

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.170 of 2013

Arising Out of PS. Case No.-30 Year-1999 Thana- BHAPTIAHI District- Supaul

1. Sita Ram Yadav, S/o Raso Yadav Resident Of Village Sadanandpur, P.S. Bhaptiyahi, District Supaul.
2. Narain Yadav, S/o Bhut Lal Yadav Resident Of Village Sadanandpur, P.S. Bhaptiyahi, District Supaul.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Pramod Mishra, Advocate Mr. Suraj Kumar, Advocate Mr. Prasoon Kumar, Advocate Mr. Geeta Kumari, Advocate
For the Respondent/s	:	Mr. Anita Kumari, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

Date : 25-11-2024

The present appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the Judgment of conviction dated 19.02.2013 and order of sentence dated 23.02.2013 passed by the learned Adhoc Additional and Sessions Judge-IV, Supaul (hereinafter referred to as the learned 'trial Court') in Sessions Trial No. 06 of 2007 / 60 of 2011 arising out of Baptiyahi P.S. Case No. 30 of 1999 instituted for an offence punishable under Sections 323, 324, 341 and 307/34 of the Indian Penal Code, whereby and whereunder the appellants have been convicted for the offence punishable under Sections 307/34 of the Indian



Penal Code and sentenced to undergo rigorous imprisonment of seven years each and also liable to pay fine of Rs. 10,000/- (Ten Thousand) and in default of payment of fine, they are further directed to undergo simple imprisonment for six months.

2. Heard Mr. Pramod Mishra, learned counsel for the appellants assisted by Mr. Suraj Kumar and Ms. Geeta Kumari and Ms. Anita Kumari Singh, learned APP for the State.

3. The prosecution case in brief is that the on the basis of *fardbeyan* of the informant, on 18.07.1999 at 0500 hours, the informant aforesaid gave his *fardbeyan* in his *Gohal* to the S.I. of P.S. concerned stating therein that in the previous night at 10 PM, the informant retired to his bed in his *Gohal* and when he was asleep, then at 01:00 AM (night) he received knife blow on his shoulder upon which he woke-up and saw his nephew Sita Ram Yadav s/o Raso Yadav was standing holding knife in his hand then informant tried to get hold of him but other accused persons including co-appellant namely Phutai, Bhago Yadav, Sukhai Yadav, Raso Yadav, Narain Yadav, Mahadeo Yadav, Binod Yadav, Dhulki Yadav and Radheshyam Yadav came from behind holding knife and Talwar in their hands and co-accused Bhutai Yadav and Raso Yadav ordered to kill the informant upon which the co-accused persons started



giving knife blow, over his mouth, upon which his lip and jaw including his teeth got injured and hung due to severe cut injuries. On *hulla*, informant's wife, Bahulia Devi (PW-4), his two daughters Buchni Devi and Sobha Kumari, his son Ramphal Yadav (PW-1) and his daughter in-law Babita Devi woke up and came running to the place of occurrence and then the accused persons started fleeing away seeing the above inmates of the house. Villagers Ganga Yadav, Sobhi Yadav and several others came to witness the occurrence. The cause of occurrence as stated in his *fardbeyan* is the long-standing land dispute going between them and out of this enmity they are cultivating his land forcibly. Moreover, the accused persons hurled killing threat upon informant several time before and at one time they took away his ox forcibly at the point of gun.

4. On the basis of said *fardbeyan*, the Baptiyahi P.S. Case No. 30 of 1999 was registered for an offence under Sections 323, 327, 341 and 307/34 of Indian Penal Code was instituted and investigation was taken up by the police, thereafter charge-sheet has been submitted against the accused persons. After taking cognizance, the case was transferred to the court of learned Judicial Magistrate for commitment. The case was committed on 19.12.2006 and sent to the learned court of



Session Judge for the trial and disposed of the case.

5. To substantiate the charges, the prosecution has examined as many as seven witnesses in this case, out of them, PW-1 Ramphal Yadav, PW-2 Dasan Yadav, PW-3 Ganga Ram Yadav, PW-4 Jhulia Devi @ Bhabulia Devi (wife of the informant), PW-5 Luxmi Yadav, PW-6 Dr. Anzar Ahmad and PW-7 Chakram Yadav (informant). On the other hand, the defence has also adduced evidence both oral and documentary in this case which are as follows:

(i) Defence has examined only one defence witness namely Vidyanand Yadav whose evidence is formal in nature exhibiting the signature of Chakram Yadav (PW-7) on compromise petition as also on permission petition as Ext. A & A/1 respectively. He further states in his evidence that informant and accused Bhutai and Raso are full brothers and others accused are his nephews. He also discloses that panchayat was held in which compromise was arrived at between the parties and then a compromise petition was filed in the court on 09.06.2011 bearing the signature of informant



and accused persons.

(ii) some documents have also been produced on behalf of defence which are as follows:

(a) Ext. B-(1) Order sheet of Mutation case No. 458 of 1987-88 filed by Bhutai Yadav order being passed on 17-12-87 by the then Anchaladhikari, Nirmali directing to create jamabandi in favour of Bhutai Yadav in respect of land bearing *khata* No. 193 total area 01.06.16.

(b) Ext. B/1- Order sheet of case No. 134 of 1998-99 filed by Bhutai Yadav in which it is ordered on 25.11.1998 by Anchaladhikari to create jamabandi in favour of Bhutai Yadav.

(c) Ext. C- Certified copy of judgement passed by Sub-Judge-IV, Supaul in T. S. 99 of 1998 filed by Chakram Yadav against Raso Yadav and others whereby the preliminary decree was passed on 02.07.2005 in favour of informant declaring 1/6th share of informant and accused persons in the suit property separately.



(d) Ext. D- Certified copy of the decree passed in T.S. 99 of 1998 by the Sub-Judge-IV, Supaul.

6. PW-1, who is son of the informant came to the place of occurrence when his mother (PW-4) awoke him up at the relevant time of occurrence. He has stated at para 1 that all accused persons had assaulted his father with knife and Talwar as a result of which his father got seriously injured and blood oozing out from the injuries. At para, 19 and 21 he has stated that he saw injuries on his father at four places, shoulder, mouth, eye and also near the ear.

7. PW-2, who is *Samdhi* of P.W.7, it appears that he visited the Simrahi Hospital where PW7 was admitted. There, he saw injuries at shoulder, mouth and other part of his body. He also states that teeth of PW7 got incision. He admits that he has not seen the occurrence.

8. PW-3, it appears that he has accepted in his deposition that he has not seen the occurrence nor seen the accused person fleeing away from the scene of occurrence. He simply stated that in hearing the cries, he came to the *darwaja* of PW7 and saw the face of PW7 soaked in blood and his family was weeping near him. The house of this witness is in the



vicinity of PW7 as stated in para 6.

9. PW-4, who is wife of informant (PW7), it appears that she was asleep inside the house at the *osara* and on hearing the cries, she went to awoke her son and daughter and then came to the *darwaja* leading to the *Gohal* room there she saw her husband in unconscious injured state. She has spoken the name of all accused person and saw them fleeing away from the scene of occurrence, after having assault the PW7.

10. PW-5 who has been declared hostile by the prosecution.

11. PW-6, who is doctor and it is he who treated the injury of the informant. In his deposition he has stated that on 18.07.1999 he examined the informant at 08 a.m. and found the following injury:

(i) Sharp cut would 1 1/2" x 1/2"

above left upper lip leading to cut down of left incisor and one canine teeth with gum.

(ii) Incise wound 2 x 1/4" over left

shoulder joint cause by sharp cut weapon the opinion of doctor regarding the injuries sustained by PW6 is that injuries No.1 is grievous and whereas injury no.(ii) is simple in nature. He



exhibited the injury report as Ext. 2 of this case.

12. PW-7, who is the informant, has given a vivid details of the sequence of occurrence as stated in his fardbeyan, by stating that occurrence took place on 18.07.1999 at about 1.00 am (night). He was asleep on his bed in his *Gohal* from then all of a sudden a man came and gave knife blow on him which hit over shoulder joint of left hand. Then he woke-up and saw his nephew Sitaram Yadav (appellant) and then he caught his hand where attempted to give second blow. He also saw all the accused persons standing there holding knife and farsa in their hands. He then stated that at the exhortation of accused Raso Yadav and Bhutai Yadav to kill the informant, accused/appellant Narain Yadav gave knife blow on him which hit him at the left jaw of his lip cut in it into pieces as a result of which it got hung from its base and his teeth also sustained injury. Accused Binod Yadav also hit him below the left eye. Then the informant fell down raising hue and cry hearing the cries, inmates of the house namely Ramphal Yadav (PW1), informant's wife Bhulia Devi (PW4), informant's daughter Sona and Buchi Devi came. He also stated that his son Ramphal Yadav (PW1) along with Ganga Yadav and Badri Yadav went to Thana to call the police who came at 5 am and then record his



fardbayan. He identified his signature on fardbayan (Ext. 1/A) and he also identified the signature of one Gajendra Yadav (Ext. 1/B) (para5). He has also supported his statement what he stated in his fardbeyan that one year before the occurrence the accused/appellants took away his one pair of oxen (para2). At para 3 he has disclosed that in a partition suit he got the decree in the year 2005. At para 4, he identified all accused persons before the Court. During cross-examination, at para 12, 13 and 14 he has given the description of his house by stating that he has two rooms in the *Angan* and one at the *darwaja* and the room at the darwaja was 19 hands long made up of *foosh* in which he was asleep. Some cattle was also present, therein. At para 15 he has stated that he was sleeping in such a way that his left portion of body was exposed.

13. Learned counsel for the appellants submits that the impugned judgment of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment of conviction and order of sentence. He further submits that the non-official witnesses are close family members, hence, they are interested and not reliable witnesses. He has also submitted that the testimony of the non-official



witnesses is full of contradictions. The learned counsel has submitted that the most of the witnesses have not supported the prosecution case and the informant has filed a false case due to land dispute on going between them. He further submits that learned trial Court did not appreciate that the injuries got in upper jaw got hung blow of knife inflicted by the Narayan Yadav (appellant no.2) is not find place in his fardbeyan rather general and omnibus allegation levelled against the co- accused but in examination-in-chief, he stated that appellant no.2 has inflicted by way of knife which shows that the informant statement is not acceptable and also failed to crave the wrong conclusion that investigating officer has not been examined which prejudice case of the prosecutor.

14. However, learned APP for the State defends the impugned judgment of conviction and the order of sentence submitting that there is no illegality or infirmity in the impugned judgment and order of sentence, because prosecution has proved its case against the appellants beyond all reasonable doubts. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained.

15. At this stage, I would like to appreciate the



relevant extract of entire evidence led by the prosecution before the Trial Court. I have thoroughly perused the materials on record and given thoughtful consideration to the submissions advanced by both the parties.

16. On deeply studied and scrutinized all evidences, it is evident to note that the occurrence took place at night on 18.07.1999, when the informant was asleep, then at 01:00 AM (night) he received knife blow on his shoulder upon which he woke-up and saw his nephew Sita Ram Yadav s/o Raso Yadav was standing holding knife in his hand then informant tried to caught hold him but other accused persons / appellants came from behind holding knife and Talwar in their hands and co-accused Bhutai Yadav and Raso Yadav ordered to kill the informant upon which the co-accused persons started giving knife blow, over his mouth, upon which his lip and jaw including his teeth got injured and hung due to severe cut injuries. The witnesses examined before the trial court are family members as at the time of occurrence it is not possible that any independent witness would be present at the place of occurrence and it is well settled principle of law that the testimony of any family members of the victim cannot be discarded only on account of his/her relationship with the victim



and there are less chances that other witnesses will be present at the place of occurrence at night. So that related witnesses is natural witness. If other witnesses are produced before the trial Court, that can make his presence doubtful at the place of occurrence. So, the conduct of the appellants also established his intention for killing the informant and no ground for false implication is made out and all the prosecution witnesses are also consistent in their evidences. Hence, they are natural and trustworthy and the trial Court has rightly convicted under Section 307/34 of the Indian Penal Code and it is also clear that the present appeal is of year, 1999 and 25 years old and the appellants are struggling in the present case since then.

17. The Hon'ble Apex Court, in the case of *State of U.P. vs Tribhuwan, (2018) 1 SCC 90* has laid down that, time spent in custody by a convicted person, both as an under-trial and as a convicted person, may be considered as jail sentence awarded to him and he may get the advantage of setoff under Section 428 of Cr.P.C.

18. The appellants have got sufficient judicial custody and there is no adverse report against the appellants about their conduct otherwise the same would have been brought to our notice by learned counsel for the State. Thus,



accordingly, the judgment of conviction dated 19.02.2013 passed by the learned trial Court is upheld and affirmed and the sentence of the appellants is reduced to period already undergone and the appellants stand discharged of the liabilities of his bail bonds, if any.

19. Accordingly, appeal is partly allowed.

(Ramesh Chand Malviya, J)

S.Katyayan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.11.2024
Transmission Date	27.11.2024

