

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.576 of 2012

Arising Out of PS. Case No.-168 Year-2005 Thana- SIKANDARA District- Jamui

DINA YADAV S/O LATE LALJEET YADAV RESIDENT OF VILLAGE-
GAHLOR, P.S.- SIKANDRA, DISTT.- JAMUI.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

with

Criminal Appeal (DB) No. 616 of 2012

Arising Out of PS. Case No.-168 Year-2005 Thana- SIKANDARA District- Jamui

1. SHITAL YADAV S/O LATE RAGHO YADAV RESIDENT OF VILLAGE- MIRJAGANJ, P.S.- SIKANDRA, DISTRICT- JAMUI.
2. PRAHLAD YADAV S/O LATE FAUDI YADAV RESIDENT OF VILLAGE- GAHLAUR, P.S.- SIKANDRA, DISTRICT- JAMUI

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

In Criminal Appeal (DB) No. 576 of 2012

For the Appellant/s : Mr. Sanjay Kumar &
Mr. Mrityunjay Kumar Jha, Advocates
For the Respondent/s : Mr. Ajay Mishra, APP

In Criminal Appeal (DB) No. 616 of 2012

For the Appellant/s : Mr. Umesh Prasad &
Mr. Ramesh Singh, Advocates
For the Respondent/s : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

And

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)

Date : 11-05-2018

Heard learned counsels appearing for the appellants
and the State.



2. Both the appeals have arisen out of judgment of conviction dated 10.05.2012 and the order of sentence dated 17.05.2012/19.05.2012, passed by 1st Additional Sessions Judge, Jamui in Sessions Trial No. 237 of 2006 arising out of Sikandra P.S. Case No. 168 of 2005, whereby and whereunder appellants have been convicted for the offence punishable under sections 302/34, 201 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life with fine of Rs. 5000/- each for the offence under section 302/34 of the Indian Penal Code. In default of payment of fine, they have been further sentenced to undergo rigorous imprisonment for six months. They have further been sentenced to undergo rigorous imprisonment for three years for the offence punishable under section 201 of the Indian Penal Code with fine of Rs. 500/- each. In default of payment of fine, they have been further sentenced to undergo rigorous imprisonment for two months. All the sentenced have been directed to run concurrently.

3. The prosecution case, in brief, is that one Brahmdeo Thakur, the informant, gave his *fardbeyan* alleging therein that on 29/30.07.2005 his father, Jamuna Thakur, aged about 70 years, was sleeping alongwith his mother, Dahiya Devi, aged about 65 years, at his animal shed, which is situated



about 1 K.M. away in the southern side of the village Gahlaut. At about 9 PM when informant went there to see his ailing mother, he found 10-11 persons armed with weapons had caught his father and were searching for him. Out of fear, he hide himself and in the light of lantern identified them as Billa Yadav, Prakash Yadav, Masoodan Mahto, Anandi Mahto, Prahlad Yadav, Dina Yadav, Gaina Manjhi, Devendra Yadav, Dhaneshwar Yadav, Shankar Yadav and Shital Yadav. Prakash Yadav and Masoodan Mahto said his father that we had said to pay rupees sixty thousand and to withdraw the case lodged by his son (informant), but your son neither gave the sixty thousand nor withdrew the case. They asked him to call the informant. On denial, they started taking him away. On protest by her mother, they assaulted her and took his father towards Markawan Bahiyar. The informant also secretly followed them and saw all the accused persons took his father to the Bandh and they all chopped the head of his father.

4. On the basis of the aforesaid *fardebayan* of the informant, Sikandra P.S. Case No. 168 of 2005 was registered on 30.07.2005 for the offence under sections 302, 201/34 of the Indian Penal Code. After investigation, police submitted charge-sheet against the accused persons namely, Billa Yadav @ Bilash



Yadav, Shital Yadav, Prahlad Yadav and Dina Yadav for the offence under sections 302, 201/34 of the Indian Penal Code by keeping the investigation continued against the rest accused persons. Thereafter cognizance of the offence was taken and the case was committed to the Court of Sessions for trial on 16.05.2006. On 05.09.2006, charges were framed under section 302/34 and section 201 of the Indian Penal Code.

5. During trial, the prosecution has examined altogether 12 witnesses. P.W. 1 Ajay Kumar, son of the informant, P.W.2/Saryug Thakur, brother of the informant, P.W. 3/Sanjay Kumar, son of the informant, P.W. 4/Sital Khairwar, resident of the nearby village, P.W. 5/ Uday Thakur, grandson of the deceased, P.W. 6/ Vijay Kumar, son of the informant, P.W. 7/ Dahiya Devi, mother of the informant, P.W.8/ Meena Devi, P.W. 9/ Sunita Devi, daughters of the deceased, P.W. 10/ Ramswaroop Paswan, formal witness who has proved the endorsement made by police over the *fardebayan* as Exhibit-1, P.W. 11/ Syed Naushad Ahmad, the Doctor who conducted the *post-mortem* examination on the body of the deceased, P.W.12/ Arun Kumar Singh, the Sub-Inspector, who is Investigating Officer of the case.

6. In order to establish the charges, prosecution has



proved the following documents as exhibits :-

Exhibit-1	Formal First Information Report
Exhibit-2	<i>Post-mortem</i> Report
Exhibit-3	Charge-sheet
Exhibit-4	Certified copy of first information Report of Sikandra P.S. Case No. 149 of 2007 lodged by son of the informant against Prahlad Yadav and others registered in connection with murder of the present informant.

7. The statements under section 313 of the Code of Criminal Procedure were recorded, in which appellants denied the allegations and have claimed themselves to be innocent.

8. Learned counsels appearing for the appellants submit that in the present case neither the ocular evidence nor the medical evidence corroborates the prosecution case. Learned counsels further submit that except P.W.7/ Dahiya Devi, all other witnesses are hearsay witness. Further the witnesses are sons, daughters, grandsons and wife of the deceased and they are highly interested witnesses. It is further submitted that the prosecution has failed to establish the place of occurrence. There is serious contradictions in the evidence of the witnesses. Further, no blood stained soil was found at the place of occurrence which itself shows that at the alleged place of



occurrence no murder was committed. It is further submitted that the deceased was Area Commander of M.C.C. and due to internal dispute, he was killed by M.C.C. people. Learned counsel further submits that the occurrence allegedly took place at 9 P.M. on 29.07.2005 and post mortem examination was conducted on 30.07.2005 at 4 P.M. so the time elapsed after murder should have been 19 hours, whereas *post-mortem* report mentions the time elapsed since death till holding of *post-mortem* within 24 hours, which creates doubt on the time of occurrence. Learned counsel also submits that the investigating officer (P.W.12) in his deposition has stated that P.W.7/Dahiya Devi, the mother of the informant, did not disclose name of any accused persons.

9. Learned counsel, therefore, submits that the impugned judgment of conviction and order of sentence is illegal, without application of mind, and as such, the same deserves to be set aside.

10. Learned Additional Public Prosecutor appearing for the State opposes the prayer for the appellants.

11. We have heard the submissions, as advanced on behalf of the parties and also perused the evidences available on record. Before reaching at any conclusion, for better



appreciation of the mater, this Court feels it necessary to examine the evidence of prosecution witnesses.

P.W. 1/ Ajay Kumar has said that his father i.e. the informant told him that all the F.I.R. named accused persons have killed his Grandfather. When this witness went to the place of occurrence, he found his Grandfather was lying dead and blood was also found there. Darogajee had also seen the blood.

P.W. 2/ Saryug Thakur's evidence is that on the date of occurrence he was sleeping in his house. His father was sleeping on varandah and his mother was there with his father. All the named accused persons came at the Bathan and took away his father and murdered him.

In his cross examination, this witness has said his father was sleeping at Bathan which is situated one kilometer away from his house.

P.W.3/ Sanjay Thakur has stated that his father i.e. the informant came to the house and told that your grandfather has been killed by all the F.I.R. named accused persons. This witness has stated about seeing blood at the place of occurrence by him and also by the Darogajee.

P.W. 4/ Shital Khairwar has stated that 11 persons came to the door of his house out of whom this witness



identified nine persons. They all assaulted him and asked about Brahmdeo Thakur and thereafter went away. On the next day, he came to know that father of Brahmdeo Thakur has been killed. This witness also stated that all the accused persons had covered their faces, but he has not clarified as to how he identified them.

P.W. 5/ Udaya Thakur has stated that his uncle i.e. the informant told him that all the F.I.R. named accused persons killed his grandfather.

P.W.6/ Binay Thakur has given the same evidence that his father i.e. the informant told him that all the F.I.R. named accused persons killed his grandfather. This witness went to the place of occurrence and saw the deadbody of his grandfather and also saw blood around the deadbody.

P.W.7/Dahiya Devi, the wife of the deceased, in her evidence has stated that 10-11 persons came, assaulted her on which she became unconscious. They took away her husband and killed him.

This witness had identified the accused persons from very close distance and also stated that she has no vision in her eyes and therefore she cannot identify them. She has also stated that even prior to the occurrence her eyesight was weak and at present her eyesight is almost cipher.



This witness has also stated that accused persons themselves told her their names.

P.W.8/ Mina Devi has stated in her evidence that the deceased was her father. Informant told her that all the named accused persons killed her father.

P.W.9/ Sunita Devi has also given the same evidence.

P.W.10/Ram Swaroop Paswan is a formal witness. He has proved the endorsement on the fardbeyan (Exhibit -1). He has also stated that this was not written in his presence.

P.W.11/ Dr. Naushad Ahmad is a medical officer who conducted *post mortem* of the dead-body and found the following injuries :

“Rigor mortis was found present on all limbs and the anti-mortem injuries were found present as follows :

I. Head separated from body at the base of the neck with clear margin

II. An abrasion 3” X2” on right shoulder.

On dissection thoracic visera were found pale. Injury no. I was caused by sharp cutting heavy weapon. Injury No. II was caused by hard blunt substance.

Cause of death was due to haemorrhage caused by Injury no. I.



*Time elapsed since death till holding
P.M. within 24 hours.”*

P.W. 12/ Arun Kumar Singh, who is the Investigating Officer of the case, in his evidence has established the second place of occurrence. He recorded the evidence of witnesses and submitted charge-sheet. He proved the charge-sheet (Exhibit-3).

He has stated that presence of blood at the place of occurrence is not mentioned in the case diary. With regard to first place of occurrence, he stated that he did not inspect the same and the witness Dahiya Devi in her evidence did not name any accused person.

12. In this trial/appeal except P.W. 7 Dahiya Devi, all other witnesses are hearsay witness who got information regarding the occurrence from the informant, but informant does not come to give his evidence.

13. P.W. 7/ Dahiya Devi had very weak vision even prior to the occurrence, and as such, it would have been very difficult for her to identify anyone in the light of lantern in a dark night. Her statement that accused persons themselves told her their names is also not reliable.

14. The investigation of the case is also faulty. Investigating Officer, out of the two, inspects only second place



of occurrence. He does not seize the blood stained soil from the place of occurrence. Even after coming of this fact clearly in the fardbeyan that the informant identified the accused persons in the light of lantern, he neither seizes the said lantern nor feels the necessity of going to the first place of occurrence.

15. Even if on the basis of *post mortem* report (Exhibit-2) it is said that the father of the informant has been killed, then also from the evidences available on record it cannot be said that the accused persons had any hand in the alleged murder.

16. So far as Exhibit -4, which is formal first information report registered in connection with murder of the informant, in which the name of present appellant Prahlad Yadav has come, is concerned, the same is matter of another trial and on basis of this exhibit nothing can be inferred in the present trial/appeal.

17. For the reasons stated above, this Court is of the considered opinion that the benefit of doubt should have been given to the appellants, and accordingly, they are given the benefit of doubt.

18. In view of the facts and circumstances of the case and the discussions made above, this Court finds that the



judgment of conviction of the appellants is not sustainable in the eye of law. Accordingly, the judgment of conviction dated 10.05.2012 and the order of sentence dated 17.05.2012/19.05.2012, passed by 1st Additional Sessions Judge, Jamui in Sessions Trial No. 237 of 2006 arising out of Sikandra P.S. Case No. 168 of 2005, is, hereby, set aside and the appeals are allowed.

19. Since the appellants are in custody and the judgment of their conviction and sentence has been set aside, it is directed to release them forthwith, if not wanted in any other case.

(Arvind Srivastava, J)

(Rakesh Kumar, J)

(Rakesh Kumar, J)

mcv/-

AFR/NAFR	NAFR
CAV DATE	19.04.2018
Uploading Date	11.05.2018
Transmission Date	11.05.2018

