
(2018) 04 PAT CK 0102

In the Patna High Court

Case No : Criminal Appeal (Db) No. 198 Of 1995

Shyam Lal Yadav And Ors

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 10-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 364

Code Of Criminal Procedure, 1973 — Section 164, 313

Evidence Act, 1872 — Section 27

Citation : (2018) 3 PLJR 859

Hon'ble Judges : Rajendra Menon, CJ;Rajeev Ranjan Prasad, J

Bench : Division Bench

Advocate : Girish Chandra Sharma, S.B.Verma

Final Decision : Dismissed

Judgement

1. The present criminal appeal has been preferred for setting-aside the judgment dated 27th May, 1995 passed by the 3rd Additional Sessions Judge,

Kaimur at Bhabua (hereinafter referred to as the learned "Trial Court") in Sessions Trial No.122/01 of 1990- 1995.

2. The learned Trial Court has after framing the charges for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code

and further under Sections 364 and 201 of the Indian Penal Code against the accused Shyam Lal Yadav, Lalita Yadav @ Lalit Singh Yadav and Ram

Bilash Yadav finally convicted all the three accused under the aforesaid provisions of the Indian Penal Code. They have been sentenced to undergo

rigorous imprisonment for life under Sections 302/34 of the Indian Penal Code. No separate sentence has however been passed under Sections 364

and 201 of the Indian Penal Code.

3. The appeal has been preferred by all the three convicts, however, during the pendency of the appeal the appellant Shyam Lal Yadav died. In the

supplementary affidavit available on the record it is stated that the appellant no.1 Shyam Lal Yadav alias Shyam Lal Singh died on 13.10.2014, a death

certificate has been enclosed in proof thereof. The present appeal, therefore, survives only in respect of appellant nos.2 and 3.

4. The prosecution case as appearing from the Fardbeyan of the informant Duleshwari Devi who is the wife of the deceased Gulab Yadav is that the

husband of the informant had gone to Sasaram on 10.05.1988 along with his co-villagers accused Lalita Yadav @ Lalit Singh Yadav, Ram Bilash

Yadav and Shyam Lal Yadav to attend the case at Sasaram Court. Ram Bilash Yadav and Laita Yadav @ Lalit Singh Yadav returned to the village

on 13.05.1988 and when the informant inquired from them about her husband they did not give any satisfactory reply. It is alleged that the informant

was told by Lalita Yadav@ Lalit Singh Yadav that the next date is fixed on 14.06.1998. The informant went on searching about her husband for

another three to four days but she did not receive any information regarding her husband. It is alleged that when the informant again enquired from

Lalita Yadav@ Lalit Singh Yadav and Ram Bilash Yadav about her husband, they gave a threat that he will oust the informant from her house and he

would also remove her father-in-law and all the properties would be their properties. It is alleged that the informant gave information of this to her

brother Sheo Singh and thereafter she went to the Adhaura P.S where she gave her statement before the Officer-in-Charge of the police station. Her

statement was recorded, a formal F.I.R was drawn up and investigation started.

5. In course of investigation, the Investigating Officer inquired from accused Ram Bilash Yadav and one Alagu Yadav. He received information from

Vishwanant Yadav (P.W.1) that accused Ram Bilash Yadav was wearing the H.M.T Janta watch of the deceased and the said accused Ram Bilash

Yadav made confessional statement before the I.O as well as extra judicial confession before the witnesses stating that all the three accused persons

had entered into a criminal conspiracy for murder of Gulab Yadav and in conspiracy they have committed the murder of Gulab Yadav in the forest.

On the confessional statement of accused Ram Bilash Yadav the I.O went to the forest along with the accused Ram Bilash Yadav and from the site

of the occurrence as disclosed by Ram Bilash Yadav the clothes, bones and skeleton of Gulab Yadav were recovered. Ram Bilash Yadav was

produced before the Magistrate at Bhabua where his statement under Section 164 of the Cr.P.C was recorded.

6. After investigation police submitted a charge-sheet in the case, the case was committed to the Court of 1st Additional Sessions Judge, Bhabua, thereafter, the case was transferred to the learned Trial Court.

7. Accused persons have pleaded not guilty to the charge and claimed to be tried. It was their defence that they have been falsely implicated in this case. On behalf of the prosecution as many as eight witnesses were examined.

8. Duleshwary Devi (P.W.5) is the informant of the case. Sheo Jee Singh (P.W.6) is the brother of the informant. It is stated that accused Ram

Bilash Yadav had made an extra judicial confession before this witness regarding murder of Gulab Yadav by him and two others. P.W.3 is Ram

Sagar Yadav whereas Raja Ram Yadav is P.W.4 who are seizure list witnesses. Vishwanath Yadav (P.W.1) is the father-in-law of the informant

and he is also a witness on fact that in the morning on 10.05.1988 the appellant had come to his house to take Gulab Yadav (deceased) on the pretext

of going to Court. Kedar Singh (P.W.2) is a formal witness who has proved Ext.1. Nageshwar Prasad Singh is the I.O who has deposed as P.W.8.

Rajendra Prasad Mishra (P.W.7) is a Judicial Magistrate who has recorded the statement of the accused Ram Bilash Yadav under Section 164 of the

Cr.P.C.

9. On perusal of the evidences, the learned trial Court found that the entire case is based on circumstantial evidence which undoubtedly prove the guilt

of the appellants. P.W.1 who is the father of the deceased Gulab Yadav, has stated in his deposition that there was prior enmity with the family of the

appellant Lalita Yadav@ Lalit Singh Yadav. Brother of Lalita Yadav@ Lalit Singh Yadav was murdered about seven years back, the said case was

though compromised but because of that enmity his son Gulab Yadav was murdered. This witness had seen Lalita Yadav@ Lalit Singh Yadav, Ram

Bilash Yadav and Shyam Lal Yadav in the morning at 04:30- 05:00 A.M when they had came to the house of this witness to take Gulab Yadav on the

pretext of attending the Court case at Sasaram. This witness had identified the dead body of the deceased, his Dhoti and other clothes which were

found at the place of occurrence. Gulab Yadav was an accused in the murder case of brother of Lalita Yadav @ Lalit Singh Yadav, the informant

(P.W.5) has also stated that the accused persons had come to her house at about 04:00A.M in the morning, she had opened the door on that day. All

the three accused persons asked her husband to come quickly otherwise the vehicle will be missed out. Her husband had told this witness that he was

going to attend the Sasaram Court. In his confessional statement, Ram Bilash Yadav made a statement that accused Lalita Yadav@ Lalit Singh

Yadav threw the deceased Gulab Yadav down the earth and thereafter Ram Bilash Yadav and Shyam Lal Yadav assaulted the deceased Gulab

Yadav with stone pieces several times leading to the death of Gulab Yadav and concealed the dead body in the forest of Mohania. Accused Ram

Bilash Yadav made a confessional statement before P.W.8 in which he has stated that all the three accused had committed the murder of Gulab

Yadav.

10. Rajendra Prasad Mishra (P.W.7) being a Judicial Magistrate had recorded the statement of the accused Ram Bilash Yadav under Section 164 of

the Cr.P.C and the said statement has been marked as Ext.3. The statement of Alagu Yadav recorded by P.W.7 has been marked as Ext.4. The

learned Magistrate has stated that the necessary formalities regarding the recording of the statement under Section 164 of Cr.P.c has been observed.

11. Nagendra Prasad Singh (P.W.8) being the I.O of the case had recorded the statement of the informant and the witnesses.

He has stated that on 24.05.1988 he recorded the statement of Duleshary Devi (P.W.5) and the witnesses who had proved the F.I.R marked as

Ext.1. He has also recorded the confessional statement of the accused Ram Bilash Yadav. This witness has also stated that one H.M.T Janta watch

belonging to the deceased was seized from the possession of the accused Ram Bilash Yadav which was identified by the informant in presence of

witness, Raja Ram Yadav and Ram Sagar Yadav who had signed the seizure list which has been marked as Ext.5. The I.O has stated that the

accused Ram Bilash Yadav confessed his guilt before him and stated that he disclosed the place where the dead body of Gulab Yadav had been

concealed and from the said place the skull bone, leg bone and the clothes worn by the deceased were also discovered and those were identified by

the informant and others.

12. On appreciation of the evidences the learned trial Court found that evidence of P.W.1 and P.W.5 are the most natural witnesses on the point that

the accused persons came to their house and the deceased went with them. It was clearly proved before the learned trial Court that all the three

accused persons had gone to the house of P.W.5 and had taken away the deceased on the pretext of attending the date at Sasaram Court. On the

point of murder also the learned trial Court found from the evidences available on the record that the guilt of the accused were proved from the

circumstantial evidence.

13. There was a strong motive against the accused Lalita Yadav @ Lalit Singh Yadav committing murder of Gulab Yadav because according to the

prosecution the brother of Lalita Yadav @ Lalit Singh Yadav had been murdered about five years ago and the deceased had been strongly suspected

in that murder. The trial Court found that there was no denial of the fact from the side of the defence that the deceased was an accused in the said

murder case of the brother of Lalita Yadav @ Lalit Singh Yadav.

14. Learned counsel representing the appellant nos.2 and 3 submits that the learned trial Court has itself recorded that there is no evidence and the

whole case is based on circumstantial evidence but according to learned counsel while appreciating the circumstantial evidences the learned trial Court

could not appreciate that the confessional statement of the accused Ram Bilash Yadav cannot be admissible in evidence and no conviction can take

place on the basis of confessional statement. It is submitted that there was no proper identification of the dead body and the prosecution has failed to

prove the guilt of the appellants beyond all reasonable doubts.

15. On the other hand, learned A.P.P for State supported the impugned Judgment of the learned Trial Court and submits that the learned trial Court

has rightly appreciated the evidences brought on the record by the prosecution. It is submitted that the father and wife of the deceased who have

deposed as P.W.1 and P.W.5 respectively are the most reliable witnesses. It is also submitted that the Honâ??ble Supreme Court has held in catena

of judgments that the evidence of a related witness cannot be discarded only because he or she happens to be related with the deceased. It is not the

case of the defence that the prosecution witnesses are interested witnesses.

There would be a difference between a related witness and interested witness. It is submitted that at the instance of Ram Bilash Yadav the I.O recovered skull bones and clothes of the deceased, therefore, the part of the confessional statement leading to recovery of the skull bones and clothes are admissible in evidence as envisaged under Section 27 of the Evidence Act. He has narrated the whole manner of occurrence in his confessional statements made before P.W.6 and further in his statement under Section 164 Cr.P.C.

16. Thus, it is the submission of learned A.P.P that the conviction of the accused-appellants in the present case is not based on the confessional statement alone. Learned A.P.P submits that the confessional statement of the accused is duly corroborated by the recovery of the dead body and belongings of the deceased at the instance of Ram Bilash Yadav this undoubtedly shows that the appellants had a motive to kill the deceased because of prior enmity and they had taken away the deceased on the pretext of attending the Sasaram Court on way they took Gulab Yadav to Mohania forest and killed him in furtherance of their common intention.

17. Having heard learned counsel for the appellant as well as learned A.P.P for the State, we are of the considered opinion that the prosecution has been able to prove the guilt of the appellant nos. 2 and 3 beyond all reasonable doubts. Learned trial Court has rightly appreciated the evidence of the prosecution and had found that P.W.1 and P.W.5 are the natural witnesses who had seen the accused persons when they had come at their house in the morning hour to take the deceased Gulab Yadav on the pretext of attending the Court at Sasaram.

18. In a recent Judgment in the case of Ganapathi and another vs. State of Tamil Nadu with Muthulakshmi vs. State of Tamil Nadu reported in A.I.R

2018 SC 1635 the Honâ??ble Apex Court held in Paragraph 14 as under:-

â??14. Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of

interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the

accused cannot be a ground to discard the evidence which is otherwise cogent and credible. Relationship is not a factor to affect credibility

of a witness. It is more often than not that a relation would not conceal actual

culprit and make allegations against an innocent person.

Foundation has to be laid if plea of false implication is made[See: Maranadu and Anr. v. State by Inspector of Police, Tamil Nadu(2008) 16

SCC 529 : (AIR 2008 SC (Supp) 534).â??

19. Further the I.O seized the H.M.T Janta watch from the possession of accused Ram Bilash Yadav which the accused is unable to explain and in

course of investigation Ram Bilash Yadav made confessional statement under Section 164 of the Cr.P.C before the learned Judicial Magistrate who

has deposed and proved the statement under Section 164 Cr.P.C.

20. The most important aspect of the matter is that in course of investigation on the disclosure made by accused Ram Bilash Yadav, the I.O could

reach the site of occurrence where the skull bone, leg bone and clothes of the deceased Gulab Yadav were recovered which were identified by the

informant and others. Strong motive behind the murder of deceased, Gulab Yadav is apparent from the evidence of the prosecution witnesses who

have stated that the deceased Gulab Yadav was accused in the murder case of brother of Lalita Yadav @ Lalit Singh Yadav and that is the reason

the deceased was taken out from his house on the pretext of going to the Court at Sasaram but the accused persons acted with a common intention to

kill the deceased Gulab Yadav on the way and this fact was concealed for about three to four days despite the informant asking Ram Bilash Yadav

about the whereabouts of her husband.

21. We have also perused the statement of the appellants under Section 313 Cr.P.C. The attention of the appellants were drawn towards the

prosecution evidences and they were given an opportunity to explain. Accused Ram Bilash Yadav (appellant no.3) was informed about the evidences

brought by the prosecution showing that he had concealed the dead body of Gulab Yadav in the forest and that the watch of the deceased was found

from his possession, he was unable to explain as to how the watch of the deceased came in his possession. Further he could not explain anything

about the recovery of the skull bone and clothes of the deceased which were seized from the forest at his instance. Similarly, appellant no.2 has not

been able to explain the circumstances and the evidence which were brought by the prosecution.

22. Apparently, the present case is based on the circumstantial evidence. In this

nature of case, 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. The Honâ??ble Apex Court has long back set the mode of evaluating circumstantial evidence in Hanumant Govind Nargundkar and another vs. State of Madhya Pradesh reported in 1953 Cri.L.J 129, which has been taken note of by Honâ??ble Apex Court recently in the case of Dev Kanya Tiwari vs. State of U.P reported in AIR 2018 SC 1377 as under:-

â??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.â??

23. Upon considering the totality of the circumstances and the materials available on record, we find that the learned Trial Court has rightly found that there are strong circumstantial evidences beyond all reasonable doubts which proved the chain of the facts and the events showing the murder of the deceased, Gulab Yadav by these appellants. Motive behind the killing has also been duly proved.

24. We, therefore, find no reason to interfere with the judgment impugned in the present appeal. The conviction and the sentence of the accused Lalita

Yadav @ Lalit Singh Yadav and Ram Bilash Yadav are upheld. Since they are on bail, their bail bonds are cancelled. Both are directed to surrender

forthwith. The Superintendent of Police, Kaimur at Bhabua is directed to take the appellants Lalita Yadav @ Lalit Singh Yadav, son of Late Devan

Yadav and Ram Bilash Yadav son of Sita Ram Yadav in custody and produce before the learned Chief Judicial Magistrate, Kaimur at Bhabua for

undergoing the remaining period of sentence.

25. Let a copy of this order be also sent to the learned Chief Judicial Magistrate,

Kaimur at Bhabua for further action.

26. The appeal stands dismissed.