

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.402 of 1995

Arising Out of PS.Case No. -74 Year- 1989 Thana -Barhara District- BHOJPUR

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1. Shri Bhagwan Choudhary @ Paltu Choudhary.
2. Sri Narayan Choudhary @ Mangaru Choudhary.
3. Mitlal Choudhary.

All sons of Mohagu Choudhary.

Resident of village-Ram Sagar, P.S.-Barhara, District-Bhojpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Acts/Sections/Rules:

- IPC - Section 149, 302

Cases referred:

- Dev Kanya Tiwari Vs. State of U.P. reported in AIR 2018 SC 1377

Appeal - filed for setting aside the judgment passed by the learned 2nd Additional Sessions Judge in Session Trial whereunder accused who were charged for the offence under Section 302 of Indian Penal Code read with Section 149 have been held guilty.

Accused and deceased were competitors of each other and were engaged in selling of toddy.

Held - There is no independent witness on the point of last seen theory. - Evidences of several prosecution witnesses are contradicting each other. - The case seems to have been lodged on mere suspicion raised by wife of deceased. (Para 13)

Neither the deceased was seen lastly with the appellants nor other parameters which are required to be satisfied while appreciating or evaluating the circumstantial evidences are present in this case. (Para 15)

Appeal allowed. (Para 16)

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Appearance :

For the Appellant/s : Kumari Shubham, Adv.

For the Respondent/s : Ms. S.B. Verma, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 15-05-2018

This criminal appeal has been preferred for setting aside the judgment dated 29th November, 1995 passed by the learned 2nd Additional Sessions Judge, Arrah, Bhojpur in Session Trial No.378 of 1990 (hereinafter referred to as the 'learned trial court'). All the three accused who were charged for the offence under Section 302 of Indian Penal Code read with Section 149 have been held guilty to the charge under Section 302/149 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life.

2. The prosecution case is based on the fardbeyan of one Dadan Chaudhary (PW-6) at Barhara police station on 18.06.1989 at



about 3.00 AM. According to the informant in the previous night at about 10.00 PM his Bhawah (Younger brother's wife) told him that her husband (father of Dasrath) had gone to the eastern side of village about half an hour ago carrying the toddy near tamarind tree. She also told him that two people of village Ramsahar had gone to the house and asked the father of Dashrath to come with toddy towards eastern side of the village near Tamarind tree. They also said that three women were sitting there for drinking toddy. He was told to serve toddy to them and return after taking money. The informant was further told by his younger brother's wife that after sometime when Dashrath did not return, she sent her son to find out Dashrath. It is alleged that when Dasrath came back, he informed that near Tamarind tree Sri Bhagwan Choudhary @ Paltu, Shrinath Choudhary @ Langtu and Mitlal Choudhary, sons of late Mahngu Choudhary, all residents of village Ramsagar along with two unknown persons were taking toddy, they asked Dasrath to bring 'Biri' for them. When Dasrath went to Tamarind tree after taking Biri, he did not find anybody there. After Dasrath returned and informed these facts, the Bhawah of the informant along with his brother Achhaylal Choudhary, Soharai Choudhary and Rajnandan Choudhary proceeded in search of father of Dashrath. When they reached near the Tamarind tree they did not find anybody there. It is alleged that they went in search of father of



Dasrath in the neighbouring villages and when they were returning from village Ramsahar to their house, in the 'Badhar' towards eastern side of the village they found Anant Choudhary (deceased) lying dead. His body was lying in a pool of blood and the neck was slitted. It is alleged that thereafter informant came to his village and informed this to chowkidar Jairam Paswan and Sheonarayan Paswan. It is stated that the informant came to the police station with chowkidar and his brother Soharai Choudhary. Genesis of the occurrence as alleged is that about 2-3 days back accused persons had a quarrel with the deceased Anant Choudhary over a toddy tree and for this reason the accused persons had threatened them of dire consequences. The Fardbeyan and the Formal FIR have been proved as Ext.-2 and Ext.-4 respectively.

3. In course of trial, prosecution examined as many as eight witnesses to prove the guilt of the accused persons. PW-1 is Manna Devi, wife of the deceased, who has stated that when Anant Choudhary (deceased) was sleeping after taking his meal, two persons came on the door and called Anant Choudhary by his name. On asking of the witness as to whether she had been keeping toddy, this witness said yes and asked for money, on this they asked this witness to get her husband wake up. In the meantime, deceased woke up, the persons who had come there asked him to come with toddy near



Tamarind Tree. They assured him that he will get his money there. Thereafter Anant Choudhary (deceased) went there with toddy. After sometime PW-1 sent her son Dasrath but when he returned he told her that near Tamarind tree Sri Bhagwan Chouhdary @ Paltu, Shrinath Choudhary @ Langtu and Mitlal Chouhdary were sitting with two unknown persons. They had asked Dasrath to bring Biri but when Dasrath was not going they asked him to run and bring the Biri. PW-1 allegedly gave 8-9 Biris to Dasrath but when Dasrath went there with Biri he did not find anybody near Tamarind Tree. This was reported to PW-1 by Dasrath. She alleged that being afraid of the same she woke up her husband's elder brother Dadan Choudhary (informant). She also got woke up her three Devars Achhaylal Chouhdary, Soharai Choudhary and Rajnandan Choudhary. This witness had stated that persons who had come to the door were of village Ramsahar therefore they had gone to the said village in search of Anant Choudhary. She had identified the dead body of her husband while returning from village. She alleged that Sri Bhagwan Chouhdary @ Paltu, Shrinath Choudhary @ Langtu and Mitlal Chouhdary had a quarrel with her husband about 5-6 days back and all the three had threatened her husband to kill. In her cross-examination she has stated that the accused persons are own brothers. In the village there are two chowkidars who are all Dusadh by caste. She has also stated that her



husband and the house of the accused are adjacent to each other. Her house is situated in the eastern side whereas the house of the accused is situated in the western side. Tamarind tree is situated at a distance of 200 yard east to her house. She has also stated that her toddy shop and the shop of the accused persons are situated in the Tarbana of village Gulab Chapra and they have license for the same. Toddy shops are situated besides each other. The sale of toddy takes place from 8.00 am to 8.00 pm.

4. In her cross examination she has stated that village Ramsahar is situated at a distance of one kos (equivalent to two kilometres approximately). It is stated that only after ten minutes she had sent her son to see her husband and her son returned within one-two minutes to take Biri and had gone with the Biri. He came back weeping and said that nobody was there near the Tamarind tree. This witness had gone near the Tamarind tree with lantern but had not found any glass, lota or labani. She had not informed the chowkidar for going in search of her husband. She did not remember as to whom she had asked about her husband in village Ramsahar. She had gone to the village Ramasahar by taking one path and was returning from the said village through Badhar taking another path. She has admitted that no case was registered with respect to dispute over the tree.



5. PW-2 is Dasrath Choudhary aged about 16 years who has supported the prosecution case. In his cross-examination this witness has stated that he had stated before the Daroga that two persons who had come for the toddy had said that three women are sitting near the Tamarind tree. He had also said to the Daroga that when he went to Tamarind tree he did not find any women sitting there. In his further cross-examination this witness has stated that his father had taken food at about 3.00 pm during day hour. He had not taken any meal in the evening and night and had gone for sleeping at 8.00 PM. He has further stated that during the night hour near the tree he had not identified anybody by their face and voice and this witness has categorically stated that there was no source of light. He has also contradicted the statement of his mother (PW-1) and stated that his father had no dispute with the accused persons over toddy tree. He has also stated that the accused persons have also got a toddy shop besides the shop of the deceased. He has admitted that they have competition and because of this competition names of the accused persons have been taken. The trial court has recorded that this witness is only saying yes to all questions.

6. PW-3 Sohrai Choudhary has stated in his evidence that before the alleged occurrence his brother (deceased) had quarrel with unknown customers. PW-3 has been declared hostile and has been



cross-examined. In his cross-examination he has stated that his statement was not recorded by Daroga in course of investigation, he denied the suggestion that he had told to Daroga that there was a quarrel with the accused persons over the toddy. This witness has also denied the suggestion that he had said to Daroga that these two persons had murdered his brother with the help of two unknown persons.

7. PW-4 is Kameshwar Pandey who has stated that there is a mill situated towards eastern side of village and Tamarind has been tendered by the prosecution. Rangnath Choudhary (PW-5) is a formal witness who had signed on the inquest report. He has proved his signature and signature of his brother Soharai Choudhary which is marked as Annexure-1 and ½ respectively. The informant (PW-6) has stated that he had gone in search of his brother and found the dead body of his brother Anant Choudhary. Thereafter he had gone to the police station with chowkidar and met Daroga who recorded his fardbeyan and took his signature. He has proved his signature as well as signature of Soharai as Ext.1 and ½ respectively. In his cross examination he has stated that he was not aware of any dispute over the Tamarind tree. He had no personal information about any dispute. In paragraph 3 he has stated that the wife of the deceased had raised suspicion over the accused persons. No villager had told this witness



that Anant Choudhary was taking Toddy with accused persons near the Tamarind tree. Nobody had told about seeing the deceased going to Tamarind tree. This witness has stated that both the parties are involved in selling of Toddy, the accused were involved in the occurrence but now peace has prevailed.

8. P.W.7 is the doctor who has conducted the post mortem examination. He has found four injuries on the body of the deceased. The whole body was having stain of mud, all the wounds were caused by sharp cutting weapon, time elapsed between examination and the death was within 36 hours.

9. P.W.8 is the Investigating Officer (in short the 'I.O.'). He has proved the F.I.R. (Exhibit-4). He had gone to the place of occurrence and has narrated about the same. He has stated that the Sohrai Choudhary had proved that there had been a quarrel with Paltu, Langtu and Mitlal Choudhary. They had threatened to show. In his cross examination, he has stated that during completion of investigation he could not find about the persons said to have been involved namely, Nanhak Nat and one unknown person. The I.O. had not recorded about the blood-stained soil and about the blood falling on the earth. I.O. had not found any sign of taking toddy near the tamarind tree. He has also stated that P.W.1 Manna Devi had not



stated that two persons had asked her to awake her husband. She had told her husband that Nanhak Nutt had come.

10. The learned trial court convicted the accused persons by holding that prosecution had been able to adduce the chain of circumstantial evidence and all the points towards the guilt of the accused persons in committing murder with the help of two unknown Nutt were duly proved by the prosecution beyond all reasonable doubts.

11. Learned counsel representing the appellants would submit that in the present case the learned trial has miserably failed to appreciate the evidences available on the record. It is submitted that there is no evidence at all to show that these appellants had come to the door of informant to call for the deceased. Neither in the F.I.R. nor in course of evidence the informant or any other witness has stated that these appellants were seen calling for the husband of the informant. It is thus submitted that the appellants who are the next door neighbours of the informant were only later on falsely implicated because of the admitted competition between the two of them who were involved in similar business of toddy selling in the village Gulab Chapra. Learned counsel submits that the learned trial court has wrongly come to a conclusion that the chain of circumstantial



evidence has come pointing out towards the guilt of the accused persons. Learned counsel submits that it is apparent from the evidence of the prosecution witnesses that these appellants were involved in this case only on mere suspicion. Learned counsel relies upon a judgment of the Hon'ble Supreme Court in the case of **Dev Kanya Tiwari Vs. State of U.P.** reported in **AIR 2018 SC 1377**. Relying upon the earlier judgment of the Hon'ble Apex Court in the case of **Hanumant Govind Nargundkar Vs. State of Madhya Pradesh** reported in **1953 Cri LJ 129**, their Lordships have held that in the cases based on the circumstantial evidence the prosecution must prove by chain of evidence that they are complete and fully established not to leave any reasonable doubt/ground consistent with the innocence of the accused.

12. On the other hand, learned A.P.P. representing the State has supported the judgment of the learned trial court and submits that in the present case the prosecution has been able to prove the guilt of the appellants beyond all reasonable doubts.

13. Having heard learned counsel for the appellants and learned A.P.P. for the State and upon going through the evidence available on the record, we find that neither in the F.I.R. P.W.-6 nor in course of evidence P.W.1 who is the wife of the deceased has stated



about the presence of these appellants when the two unknown persons came on the door of the informant to call for her husband. It is not the case of the prosecution that these appellants had come to call the husband of P.W.-1 and brother of the informant. The prosecution witnesses have stated that no villager had told that they had seen these appellants sitting with the deceased near the tamarind tree. No villager has seen these appellants taking toddy with the deceased. Son of the deceased P.W.2 has stated that there was darkness near the tamarind tree and he has not identified these appellants by face. He has also stated that there was no source of light near the tamarind tree. The informant (P.W.6) has himself stated in course of evidence that wife of the deceased had raised suspicion over these appellants involvement in the offence. There is no independent witness on the point of last seen theory. The evidence of P.W.-1, P.W.-2 and P.W.-6 are contradicting each other. The case seems to have been lodged on mere suspicion raised by P.W.-1. Both the prosecution and defence parties were competitors of each other and were engaged in selling of toddy.

14. In the case of Dev Kanya Tiwari (supra) the Hon'ble Supreme Court while examining the case based on the circumstantial evidence recorded in paragraph 10 as under:-

“10. Having heard learned counsel on either



side, we have carefully gone through the material on record. Apparently, there is no eyewitness to the incident and the case is entirely based upon circumstantial evidence. In such a case, the Court is expected to be more careful while analyzing the evidence and convicting the accused. In other words, in all probabilities, the chain of circumstances should lead to the irresistible conclusion that the accused participated in the commission of crime and committed the offence. This Court has long back set the mode of evaluating circumstantial evidence in Hanumant Govind Nargundkar v. State of Madhya Pradesh, 1953 Cri LJ 129 in the following terms:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”



15. In our considered opinion, neither the deceased was seen lastly with the appellants nor other parameters which are required to be satisfied while appreciating or evaluating the circumstantial evidences are present in this case. In our opinion the trial court has committed an error in convicting the appellants on the basis of the evidences which have come up in course of trial. The trial court's judgment impugned in the present appeal is therefore set aside.

16. The appeal is allowed and the appellants are acquitted from the charges giving them benefit of doubt. They are discharged from the liability of the bail bonds.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	AFR
CAV DATE	N/A
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