

Shailendra Yadav Vs State Of Jharkhand And Others

Court: Jharkhand High Court

Date of Decision: April 5, 2023

Acts Referred: Indian Penal Code, 1860 " Section 34, 120B, 201, 302
 Evidence Act, 1872 " Section 134

Hon'ble Judges: Shree Chandrashekhar, J; Ratnaker Bhengra, J

Bench: Division Bench

Advocate: Navin Kumar, Abhijeet Kumar Pandey, Manoj Kumar Mishra

Final Decision: Dismissed

Judgement

Shree Chandrashekhar, J

1. Shailendra Yadav who is the informant of Rajpur PS Case No. 21 of 2014 has challenged the judgment dated 15th May 2018 passed in Sessions

Trial No. 232 of 2014.

2. In Sessions Trial No. 232 of 2014, Nemdhari Yadav, Parmeshwar Yadav and Prabhu Yadav faced the trial on the charge under sections 302/34,

201/34 and 120-B/34 of the Indian Penal Code. The informant has made a statement before the officer-in-charge of Rajpur police station that in the

evening of 20th April 2014 he was returning home with his father and when they reached near Chiridir dam he stopped there for a while to answer the

nature's call. After some time, he heard cries of his father and when he reached near him he saw that Pradeep Yadav, Shyamdeo Yadav,

Dhaneshwar Yadav, Prabhu Yadav, Vijay Yadav, Parmeshwar Yadav and Nemdhari Yadav were trying to conceal the dead body of his father.

3. During the trial, fourteen witnesses were examined by the prosecution to support the aforesaid charge framed against the accused persons who are

the respondent Nos. 2 to 4 (hereinafter referred to as "the respondents").

4. The learned trial Judge has held that the informant who is the only eyewitness is not a reliable witness and non-examination of the chawkidar to

whom the informant first gave the information has substantially weaken the prosecution case.

5. The learned trial Judge has scrutinized the testimony of PW14 in the following manner:

"11. First of all I am taking the evidence of P.W.14 who is the informant of this case. He has proved his signature on the fardbeyan

which was Marked as Ext. 2/1. He has also proved that this fardbeyan was written by Mahadeo Yadav. He has further stated in

examination-in-chief that on 20.4.2014 on Sunday at 7.30 p.m. he was at Kanhachatti of Sunday Market. He went there to sell cucumber.

His father had purchased six katthas land from Deva Bhuian. All the accused persons, namely, Nemdhari Yadav, Pradeep Yadav, Shamdeo

Yadav, Bijay Yadav, Prabhu Yadav and Parmeshwar Yadey were stating to his father to give the land for construction of Chabutra if he will

not give his land then they will kill him and they all have threatened before 15 days of incident. Before incident Shyamlal Yadav came at this

house and said send your father to put LTI for land but he did not go. We were returning after selling cucumber from market and reached

near Chiridiri dam then he went to call of nature and his father was going to slowly towards house. During that time his father made hulla

“save me save me”. He ran away towards house. All six accused persons were pulling after killing his father near brick-line. He has

identified all six persons in the light of mobile and in the mean time Pradeep Yadav, Bijay Yadav and Nemdhari said kill him also and they

chase him, he fled away towards jungle, hide himself in the shrub, they searched him he was hidden himself whole night behind the shrub At

4:00 a.m. he reached near brick-line he saw the dead body of his father. There was head injury and teeth were broken and right leg was

dislocated. There was small red and green colour Gamchha and a lathi of 5' long lathi was also there. White colour Gamchha was on the

shoulder of his father. He was bearing plastic shoe, his head was covered by the piece of bricks and face was looking. He went to his house

and narrated with family members accused persons have killed his father and left near brick-line. Villagers came. He went to the police

station and chowkidar was also intimated. He also went to the police station with him. He has identified to the accused persons.

He has further stated in cross-examination that he has sold cucumber his father has not sold. Distance of brick-line is 200 steps from dam.

There were one lacs bricks in the brick-line. He has given the boundary of brick-line in East-land of Kamakhya Singh, West- land of

Kauleshwar Yadav, Norther - Land of Kamakhya Singh and South-dam. He went to answer to call of nature towards western side of the

dam in the forest area comes within Chiridiri. After answer call of nature he used water where he sat for call of nature from this place

where marpit was committed with his father this distance is four jaribs. He saw him through mobile bearing No. 9199682033.

6. Section 134 of the Indian Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact. The

provisions under section 134 of the Indian Evidence Act seem to be the reason that conviction of the accused can be recorded on the basis of

testimony of a solitary eyewitness provided his evidence admits no doubt and does not suffer from any inherent improbability. The learned trial Judge

has held that PW14 is not a truthful and reliable witness.

7. The conduct of PW14 who is none else than son of Tahal Yadav is highly suspicious. There are serious contradictions in his version of the

occurrence and the medical evidence.

8. Dr. Nitya Nand Mandal who conducted autopsy over the dead body of Tahal Yadav has found the following injuries on his person:

“Injuries:

(a) Lacerated wound over fore head vertical 3" x 1/2" x 1/4" bone exposed brownish colour,

(b) lacerated wound over lower limb of mouth 2"x1/2" x 1/4" brownish colour with multiple broken teeth wound involving gum and particles

also present

(c) nose deformed with smelling 5" x 1 1/2" brownish colour long and cartilaginous cracking present

(d) lacerated wound left side of the nose and face 1 1/2" x 1/4" x 1/4" brownish colour.

On exposure of the wound fracture of left moller left moller bone facial present.

(e) Lacerated wound below left eye 1/2" x 1/2" x 1/4" brownish colour.

(f) Lacerated wound front of left leg 1"x1/2"x1/4" brownish colour.

(g) Lacerated wound front of left leg 1" x 1/2" x 1/4" brownish colour

(h) Echchymosis over left forarm 1 1/2" x 1 1/2" brownish colour.

(i) Echchymosis over back of elbow 2" x 1 1/2" brownish colour.

(a) sternum fractured with haemotoma of inner side of wound 4" x 3

(b) Lungs were pale.

(c) Heart both chamber empty pericardium and muscles pale. (d)Abdomen liver, pale, stomach pale full of blood.

(e)Oesophagus contains

blood and mocus.

Other viscera were pale.

9. As PW3, the doctor has rendered an opinion that the aforesaid injuries were caused to Tahal Yadav by hard and blunt object about 4 hours before

his death and the cause of death was shock and hemorrhage resulting from multiple injuries over his face, chest and skull.

10. There are as many as nine serious injuries over vital parts of Tahal Yadav which indicate that the scuffle between the accused and the deceased

must have continued for some time. However, no other witness has come forward to support the prosecution story. PW1 and PW2 were declared

hostile and the prosecution witnesses have admitted in the Court that there was enmity between the parties. PW5 who is the daughter of Tahal Yadav

has set up an altogether different story that all accused persons caught hold of her father and taken him away from the market and on the way when

her mother made inquiries from them they had threatened her. PW4 and PW6 who are the related witnesses have also not tendered any corroborative

evidence rather PW4 has set up a third story about illicit relationship between Pradeep Yadav and the daughter-in-law of Tahal Yadav.

11. There are certain judicially evolved parameters which have to be kept in mind while dealing with a challenge to the judgment of acquittal.

12. In *Mahavir Singh v. State of M.P.* (2016) 10 SCC 220 the Hon'ble Supreme Court has observed as under:

“12. In the criminal jurisprudence, an accused is presumed to be innocent till he is convicted by a competent court after a full-fledged trial, and

once the trial court by cogent reasoning acquits the accused, then the reaffirmation of his innocence places more burden on the appellate court while

dealing with the appeal. No doubt, it is settled law that there are no fetters on the power of the appellate court to review, reappraise and reconsider

the evidence both on facts and law upon which the order of acquittal is passed. But the court has to be very cautious in interfering with an appeal

unless there are compelling and substantial grounds to interfere with the order of acquittal. The appellate court while passing an order has to give clear

reasoning for such a conclusion.”

13. Having regard to the aforesaid facts and circumstances in the case, we do not find any compelling reason to interfere with the judgment of

acquittal passed in Sessions Trial No. 232 of 2014 and, accordingly, Acquittal Appeal No.65 of 2018 is dismissed.

14. Let the lower Court records be sent to the Court concerned forthwith.

15. Let a copy of the judgment be transmitted to the Court concerned through 'FAX'.