating Officer. In this case, Exhibit-3 is the postmortem report which proved by P.W.-9 who conducted the postmortem of the deceased Murti Devi. As per postmortem report, doctor could not ascertain the cause of death of the deceased. Viscera report is also not available on record. Hence, the case of the prosecution got demolished. It is also submitted that the prosecution case is that the appellant and other assaulted to the deceased but the medical report is not in consonance with the fact of the prosecution case. It would be proper to mention here that learned trial Court after considering the oral and documentary evidence adduced by the prosecution, has found the appellant is guilty for offence under Section 304 of IPC while charge has been framed under Section 302 of the IPC.

8. I have thoroughly scrutinized the entire oral and documentary evidence adduced by the prosecution. According to FIR, P.W.-2 has made only omnibus allegation of assault by slaps by all the named accused persons whereas in his evidence (Para-6), he has made specific allegation of assault by fist and slaps by the



appellant leading to death of the deceased. This witness subsequently during his cross examination(para-12) again reiterates that all the accused assaulted his mother. Hence, the evidence of P.W.-2, who claims to be the sole eye witness and supported the prosecution case but failed to prove the prosecution case. Learned trial Court had committed irregularity in respect of other prosecution witnesses who declared hostile during trial saying that the other witnesses supported the prosecution case. Some of the witnesses declared hostile have merely stated that on hulla they came to the place of occurrence and saw the deceased lying on the ground. This makes doubtful that the alleged occurrence actually took place and that the appellant was involved in the alleged occurrence. Learned trial Court has totally misconstrued the suggestions made by the defense to the informant/P.W.-2 during cross-examination. The defense has not at all admitted in its suggestions that the deceased died during a scuffle in which the appellant was involved. I found much force in the submission made on behalf of the appellant. According to the evidence of the P.W.-9(doctor) in absence of cause of death, the appellant



ought to have been given the benefit of doubt because of the cause of death could not be ascertained. The conviction of the appellant only on the basis of evidence of single witness P.W.-2(informant) whose evidence is full of contradiction, is wholly unbelievable. The family members of P.W.-2 have also not supported their evidence and the postmortem report also does not in consonance with the fact of the prosecution case. In this case, Investigating Officer has not been examined due to non-examination of I.O, defense caused prejudice. Defense has a valuable right to be cross-examined in respect of contradiction raised during evidence of the prosecution. Learned trial Court passed the judgment of conviction against the appellant only on the basis of sole eye witness P.W.-2(informant). Uncorroborated testimony of only sole eye witness would not be safe to convict the appellant because the sole eye witness P.W.-2(informant) is interested witness and rule of prudence is that for convicting the accused, single evidence should be corroborative by other evidence as well. Hence, the conviction of the appellant is not justifiable and it is liable to be discarded.



9. After considering the above discussions, I am of this view that the prosecution has miserably failed to prove the charge levelled against the appellant beyond reasonable doubt, the conviction based on the evidence of P.W.-2(informant). His evidence has not corroborated or supported by any oral evidence as well as medical evidence. The appellant is entitled to get the benefit of doubt. The judgment of conviction and order of sentence are hereby set aside.

10. The appellant is acquitted after giving benefits of doubt. He is discharged from the liabilities of the bail bonds.

11. Accordingly, the instant appeal is hereby allowed.

(Sunil Kumar Panwar, J)

Shubham/-

AFR/NAFR	NAFR
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