

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.655 of 2018**

Arising Out of PS. Case No.-52 Year-2016 Thana- BHAGWANPUR District- Begusarai

Shobha Devi, D/o Gholtan Tanti, Resident of Village- Jokiya, P.S.-  
Bhagwanpur, District- Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

**CRIMINAL APPEAL (DB) No. 841 of 2018**

Arising Out of PS. Case No.-52 Year-2016 Thana- BHAGWANPUR District- Begusarai

Pappu Singh, son of Ram Binay Singh, resident of Village- Jokiya, P.S.-  
Bhagwanpur, District- Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

|                      |   |                                                                                                                                                             |
|----------------------|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Appellant/s  | : | Mr. Ajay Kumar Thakur, Advocate<br>Mrs. Vaishnavi Singh, Advocate<br>Mr. Ritwik Thakur, Advocate<br>Mr. Kiran Kumari, Advocate<br>Mr. Ashok Kumar, Advocate |
| For the Respondent/s | : | Mr. Binay Krishna, Spl. PP                                                                                                                                  |

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**

**and**

**HONOURABLE MR. JUSTICE JITENDRA KUMAR**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

**Date : 19-06-2024**

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

2. We have heard Mr. Ajay Kumar Thakur, the



learned Advocate for the appellants in both the appeals.

The State has been represented by Mr. Binay Krishna, the learned Special Public Prosecutor, SC/ST Act cases.

3. By the impugned judgment dated 26.03.2018, the appellants have been convicted under Sections 148, 302/149 of the Indian Penal Code and Section 3(2)(v) of the SC/ST Act. By order dated 28.03.2018 they have been sentenced to undergo RI for life, to pay a fine of Rs. 20,000/- each for the offence under Section 302/149 IPC with a default clause that in the event of non-payment of fine, they would be required to suffer one year imprisonment. For the offence under Section 148 IPC, both the appellants have been sentenced to undergo RI for one year and for the offence under Section 3(2)(v) of the SC/ST Act they have been sentenced to undergo life imprisonment, to pay a fine of Rs. 5,000/- and in default of payment of fine, the appellants have been directed to undergo additional simple imprisonment for three months.



4. All the sentences awarded to the appellants have been directed to run concurrently.

5. One Raja Ram Paswan and his wife Anita Devi were killed in their cowshed in the night intervening between 12.03.2016 and 13.03.2016. Both of them were stabbed and were also hit by bricks which is evident from the postmortem examination. Both of them suffered several incised wounds on their bodies and the skulls of the two deceased were found to be fractured. The occurrence is said to have been witnessed by their daughter, Indu Devi, who is the informant of this case and has been examined as PW-2 before the Trial Court.

6. A written report was lodged by PW-2 on 13.03.2016 which was registered as Bhagwanpur P.S. Case No. 52 of 2016 dated 13.03.2016 for the offences under Sections 302/34 of the IPC and Section 3(2)(v) of the SC/ST Act.

7. The aforementioned FIR was registered at 5:45 PM on 13.03.2016, notwithstanding the fact that the



information about the occurrence had reached the police station at about 6:30 in the morning of 13.03.2016. In her written report, PW-2 has alleged that on 12.03.2016 at about 8:00 PM, her parents (deceased) went off to sleep in the cowshed and she went to a room in the house adjacent to that cowshed. In the night, she heard a thumping sound coming from downstairs. She looked through a window in the room and found that the appellants and three others, against whom investigation is still pending, were present in the cowshed. She has specifically averred in the written report that appellant/ Pappu Singh was assaulting her father by means of a knife whereas Ram Binay Singh was giving knife blows to her mother. One Niraj Singh was using a brick for assaulting the deceased. Appellant/ Shobha Devi and one Shankar Singh were also armed with knives. Along with them, there were 7 to 8 more persons whom she could not identify. Seeing this gory incident, she became unconscious and regained her consciousness only in the



next morning. She saw both her parents dead on a cot. She started wailing which attracted the attention of many of the neighbours, who also arrived at the PO.

8. As noted above, on the basis of the aforementioned written report, the subject FIR was lodged. The police after investigation submitted charge-sheet against both the appellants but kept the investigation pending against three others.

9. The appellants faced trial where the prosecution brought forward eight witnesses to prove its case. Two persons were examined as defence witnesses whereas one person was examined as a court witness.

10. The major thrust of the argument of Mr. Thakur, learned Advocate is that the deceased persons were no doubt murdered which stands proved by the postmortem report but Indu Devi (PW-2) had not seen the occurrence and her tall claims of being the sole eye-witness is absolutely untrustworthy. He has further submitted that the couple were killed in the night by



some unknown persons and taking advantage of the two deaths in a family, persons harbouring ire against the appellants were made accused in this case.

11. As opposed to the aforementioned contention, Mr. Binay Krishna, learned Special Public Prosecutor has submitted that some minor discrepancies in the deposition of PW-2 would not entitle the appellants to argue that she had not seen the occurrence herself. The investigation may be shoddy but then the truth has to be culled out from the materials available on record by way of deposition of the witnesses. The argument of the appellants, Mr. Krishna has asserted, is solely based on the deposition of the defence witnesses and subjunctive imagination of an accused to defend himself. There could have been no reason for a married lady, viz., PW-2 who had seen the occurrence, to falsely implicate persons with whom she was not in direct touch.

12. No doubt, it has been argued, that some of the important witnesses have not been examined but the



Trial Court is required to appreciate the quality of evidence and not the quantity of it. He has thus urged that all the evidences point towards the complicity of the appellants, requiring no interference with the judgment by the Appellate Court.

13. We have examined the deposition of all the witnesses rather carefully to find out as to what had happened. In her deposition before the Trial Court, PW-2/Indu Devi/ Informant has supported the accusation against the appellants and others but has stated that the written report was scribed by her brother/ Rohit Kumar which was later signed by her. Incidentally, Rohit Kumar has not been examined at the Trial. The house of appellant/ Pappu Singh is only next doors but she and her parents were not on visiting terms with him.

14. One Rajnish Kumar, who has been examined as Defence Witness No. 1, was the current Mukhiya of the village and an election of Mukhiya was impending. One Ashok Singh had also thrown his hat in



the ring and had filed his nomination. Since appellant/ Pappu was closely associated with Rajnish Kumar (DW-1), Ashok, the contender, was not happy with him.

15. The other noticeable statement made by PW-2 is that in the room from which she saw the occurrence, two of her brothers aged about 10 and 12 years respectively were also sleeping, who never woke up when her parents were being killed. She did not wake them up for the reason of their tender age. She never came out of the house and the reason assigned by her is that she had become unconscious. She regained her consciousness only at about 5 O'clock in the morning, when she shouted for help and thereafter many persons had arrived. The police officials had also reached the place of occurrence at about 6 O'clock in the morning. Her uncle, viz., Satish Paswan (PW-3) had also arrived by around 6:30 AM.

16. With respect to the motive for committing the murders, PW-2 has stated that appellant/ Pappu was



insisting upon her father to sell off his land to him. With regard to appellant/ Shobha Devi, PW-2 has alleged that at one point of time, she had tried to influence her sister/ Sintu to come out of her marital bond and marry another person of her choice. In her cross-examination, she has clearly stated that she did not name anyone of the assailants including the appellants before the police. It was only when PW-3, her maternal uncle, had arrived at the PO at 11:00 AM, he along with Ashok, referred to above, and Satish Paswan (PW-3) talked amongst themselves and thereafter the written report was filed by around 11:30 AM in the day. She has denied the suggestion that Pappu has been named in order to appropriate the loan amount which Satish Paswan (PW-3) had taken from him.

17. The evidence has come on record that PW-2, being a married lady, was present in her matrimonial home in the night of the occurrence and had visited the PO only on the next day. In this context, it would be



relevant first to refer to the deposition of Bhola Paswan (PW-4), who is none-else but the uncle of the deceased/ Raja Ram Paswan. He claims to have gone to the PO between 11:00 to 11:30 AM on 13.03.2016 where PW-3 was also present from before. No body at that time disclosed the name of the appellants or any other assailants.

18. Ashok Singh, the person who intended to contest for the post of Mukhiya against Rajnish (DW-1) was also present there. Appellant/ Pappu had given loan to PW-3. Of his own, PW-4 has stated before the Trial Court that Indu Devi (PW-2) was in her matrimonial home. If he is to be believed, then till about 11:30 AM on 13.03.2016, PW-2 was not even present at the PO.

19. The falsity of the claim of PW-2 gets further exposed when the deposition of her maternal uncle (PW-3) is scrutinized in some detail.

20. PW-3 has stated that he was informed by PW-2 that her parents have been killed. She had spoken



the names of the appellants and some others whom she did not identify. On such information by PW-2, PW-3 reached the PO and found that the couple were killed. Sometimes prior to the occurrence, Raja Ram Paswan (deceased) had come to his house and had disclosed that appellant/Pappu Singh and accused/Shankar Singh might kill him for his refusal to part with his land which they insist for being sold. He had also spoken about appellant/Shobha having misguided his daughter/ Sintu for coming out of the matrimonial bond.

21. In his cross-examination, he has stated that the information was received on his mobile telephone kept at his house. He did not remember the telephone number of the caller. When he had reached the PO, the police had not arrived by then. The police came only half an hour later. There was a huge crowd at the PO. It was at that time that Indu Devi (PW-2) was questioned and on her reply, the inquest was done which was signed by him. The police officers came in batches and stayed at



the PO for about two hours. He has but denied the suggestion that he had yet not paid back Rs. 50,000/- which he had taken as an accommodation loan from appellant/Pappu. He also denied any false implication at the behest of Ashok Ram and Ashok Rai or that PW-2 was not present in her parental home when the occurrence had taken place.

22. From his deposition, two things emerge very clearly, viz., that whatever information he had, was through the mouth of PW-2 and that PW-2 had seen the occurrence from the window of the room, whereafter she had become unconscious.

23. We have noticed that PW-4, the uncle of deceased/Raja Ram Paswan, knew it for certain that there was no window in the room in which PW-2 claims to have slept in the night of the occurrence.

24. A plain reading of the deposition of PWs. 2, 3 and 4, referred to above, make the presence of PW-2 in the night of the occurrence in her parental home very



doubtful. We say so for more than one reasons. It appears to be rather unusual that she had, in her line of vision, everything which happened in the cowshed and after seeing the occurrence, she became unconscious.

25. Even if such statement is believed, then she has not claimed to have informed PW-3 about the occurrence. It is really surprising as to the source of information to PW-3 to arrive at the PO at 6:30 AM on 13.03.2016. That apart, if PW-2 had seen the appellants playing their overt act, there was no reason for her not to disclose their names before the police officers who had come to the PO by around 6:30 in the morning. There was no reason for her to withhold such information even for a minute. It is very curious to learn that when police officers asked for her account, she chose not to answer and said that she would furnish written report about the occurrence later.

26. This does not signify anything else but consultation and confabulation amongst family members,



aided by others, in falsely implicating the appellants and others about whom no concrete material could be gathered and the investigation against them were kept pending. The only inference, therefore, is that PW-2 was not present in her parental home in the night of the occurrence and had come only on the next day.

27. The incoherent statement in her written report regarding the accused persons including the appellants and her reluctance to disclose their names before the police officers for such a long time further confirms the suspicion that perhaps she was waiting for her to be advised as to who had killed the deceased.

28. If a witness professes to know about the murderer but keeps silent in presence of police officers, his/her statement is eroded of much of its value. It is understandable that PW-2 could have waited for filing the written report in a proper manner but not disclosing the names of the assailants is not something which can be lightly brushed aside, especially when the inquest was



done and police officers of the local police station kept pouring in and stayed there for two hours.

29. In this context, we have further examined the deposition of Madan Paswan (PW-1), who is the uncle of PW-3. He has said that PW-3 received information in the night on telephone about the murders, who in turn informed him. His source of information, on reaching the PO, was PW-2 only.

30. The postmortem was conducted by Dr. Arun Kumar (PW-5) who found several incised and stabbed wounds on both the deceased. The cranial bone of both the deceased were found to be fractured and lacerated. Perhaps the deceased were stabbed by knife and their heads were crushed by stone or a brick. The death was because of neurogenic and hemorrhagic shock, because of the injuries inflicted by sharp cutting weapon as also by hard and blunt substance. The time of death, however, was different for the two deceased. This is quite possible as the timing is measured by certain



factors which could vary even if the injuries are suffered in the same transaction.

31. Interestingly but sadly, the investigator/ Gunjan Kumar (PW-7) completely abandoned his onerous duties as a policeman. He had received information at the police station on 13.03.2016 at about 6:00 AM, which though he mentioned in the station diary but did not disclose any detail about the source of information or the names of the assailants. He visited the PO at 7:45 AM but till 11:15 AM, he did not record the statement of anyone of the persons present there. This perhaps was because till 11:15 AM, no witness had named anyone of the assailants including the appellants before him. He was told that a written report would be filed and, therefore, he chose not to record the FIR there. The written report was scribed by Rohit Kumar, about whom the investigator did not inquire. He did not even visit the house from where PW-2 had witnessed the occurrence. Obviously therefore, he would not have



known whether there was any window in the room in which PW-2 was sleeping and through which she could have seen anything happening in the cowshed. He did not seize the blood from the PO even though he noticed plenty of it not only on the floor but on the mattress where the dead bodies were found. He never investigated whether PW-2, claiming to be an eyewitness, was present in her parental home or that she had come from her matrimonial home only after the occurrence. He also did not notice any source of light in the cowshed for PW-2 to have seen and identified the appellants.

32. This investigation, therefore, has led the prosecution to nowhere.

33. Rajnish Kumar, the current *Mukhiya* of the village where the occurrence had taken place, as noted above, has been examined as DW-1. He has stated before the Trial Court that Indu Devi (PW-2) was in her matrimonial home at the time of the occurrence and she



came only at about 11:30 AM on the next day. He knew about the occurrence because he was the *Mukhiya*. He was informed about the occurrence by the Officer-in-Charge of the police station. He went to the PO at about 10:00 AM where nobody told the names of the assailants. In his presence, Indu Devi (PW-2) reached from her matrimonial home. Simultaneously, Satish Paswan (PW-3) also arrived. Ashok Rai, Ex-*Mukhiya* was also present there. All of them consulted amongst themselves and then the written report was filed, in which for the first time, the names of the appellants found mention.

34. Similarly, Rajeshwar Singh (DW-2), the local *Sarpanch*, has testified to the facts that Indu Devi (PW- 2) was not present in her parental home and that Ashok and Satish (PW-3) had definite animus against Rajnish, the current *Mukhiya* and appellant/Pappu.

35. Manoj Paswan, the Court witness testified that the written report was in the handwriting of Rohit



Kumar and that the written report was drafted between 11 to 12 AM on 13.03.2016. He had been present at the PO since 6:30 in the morning.

36. This leaves us with a gnawing doubt whether PW-2 had seen the occurrence.

37. Evidence is replete that there was no window in the room in which PW-2 was sleeping and there is nothing on record to indicate that she could have had a clear line of vision from the room to the inside of the cowshed where the murders had taken place. There was no source of light in the cowshed as well.

38. With this doubt in mind, it is difficult for us to accept the prosecution version that the appellants had killed the deceased. There is no accusation against appellant/Shobha, who too is one of the neighbours of the deceased persons.

39. It is a cardinal principle of criminal jurisprudence that guilt of the accused must be proved beyond all reasonable doubts and the burden of proving



its case beyond all reasonable doubts lies on the prosecution, which never shifts.

40. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to the doubtful accusation or innocence of the accused, the view which is favourable to the accused has to be adopted ***[Harbeer Singh vs. Sheeshpal and Ors. (2016) 16 SCC 418; Kali Ram vs. State of H.P. (1973) 2 SCC 808; State of Rajasthan vs. Raja Ram (2003) 8 SCC 180; Chandrappa vs. State of Karnataka (2007) 4 SCC 415; Upendra Pradhan vs. State of Orissa (2015) 11 SCC 124 and Golbar Hussain vs. State of Assam (2015) 11 SCC 242]***.

41. With such a shoddy investigation and a lurking doubt whether PW-2 was even present in her parental home in the night of 12.03.2016, we have no option but to reverse the findings of the Trial court; set aside the judgment and acquit the appellants.



42. We are also surprised at the conviction of the appellants under the SC/ST Act for there being not an iota of material justifying such conviction.

43. The judgment of conviction and the order of sentence against the appellants are, therefore, set aside.

44. The appellants are acquitted of the charges.

45. Both the appeals stand allowed.

46. Appellant/Shobha Devi [Cr. APP. (DB) No. 655 of 2018] is on bail. She is discharged of her liabilities under her bail bonds.

47. Appellant/Pappu Singh [Cr. APP. (DB) No. 841 of 2018] is in jail since 19.04.2016. He is directed to be released forthwith from jail if not wanted in any other case.

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

49. The records of this case be returned to the Trial Court forthwith.



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

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Rajesh/Manoj

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