

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.715 of 2017

Arising Out of PS. Case No.-45 Year-2010 Thana- MANJHAGARH District- Gopalganj

=====

Lalan Yadav, Son of Late Bachcha Yadav, resident of Village-Domahata, P.S.-
Maghagarh, District-Gopalganj.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 448 of 2017

Arising Out of PS. Case No.-45 Year-2010 Thana- MANJHAGARH District- Gopalganj

- =====
1. Satya Narayan Yadav, Son of Late Ganga Yadav;
 2. Baij Nath Yadav @ Baidya Nath Yadav, Son of Late Rudal Yadav;
 3. Dhruv Yadav, Son of Late Rudal Yadav;
 4. Rama Jee Yadav, Son of Babu Lal Yadav;
 5. Sadhu Yadav, Son of Babu Lal Yadav;

All are residents of Village-Domahatta, P.S.-Manjhagarh, District-
Gopalganj.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 666 of 2017

Arising Out of PS. Case No.-45 Year-2010 Thana- MANJHAGARH District- Gopalganj



1. Ramadhar Yadav;
2. Laxman Yadav;
- Both Sons of Mus Yadav, residents of Village-Doma Hatta, Police Station-
Manjhagarh, District-Gopalganj.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 756 of 2017

Arising Out of PS. Case No.-45 Year-2010 Thana- MANJHAGARH District- Gopalganj

1. Wakil Yadav, Son of Late Mukhlal Yadav;
2. Bhola Yadav, Son of Wakil Yadav;
3. Saral Yadav, Son of Wakil Yadav;
4. Sukhal Yadav, Son of Late Awadh Yadav;
5. Devata Yadav, Son of Sukhal Yadav;
6. Kisan Yadav, Son of Lalan Yadav;
7. Vijay Yadav, Son of Lalan Yadav;
- All residents of Village-Domahata, P.S.-Majhagarh, District-Gopalganj.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 715 of 2017)

For the Appellant/s

:

Mr. Ajay Kumar Thakur, Adv.
Ms. Vaishnavi Singh, Adv.

For the State

:

Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 448 of 2017)



For the Appellant/s : Ms. Rina Sinha, Adv.
For the State : Mr. Dilip Kumar Sinha, APP
(In CRIMINAL APPEAL (DB) No. 666 of 2017)
For the Appellant/s : Mr. Umesh Kumar Singh, Adv.
For the State : Mr. Dilip Kumar Sinha, APP
(In CRIMINAL APPEAL (DB) No. 756 of 2017)
For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Ms. Vaishnavi Singh, Adv.
For the State : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 02-01-2024

All the criminal appeals have been heard together and are being disposed off by this common judgment.

2. We have heard Mr. Ajay Kumar Thakur, Ms. Rina Sinha and Mr. Umesh Kumar Singh, the learned Advocates on behalf of the appellants. The State, in all the appeals, has been represented by Mr. Dilip Kumar Sinha, the learned Additional Public Prosecutor.

3. The appellants (fifteen in number) have



been convicted under Sections 302 and 201/34 of the Indian Penal Code (*in short, the I.P.C.*) vide judgment dated 28.03.2017 passed by the learned Additional Sessions Judge-VIII, Gopalganj in Sessions Trial No. 342 of 2010 (CIS No. 2898 of 2013) arising out of Manjhagrah P.S. Case No. 45 of 2010. On the same day of conviction, *i.e.*, on 28.03.2017, the appellants were sentenced to undergo imprisonment for life, to pay a fine of Rs. 20,000/- each for the offence under Section 302/34 of the I.P.C. and to undergo rigorous imprisonment for four years, to pay fine of Rs. 1000/- each for the offence under Section 201 of the I.P.C. The default clauses have been made composite, namely, to suffer an additional period of simple imprisonment of six months for not paying the fine. The Trial Court has also directed that 50% of the fine amount would be paid to the informant, who is the wife of the deceased. Additionally, one of the appellants, namely, Lalan Yadav [*Cr. Appeal (DB) No. 715 of 2017*] has been directed to



pay an amount of Rs. 1,00,000/- as compensation to the wife of the deceased, who incidentally is none else, but the daughter of the afore-noted appellant.

4. Dayanand Yadav is alleged to have been bludgeoned to death and his dead-body was put on fire with the active assistance of appellant/Lalan Yadav, who is the father-in-law of afore-noted Dayanand Yadav.

5. The F.I.R. has been lodged by the wife of the deceased, namely, Asha Devi (P.W. 3). She has alleged in her *fardbeyan* statement recorded by S.I./Ram Kumar Singh (P.W. 7) that the appellants had entered her house; dragged out her husband and assaulted him to death. The dead-body was lifted by the appellants and thrown on the *verandah*. Later, her father (appellant/Lalan Yadav) commanded his co-villagers/appellants to burn the dead-body in the fire which was already burning in front of his house. Seeing the occurrence, P.W. 3 claims to have made her escape to a different village to take shelter in the house of one



Parmanand Yadav. After some time, she came to her village home and saw the dead-body of her husband in front of her father's house. She has been very specific in alleging that in order to screen the offence, the dead-body was attempted to be burnt.

6. On the basis of afore-noted *fardbeyan*, Manjhagarh P.S. Case No. 45 of 2010 dated 13.03.2010 was registered for investigation against all the appellants under Sections 302, 201 and 34 of the I.P.C.

7. The police, after investigation, submitted *charge-sheet* against the appellants, whereupon they were tried.

8. The Trial Court, after having examined seven witnesses in all on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

9. The learned Advocates for the appellants have argued that the Trial Court completely went along the deposition of P.W. 3 as a daughter to a father would



never falsely accuse him for having murdered her husband. The deposition of P.W. 3, it has been argued, ought to have been seen in the correct perspective and it should have been analyzed more deeply for placing implicit reliance on it only on account of the filial relationship between appellant/Lalan Singh and P.W. 3.

10. Apart from this, it has been urged in defence of the appellants that notwithstanding the tall claims of P.W. 3 of having witnessed the occurrence, her presence at the P.O., especially at the time of assault, has been rendered doubtful, which fact becomes evident from a bare reading of the deposition of all the witnesses.

11. No independent person has been examined at the Trial, the learned Advocates grieve, and only those persons who are directly related to the deceased have deposed before the Trial Court. Some of the persons, who could have disentangled this complex weave of the story, have been purposefully left behind.



Even the manner of occurrence, the learned Advocates have argued, is not in *sync* with the ocular testimony offered at the Trial.

12. The time-lines suggested by the prosecution has further lessened the credibility of the prosecution version. The F.I.R., according to them, was prepared after due deliberation in order to include an explanation for the physical injury on the deceased, including minor burn of the hair which could not have had been the case if the deceased were put on fire. Even the accusation of fifteen persons assaulting the deceased before his death is not borne out by the *ante-mortem* injuries found by the doctor who had conducted the *post-mortem* examination.

13. The entire story, therefore, was sought to be debunked on the ground that with the severance of relationship of P.W. 3 with her parents, because of her having married against the wishes of the family, she chose to go along with her in-laws; otherwise she would



not have any place to go to. Even otherwise, P.W. 3 had not maintained any relationship with her family, which stayed only next doors.

14. As opposed to the afore-noted contentions, Mr. Sinha, the learned APP has tried to justify the judgment on the ground that minor inconsistencies in the prosecution story would not justify completely discarding the same. A daughter would not unnecessary point an accusative finger against her father, who, for all this while, had not troubled her except for maintaining a cool reserve. Not only the daughter, but her uncles-in-law and the mother-in-law have supported the prosecution case in its entirety.

15. The ribs of the deceased were found to be broken and the cause of death was attributed to the physical injuries suffered by him. The hairs and some part of the face were though found to be burnt; however, the doctor had found the face and head of the deceased smeared with mud. This only pre-supposes



that an attempt may have been made to douse the fire. Merely because the reason for the mud to be found on the head and the face of the deceased was not explained by the prosecution, the defence would not be justified in castigating the *post-mortem* report as not being in concord with the prosecution case. If not for burning the deceased to death, then it was for concealing and screening the offence that the deceased was put on fire. That he did not get burnt completely was because of the villagers rescuing him and taking him out of fire. Nonetheless, the deceased had died instantaneously as there is no evidence of his having been taken to hospital for any treatment. In that event, the social and moral context of the explanation of the defence regarding the futility of the appellants having indulged in such a gory act, is not worth accepting.

16. Lastly, it has been submitted that there are no instances of differing time-lines; rather it is only a venial mistake of referring to a time after 12 O'clock as



P.M. and not A.M. by the doctor. Even otherwise, any wrong entry in the documents regarding time would not make the entire prosecution case doubtful.

17. Thus, the sum and substance of the argument of the State is that in the event of many persons including the wife of the deceased having seen the occurrence and re-counting the same before the Trial Court, no other effort ought to be made to discredit the witnesses on account of the human susceptibilities only. The law, as is trite, enjoins that an eye-witness account, if undiluted, has to be given preference over any other factor and in the present case, the eye-witness account of the wife of the deceased assumes importance and has been given good worth by the Trial Court.

18. In our efforts to know the reasons for P.W. 3 to have named her father along with fourteen of his cohorts, we have analyzed the evidence of all the seven witnesses in some detail.

19. Asha Devi/P.W. 3 has talked about the



presence of the deceased, her mother-in-law (P.W. 2) and one Braj Kishore (not examined) in her house at the time of the occurrence. In her *fardbeyan*, she was categorical in stating that only she and the deceased were in the house when the occurrence had taken place. This addition becomes relevant for the reason that Braj Kishore, who also was alleged to have been assaulted while trying to rescue the deceased and because of which assault, he died a year later, was never examined at the Trial. Along with all these persons, P.W. 3 has also acknowledged the presence of her brother-in-law in the house when the occurrence had taken place. She claims to have been assaulted by the appellants when she wanted to save her husband. Her mother-in-law and the younger brother of the deceased were treated in local hospital for the injuries suffered by them. However, none of those injuries are on record.

20. Blowing a different wind, P.W. 3 has given an explanation of appellant/Lalan Yadav, her



father, not filing a case against the deceased earlier for his marriage with P.W. 3 against his choice, as his advancing age. She claims to have married the deceased of her own choice and also had been blessed with a son from this marriage. She has confirmed that the entire ire of the villagers/the appellants, because of her having married the deceased against the wishes of the family, was directed towards the deceased. After the occurrence, P.W. 3 chose to implicate her father and grandfather, both, but none of the female members of her parental home. The house, where the occurrence had taken place, is situated next to the house of appellant/Lalan Yadav.

21. One other fact disclosed by P.W. 3 which has made her statement doubtful is of her escaping at the time of the occurrence to a different village situated about two and half kilometers away from the P.O. to her brother-in-law's house and then coming back again to the village where the occurrence took place, for lodging



the F.I.R. This version of P.W. 3 does not get supported by the evidence of the other witnesses.

22. Parmanand Yadav, who though is a witness to the F.I.R. as also the inquest, is the person to whom P.W. 3 had looked up to when her husband was being assaulted by the appellants. So, there was no reason to the prosecution to have withheld him from coming to the witness stand.

23. The brother of aforesaid Parmanand Yadav, namely, Birbal Yadav (P.W. 6) claims to have learnt about the occurrence only on overhearing P.W.3 talking to Parmanand Yadav. He came to the P.O. along with Parmanand's wife, who is the sister of the deceased but before the Trial Court, he has not made any statement to indicate that his brother/ Parmanand Yadav had accompanied P.W. 3 to the P.O.

24. Did she actually see the occurrence?

25. Was she present in the house when the occurrence took place?



26. There appears to be a gnawing doubt about it for the reason that the wife of the slain, while pleading with her father and his other villagers to spare her husband, would not suddenly get so petrified that she will escape to a village situated two to three kilometers away. There have been divergent statements by the witnesses about assault on her when she had tried to rescue her husband. After all, she was not the prey. There was no reason for her to fear for her life.

27. She claims to have been blessed with a son. Did she leave her matrimonial home along with her son or left her son behind, also remains unknown. What mode of travel she chose for traversing the distance, up and down, within half an hour, is also a matter of our curiosity. If she had travelled on foot, she would not have reached the village home of Parmanand Yadav in time; let alone her going and coming back to the P.O. for reporting the murder. The occurrence had taken place at around 04:00 P.M. on 13.03.2010 and the F.I.R. has



been timed at 05:13 P.M. on the same day. The inquest report appears to have been prepared at 06:00 P.M.

28. Seen in this context, we find that even from the deposition of Mintu Yadav (P.W. 1), one of the uncles of the deceased, and Dularo Devi (P.W. 2), the mother-in-law of the deceased, such doubts about the presence of P.W. 3 at the time of assault becomes very glaring.

29. P.W. 1 has his house located nearby the P.O. His nephew (deceased) was assaulted in his presence. The deceased was also put on fire in his presence. He never objected to the same. None of the accused persons/appellants were armed with any firearm or any lethal weapon. That they all were armed with hard and blunt substance gets confirmed by the nature of *ante-mortem* injury on the person of the deceased and also by the absence of any injury report of P.W. 2, Braj Kishore (not examined) and the brother of the deceased.



30. Would he have been a mute spectator?

31. Apart from appellant/Lalan Yadav, all other appellants are from different household. The distance between the P.O. and his house was only one minute away. When he arrived at the house of the deceased, he only saw the deceased and his wife (P.W. 3) and the fifteen appellants and none else.

32. Had his sister (P.W. 2) been there in the house, P.W. 1 would not have missed out on her name before the Trial court. According to him, P.W. 3 was standing in the *verandah* when the deceased was being assaulted. P.W. 1 saw her witnessing the occurrence for about five to ten minutes; whereafter she used the backdoor to go to the house of Parmanand Yadav. With respect to the other appellants (other than appellant/Lalan Yadav), P.W. 1 found them standing at the door. He had not seen them entering the courtyard of the house where the first part of the occurrence had been committed. Though he claims to have protested



the highhandedness action of the appellants, but he was only left with a threat.

33. When the police party had arrived in the village, P.W. 3 came along with her sister-in-law (not examined). After one minute of their arrival, Parmanand Yadav also arrived.

34. The distance of two and half kilometers, perhaps, cannot be traversed in less than an hour. Even otherwise, the entire narration of events do not fit in the prosecution case.

35. According to P.W. 1, the dead body was brought out of the fire by the villagers and especially one of the doctors of the village, who has not been examined at the Trial. It was only thereafter that the police party had arrived.

36. Had the deceased then died by the time the police party had arrived? P.W. 1 does not refer to any resuscitation attempts by the villagers when the appellants had left the P.O.



37. At this juncture, it would be necessary to refer to the deposition of Dr. Sanjeev Kumar (P.W. 5), the doctor who had conducted the *post-mortem* examination on 13.03.2010 at about 12:15 in the day.

38. We have examined the original *post-mortem* report (Exhibit-1), which clearly reveals that the body was received at 11:30 A.M. on 13.03.2010. How was that possible when the occurrence itself is said to have taken place in the evening hours of 13.03.2010? Either the prosecution story is wrong or the timings entered in the documents are incorrect.

39. The learned Additional Public Prosecutor suggests that the doctor instead of referring to the time as A.M. (post midnight), wrongly referred to it in his deposition as P.M. That does not, but explain the entire set of timings in the documents exhibited before the Trial Court. If this were the case, the date would have changed. After midnight, it would have been 14.03.2010.



40. There is yet another flip-side to this explanation. Normally, the *post-mortem* is not conducted in the dead of the night as is the regular directive of the Directorate of prosecution.

41. Taking a line of least opposition by either of the parties, we find the injuries on the person of the deceased to be not such which would have led to his instantaneous death or complete futility of any medical help or for a medical declaration of death. *Rigor mortis* was found in all the four limbs. If the dead-body would have been brought to the *post-mortem* table some times in the night of the occurrence, *rigor mortis* would not have been present, for it was the month of March.

42. The face, neck and upper part of the chest were found to be covered with mud. As we have already noted, the explanation of the State is that perhaps that was because of the efforts of the people to douse the fire.

43. There were some evidence of the hair



being burnt but the burn injuries had not at all produced any scalding marks on the body.

44. There was only one lacerated wound on the right chest which was only skin-deep. The external genitalia were found to be intact. The skull was completely intact. There was no intracranial bleeding. However, P.W. 5 found fracture of ribs on both sides which had punctured the lungs. Blood was found in the abdominal cavity. The liver also was lacerated at three places.

45. The injuries were of course good enough to cause death, but then the certification of death was necessary.

46. Had the deceased died the moment he was thrown in the fire or died when he was pulled out, remains unknown.

47. The police had arrived at the place of occurrence before P.W. 3. Before conducting the inquest examination, in such a scenario, the



injured/deceased should have been taken to hospital.

48. The prosecution story gets a further jolt here.

49. With this kind of injury, especially only internal bleeding, the deposition of the witnesses and the I.O. appear to be exaggerated. All of them somehow had found blood marks in the courtyard.

50. Dularo Devi (P.W. 2) claims to have been injured in the occurrence, but as we have noted, there is no reference of any injury in the entire records on her person. She, however, has stated something else which again militates against the sequence of events suggested by the prosecution. She has alleged that the deceased after being taken away from the fire was brought to a doctor where he was declared dead.

51. When did it happen? Who was the doctor who certified the death of the deceased? And why had that doctor not been examined? These are probable questions which would beckon any answer. If all this



had happened, then the time of 05:30 P.M. on 13.03.2010 in the F.I.R. appears to be conjured up too. All this must have taken lot of time.

52. We find some justification in the submission of the learned Advocates for the appellants that only after finding the nature of injuries on the person of the deceased, the F.I.R. was registered with such accusation. Otherwise, there would not have been such a mathematical precision in the F.I.R. being lodged at 05:30 P.M., the inquest done at 06.00 P.M. and the *post-mortem* examination at 12:00 A.M. in the night in the same diurnal expanse.

53. All the witnesses, who are related to the deceased, have at least admitted of the deceased having contracted an earlier marriage with the daughter of one Rajbanshi of a neighbouring village. Even the mother of the deceased (P.W. 2) has confirmed the fact that before P.W. 3 was married to the deceased, he had contracted marriage with daughter of Rajbanshi for



which a case been lodged against him.

54. Appellant/Lalan Yadav also had filed a criminal case against the deceased when he chose to marry P.W. 3 against his wishes.

55. None of the F.I.Rs. of these cases or their status are on record and those details have come in evidence only through the mouth of witnesses as answers to the suggestions given to them.

56. This, therefore takes us to the primary question as to why a daughter would depose against her father, if the father had not led a gang into her matrimonial house and had killed the deceased.

57. We have found from the evidence that the deceased had married P.W. 3 some three years ago. The couple did not stay in the village in the beginning. It was only much later that they elected to come back to the village and lead their lives. The house of the deceased and appellant/Lalan Yadav is, as we have noted, are next doors. While P.W. 3 stayed in her own



village home along with her husband (deceased), she gave birth to a son. This fact, therefore, presupposes that the deceased and P.W. 3 were staying in the village at a stone's throw distance from the house of appellant/Lalan Yadav for a couple of months before the occurrence took place.

58. What was the reason for selecting 13.03.2010 as the date to wreak vengeance on the deceased for having married P.W. 3?

59. Seen in this perspective, it appears that F.I.R. has been lodged on the asking of P.Ws. 1 and 2 and, perhaps, others, who formed part of a group which was opposed to the group led by appellant/Lalan Yadav. Some fight may have taken place or somebody may have assaulted the deceased. That the death provided an opportunity for the family members of the deceased to frame appellant/Lalan and his supporters, is a possibility which cannot be overlooked, especially when the inconsistencies pointed out in the prosecution case



could not be answered.

60. If all the fifteen appellants would have assaulted the deceased, the external injuries would not have been so minimal. The deceased appears to have received internal injury. His ribs were broken, the fallout of which was the puncturing of the lungs and internal bleeding. With the assault by fifteen persons, there would not have been only an external evidence of one abrasion which was only skin-deep. Even otherwise, none of the witnesses saw all the fifteen of the appellants inside the courtyard of the deceased. The courtyard which is twenty feet in size, as disclosed by P.W. 2, would not provide sufficient space for all the fifteen persons to fling their arms.

61. The explanation of P.W. 3 going along with her matrimonial family and naming her father as one of the accused persons, who had completely severed his connection with P.W. 3, appears to be the only acceptable choice for P.W. 3, which accusation may or



may not be true.

62. Under the aforesaid circumstances, we have doubted the participation of all the appellants of entering the house of the deceased, assaulting him to a pulp, dragging him out (there are no dragging marks found in the *post-mortem* report) and putting him on fire for removing the evidence of murder, giving no option to us but to discard the prosecution case by giving benefit of doubt to all the appellants.

63. For the afore-noted reasons, we set-side the judgment of conviction and order of sentence referred to above and acquit the appellants, above-named, of the charges levelled against them.

64. All other appellants except appellant/Lalan Yadav [*Cr. Appeal (DB) No. 715 of 2017*] are on bail. Their liabilities under the bail-bonds are cancelled.

65. Appellant/Lalan Yadav [*Cr. Appeal (DB) No. 715 of 2017*] is said to be custody since



28.03.2017. He is directed to be set at liberty forthwith unless his detention is required in any other case.

66. All the appeals stand allowed.

67. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

68. The records of these cases be returned to the Trial Court forthwith.

69. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

Praveen-II/Manoj

AFR/NAFR	AFR
CAV DATE	N/A
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