IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.237 of 2019

Arising Out of PS. Case No.-221 Year-2015 Thana- MANJHI District- Saran

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Hare Ram Yadav, Son of Late Suresh Yadav, Resident of Village- Gora, P.S.- Manjhi, District- Saran.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Nachiketa Jha, Advocate
For the Respondent/s : Mr. Shiwesh Chandra Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 20-08-2024

Heard Mr. Nachiketa Jha, learned Advocate for the appellant and learned Additional Public Prosecutor for the State.

2. The sole appellant has been convicted under Section 302 of IPC *vide* Judgment dated 30.01.2019 passed by the learned Additional Sessions Judge No. X, Saran in Sessions Trial No. 167 of 2016, G.R. Case No. 6322 of 2015, arising out of Manjhi P.S. Case No. 221 of 2015. By order dated 31.01.2019, he has been sentenced to undergo imprisonment for life and to pay a fine of Rs.

10,000/-. No default clause has been provided in the sentence.

3. One Hewanti Devi is alleged to have been stabbed to death by the appellant. The appellant is the relative of the deceased. The FIR has been lodged by the husband of the deceased, *viz.*, Ranglal Yadav (P.W. 5). In his written report which has been scribed by one Anil Yadav (not examined), P.W. 5 has alleged that at about 10.00 A.M. on 09.11.2015 the appellant, on being annoyed with the pile of bricks in front of his house having been removed, started fighting with the deceased. He then stabbed her and ran away. The victim (deceased) was taken to a private doctor at Mohammadpur, from where the patient was referred to PHC, Manjhi, where she died during the course of treatment.

4. The cause of occurrence as stated in the written report is the old land dispute which had cropped up after the partition in the family. It has also been alleged that earlier, the appellant was also charged for murdering the

cousin of P.W. 5, in which case he was convicted and sentenced and at the time of this occurrence, he was out on bail.

5. On the basis of the aforenoted written report, Manjhi P.S. Case No. 221 of 2015 dated 09.11.2015 was registered for investigation against the appellant under Section 302 of IPC.

6. The police after investigation submitted chargesheet against him and the case went to Trial.

7. The Trial Court, after having examined seven witnesses on behalf of the prosecution including the doctor and the investigator, convicted and sentenced the appellant as aforesaid.

8. Mr. Jha, the learned Advocate while commenting upon the judgment has submitted that the Trial Court did not consider the evidence in proper perspective and failed to notice the motivating factor for P.W. 5 to frame the appellant in this case.

9. The appellant and the deceased stayed in the same house but in different house-hold. There is a common courtyard. He has further urged that the written report which was recorded on 09.11.2015 saw the light of the day after ten days *i.e.* on 19.11.2015, against the mandate of the Code that such FIRs ought to be dispatched to the Judicial Officer forthwith.

10. Such delay, Mr. Jha has contended, has caused serious dent in the prosecution version and in fact, it lends support to the proposition that the FIR was filed after consultation in order to prevent the appellant from staking his claim in the family property.

11. Assuming, it has been argued, that the information about the appellant having been convicted for the murder of another family member earlier were true, that also does not make out a case against the appellant in the present set of facts as no independent person has been examined to support the prosecution version. The Trial Court has relied on a specious plea of the prosecution that

no independent person was forthcoming in deposing against the appellant because of his earlier conviction in a murder case. This does not appear to be correct for the reason that I.O./Prabhakar Pathak (P.W. 7) has very candidly disclosed in his cross-examination that apart from the family members of the deceased, he never chose to examine anyone of the villagers or independent persons.

12. Thus commenting on the entire prosecution case, Mr. Jha has argued that the investigation is shoddy and perhaps the police also went in collusion with P.W. 5 in taking a short-cut approach in concluding the investigation and sending up the appellant for Trial.

13. The other limb of argument of Mr. Jha is that the weapon of assault could not be recovered.

14. The appellant was arrested on 19.12.2015, from a different place in the district of Siwan from the house in which he is married. It appears, it has been contended, that because the other co-parceners of the family property had been successful in ousting the appellant

from the common property, he had to take refuge in his in-laws' house. That apart, if the occurrence had taken place in front of the house of P.W. 5 and in presence of many persons, it was quite unlikely that the appellant would have been allowed to escape from the P.O.

15. It has also been argued that during the post-mortem examination on 10.12.2015, Dr. Chandeshwar Singh (P.W. 6) found stitched wounds. This presupposes that the deceased was treated before he died. This makes the prosecution story, it has been argued, very doubtful as at Mohammadpur, the private doctor refused to treat her and she had to be taken to Manjhi PHC. According to the version of P.W. 5, the deceased died within ten minutes. There was no time for the injuries of the deceased to be treated. This leaves no explanation with the prosecution with respect to the bandaged wounds found in the post-mortem examination.

16. On these grounds, it has been urged that the prosecution fabric could not be woven properly, entitling the appellant to be acquitted of the charges.

17. Countervailing arguments were advanced by the State to the extent that the appellant was held guilty earlier for murdering another family member and he was on bail. This was good enough reason to scare the villagers in coming to the witness-stand and deposing against him.

18. On behalf of the prosecution, it has been urged that minor discrepancies in the deposition of witnesses ought not to render them unbelievable.

19. The occurrence took place at 10:00 A.M. on 09.12.15, when there is every likelihood of the family members remaining at home. The law is well settled that only because witnesses happen to be closely related to the deceased or the informant, they are not to be necessarily treated as persons not coming out with truth and being interested in prosecution of the accused. If their deposition

before the trial Court is trustworthy, they can form the basis for conviction and sentence.

20. True it is, it has been argued on behalf of the State, that the weapon of offence could not be recovered but then there is a reasonable explanation through the mouth of the investigator that he learnt that the weapon of offence, *viz*., the dagger was thrown in a pond while the accused was retreating to the place of safety. The post-mortem report and the evidence of P.W. 6 clearly confirms that the deceased died a homicidal death because of stab injuries. Even if other witnesses came to the P.O. somewhat later, the evidence of P.W. 5, who is the husband of the deceased, is good enough for recording conviction. The Trial Court judgment, therefore, requires no interference.

21. Considering the fact that no independent person has been examined at the Trial, we have gone through the deposition of the witnesses in great detail in an effort to unearth any discrepancy which travels to the root

of the matter and makes the prosecution case difficult to rely upon.

22. We have noticed that the occurrence took place at 10:00 A.M. on 09.11.2015 and the written report was filed on the same day at about 4:00 P.M. The distance from the P.O., which is in front of the house of the appellant as also P.W. 5, is 16 km.

23. We are conscious of the position of law that a recorded FIR ought to be dispatched to the nearest Judicial Magistrate within 24 hours. There cannot be any explanation of the learned C.J.M. endorsing the FIR on 19.11.2015.

24. Regardless, we are not inclined to accept the argument of Mr. Jha that because of this delay only, the prosecution case ought to be jettisoned as it leaves an almost untrammelled cranny in the prosecution version and gives scope of making an argument that it was only after consultation that belatedly the written report was filed, naming appellant as the sole perpetrator of crime which

would serve the twin purpose of preventing him from raising any stake over the family property as also for ousting him for ever from such property in which he too has stakes.

25. We say so for the reason that notwithstanding the delay in the dispatch of the FIR, the suggested concatenation of events fits in the entire projection of the prosecution version.

26. Immediately after the occurrence, the victim was taken to a private doctor at Mohammadpur. There is no evidence on record about such a visit to a private doctor but then the I.O. in his deposition has clearly stated that when P.W. 5 along with the victim, who then was still surviving, came to the Manjhi Police Station, they were directed to go to Manjhi PHC for further treatment. This proves the fact that after the occurrence, the police came to know about it.

27. We do reckon that if the police party at Manjhi would have been informed about the occurrence, a case should normally have been registered there.

28. There could have been some dispute with respect to the territorial jurisdiction of the police station or of the anxiety of the police party to immediately render medical help to the victim. In any view of the matter, since the victim was taken to the Manjhi PHC, where treatment was afforded to her, there appears to be no doubt that the occurrence which has been complained of by P.W. 5 in his written report had actually taken place at the hands of the appellant. The deceased unfortunately could not survive the attack and died in the same night.

29. However, from the inquest report, it appears that death had already occurred at 03:30 P.M. Taking clue from this time of death, we find that the information about the appellant having killed the deceased reached the police station within half an hour at about 04:15 P.M. There does not appear to be any delay in these events so as to lend credence to the proposition of the defence, strengthened by the delay in dispatch of the FIR to the C.J.M., that there

had been some consultation and confabulation before lodging the written report.

30. Now to the witnesses.

31. We deem it more appropriate to discuss the evidence of P.W. 5 first. He has supported the prosecution version in its entirety and had stated in detail about the reason for the appellant to have resorted to such misadventure of attacking his wife by means of a dagger. A pile of bricks stacked in front of the house of the appellant was found to be taken away, which had annoyed him. He started abusing the deceased, who fell in his line of vision while he was expressing his anger. In that spur of the moment, he took out his knife and pierced it in the chest of the deceased.

32. P.W. 5 has also referred to the earlier conviction of the appellant for the murder of another senior family member. He has provided the Trial Court with the entire genealogical table, which only confirms his kindred with the members of the prosecution party.

33. On being specially questioned, he disclosed that two sale deeds were executed by the father of the appellant; one in his favour and the other in favour of Bidya Sagar Yadav (P.W. 4). He admitted of there being a Title Suit bearing No. 70/1990 pending before the Sub-Judge. He was also suggested that perhaps such sale deeds were procured from the father of the appellant, when he was not in a fit mental state; which suggestion was vehemently denied by him.

34. The sale-deeds were executed sometimes between 1990 and 1991 *i.e.* about 15 years before the occurrence. That would not have been the reason for the P.W. 5 to have falsely framed the appellant.

35. There is a big question mark on such a proposition.

36. Is the defence suggesting that the deceased was deliberately killed in order to frame the appellant?

37. It does not appear to be so.

38. The injuries of the deceased have clearly been opined to have been caused by sharp pointed weapon, which injury has been specifically attributed to the appellant only.

39. If not as what prosecution has suggested, then how did the deceased die?

40. This is not the question to be answered by the appellant and the case has to be proved by the prosecution; but then, regardless of the delay in dispatch of the FIR, we find that the events have been properly chronicled and talked about in the deposition of P.W. 5.

41. There is some doubt about the daughter-in-law of the deceased *viz*. Lilawati Devi (P.W. 1) having seen the occurrence. Though she claims to be an eye witness to the occurrence but her disclosure during the cross-examination makes it rather obvious that when she first saw her mother-in-law, she already had received the stab injuries and was bleeding. But then, this divergence in her statement is explained by the fact that the parties lived in

the same household and there is every possibility of each of the members of the house having come out at the nick of the time, when the appellant had gone berserk.

42. Dhannu Kumar Yadav (P.W. 2) is not very specific about his having seen the occurrence. We discount his evidence also for the reason of his being a student of Standard-VII and his not coming forth clearly whether he had seen the appellant assaulting the deceased.

43. However, the presence of Dhananjay Kumar Yadav/son of the deceased (P.W. 3) at the P.O. and at the time of the occurrence is proved by the deposition of his wife/P.W. 1, who has confirmed that when she came out and saw her mother-in-law bleeding, her husband (P.W. 3) was present there.

44. Bidya Sagar Yadav (P.W. 4) is a co-signatory to the FIR and had accompanied P.W. 5 to the hospital. In fact, he had signed the inquest as well. This leaves us with no doubt that he was present all through. It is difficult to disbelieve him.

45. Now to the specifics of the medical testimony.

46. We have gone through the deposition of P.W. 6 in detail. He had conducted the post-mortem examination on 10.11.2015 at 08.10 A.M. He had found a stitched wound containing four stitches on the right breast on its lower part, measuring 1x½" in length. On removing of the stitches, he had found a penetrating/incised wound which was cavity deep. On dissection, the right side chest cavity was found to be full of blood. There was another wound on the right lung. The impact of this wound was the puncturing of the right lung which corresponds with the wound referred above. The death in the opinion of P.W. 6 was due to hemorrhage and shock because of the aforenoted injuries and damage to the vital organ like lung, caused by any sharp-pointed weapon. The time fixed for death was 12 to 24 hours from the time of post-mortem examination, which fits in almost in totality with the prosecution version.

47. We, for some while, entertained some doubt about the time when the deceased was rendered medical

assistance before she died. Since the doctor at the PHC has not been examined, we have nothing to fall back upon, except the deposition of the I.O. that at his instance and for better treatment, the deceased, while still surviving, was sent to Manjhi PHC.

48. The death, as disclosed from the inquest report, occurred sometimes between 3.00 P.M. to 4.00 P.M. on the same day. Since Manjhi police station and the hospital are not located at any far distance from the P.O., it does not appear to be very improbable that the deceased was rendered medical assistance but unfortunately she could not survive the neurogenic shock because of bleeding.

49. After having said that, we must however record that the investigator did not perform his duties properly. All that he has done was to inspect the P.O., but did not consider it at all important to inquire about the occurrence from independent persons or other neighbours of the appellant and the deceased. The I.O. also did not find blood stains at the P.O. on his first visit.

50. This is no investigation in the eyes of law.

51. To reject the prosecution version only on this count would only reflect our naivete, especially when the timing of the other happenings match with the oral testimony of the witnesses.

52. While assessing the entire evidence on record, we find that the Trial Court was right in holding that it is almost apodictic that enmity is a double edged sword which could be a ground for false implication as also for committing an offence.

53. Relying on the Supreme Court decision in ***Ramashish Rai v. Jagdish Singh (2005) 10 SCC 498*** and ***Subhash Chandra vs. the State (2001) Cr. Law Journal, 3969 (Supreme Court)*** that in such a circumstance, a duty is cast upon the Court to examine the testimony of inimical witnesses with due caution and diligence and that mere enmity is no ground to reject the testimony of eye witnesses, the conviction of the appellant was recorded.

54. In ***Dharnidhar Vs. State of U.P. & Ors. (2010) 7 SCC 759***, the Supreme Court has clearly laid down that there could be no hard and fast rule that family members can never be true witnesses to the occurrence and they will always depose falsely before the Court. It all depends upon the facts and circumstances in a given case. Any pedantic approach need not be applied while dealing with the evidence of interested witnesses. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim.

55. Likewise, there are no dearth of case laws with respect to the effect of shoddy investigation. A faulty investigation or negligence committed by the I.O. cannot render the prosecution case to be totally unreliable.

56. In such lop-sided investigation, the only requirement is of extra caution by the Courts by evaluating the evidence with circumspection.

57. For all these reasons, we find that the Trial Court is absolutely justified in holding the appellant guilty of

the charge and sentencing him. We find even the sentence to be condign.

58. We, thus, endorse the opinion of the Trial Court and dismiss this appeal.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

krishna/jyoti

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