

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1425 of 2019

Arising Out of PS. Case No.-160 Year-2015 Thana- SABAUR District- Bhagalpur

UDESHWAR YADAV, Son of Late Gulabi Yadav, Resident of Village- Novtolia Chauka, Police Station- Industrial Area, District- Bhagalpur.

... ... Appellant

Versus

1. The State of Bihar
2. Amarnath Yadav Son of Late Suuga Gope. Resident of Village- Mansarpur, Police Station- Sabour, District- Bhagalpur.
3. Gaurav Yadav @ Shiva Yadav Son of Amarnth Yadav Resident of Village- Mansarpur, Police Station- Sabour, District- Bhagalpur.
4. Nirmala Devi W/o Amarnath Yadav Resident of Village- Mansarpur, Police Station- Sabour, District- Bhagalpur.
5. Suman Devi W/o Gaurav Yadav @ Shiva Yadav Resident of Village- Mansarpur, Police Station- Sabour, District- Bhagalpur.
6. Sonika Devi Wife of Late Brajesh Kumar Yadav, D/o Amarnath Yadav Resident of Village- Mansarpur, Police Station- Sabour, District- Bhagalpur.

... ... Respondents

Appearance :

For the Appellant/s : Mr. Nurul Hoda, Advocate
For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 30-11-2022

By a judgment dated 26.10.2019, passed by the learned Additional District and Sessions Judge-VIII, Bhagalpur in Sessions Trial No. 732/2015 and 240 of 2016, the respondents No. 2 to 6 have been acquitted of the charge punishable under Section 302/34 of the Indian Penal Code, which is sought to be challenged by the appellant in the present appeal filed under Section 372 of the Cr.P.C.



The aforesaid sessions trial had arisen out of Sabour P.S. Case No. 160 of 2015. The appellant happened to be the informant of the said criminal case.

2. The place of occurrence, as described in the first information report, is the house of the in-laws of his son (the deceased) at village *Mansarpur* where the informant was also present. He alleged in his written report, which is the basis for registration of FIR that the father-in-law, the brother-in-law and the wife of the deceased had forcibly taken the deceased to their house at village *Mansarpur*. The informant's son was thereafter tied with a pole by means of a rope and thereafter in his (informant's) presence, respondent No. 3 Gaurav Yadav (brother-in-law of the deceased) with an iron rod, respondent No. 2 Amarnath Yadav (father-in-law of the deceased), respondent No. 6 Sonika Devi (wife of the deceased), respondent No. 4 Nirmala Devi (mother-in-law of the deceased), respondent No. 5 Suman Devi (wife of brother-in-law of the deceased) all with *lathi*, rod, *gandasa* and pistol etc. mercilessly assaulted him, who finally succumbed to the injuries. When the appellant tried to save his son from assault, he was pushed away by the accused persons. The date and the time of occurrence, as disclosed in the FIR, was 09.08.2015 at 12 noon, on which date itself the FIR was registered. Upon completion of investigation the police submitted charge-sheet against respondents Amarnath Yadav,



Sonika Devi and Nirmala Devi while keeping the investigation pending against others. Subsequently, the police submitted charge-sheet against three other persons, namely, respondents Gaurav Yadav, Suman Devi and one Ram Bilas Yadav. After framing of the charge, the private respondents were put to trial as they denied the charges.

3. At the trial, altogether six witnesses were examined including the informant (P.W. 3), brother of the deceased (PW-1), sister of the deceased (PW-2), one Nawal Kishore Yadav (PW-4), the Investigating Officer (PW-5) and the doctor (PW-6). Two witnesses i.e. PW-7 and PW-8 came to be declared as hostile.

4. It is noteworthy that PW-1 and PW-2 are apparently not the eye-witnesses. PW-1 is said to have received the information regarding the occurrence from the informant. He is thus a hearsay witness. PW-2 is apparently also a hearsay witness.

5. The trial court has analyzed in the impugned judgment the evidence of PW-2, who had deposed at the trial that she had received the information on her phone that her brother had been killed whereafter she had rushed to the in-laws' house of her deceased brother. After having talked to the father-in-law of the deceased, when she was on her way back to her *maike*, she met the appellant who disclosed to her the manner in which the deceased was killed. She is said to have, thereafter, went back to the in-laws'



house of his brother where he was killed. The trial court has disbelieved the evidence of PW-2 on various counts including her conduct. The trial court has noted in its judgment the fact that the dead body of the deceased was found lying in a bush and that PW-2 was present there on the spot, but the inquest report did not disclose her presence at the place of preparation of the inquest report. The informant (PW-3) fully supported the prosecution's case as was disclosed by him in the FIR. He deposed that respondent No. 3, had broken the teeth of the deceased by piercing an iron rod in his mouth and respondent No. 2 had given a *gandasa* blow over the neck of the deceased. He also deposed that respondent No. 2 had pierced a rod in one ear of the deceased in a manner that it had come out of the other.

6. The trial court did not find the evidence of the informant/ appellant (PW-3) to be trustworthy. The trial court noticed patent contradiction in the evidence of the informant on the point of presence of respondent No. 6 (the wife of the deceased) at the place occurrence. He admitted, at one stage that respondent No. 6 was present at her *sasural* (the house of the appellant) at the time of occurrence and on the other hand, he deposed that she too was a perpetrator of the crime which had taken place, according to him, in the house of the in-laws of the deceased. Further, the Court had also put questions to the appellant/ information (PW-3); firstly, on the



point as to when and why had he gone to *Mansarpur*. In response to the said question, the appellant had answered that his daughter-in-law (respondent No. 6) had told him on phone that he was being called by respondent No. 2, whereafter he had gone to the house of respondent No. 2 with his daughter-in-law. In response to a question as to what he did do after the occurrence had taken place, he deposed that for some time, he had stayed in the courtyard where the occurrence had taken place and thereafter, he had gone outside the village and sat on the side of a road. Though he was repeatedly asked by the Court as to when did he leave the place where he had sat by the side of the road, he did not answer the said question and kept talking about other things for ten minutes. The Court thus doubted the very presence of the informant at the place of occurrence. The medical evidence also did not support the case of the prosecution, as made out in the first information report. No injury caused by *gandasa* or pistol was found on the person of the deceased. No tooth of the deceased was found broken. Neither any entry wound caused by any rod in one ear nor exit from the other, which even otherwise appeared to be imaginary, was found.

7. After having taken note of these aspects and other aspects of the evidence adduced at the trial, the trial court has acquitted the private respondents of the charge of commission of an offence punishable under Section 302 of the IPC. The said finding is



based on appreciation, analysis and close scrutiny of the evidence adduced at the trial by the trial court. The opinion formed by the trial court based on such analysis and evaluation of evidence to extend the respondents No. 2 to 6 benefit of doubt, taking into account the material contradictions in the evidence of the prosecution's witnesses, cannot be said to be suffering from any such legal infirmity as would warrant this Court's interference with the impugned judgment.

8. Situated thus, in our opinion, considering the nature of evidence adduced at the trial by the prosecution, the trial court has rightly acquitted respondents No. 2 to 6 of the charge of commission of an offence punishable under Section 302/34 of the IPC in the absence of convincing and sufficient evidence adduced at the trial.

9. In such a view of the matter, we do not find any merit in this appeal, which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

Rajesh/-

AFR/NAFR	NAFR
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