

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.720 of 2016**

Arising Out of PS. Case No.-160 Year-2012 Thana- JHAJHA District- Jamui

Latyain Yadav son of Late Janki Yadav, resident of Village- Tumba Pahar, P.S.
Jhajha, District Jamui.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1024 of 2016

Arising Out of PS. Case No.-160 Year-2012 Thana- JHAJHA District- Jamui

Jagdeo Yadav S/o Late Ganesh Yadav R/o Vill- Bhalgori, P.S.- Jhajha, Distt-
Jamui.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 720 of 2016)

For the Appellant : Mr. Amar Prakash, Advocate

For the State : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 1024 of 2016)

For the Appellant : Mr. Amar Prakash, Advocate

For the State : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 30-08-2023

Both these appeals are filed under Section 374(2) of
the Code of Criminal Procedure, 1973 (hereinafter referred to as
'the Code') against the judgment of conviction dated 22.06.2016



and order of sentence dated 23.06.2016, passed by learned 2nd Additional District and Sessions Judge, Jamui in Sessions Trial No.254 of 2013, arising out of Jhajha P.S. Case No.160 of 2012, by which both the appellants have been convicted and sentenced to undergo R.I. for life and fine of Rs.10,000/- each and in default of payment of fine, the appellants have to undergo S.I. for two months for the offences punishable under Sections 302/34 of the Indian Penal Code.

2. The prosecution story, in brief, is as under:

One Sudhir Kumar Yadav, S/o Jibu Yadav of village Kewal Fariyaka, P.S. Khaira, District Jamui informed the concerned police authority that on 10.11.2012 his brother-in-law, namely, Shantanu Yadav (deceased) came to his village. It is alleged that when the brother-in-law of the informant was returning to his village Baliyadih, the mother of the informant told the informant to go alongwith his brother-in-law to his village and bring her daughter to Kewal Fariyaka on the occasion of *Chhath Puja*. Thereafter the informant and his brother-in-law proceeded towards village Baliyadih. When they reached village Tumbapahar at about 06:00 p.m., wife of appellant Latyain Yadav stopped them near her house and told that the land must be registered in her name. The brother-in-law of the informant said that the land will be registered in her name after few days. In the meantime, appellants came there having axe in their hands and started



assaulting Shantanu Yadav indiscriminately by means of axe on his head and face. The informant ran towards the village Baliyadih and informed the villagers and relatives of his brother-in-law, Shantanu Yadav. It is further alleged that when the informant and other villagers came back to the place of occurrence, the informant found the dead body of his brother-in-law, Shantanu Yadav lying near Ulay river. The informant alleged that the appellants after killing his brother-in-law kept his dead body near the river. Thereafter the dead body of the deceased and his motorcycle were brought to village Baliyadih. It is alleged in the FIR that the appellants have killed the brother-in-law of the informant after assaulting him by means of *Tangi*.

3. On the basis of *fardebayan* of the informant, Jhajha P.S. Case No.160 of 2012 was registered under Sections 302/34 of the Indian Penal Code against both the appellants and after investigation was over, the Investigating Officer filed charge-sheet against the accused. As the case was exclusively triable by Court of Sessions, the concerned Magistrate committed the same to the Sessions Court where the same was registered as Sessions Case No.254 of 2013.

4. During course of trial, the prosecution had examined ten witnesses, namely, PW-1, Anita Devi, PW-2, Manju Devi, PW-3, Arbind Yadav, PW-4, Suma Devi, PW-5, Jay Prakash Yadav, PW-6, Toto Yadav, PW-7, Anandi Yadav, PW-8, Sudhir



Yadav, PW-9, Dr. Syed Naushad Ahmad and PW-10, Sunil Kumar. The Trial Court, after considering the evidence produced by the prosecution, passed the impugned order of conviction as observed hereinabove. Both these appellants-convicts have, therefore, filed two different appeals.

5. Heard Mr. Amar Prakash, learned counsel for both the appellants and learned APP appearing on behalf of the respondent-State.

6. Learned counsel for the appellants mainly submitted that as per case of the prosecution, PW-8 Sudhir Kumar Yadav (informant) is the only eye witness. It is further submitted that other witnesses, i.e., PWs. 1 to 6 are hearsay witnesses. PW-7 has been declared hostile. It is further submitted that PW-10 is an Advocate Clerk who was surprisingly examined by the prosecution with a view to prove the signature of the Investigating Officer, Rajiv Singh. However, the Investigating Officer has not been examined by the prosecution. Learned counsel, at this stage, further submitted that parents of the deceased or other near relatives of the deceased have not been examined by the prosecution nor the prosecution had examined independent witnesses, in spite of that the Trial Court has recorded the order of conviction against the appellants.

7. Learned Advocate for the appellants thereafter submitted that in fact PW-8, the first informant, was in inimical



terms with the deceased as the deceased had solemnized second marriage with Anita Devi though his first wife, Manju Devi was alive. In fact, the first informant is brother of Manju Devi hence, PW-8, the informant, himself has killed the deceased. It is further submitted that with a view to prove the same, the defence has examined three defence witnesses who have specifically deposed before the Court that the first informant has killed the deceased with knife and they are the eye witnesses.

8. It is lastly submitted by learned Advocate for the appellants that while recording the further statement of the appellants-accused, the incriminating circumstances against the appellants-accused were not specifically put to them and, therefore, there is a failure on the part of the Court to put the said circumstances to the accused which amounts to a serious irregularity and it will vitiate the trial when the prejudice is caused to the appellants-accused. In support of the said contention, learned counsel has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of ***Raj Kumar @ Suman Vs. State (NCT of Delhi)***, rendered on 11.05.2023 in ***Criminal Appeal No.1471 of 2023***, arising out of ***S.L.P. (Cri) No.11256 of 2018***.

9. On the other hand, learned APP for the respondent-State has referred the deposition given by PW-8, who is an eye witness to the incident in question and thereafter referred the



medical evidence, i.e., the deposition of PW9, the doctor, namely, Dr. Syed Naushad Ahmad. It is submitted that the version of the eye witness is supported by medical evidence and, therefore, the Trial Court has rightly placed reliance upon the same and passed the impugned order of conviction against the appellants. Learned APP has also submitted that blood stained clothes of the deceased as well as the appellants were seized and sent to FSL for necessary analysis. The report of FSL is marked as Ext.4. It is further submitted that merely because there is certain lacuna on the part of the prosecution or the Investigating Officer by which the Investigating Officer was not examined at the time of trial, the benefit of the same may not be given to the appellants-accused, He, therefore, urged that these appeals be dismissed.

10. We have considered the submissions canvassed by learned counsel for the parties and we have also gone through the entire evidence produced by the prosecution before the Trial Court as well as the statement of the accused recorded under Section 313 of the Code.

11. PW-1, Anita Devi is the second wife of the deceased. Her mother asked the husband of this witness that Latyain Yadav told her to execute the sale deed of the land in his favour. However, Latyain Yadav had given money for 1 Kattha of land whereas the measurement of the land was 1½ Katthas, therefore, the husband of the said witness asked her to measure the



land and thereafter execute the sale deed of land. Before three days of the incident in question, quarrel took place between Latyain Yadav and husband of the witness with regard to the said land. Latyain Yadav was insisting for execution of the deed and the husband of the witness was saying that the land is to be measured first. She has further stated that her husband is also having one another in-laws and one Sudhir Yadav is brother-in-law of her husband. It is stated that when her husband was returning with Sudhir Yadav, wife of Latyain Yadav stopped them and told about the agricultural land. The said aspect was told to the witness by her husband on phone and, therefore, she also talked with wife of Latyain Yadav on telephone. Thereafter the said witness got the information that both the present appellants-accused assaulted the husband of the said witness with axe in which he sustained injuries, therefore, she reached to the place of occurrence. She identified the accused who were present in Court. During cross-examination, she has admitted that she is not an eye witness to the incident in question. She has further stated that she got married with the deceased before seven years from the date of incident.

12. PW-2, Manju Devi, who was the first wife of deceased Shantanu Yadav. She stated that her brother, Sudhir Yadav came to the house and thereafter informed that both the present appellants have killed her husband Shantanu Yadav with axe. When she reached to the place of occurrence, she saw that



both the appellants were fleeing away from the place of occurrence. She had identified both the appellants-accused who were present in Court. During cross-examination, the said witness had denied the suggestion that her husband was an accused in connection with one FIR lodged with Patna Railway Police Station and he remained in jail in connection with the said FIR. He has further stated that a motorcycle was seized from the place of occurrence and the same motorcycle was registered in the name of her husband. From the place of occurrence, axe was seized on the next day and it was also sealed.

13. PW-3, Arbind Yadav is also not an eye witness to the incident in question and on getting information that Shantanu Yadav was killed, the said witness reached to the place of occurrence. He identified Latyain Yadav however, he did not know the name of the second accused. The said witness has admitted in cross-examination that the deceased was sent to jail in connection with one murder case.

14. PW-4, Suma Devi is also not an eye witness to the incident in question. The deceased was her son-in-law and after getting information, she had gone to the place of occurrence and seen the dead body of the deceased. She has tried to attribute the motive on the part of the accused by saying that Latyain Yadav was insisting to execute the sale deed with regard to the land. During cross-examination, the said witness has stated that she has



remained present for giving deposition at the instance of her daughter and she has deposed as per the version given by her daughter.

15. PW-5, Jay Prakash Yadav and PW-6, Toto Yadav are also not eye witnesses to the incident in question and upon receipt of the information from Sudhir Yadav, they reached to the place of occurrence and saw the dead body of the deceased. Dead body of the deceased was taken to his residence.

16. PW-7, Anandi Yadav has not supported the case of the prosecution and, therefore, he was declared hostile.

17. PW-8, Sudhir Kumar Yadav is claiming to be an eye witness. The said witness has stated that he was going to Baliyadh with the deceased and when they reached near the house of appellant Latyain Yadav, wife of Latyain Yadav stopped them and told the deceased to execute the sale deed of the land in question. This witness has further stated in his examination-in-chief that in the meantime, appellants came armed with axe and started assaulting the deceased. The said witness also stated that he saw the appellants fleeing away after leaving the dead body near river. PW-8, Sudhir Kumar Yadav also stated that due to assault made by the appellants, the face of the deceased was disfigured. During cross-examination, this witness stated that his sister Manju Devi is the first wife of the deceased, Shantanu Yadav and the deceased solemnized second marriage with Anita Devi. The said



witness further stated in his cross-examination that in between the house of appellant Latyain Yadav and river, no any house is situated. The said witness further stated that Daroga Jee saw the dead body in Baliyadh. In paragraph-9 of his cross-examination, the said witness stated that Daroga Jee came at 08:00 to 09:00 p.m. and at that time, Chaturanand, Suveen Yadav, Upendra Yadav, Prakash Yadav, Arbind Yadav and other villagers were also present there. It is stated that his brother-in-law married Anita Devi without consent of his sister. In paragraph-12 of his cross-examination, the said witness stated that his sister has three sons and Anita Devi has one daughter and after the murder of Shantanu Yadav, all sons of his sister are maintained by their grandmother, aunt and uncle. In paragraph-18, this witness denied that he committed the murder of his brother-in-law.

18. PW-9, Dr. Syed Naushad Ahmad is the doctor who had conducted the post-mortem of the deceased. The said witness has noticed the following injuries:

“I. Multiple incised wound 8 in numbers across the face of various dimation measuring 4” x 1/2” x 1/2” to 1” x 1/4” x 1/4” extending from chin to eyebrows.

II. Abrasion 3” x 2 1/2” x on right lower chest and upper abdomen.

III. Abrasion 3 1/2” x 2 1/2” on left lower chest and abdomen.

Injury No.I are antimortem caused by sharp cutting weapon such as “Talwar”.

Injury No.II & III are postmortem, caused by



rubbing against hard and rough surface.

Cause of death due to Injury No.I.”

19. PW-10, Sanni Kumar was working as an Advocate Clerk and he has identified the signature of Rajiv Singh who was the Investigating Officer, in the seizure list. The said witness produced the FSL report. The said witness also produced the formal FIR which was signed by Rajiv Singh. However, during cross-examination, the said PW-10 has specifically admitted that he is not aware about the fact that on which date the seizure list was prepared and what has been stated in the said seizure list. He has also admitted that he had never worked with Rajiv Singh who was SHO of the concerned police station and when the formal FIR was registered he is not aware.

20. We have appreciated the entire evidence produced by the prosecution before the concerned Trial Court. It is not in dispute that Pws.1 to 6 are not the eye witnesses to the incident in question whereas PW7 has turned hostile, therefore, the case of the prosecution rests only on the deposition given by PW-8 who is claiming to be an eye witness to the incident in question. It is relevant to note that the prosecution has failed to prove the motive on the part of the appellants-accused to commit the crime. PW-8, Sudhir Yadav, the first informant, is brother of the first wife of the deceased Shantanu Yadav. It is the defence taken by the appellants that because of the inimical terms between the informant and the



deceased, it is not possible to believe that both have left the house on a motorcycle and were going to village Baliyadih. From the evidence of PW-2, it is revealed that though the Investigating Officer has seized the axe, i.e., the murder weapon, the same was not sent for necessary analysis to the FSL. PW-10 was working as an Advocate Clerk. Surprisingly the said witness was examined with a view to prove the signature of the Investigating Officer. The said witness has specifically admitted in his cross-examination that he had never worked with Rajiv Singh who was police officer nor he was aware about the contents of the seizure list. It is the case of the prosecution that blood stained clothes of the deceased as well as the appellants were seized which were sent for necessary analysis to FSL. However, the seizure list is not dully proved by the prosecution by examining the Investigating Officer. It is not in dispute that in the present case, the prosecution has not examined the Investigating Officer and simply produced the report of FSL through PW-10 who has nothing to do with the said report.

21. Though the medical evidence suggests that the deceased died because of injuries sustained by him by sharp cutting weapon, such as, *Talwar* (sword), however, it is pertinent to note that it is the case of the prosecution that the appellants assaulted the deceased with axe. From the medical evidence, i.e., the post-mortem report, it is further revealed that the deceased sustained only one injury which was caused by sharp cutting



weapon whereas Injuries No.2 and 3, i.e., abrasion which can be caused by rubbing against hard and rough surface.

22. Thus, the medical evidence does not support the version given by PW-8, Sudhir Yadav who was claiming to be an eye witness to the incident in question.

23. It is also pertinent to note that while recording the statement under Section 313 of the Code, the Court has also not put incriminating material before the appellants-accused and it is specific case of learned counsel appearing for the appellants that because of the same, prejudice has been caused to the appellants-accused.

24. In the case of **Maheshwar Tigga vs. State of Jharkhand**, reported in **(2020) 10 SCC 108**, the Hon'ble Supreme Court has observed in paragraph 7, 8 and 9 as under:

“7. A bare perusal of the examination of the accused under Section 313 CrPC reveals it to be extremely casual and perfunctory in nature. Three capsuled questions only were asked to the appellant as follows which he denied:

“*Question 1.* There is a witness against you that when the informant V. Anshumala Tigga was going to school you were hiding near Tomra canal and after finding the informant in isolation you forced her to strip naked on knifepoint and raped her.

Question 2. After the rape when the informant ran to her home crying to inform her parents about the incident and when the parents of the informant came to you to inquire about the incident, you told them that



“if I have committed rape then I will keep her as my wife”.

Question 3. On your instruction, the informant’s parents performed the “Lota Paani” ceremony of the informant, in which the informant as well as your parents were present, also in the said ceremony your parents had gifted the informant a saree and a blouse and the informant’s parents had also gifted you some clothes.”

8. It stands well settled that circumstances not put to an accused under Section 313 CrPC cannot be used against him, and must be excluded from consideration. In a criminal trial, the importance of the questions put to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish his defence, but also to explain the incriminating circumstances against him. A probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt.

9. This Court, time and again, has emphasised the importance of putting all relevant questions to an accused under Section 313 CrPC. In *Naval Kishore Singh v. State of Bihar* [*Naval Kishore Singh v. State of Bihar*, (2004) 7 SCC 502 : 2004 SCC (Cri) 1967] , it was held to be an essential part of a fair trial observing as follows : (SCC p. 504, para 5)

“5. The questioning of the accused under Section 313 CrPC was done in the most unsatisfactory manner. Under Section 313 CrPC the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case. We deprecate the practice of putting the entire evidence against the



accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The trial Judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence.”

25. In view of the aforesaid observations, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt and, therefore, the Trial Court has committed an error while passing the order of conviction against the appellants.

26. Hence, Both these appeals stand allowed. The impugned judgment of conviction dated 22.06.2016 and order of sentence dated 23.06.2016 passed by learned 2nd Additional District and Sessions Judge, Jamui in connection with Sessions Trial No.254 of 2013 arising out of Jhajha P.S. Case No.160 of 2012 is set aside. The appellants, namely, Latyain Yadav in Criminal Appeal (DB) No.720 of 2016 and Jagdeo Yadav in Criminal Appeal (DB) No.1024 of 2016 are acquitted of the charges levelled against them by the learned trial court. Since appellant, namely, Jagdeo Yadav is on bail, he is discharged from



the liabilities of his bail bond and appellant, namely, Latyain Yadav is in jail, he is directed to be released forthwith, if his presence is not required in any other case.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

Sanjay/-

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