

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.251 of 2015

Arising Out of PS. Case No.-94 Year-2011 Thana- SINGHESHWAR District- Madhepura

1. Shyam Rishideo and Ors.
2. Hareram Rishideo both sons of Late Lalmain Rishideo
3. Shambhu Rishideo son of Late Tilay Rishideo All of them are resident of village - Bairbanna, Tola - Katraha, P.S. Sigheshwar, District - Madhepura
4. Umesh Rishideo Son of Dukhhan Rishideo resident of village - Dandari, Tola - Tarha, P.S. Singheshwar, District - Madhepura

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 252 of 2015

Arising Out of PS. Case No.-94 Year-2011 Thana- SINGHESHWAR District- Madhepura

Chhedni Devi W/o Shyam Rishideo Resident of Village Bairbanna, Tola Katraha, P.S. Singheshwar, District Madhepura.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 251 of 2015)
For the Appellant/s : Mr. Mahendra Pathak, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, APP
(In CRIMINAL APPEAL (DB) No. 252 of 2015)
For the Appellant/s : Mr. Mahendra Pathak, Advocate
For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 10-01-2024

These appeals have been preferred by the appellants under Section 374(2) of the Code of Criminal Procedure, putting to challenge the judgment of conviction dated 09.02.2015 and the order of sentence dated 13.02.2015, passed by learned learned Additional Sessions Judge, Adhoc-II, Madhepura in Sessions Trial No. 59 of 2012, arising out of Singheshwar P.S. Case No. 94 of 2011, whereby the appellants have been convicted and sentenced as under:

Cr. Appeal (DB) No. 251 of 2015				
Appellant	Penal provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Hareram Rishideo	Section 302/149 of the Indian Penal Code	For life	10,000/-	S.I. for one year
	Section 147 of the Indian Penal Code	R.I. for two years	--	--
	Section 323 of the Indian Penal Code	R.I. for one year	--	--
	Section 341 of the Indian Penal Code	S.I. for one month	--	--
	Section 148 of the Indian Penal Code	R.I. for three years	--	--
	Section 504 of the Indian Penal Code	RI for two years	--	--
Shyam Rishideo	Section 302/149 of the Indian Penal Code	For life	10,000/-	S.I. for one year
	Section 147 of the Indian Penal Code	R.I. for two years	--	--
	Section 323 of the Indian Penal Code	R.I. for one year	--	--
	Section 341 of the Indian Penal Code	S.I. for one month	--	--
	Section 504 of the Indian Penal Code	R.I. for two years	X	X
Umesh Rishideo	Section 302/149 of the Indian Penal Code	For life	10,000/-	S.I. for one year
	Section 147 of the Indian Penal Code	R.I. for two years	--	--
	Section 323 of the Indian	R.I. for one	--	--

	Penal Code	year		
	Section 341 of the Indian Penal Code	S.I. for one month	--	--
Shambhu Rishideo	Section 302/149 of the Indian Penal Code	For life	10,000/-	S.I. for one year
	Section 147 of the Indian Penal Code	R.I. for two years	--	--
	Section 323 of the Indian Penal Code	R.I. for one year	--	--
	Section 341 of the Indian Penal Code	S.I. for one month	--	--
Cr. Appeal (DB) No. 252 of 2015				
Appellant	Penal provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Chhedni Devi	Section 302/149 of the Indian Penal Code	For life	10,000/-	S.I. for one year
	Section 147 of the Indian Penal Code	R.I. for two years	--	--
	Section 323 of the Indian Penal Code	R.I. for one year	--	--
	Section 341 of the Indian Penal Code	S.I. for one month	--	--

2. All the sentences have been ordered to run concurrently.

3. The occurrence as alleged in the FIR had apparently taken place in the background of a very petty dispute, leading to an altercation. The wife of the deceased (PW-8) is the informant, whose *fardbeyan* recorded by Sub-Inspector of Police-cum-SHO, Singheshwar Police Station, on 14.09.2011 at Primary Health Center, Singheswar, at 05:00 PM, is the basis for registration of the connected Singheshwar P.S. Case No. 94 of 2011, disclosing commission of the offences punishable under Sections 341, 323, 302, 307 and 504 read with Section 34 of the Indian Penal Code. It

was alleged that the informant had a small shop dealing with grocery and other items. At about 04:00 PM, the appellant Hareram Rishideo is said to have come to the shop, asking for a cigarette, which the informant had given him for one rupee. The appellant, Hareram Rishideo returned to the shop asking the informant to give him a better cigarette, costing 3 rupees. The Informant expressed her inability and is said to have told the appellant Hareram Rishideo, that when there was no consumer in the village to purchase cigarette even for a rupee, where was the question of the keeping costlier cigarettes. The appellant Hareram Rishideo sharply reacted to such response and used abusive language against her. The informant's husband (the deceased) who was present nearby, objected to the appellant's conduct of using abusive language and told him that he would be complaining to his elder brother, Shyam Rishideo (an appellant) about it. The deceased, thereafter, went to complain to Shyam Rishideo to his house. The informant asserted that she also followed her husband. When the deceased reached the house of the appellant and complained to them about the conduct of the appellant Hareram Rishideo, all of the them started assaulting him with iron rods, *lathi* and *mungri* (thick stick). The other witnesses, upon hearing the noise, reached at the place of occurrence and noticed the

deceased being mercilessly beaten up by these appellants. The deceased had sustained grievous injuries and had fallen down on the ground. PW-7, the son of the deceased who had reached the place of occurrence and had attempted to rescue his father, also sustained minor injuries. The deceased was taken to a Primary Health Center, Singheshwar, where he was declared dead by the doctor. After having received the information, the police reached Primary Health Center, Singheshwar, where the *fardbeyan* of the informant was recorded, leading to registration of the FIR. It is noted at this juncture that the appellants No. 1 and 2 of Criminal Appeal (DB) No. 251 of 2015 are full brothers, whereas the appellant Chhedni Devi of Criminal Appeal (DB) No. 252 of 2015 is the wife of the appellant Shyam Rishideo. Shambhu Rishideo is a co-villager and Umesh Rishideo is a resident of a nearby village.

4. The police upon completion of investigation submitted charge-sheet against all these appellants for the offences punishable Sections 147, 148, 149, 341, 323, 307, 302 and 504 of the IPC on 11.01.2012, whereupon cognizance was taken by the learned Judicial Magistrate on the said offences on the same day. Upon commitment of the case to the trial court, charges came to be framed against all these appellants for the offences punishable under Section 147, 148, 341, 302 read with Section 149, 504 and

323 of the IPC. As the appellants denied the charges and claimed to be tried, they were put on trial. At the trial, the prosecution examined altogether 12 witnesses to bring home the charge, including the informant (PW-8), her son an injured witness, Shambhu Chowdhary (PW-7), a daughter-in-law of the deceased and the informant Nitu Devi (PW-5) and Yogendra Chowdhary, brother-in-law of the deceased (PW-6). The other co-villagers, namely, Shrilal Chowdhary (PW-1), Sonelal Mandal (PW-2), Satyanarayan Mandal (PW-3) and Sadanand Chowdhary (PW-4) deposed at the trial in support of the prosecution. The Doctor, who had conducted the postmortem examination was examined as PW-11, whereas the Doctor, who had examined the injured witness Shambhu Chowdhary deposed as PW-9. Further, the Investigating Officers deposed at the trial as PW-10 and PW-12.

5. Apart from the oral evidences of the prosecution’s witnesses, the prosecution also brought on record following documentary evidences in support of the charge:

Sl. No.	Description	Exhibit Number
1.	Signature of Sone Lal Mandal on the carbon copy of inquest report	Exhibit-1
2.	Signature of Satya Narayan Mandal on the carbon copy of inquest report	Exhibit-1/1
3.	Certified copy of injury report	Exhibit-2
4.	Fardbeyan	Exhibit-3

5.	Carbon copy of inquest report	Exhibit-4
6.	Endorsement on fardbeyan	Exhibit-5
7	Carbon copy of the challan of sending the dead body for preparing the inquest report	Exhibit-6
8	Application dated 14-9-11 for treatment of Shambhu Chaudhary's wound and giving report	Exhibit-7
9	Postmortem report	Exhibit-8

6. After closure of the evidence of the prosecution's witnesses, the appellants were questioned under Section 313 of the CrPC, so as to give them an opportunity to explain the circumstances emerging against them based on the evidence adduced at the trial by the prosecution to establish the charge. The appellants denied the incriminating circumstances and claimed to be innocence. The trial court, after having evaluated and scrutinized the evidence on record held the appellants guilty of various offences by the impugned judgment of conviction dated 09.02.2015 and accordingly, sentenced them to imprisonment and fine by an order dated 13.02.2015, as has been noted at the outset.

7. Mr. Mahendra Pathak, learned counsel appearing on behalf of the appellants has submitted that such witnesses who have claimed to be the eyewitnesses to the occurrence are not reliable witnesses, keeping in mind the patent contradictions in their depositions. He contends that on close scrutiny of the evidences of the witnesses, it can be easily seen that none of them

were present at the place of occurrence. He contends that if the facts alleged in the FIR are taken to be correct, no person other than the informant was present at the place of occurrence when the occurrence had taken place, whereas at the trial, other witnesses have also claimed to be the eyewitnesses. He has submitted, with reference to the deposition of PW-2, that even the informant was not present at the place of occurrence. He, accordingly submits that there is no eyewitness to the occurrence and whosoever have claimed to be the eyewitnesses of the occurrence are not truthful. He has drawn our attention to the various contradictions in the evidence of the prosecution's witnesses including the evidence of PW-8. In her cross-examination, she expressed her inability to disclose as to which accused person had assaulted the deceased. He, accordingly submits that the witnesses having failed to clearly attribute the assaults made by the appellants, their conviction for an offence punishable under Section 302 is not sustainable. He argues that though in her deposition, the informant (PW-8) claimed that she had also sustained injuries in the occurrence, but the said fact was not disclosed in her *fardbeyan*. This fact goes to suggest that she is not a truthful witness.

8. Ms. Shashi Bala Verma, learned Additional Public Prosecutor appearing on behalf of the State, defending the finding

of conviction recorded by the trial court has submitted that the witnesses are consistent in their depositions on the point of the place, time and manner of occurrence. She contends that there is no reason why their depositions should not be believed. There is no evidence of any previous animosity between the parties and, therefore, there would have been no question of false implication. She has argued that minor contradictions in the evidence of the prosecution's witnesses are natural and the Court is required to overlook the instances of exaggeration in the evidence of the prosecution's witnesses. She contends that taking into account the evidence of the prosecution's witnesses in totality, it can be easily seen that the prosecution successfully proved the charges at the trial against the appellants, as has been recorded by the trial court. She submits that the impugned judgment does not require any interference.

9. We have perused the impugned judgment and order of the trial court and we have carefully gone through the trial court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties. On careful examination of the depositions of the prosecution's witnesses, we find that the prosecution ably proved the place of occurrence, which is evident from the depositions of the eyewitnesses read

with the evidence of the Investigating Officer (PW-10). PW-10, in his evidence, deposed that he had noticed the soil scattered near the place of occurrence, which indicated that some occurrence had taken place near the house of the appellants, Shyam Rishideo, Hareram Rishideo and Chhedni Devi. The occurrence of demand of cigarette from the informant by the appellant, Hareram Rishideo at her shop, subsequent altercation between them and use of abusive language by the appellant Hareram Rishideo has been proved by PW-1 and PW-2. PW-3. A co-villager had reached the place of occurrence after hearing the noise and had witnessed the occurrence. PW-6, a resident of another village and brother of the deceased, was present in the village when the occurrence had taken place. The fact that the deceased was assaulted by all these appellants, in the Court's opinion has been proved by the oral evidence of the prosecution's witnesses. The appellant's son, according to the prosecution's case had also sustained minor injuries. He was examined by the Doctor and the injury report (Exhibit-2) corroborates the oral evidence of PW-7.

10. In the aforesaid circumstance, we do not find any reason to completely discard the evidence of the prosecution's witnesses as regards the occurrence. Inconsistencies in the evidences of the prosecution's witnesses, in the Court's opinion are

minor and inconsequential. The postmortem report (Exhibit-8) fully corroborates the prosecution's case of the deceased, having sustained injuries caused by the appellants in the occurrence. The Doctor (PW-11) has proved following antemortem injuries on the body of the deceased:

External:

- 1) Contusion -3inchX 2 inch on front of chest on Right side
- 2) Contusion – 4 inch X 2 inch on front of chest on left side.
- 3) Contusion 4 inch X 2 ½ inch on posterior part of chest on left side
- 4) Contusion 2 ½ X 1 on lower 1/3 of Right forearm.
- 5) Contusion 1 inch X ½ inch on right side of neck.

On dissection:- On dissection of contused areas of injury there is coagulation of blood and infiltration of tissues with blood.

Abdominal Cavity: All viscera intact and pole.

Thoracic cavity: Fracture of 6th rib on right side of chest on anterior aspect, lungs-pale, heart- Right chambers full of blood, left chambers- empty.

Cervical cavity- Brain and spinal cord congested.

Cause of death – Shock and Internal hemorrhage due to above mentioned ante-mortem injuries by hard and blunt substance.

11. In the Court's opinion, the prosecution's witnesses cannot be said to be wholly unreliable. Their depositions, on the

other hand, naturally describe the circumstances and the background in which the occurrence had taken place. Further, their oral evidence stand duly corroborated by the medical evidence, i.e., the postmortem report in relation to the deceased and the injury report in relation to PW-7.

12. It is worthwhile noticing the oft-quoted Supreme Court's decision in the case of *Vadivelu Thevar v. State of Madras* (AIR 1957 SC 614), which classified oral testimony of the witnesses into three categories, namely:

- (i) Wholly reliable
- (ii) Wholly unreliable, and
- (iii) Neither wholly reliable nor wholly unreliable.

After having categorized the witnesses as above, the Supreme Court observed in Paragraph 12 as under:-

"...12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is

another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution..."

13. The aforesaid judgment in case of **Vadivelu Thevar** (supra) has been substantially followed by the Courts including the

Supreme Court and recently in its decision rendered on 08.11.2023 in case of *Balaram Vs. State of Madhya Pradesh* in **Criminal Appeal No. 2300 of 2009**, the Supreme Court has referred to and relied on this decision.

14. However, on taking a holistic view of the entire material on record, we are of the view that the appellants cannot be said to have acted with an intention of causing death or causing such bodily injury, as was likely to cause death. There was absence of premeditation prior to commission of acts by these appellants. The entire occurrences appears to have taken place in the heat of the moment. The deceased had gone to the place of the appellants to complain against the conduct of the appellants, Hareram Rishideo. It cannot be said to be the prosecution's case that the appellants acted in such cruel or unusual manner that intended to kill the deceased. The occurrence was apparently consequent upon certain altercation between the deceased and these appellants.

15. In our view, the present appeals fall under Exception 4 of Section 300 of the IPC, as the homicide in the present case appears to have committed without premeditation, in the heat of passion. We reiterate that the element of intention of causing death of the deceased or causing such bodily injury, as was likely to

cause death, cannot be said to have been proved to make out an offence punishable under Section 302 of the IPC.

16. Accordingly, we are of the view that the appellants' conviction for the offence punishable under Section 302 of the IPC deserves to be modified to a conviction for the offence punishable under Part-II of the Section 304 of the IPC, since, the element of intention of causing death or of causing such bodily injury as is likely to cause death, in the Court's opinion is absent.

17. This view we have taken in the background of nature of weapon used by the appellants, according to the prosecution's case. We, accordingly modify the appellants conviction for the offences punishable under Section 302 of the IPC to Part -II of the Section 304 of the IPC.

18. We are not inclined to interfere with the finding of conviction recorded by the trial court of other offences against these appellants.

19. From the records, it appears that the appellant No. 1 and 2 of Criminal Appeal (DB) No. 251 of 2015 have remained in custody for 9 years and 9 months and appellant No. 3 and 4 for 8 years. In the background, in which the occurrence is said to have taken place, we deem it proper in the interest of justice to sentence

them to imprisonment for the term of the period already undergone by them.

20. The sole appellant of Criminal Appeal (DB) No. 252 of 2015 is a lady. Though, her participation in the commission of the offence has been established, the fact that she being the wife of appellant No. 1 was present at the place of occurrence and in the course of occurrence, she was only assisting appellant No. 1, is a mitigating circumstance. She has remained in custody for one year and six months, during the investigation and trial from 14.10.2011 to 10.04.2012 (six months) and further after conviction she remained in custody from 09.02.2015 to 10.02.2016, whereafter, she was released on bail upon suspension of sentence. In her case also, in the present facts and circumstances of the case, the sentence of imprisonment for the period undergone by the appellant is imposed for the offences punishable under Part-II of the Section 304

21. The appellants shall be liable to pay fine of Rs. 10,000/- and in default of payment of fine, they shall be required to undergo imprisonment for a period of one year, for the offences punishable under Part-II of the Section 304.

22. These appeals are partly allowed.

23. The appellants Shyam Rishideo and Hareram Rishideo are in custody. Let them be released forthwith, if not required in any other case.

24. The appellants, namely, Umesh Rishideo and Shambhu Rishideo of Criminal Appeal (DB) No. 251 of 2015 and the appellant, namely Chhedni Devi of Criminal Appeal (DB) No. 252 of 2015 are on bail. Let them be discharged from the liabilities of bail bonds and sureties, if any.

(Chakradhari Sharan Singh, J)

(G. Anupama Chakravarthy, J)

Nishant/Shanu-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.01.2024
Transmission Date	31.01.2024