
(2002) 09 PAT CK 0121

In the Patna High Court

Case No : Criminal Appeal No. 620 of 1987

Baso Yadav and Jobraj Chauhan

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 03-09-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2002) 4 PLJR 366

Hon'ble Judges : S.N. Jha, J; P.N. Yadav, J

Bench : Division Bench

Advocate : Soni Shrivastava, Amicus Curiae, for the Appellant; Lala Kailash Bihari, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Yadav, J.—For causing the death of Punia Devi, a 45 year old woman, the Appellants were tried for the offence punishable u/s 302 read with Section 34 of the Indian Penal Code (hereinafter to be referred to as the Code). Both the Appellants belonged to different clan and they are not related to each other. The Sessions Judge, Nawadah convicted them and sentenced them to undergo rigorous imprisonment for life u/s 302 read with Section 34 of the Code vide his judgment and order dated 27.11.1987 passed in Sessions Trial No. 85 of 1986. They have challenged and assailed the judgment and order of the Court below.

2. In the fateful night intervening between the 8th and the 9th February, 1986, the informant Sidheshwar Chauhan (P.W. 13) along with the members of his family after taking supper retired to bed. He was sleeping alone in a room north of Staircase while his wife Punia Devi (deceased) along with her children was in another room situated to the South West of the Stairs. The deceased was on a cot while her daughter Patia aged about 12 years (P.W. 6) and son Goverdhan Chauhan, aged about 10 years (P.W. 11) were on one another cot. The informant heard outcry and shriek of the deceased and alarm raised by the children. He came out of his room and in the light of lantern which was burning in the

Varanda he saw and identified the Appellants fleeing away with blood stained daggers in their hands. The Appellants soon along the stairs climbed the roof of the house. The informant raising alarm followed them and he also went over the roof. The Appellants made good escape by jumping down from the roof and fleeing away towards the west.

3. On alarm being raised by the informant and his wife, Yadunandan Chauhan (P.W. 5), Jagarnath Prasad (P.W. 1), Lalo Chauhan (P.W. 10), Lali Prasad and others arrived at the scene and they also saw and identified the Appellants fleeing away. The informant then entered into the room where his wife and children were sleeping. To his utter shock and distress, he found his wife lying dead in a pool of blood. As per allegation, the Appellants scaled over the wall, went to the roof of the house and came down inside the house and in the same manner they made good escape after committing gruesome murder of the deceased by inflicting repeated dagger blows on her. Patia Devi (P.W. 6) and Goverdhan Chauhan (P.W. 11) figured as eye witnesses to the incident and they informed their father, the informant and Yadu Nandan (P.W. 5) that the Appellants killed their mother by inflicting dagger blows on her.

4. The informant in the early next morning went to the police station and lodged First Information Report on the basis of which the case was registered at about 8.45 AM. on the 9th February, 1986. Gorakh Nath Sharma, the Officer-in-Charge and the Investigating Officer (P.W. 15) visited the place of occurrence, said (sic) the dead body of the deceased, prepared inquest report at about 9.45 A.M. in presence of Ramautar Chauhan and Puna Prasad Chauhan (not examined), inspected the place of incident and seized blood stained clothes etc. from the cot on which the deceased was lying dead and prepared seizure list in presence of Karu Chauhan (P.W. 7) and Gulab Chauhan (P.W. 9) who put their signatures thereon. The Investigating Officer caused the dead body of the deceased to be sent to mortuary for autopsy. He recorded the statements of the witnesses and after receiving postmortem examination report made by Dr. Sant Choudhary (P.W. 14) and completing investigation submitted chargesheet and finally trial commenced after commitment.

5. The defence is of total denial and false implication. As gathered from the trend of cross examination of the prosecution witnesses (P.Ws. 6, 9 and 15), the defence set up by the Appellants seems to be that Lalo, Lalkeshwar, Gulab and Harkhu entered into the room of the deceased with intent to outraging the modesty of Patna Devi (P.W. 6), daughter of the informant and the deceased and ravishing her but in the meanwhile the deceased woke up and identified them and hence they killed her and they got the Appellants roped in the case by influencing and pressurising the informant. The Appellants also entered into defence and examined defence witness named Saryug Prasad Yadav (D.W. 1) to lead the Court to uphold probability of false implication of the Appellant Baso Yadav on account of animosity developed by him and the people of his Sasural against the Chauhan community of the village. The witness also claimed to have

over heard a number of people speaking of the incident without uttering the name of any of the assailants of the deceased.

6. The contentions put forward is assailing the propriety of findings of gu(sic) recorded by the Court below may well be summarised hereunder. The entire prosecution version hinges on evidence of two child witnesses, viz. Patia Devi (P.W. 6) and Goverdhan Chauhan (P.W. 11). They claimed to have identified the Appellants while committing murder of the deceased in the light of a lantern burning in the room but none of other witnesses who rushed to the scene soon after the incident spoke of antern in the room nor did the Investigation Officer (P.W. 15) find any such lantern were and other witnesses, that is, the informant (P.W. 13) and Yadunandan Chauhan P.W. 5) stated that lantern was burning in the Varanda and this fact finds corroboration from the objective findings of the Instigating Officer. It is not the case of the prosecution, as per admission of the learned A.P.P., that there were two lanterns, one burning inside the room and the other in the Varanda and if lantern was burning in the room and not in the Varanda, P. Ws. 5 and 13 could not have identified the Appellants fleeing away and if a lantern was not burning in the room the children (P.Ws. 6 and 11) could not have seen and identified the Appellants committing murder of their mother. Further identification by the children is not free from doubt also in view of the fact that the Appellants belonged to two different villages, one situated at a distance of 1 K.M and the other half kilometre and the witnesses never visited those villages and moreover, P.W. 6 stated that though she knew, the name of the Appellants Baso Yadav, the name of the Appellant Yubraj Chauhan was disclosed to her by her father (P.W. 13). Identification of the Appellants while climbing the roof through stairs, jumping down from the roof and running away towards West in torch light by P. Ws. 1 and 10 who after hearing alarm of P.W. 13 does not inspire confidence. Similarly, identification of the Appellants by P.Ws. 5 and 13 in the light of lantern too cannot be said to be above board and free from suspicion. So even the circumstantial evidence constituted by the statement of P.Ws. 1, 5, 10 and 13 regarding identification of the Appellants is gone.

7. Again, it has been pointed out that as many as 8 injuries were found to have been inflicted on the person of the deceased and out of them 7 injuries were on non vital parts of the body and they were simple in nature and infliction of so many injuries must have taken enough time during which P.Ws. 6 and 11 were expected to have heard cry of their mother and to have called their father (P.W. 13) earlier but the latter appear to have heard alarm belatedly. All the witnesses on the point of occurrence and identification of the Appellants are closely related to and interested in the informant and the deceased and moreover, their evidence suffers from serious infirmity, lacuna, inconsistency and contradictions and the same cannot form the basis of conviction. It has also been vehemently contended that the prosecution has not come to the Court with clean hands for, no such heinous crime is committed without some motive but in the instant case, the prosecution did suppress certain facts in the nature of motive impelling the Appellants to commit cold blooded and dastardly murder of the deceased.

8. The witnesses other than those referred to in the preceding paragraph are Sukhdeo Choudhary (P.W. 2), Meena Devi (P.W. 3) who after arriving at the place of occurrence in pursuance of hulla saw the dead body of the deceased, Karu Chauhan (P.W. 7) who saw the dead body and witnessed seizure of blood stained clothes and Sutali of cot. Sadhu Yadav (P.W. 4), who merely stated that the Appellants used to visit his house for toddy and on the date of incident also he had gone to take toddy at the house of PASI of his village, Gulab Chauhan (P.W. 9) and Thakuri Chauhan (P.W. 12) who were tendered witness.

9. Let us now switch over to consider the testimony of ocular witnesses. The informant's daughter (P.W. 6) and son (P.W. 11) claimed to have witnessed commission of murder of their mother. They stated that on hearing outcry of their mother, they woke up and saw the Appellants assaulting her with dagger in the light of lantern which was burning in their room. P.W. 6 said the Appellant Baso Yadav was catching hold of the deceased while the Appellant Yubraj was assaulting her with dagger, however, P.W. 11 stated that both the Appellants were assaulting the deceased with dagger. This inconsistency in the statements of P.Ws. 6 and 11 is of no consequence. Even if one of the Appellants was catching hold of the deceased and the other was inflicting dagger blows on her both would be liable for commission of overt act and murder of the deceased in furtherance of their common Intention. Referring to the statement of P.W. 6 in her cross examination that she could not say the name of her husband, or father-in-law or brother-in-law and though she knew the name of the Appellant Baso Yadav the name of the Appellant Yubraj Chauhan was disclosed to her by her father (P.W. 13) and statements of both P.Ws. 6 and 11 that they never visited the villages of the Appellants it has been vehemently contended that identification of the Appellants by P.Ws. 6 and 11 who were respectively 12 and 10 year old children cannot be believed and accepted particularly when they did not say to the Investigating Officer (P.W. 15) that lantern was burning in the room and no such lantern was found there and the light of the lantern which was burning in the Varandah could not have spread in the room where murder was committed. The contention seems to be devoid of merit and force. Merely because P.Ws. 6 and 7 did not state to the Investigating Officer that lantern was burning in their room where their mother was done away with their testimony on identification of the Appellants cannot be discarded. It is true that the village of the Appellant Baso Yadav situated at a distance of 1 kilometre while that of the Appellant Yubraj Chauhan was at a distance of about half kilometre but it has come in the evidence that the Appellants used to visit the village where the place of occurrence situated for having toddy there as per evidence of P.W. 4 and hence P.Ws. 6 and 11 could have got opportunity to see and identify them even prior to the date of incident. There can therefore, be no scope for doubt in identification of the Appellants at the time and place of occurrence by P.Ws. 6 and 11.

10. The ocular evidence of P.Ws. 6 and 11 that it was the Appellants who were the authors of fatal injuries causing the death of the deceased stands

corroborated by strong piece of circumstantial evidence constituted by the statements of the witnesses who on alarm arrived at the scene of incident and saw and identified the Appellants fleeing away from the scene of occurrence. The informant (P.W. 13) was sleeping in an adjacent room. He woke up after hearing alarm of his wife and coming out of the room he saw the Appellants with blood stained dagger in their hands fleeing away through the Courtyard and climbing the roof of the house along the stairs. He followed them up to the roof where he witnessed that the Appellants jumped down and fled away in the western direction. Thereafter, P.W. 13 got down and went into the room of his wife where he found her lying dead in a pool of blood and his daughter and son (P.Ws. 6 and 11) weeping there. He was told by his daughter and son that the Appellants killed their mother by inflicting dagger blows on her. Jagarnath Prasad (P.W. 1) stated that he heard he(sic) while he was a slept and he woke up and climbed the roof of his own house, flashed torch light towards the roof of the house of the informant and he happened to see that the Appellants through stairs climbed the roof, jumped down from the roof and fled away in the western direction with dagger in their hands. Evidence of Lalo Chauhan (P.W. 10) is to the effect that after hearing alarm he rushed to the house of the informant and he saw and identified the Appellants running away towards west with (sic)gger their hands. Both P.Ws. 1 and 10 said that they were told by the informant that the Appellants after killing the decused with dagger fled away.

11. The house of Yadunandan Chauhan (P.W. 5) situated adjacent east of the house of the informant. As per his version, he heard alarm, woke up from his member, climbed the tiled roof of his own house and then he reached the Courtyard of the informant and in the light of burning lantern saw and identified the Appellants coming out of the room, running towards stairs case, climbing the roof and jumping down from the roof and fleeing away towards the west. He stated that he did not see dagger or any other article in the hands of the Appellants and he could see the informant two minutes later. The statement of P.W. 5 in regard to his climbing his (sic)ed roof, going to the house of the informant and witnessing the Appellants coming (sic) of the room, climbing the roof of the house through stairs, jumping down and (sic)king good escape particularly when he claimed to have seen the informant two minutes later does not inspire confidence and the same cannot be accepted in view of the evidence of P.W. 13. However, the statement of P.W. 5 that after he went into the room he saw the deceased lying dead in a pool of blood and he was told by P.Ws. 6 and 11 that the Appellants had (sic)ed their mother may be accepted.

12. The evidence of all the witnesses, to wit, P.Ws. 6, 11, 13, 1 and 10 and on certain points that of P.W. 5 is quite consentient and corroborative. They were cross examined at length but nothing was el-iced to disbelieve their veracity. The sub-session that in the dark night of Amawasya when the incident took place P.Ws. 1, 5 and 10 could not have identified the Appellants fleeing away with dagger in their stnds in the light of torch or burning lantern for, they residing in other houses and sometime must have been consumed in their getting up from

their slumber, climbing the roof of their own houses or rushing to the scene of incident and by that time the Appellants were expected to have fled away and made good escape without being noticed by the witnesses cannot be accepted.

13. The informant (P.W. 13) and Yadunandan Chauhan (P.W. 5) stated that P.Ws. 6 and 11 told them that the Appellants killed the deceased and fled away but no such statement was made by P.Ws. 6 and 11 while P. Ws. 8 and 10 said that they were told by P.W. 13 that the Appellants killed the deceased and fled away, however, P.W. 13 did not corroborate them on this point. Again as per statement of P.W. 6 it was P.W. 5 who arrived at the scene of the incident first of all and her father (P.W. 13) reached there later. P.Ws. 1 and 10 were contradicted by the Investigating Officer (P.W. 15) who stated that they did not tell him during investigation that they had seen the Appellants fleeing away with daggers. As observed earlier, P.W. 6 did not say to P.W. 15 that lantern was burning in the room and she identified the Appellants in its light. The version of P.W. 5 that he climbed the tiled roof of his own house and the Appellants jumped off the roof and fled away towards the west too was contradicted by P.W. 15 who denied such statement having been made by him in course of investigation. The Investigating Officer (P.W. 15) contradicted P.W. 13 by stating that he did not say to him that P.Ws. 6 and 11 were sleeping in the room and they while weeping told him that the Appellants killed the deceased with daggers. Certain minor inconsistencies, discrepancies or even contradictions as well as exaggerations and embellishments are bound to occur in evidence of natural and truthful witnesses for, a witness while passing his way through the labyrinth of cross examination ventures to give some answer which is not necessarily true or he gives exaggerated or embellished version for fear that his evidence on the main incident he witnessed may not be disbelieved but on that account alone the prosecution evidence cannot be discarded. However, where inconsistencies and contradictions in evidence of the witnesses have shake the fabric or edifice of the prosecution case such evidence must be rejected. In the case at hand whatever contradictions or omissions or embellishment cropped up in the evidence of the prosecution witnesses do not go to the root and core of the case and hence they must be ignored.

14. It has also been contended that as many as 8 injuries were found on the person of the deceased and out of them 7 injuries were on non vital parts of the body and they were simple in nature and infliction of so many injuries must have taken sufficient time during which P.Ws. 6 and 11 were expected to have heard outcry of their mother and to have raised alarm and called their father (P.W. 13) earlier but the latter appear to have heard alarm of the children at belated stage and this instills suspicion in the prosecution version. The contention is non meritorious.

15. Credibility of the witnesses has also been sought to be impeached by branding them relatives and interested witnesses. P. Ws. 6 and 11 are the daughter and the son respectively of the informant (P.W. 13). P.W. 5 and P.W. 1

are full brother and cousin respectively of P.W. 13 while P.W. 7 is the son of P.W. 1. The settled principle of the law is that evidence of a witness cannot be rejected merely on the ground that he is relative of and interested in the informant and conviction can be based on evidence of such witness even without corroboration provided it is wholly reliable. A witness related to and interested in the informant may not necessarily falsely implicate the enemy of the family for, there must be intense desire his mind to punish assailant of his relatives and he would not think of sparing the (sic) culprit and substituting in his place (sic) enemy of the family out of malice even (sic) he is not concerned with assault. In (sic) case at hand though the prosecution witnesses are related to each other the evidence is consistent and corroboration free from taint and infirmity and is cre(sic) worthy and reliable and hence the same must be accepted and acted upon.

16. Eye witness account of the incident leading to the death of the deceased is in consonance with medical evidence Dr. Sant Choudhary (P.W. 14) conducted autopsy on the dead body of the deceased at about 4.35 P.M. on 9.2.1986 and (sic) found (i) incised wound measuring 1"(sic) x 2" x 1" on left axilla (ii) Incised wound (sic) x 1" x 2" (iii) Incised wound 1" x 1/2 x 2(sic) both communicating to each other. (sic) Incised wound 1/2" x 1/4" x 1" on (sic) temporal region, (v) Incised wound 3/4" 1/4" x 1/2" on left mandibular region. ((sic) incised wound 1 1/2" x 1/4" x 1" on on do(sic) of right hand at first cleft (vii) Incie(sic) wound 1 1/2" x 1/2" x chest cavity medial border of right scapula and ((sic) Incised wound 1" x 1/4" x 2" on left side (sic) back just lateral to mid line. All the in(sic) referred to above were caused by sh(sic) edged and penetrating weapons like Ch(sic) (dagger).

17. On dissection blood clots (sic) found present in right chest cavity (sic) chest cavity communicating with Injury (sic) vii and the lung of right side was (sic) punctured of dimension of 1" x 1/2" (sic) while left lung was found intact and p(sic) In the opinion of the doctor, the cause death was shock and hemorrhage due(sic) the aforesaid injuries particularly Injury (sic) vii. According to the doctor, none of the injuries save and except Injury No. (sic) sufficient to cause death. Time elapsed (sic)nce death was within 6 to 36 hrs from the time of postmortem examination. The evidence of the doctor thus established (sic)atthe death of the deceased was humi(sic)dal caused by infliction of dagger blows on her person.

18. No motive, impelling the Appellants to commit such heinous crime has been alleged by the prosecution. The learned amicus curiae has strenuously (sic)ned that in absence of any motive it (sic)ems highly doubtful that the Appellants (sic)longing to different sects and villages would enter into the house of the informant in the mysterious manner probably scaling the wall, climbing the roof and coming down into the house and commit murder. Of course, it is sound proposition that every criminal act is done with a motive but would be unjust and unsound to suggest that there can be no criminal act without motive. Motive is

lodged in the heart/mind of the culprit. It is very difficult of the prosecution to see and find out (sic)tive embedded in the mind of others, (sic)tances are not less of murders having been committed without any known mo(sic) a motive for commission of crime is (sic)enged by the prosecution it must be proved (sic) where ocular testimony is found to be (sic)ble and it is proved that the incident (sic) place in the manner alleged by the prosecution, absence of motive is immaterial. In the instant case ocular evidence considered together with medical evidence abundantly established that the incident leading in the death of the deceased took place of the manner alleged by the prosecution and hence it was not incumbent upon the part of the prosecution nor was it possible (sic) to ascertain and prove the motive (sic)petling the Appellants to commit the crime, (sic)parent lack of motive and minor contractions in evidence of prosecution witnesses cannot entitle the accused to benefit of doubt if a prosecution evidence is found to be credible and acceptable.

19. Delay in lodging the F.I.R. has also been highlighted by subsisting that though the occurrence took place at about 9 P.M. in the night the information was lodged with the police after about 12 hours at 8.45 A.M. after a great deal of thought and deliberation. First Information Report in a criminal case is a valuable piece of evidence for the purpose of appreciating the evidence led at trial. The object of the F.I.R. is to obtain the earliest information regarding the circumstances in which the crime was committed including the names of the actual culprits and the parts played by them, the weapons, if any, used and also the names of eye witnesses, if known to the informant. Delay in lodging the F.I.R. often results in embellishment, exaggeration and even concoction. In the case we are in season of the place of occurrence situated in a remote corner of the country side. The incident took place in the night at about 9 P.M. The police station situated four miles from the scene of incident. The villagers being laymen do not understand implication of delay in lodging the F.I.R. There may be several reasons on account of which the informant did not rush to the police station in the night. Considering the evidence brought on records in its totality and complete absence of motive or reason for false implication of the Appellants delay in lodging the F.I.R. cannot be viewed with suspicion.

20. It is true that there is a tendency to implicate even innocent people for facing trial for the death of or injuries to victims with intent to harass them out of vengeance or enmity but the Appellants before us do not seem to be coming under such category of innocent person falsely roped because there is nothing on records to suggest existence of animosity between them and the informant or to show that the informant was guided by vengeance in charging the Appellants with commission of murder of his wife.

21. The defence sought to be probablised by putting suggestion to P.Ws. 6, 10 and 13 though denied by them is that as a matter of fact Lalo, Lalkeshwar, Gulab and Harkhu had evil eyes towards P.W. 6, the daughter of the informant and they entered into her room with intent to ravishing her but in the meanwhile, the

deceased woke up and identified them and hence they killed her and pressurised the informant (P.W. 13) to lodge the case against the Appellants does not seem to be convincing and acceptable in the face of facts and circumstances attending to the case and the same must be discarded outright.

22. The solitary defence witness (D.W. 1) was examined to say that he heard a number of villagers talking among themselves regarding the murder of the deceased but none of them spoke of the name of any of the assailants. The witness further stated that there had been long drawn disputes between the people of Sasural of the Appellant Baso Yadav and the people of Chauhan community residing there. D.W. 1 appears to have made this statement with intent to leading the Court to think in terms of false implication of the Appellant Baso Yadav on account of enmity. The witness did not stand the test of cross examination. His evidence is not creditworthy and reliable and it can by no stretch of imagination be said to have suggested existence of animosity between the parties and false implication of the Appellants.

23. The facts, circumstances and evidence discussed and the observations made in the preceding paragraphs would suggest that the witnesses depicted a vivid picture of the manner in which the Appellants committed gruesome and cold blooded murder of the deceased at the time and place of occurrence. The submission the murder of the deceased went un-seen the evidence of the witnesses regarding identification of the Appellants while fleeing away is not above Board and the same cannot form of the basis of conviction (sic) without any merit and substance.

24. In the light of the aforementioned discussions, it is to be held that the findings recorded by the Court below are base on meticulous appreciation and appra(sic) of evidence and the same do not warr(sic) interference. We, therefore, upholding conviction and sentence of the Appellants dismiss the appeal. The bail bonds of the Appellants are cancelled and the Court below is directed to take coercive step in remand them for serving out the sentences.

25. Ms. Soni Srivastava, amicus curiae has rendered valuable service and she has immensely assisted the Court She shall get her due remuneration (sic) admissible under the rules from the Patna High Court Legal Aid Committee.

S.N. Jha, J.

26. I agree.