

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.861 of 2006

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Banshraj Yadav @ Banshraj Singh Yadav, Son of Ramayan Yadav, resident of
Village- Mahuariya, Police Station-Durgawati, District- Kaimur (Bhabua).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Deepak Kumar, Amicus Cuirae

For the Respondent/s : Ms. Anita Kumari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT

Date: 08-04-2025

Heard Mr. Deepak Kumar learned Amicus
Curiae for the appellant and Ms. Anita Kumari Singh, learned
APP for the State.

2. The present appeal has been filed under
Section 374(2) of Code of Criminal Procedure, 1973
(hereinafter referred as 'Cr.P.C') challenging the judgment of
conviction dated 23.08.2006 and order of sentence dated
25.08.2006 passed in Sessions Trial Case No. 695 of 1994 / 235
of 2004 arising out of Durgawati P.S. Case No. 34 of 1994 dated
10.05.1994 passed by the learned Additional Sessions Judge
(FTC)-II, Kaimur, Bhabhua, whereby and whereunder the
appellant has been convicted for the offence punishable under
Sections 304/34 part II and Sections 323 /34 of Indian Penal
Code (hereinafter referred as 'IPC') and had been sentenced to
undergo rigorous imprisonment for seven years under Sections



304/34 part II of the IPC and further one year imprisonment for the offence punishable under Sections 323/34 of the IPC and both the sentences will run concurrently.

3. As per the prosecution story, the informant, namely Radhe Shyam Singh (PW-5) recorded *fardbeyan* on 10.05.1994 at 3:00 pm before police that on 09.05.1994 in evening at 7:00 pm there was an exchange of hot words between the appellant Ramayan Yadav and deceased Chirkut Yadav. In the meanwhile the appellant and other accused armed with lathi came at there assaulted Chirkut Yadav. Later he was being treated in his own house itself but when the deceased felt several pain he was brought to the hospital for the treatment. Later on, the deceased Chirkut Yadav died in Varanasi.

4. Further on the basis of *fardbeyan* of informant Durgawati P.S. Case no. 34 of 1994 dated 10.05.1994 under Sections 341, 323/34 of the IPC has been registered and after investigation charge-sheet against this appellant has been submitted by the Investigating Officer under Section 302 of the IPC and accordingly cognizance against this appellant has been taken and case was committed to the Court of Sessions and charge was framed which was explained to the accused who denied of prosecution taking plea of false implication in the case



and declared himself innocent.

5. On behalf of prosecution altogether 7 witnesses were examined to substantiate the charges levelled against the appellant, who are namely, PW-1 Kailash Yadav, PW-2 Bhola Yadav, PW-3 Kaushalya Devi (wife of deceased), PW-4 Meera Devi (daughter-in-law), PW-5 Radheshyam Singh, PW-6 Dr. Sunil Kumar Tripathi and PW-7 Ambika Tiwari (formal witness of injury report).

6. PW-1 in his examination-in-chief stated that incident is of about 5-6 years ago at 7 pm when I was returning from Chapra saw that quarrel was going on among Ramanand Yadav, Jitendra, Chirkut, Radheshyam, Mira, Radheshyam wife and Radheshyam's mother. Both sides were firing bullets and in that occurrence Chirkut Yadav's head got injured and he got many injuries on his waist and arms. In the morning Chirkut was brought to police station and from there he was taken to the hospital. Thereafter, he was referred to Varanasi and after two to three days PW-1 went there and found that Chirkut Yadav has died.

6.i. In his cross-examination, PW-1 stated that when he went to place of occurrence he saw that blood was oozing out from the head of Chirkut Yadav and Chirkut Yadav



was lying down there. Chirkut Yadav had fallen on bricks and there blood stain on his *dhoti* and *ganji*. He had seen that blood was dripping out from the head of Chirkut Yadav. In para 10 of his deposition, he stated that when he reached the hospital, Radhe Shyam, Raju, Bhola said that Chirkut Yadav had died. In para 13 of his deposition, he stated he was made accused in kidnapping case of Ajit Yadav.

7. PW-2 in his examination-in-chief stated that he is the brother of the deceased and accused/appellant had beaten Chirkut with lathi on the head and his brother got severe injuries on other body parts, while undergoing treatment Chirkut Yadav died in Varanasi in para-8, he stated that when he came out from his house he saw that Chirkut's head was ruptured and people took him to the police station and thereafter to the hospital.

8. PW-3 in her examination-in-chief, stated that his husband was murdered six and half years ago at 7 PM. PW-3 was at her house when Ramayan and Chirkut Yadav were shouting and when I heard the noise and came out and saw that Ramayan Yadav shouted to hit Chirkut Yadav then his son Vans Narayan came with *lathi* and hit on the head of Chirkut Yadav. When son of PW-3, namely, Radheshyam went to save the



deceased then Vans Narayan, Vans Raj and Nagendra came and hit us. On hearing commotion, then my daughter and daughter-in-law came in the place of occurrence. She further stated that due to serious condition doctor of Durgawati hospital referred him to Varanasi hospital but due to road rush her son admitted the deceased in Sakldiha hospital. After three to four days when his condition got critical they took him to Varanasi but died at the night.

8.i. In her cross-examination, she stated that her and accused house are at small distance and in between there houses Bhola Yadav house is there. She further stated that she had not seen how much times accused had beaten deceased with lathi and when the deceased fell on ground then also accused person did not went from the place of occurrence. He further stated that police came at the place of occurrence two to three times and during which their statement was recorded.

9. PW-4, Mira Devi in her examination-in-chief stated that when she was preparing the food in her house then her father-in-law, mother-in-law and her husband were outside the house. When she came out she saw that Ramayan Yadav was shouting and Vans Narayan Yadav along with Vans Raj Yadav came and hit Chirkut Yadav, when her husband to save the



deceased then accused persons also hit her husband.

9.i. In her cross-examination, she stated that when she came out she saw that Surendra and Mahendra along with other villagers were present there and after two to three minutes Vans Narayan Yadav and Vans Raj Yadav came and started beating her father-in-law with *lathi* due to which her father-in-law fell down. She further stated that her father in-law got only one injury on his head and he was taken to the hospital in the morning at 8 am. Her statement was recorded by the Investigating Officer after two to three days from the date of occurrence.

10. PW-5 Radheshyam Singh, informant in his examination-in-chief stated that the occurrence took place seven to eight years ago around 7 pm, he was at his house door along with his father and mother. He further stated that his deceased father Chricut Yadav and Ramayan Yadav was arguing on the Chakbandi, then suddenly Vans Narayan Yadav and Vansraj Yadav both came with *lathi* and hit his father on the head due to which his father's head got ruptured and they treated him at home in the night and in the morning took him to the Durgawati Police Station and went to hospital. Later on, the deceased was referred to Varanasi Hospital but due to road rush he was



admitted in Sakldiha Hospital and after four days when his condition got critical, the deceased was taken to Varanasi Hospital where he was declared dead by the doctor. On 14.05.1994, the dead body of the deceased was cremated .

10.i. In his cross-examination he stated that he told police that Narendra Yadav brought *Lathi* and beaten his mother and father. He further stated that he along with his father mother and relatives were present at the place of occurrence before the occurrence took place and on the same day, due to Chakbandi there was dispute going on. He further stated that due to land dispute, the occurrence took place and he along with his family members did not ran away from the place of occurrence when accused persons came to beat them. He further stated that Durgawati Police Station is at approx eight kilometers from his house and they took the deceased at the Police Station and then after at the hospital.

11. PW-6 Dr. Sunil Kumar Tripathi, in his examination-in-chief stated that on 14.05.1994, he was posted at Senior Lecturer in the department of Forensic Science, Institute of Medical Science, BHU, Varanasi and on that day at 2:05 PM he conducted a Postmortem examination of the dead body of the Chircut Yadav. PW-6 found four antimortem injuries on the



deceased as follows:

1. Healing scabed wound with four stitches in an area of 4 Cm x 1 1/4 Cm. area outer to left forehead and perital area 5 Cm. Outer to midline x 10 Cm. above the left eyebrow. After removing no gapping taken place subject of scalp were found contused in an area of 21 Cm x 18 Cm with clotted blood situated between scalp and skull bone. The left perital bone found with fissure fracture.

2 Abrasion with scab and contusion 6 Cm. x 4 Cm. on the right side face area and right cheek with black effect eyelid.

3- Scabed abrasion with contusion 3 Cm. x 2 Cm on the back of right elbow.

4.- Abrasion 2 Cm. x 1 Cm. on right forehead with scab. It is found 2 Cm outer to eyebrow and 3Cm. outer to mid lead.

Opinion of death- In my opinion the case if death is that deceased Chirkut Yadav died due to comma as a result of head injury and intracranial hemorrhage. During time of Postmortem. Examination these Paper have sent to me by the inquest officer on which I signed with seal it is marked as Ext.-4 to 4/5.

11.i. In his cross examination he has stated that fissure fracture may be cured if got proper time to heal with appropriate treatment and management, but in certain circumstances if it is in extensive to nature, there it is fatal even after best effort. In this case the injury no. -1. was extensive in nature but was dangerous to life.

12. The learned *Amicus curiae* 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 and from perusal of the evidences adduced on behalf of the prosecution it is crystal clear that the prosecution's case is false and fabricated and the case is filed due to enmity between the appellants and the informant as they had land dispute attributed between the parties. He further submitted that the Investigating Officer of the case has not been examined by the prosecution and any cogent explanation for the same has also not been furnished. He further submitted that none of the prosecution witnesses had clearly seen the occurrence as alleged and mostly the family members had given fabricated statements against the appellant that the deceased died due to lack of medical treatment and mistake of his family members as the incident occurred on 09.05.1994 and after 4 days the deceased died in Varanasi due to delay in medical treatment.

12.i. Learned Amicus Curiae further submitted that medical officer who examined the injured wife of deceased and son of deceased has not been examined during the trial which create doubt upon the injuries sustained by the informant



and other persons, so Sections 323/34 of the IPC is not made out against the appellant and the Learned trial Court has failed to appreciate the evidence its right perspective and impugned judgment of conviction is bad in law as well as on fact and such to set aside.

12.ii. Learned Amicus Curiae further submitted that this appeal is of the year 2006 and occurrence is of the year 1994, where, the appellant has suffered and undergone persistent agony on the account of the same and are struggling for the defence since last 20-21 years. So, the appellant should have been acquitted from the conviction as sentenced against them or period undergone.

12.iii. The counsel relied on the case of *Chotkau vs. State of U.P.* reported in (2023) 6 SCC 742: AIR 2022 SC 4688 and *Ganesh Bhavan Patel and Anr. vs. State of Maharashtra* reported in (1978) 4 SCC 371 to submit that the delayed transmission of FIR to the court would be violative of Section 157 of the Cr.P.C and it would be a cause for creeping in by introduction of colored version, exaggerated account or concocted story as a result of deliberation and consultation and would thus, be fatal to the prosecution, at the same time, the delay in examination of witness after one day would create a



serious doubt and it would cast a cloud of suspicion on the credibility of entire warp and woof of the prosecution story.

12.iv. In the case of *Harbeer Singh vs Sheeshpal and Ors.* reported in *AIR 2016 SC 4958* held that where the prosecution was not able to prove its case beyond all reasonable doubts and since the eyewitnesses were interested in the complainant and hence, unreliable.

12.v. In the case of *Jabir and others versus State of Uttarakhand* reported in *AIR 2023 SC 1239* held on the point that where all witnesses are related, there being serious inconsistencies in deposition of the witnesses as well as delay in lodging of the FIR, the sole reliance on the last seen circumstance, even if assumed to have been proved the conviction of the accused would not be justified. Also relied upon the Supreme court ruling in the case of *Ram Swaroop vs. Ravi* reported in *2004 (13) SCC 134* held that the version disclosed by witness is quite different from what he stated in the FIR and in the statement recorded during investigation such a witness is not a credible witness.

13. 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 appellant beyond all reasonable doubts. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellant and the present appeal should not be entertained.

14. 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 aforesaid judgments referred by the Amicus Curiae as well as given thoughtful consideration to the submissions advanced by both the parties.

15. The Hon'ble Apex Court, in the case of ***Shivaji Genu Mohite v. State of Maharashtra, AIR 1973 SC 55*** passed by the Hon'ble Apex Court, it was held that:

“in criminal jurisprudence, it is well established that when ocular testimony is credible and instills confidence in the court, the prosecution is not obligated to prove motive. The absence of motive does not undermine the reliability of a trustworthy eyewitness. While motive holds significance in cases relying on circumstantial evidence, it becomes less relevant when there is direct eyewitness testimony.”

16. The Hon'ble Apex Court, in the case of ***Sadakat Kotwar and Anr. V. The State of Jharkhand, LL 2021 SC 643***, it was held that:



“as the deadly weapon has been used causing the injury near the chest and stomach which can be said to be on vital part of the body, the appellants have been rightly convicted for the offence under Section 307. Further, it was held that nobody can enter into the mind of the accused and his intention has to be ascertained from the weapon used, part of the body chosen for assault and the nature of the injury caused”

17. On deeply studied and scrutinized all evidences, it is evident to note that in view of the judgment ***Shivaji Genu Mohite v. State of Maharashtra, (supra)*** passed by the Hon'ble Apex Court, in this present case, there is adequate eyewitness testimony to establish the offence against the accused/appellant. 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. After delay of 3 days from lodging of the FIR, the accused were presented before CJM does not make any ground or been proved by the prosecution that police has manipulated the informant or falsely implicated the appellant/accused in the present case. There is no material inconsistencies in the deposition of the witnesses as the



informant and other prosecution witnesses were consistent on each substantive point in their deposition.

18. The Supreme Court in ***Habeeb Mohammad vs The State of Hyderabad 1954 AIR 51, 1954 SCR 475*** pointed out that-

“It was the duty of the prosecution to examine all material witnesses who could give an account of the narrative of the events on which the prosecution is essentially based and that the question depended on the circumstances of each case. In our opinion, the appellant was considerably prejudiced by the omission on the part of the prosecution to examine Biabani and the other officers in the circumstances of this case and his conviction merely based on the testimony of the police jamedar, in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission. A police Jamedar, in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission.”

19. Hence, the learned counsel's argument that the prosecution's failure to prove motive weakens its case and the same is rejected, as the absence of motive does not affect the



prosecution's case when supported by credible eyewitness. In view of the *Sadakat Kotwar and Anr. V. The State of Jharkhand, (supra)* passed by the Hon'ble Apex Court, in this present case, there was one injury which was inflicted on a vital part of the body and there was sign of repeated blow on deceased, the prosecution has been completely successful in proving the date of occurrence, genesis of occurrence, manner of occurrence, motive of occurrence and place of occurrence in this case and proving the allegations levelled against the appellant beyond all reasonable doubt in regard to death of the deceased under Sections 304/34 part II of the IPC and with regard to the offence punishable under Sections 323/34 of the IPC, allegation leveled upon the appellant is not proved as medical officer who has examined the informant and other injured persons has not been examined. Hence, the judgment of conviction dated 23.08.2006 and order of sentence dated 25.08.2006 passed in Sessions Trial No. 695 of 1994/235 of 2004 in connection with Durgawati P.S. Case No. 34 of 1994 passed by learned Additional Sessions Judge FTC-II, Kaimur, Bhabhua, is hereby modified to the extent that appellant is acquitted from the charge under Sections 323/34 of the IPC and the charge framed under Sections 304/34 of the IPC against the



appellant is hereby upheld and affirmed.

20. 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 set-off under Section 428 of Cr.P.C.

21. Hence, keeping in view all the materials available on record and the observation of the Hon'ble Apex Court, it is observed that in the instant case the appellant has struggled for a long time during the trial procedure and the conviction of the appellant is upheld but given the long pendency of the trial and the order suffered by the appellant and there are no adverse report against the appellant about their conduct otherwise the same would have been brought to our notice by learned counsel for the State, so sentence of the appellant is justified to period undergone and the appellant stands discharged of the liabilities of his bail bonds, if any.

22. Before parting with this appeal, Secretary, Patna High Court Legal Services Committee is directed to pay Rs. 5,000/- (five thousand) to the learned Amicus Curiae, namely, Mr. Deepak Kumar towards honorarium for assisting



this Court in the present appeal.

23. Let a copy of first and last page of this judgment be handed over to the advocate Mr. Deepak Kumar, learned Amicus Curiae and Office is directed to proceed further in granting honorarium to him which is to be paid by Patna High Court Legal Services Committee.

24. Accordingly, this appeal is partly allowed.

(Ramesh Chand Malviya, J)

Anand Kr.

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