NATHUNI YADAV AND ORS

v.

STATE OF BIHAR AND ANR

DECEMBER 20, 1996

[DR. A.S. ANAND AND K.T. THOMAS, JJ.]

Criminal Law :

Penal Code, 1860 : Section 300.

Murder—Appreciation of evidence—Moonless night—Identification of assailants—Assault committed on roofless terrace—Assailants not strangers to inmates of tragedy bound house—Neighbours rushed to scene of incident and deposed that victims mentioned names of accused as assailants who shot at victims—Held, eye witnesses well acquainted with physiognomy of each of the assailants—It could not be assumed that it would not have been possible for victims to see the assailants or that there was possibility for making a wrong identification of killers—Evidence Act, 1872, S.9.

Evidence Act, 1872 : Section 157.

Shoot out in neighbouring house—Inmates reached scene of incident and stated that victims mentioned names of accused as assailants—Held, such an evidence might not be substantive evidence but had utility at trial as it would fall under Section 157—What was important was that interval between incident and utterance of statement must not be such as to afford occasion for reflection or even contemplation.

Section 9—Motive—Held, motive for a criminal act need not necessarily be proportionately grave to do grave crimes—It was quite possible that emotion impelled to commit crime would remain undiscoverable—Sometime motive established might appear to be a weak one—That by itself not sufficient to lead to any inference adverse to prosecution—Penal Code, 1860, Section 300.

Words and Phrases :

"At or about the time"— Meaning of—In the context of Section 157 of the Evidence Act, 1872.

A The appellants were acquitted of an offence under Section 302 of the Indian Penal Code, 1860 by the Sessions Court. However, the High Court had reversed the acquittal and convicted and sentenced the appellants to undergo imprisonment for life. Hence this appeal.

According to the prosecution, the victim, his wife and other members
B of his family were sleeping on the open terrace of his residential building on a moonless night. It was then that the appellants-accused lurked into the house and reached the terrace. The victim woke up and saw the appellants armed with guns standing close by. The appellants opened fire at the victim thereby injuring him and shot at his wife who fell dead.
C Hearing the sound of hubbub their neighbour woke up and asked from his terrace as to what was happening. Then the appellants fired at the neighbour who fell dead. Many neighbours rushed to the scene of incident and stated that the victim and other members of his family mentioned the names of the appellants as the assailants who shot at them.

D In the appeal before this Court, on behalf of the accused persons it was contended that there was no possibility at all for the witnesses to identify the appellants as it was a moonless night; and that the appellants had no motive to commit the murder.

E Dismissing the appeal, this Court

HELD : 1.1. The proximity at which the assailants would have confronted with the injured, the possibility of some light reaching there from the glove of stars, and the fact that the murder was committed on a roofless terrace are germane factors to be borne in mind while judging
F whether the victims could have had enough visibility to correctly identify the assailants. Over and above those factors, it must be borne in mind the further fact that the assailants were no strangers to the inmates of the tragedy bound house, the eye witnesses being well acquainted with the physiognomy of each one of the killers. It cannot be assumed that it would not have been possible for the victims to see the assailants or that there
G was possibility for making a wrong identification of them. Even the assailants had enough light to identify the victims whom they targetted without any mistake from among those who were sleeping on the terrace. If the light then available, though meagre, was enough for the assailants why should it be assumed that same light was not enough for the injured
H who would certainly have pointedly focussed their eyes on the faces of the

intruders standing in front of them. What is sauce for the goose is sauce for the gender. [910-E-H] A

1.2. The evidence of the neighbours is to the effect that when they heard sound of gun shots they rushed to the spot within a few minutes and saw the injured persons in bleeding condition. Those witnesses further deposed that the victims mentioned the names of the appellants as the assailants who shot them. The above evidence may not become substantive evidence as *res gestae*. Nevertheless, such evidence has a utility in the trial as it would fall within the ambit of Section 157 of the Evidence Act, 1872. The words "at or about the time" in Section 157 of the Evidence Act are the crucial words to judge the time when the statement was made. Whether the statement was made at or about the time of the incident can be decided on the facts of each case. No hard and fast rule can be laid down for it. However, those words "at or about the time" in Section 157 must receive a pragmatic and liberal construction. The principle is that the time interval between the incident and the utterance of the statement should not be such as to afford occasion for reflection or even contemplation. If the time interval was so short as between the two that the mind of the witness who made the statement was well connected with the incident without anything more seeping into, such statement has a credence, and hence can be used, though not as substantive evidence on the principle enumerated in Section 157 of the Evidence Act. [911-B-C; E; G-H; 912-A-B] B C D E

Rameshwar v. *State of Rajasthan*, AIR (1952) SC 54, relied on.

2.1. Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impells a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many murders have been committed without any known or prominent motive. It is quite possible that the impelling factor remain undiscovered. [913-B-C] F

2.2. Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant. [913-D-E] G H

A **2.3 In some cases, it may not be difficult to establish motive through direct evidence, while in some other cases inferences from circumstances may help in discerning there mental propensity of the person concerned. There may also be cases in which it is not possible to discern the mental transaction of the accused which would have impelled him to act. No proof can be expected in all cases as to how the mind of the accused worked in a particular situation. Sometimes, it may appear that the motive established is a weak one. That by itself is insufficient to lead to any inference adverse to the prosecution. The mere fact that motive alleged by the prosecution is not strong enough for others to develop such a degree or grudge would not mean that the assailants had no serious reasons to commit the murder. [913-F-G; A]**

Atley **v.** *State of U.P.*, **AIR (1955) SC 807, relied on.**

Reg **v.** *Palmer,* **Shorthand Report p. 308. OCC May 1856, referred to.**

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 194 of 1989.

From the Judgment and Order dated 26.11.86 of the Patna High Court in Crl. R. No. 184 of 1982 and Govt. A. No. 3 of 1982.

E M.P. Verma, Ranbir Yadav and P. Gaur for the Appellants.

B.B. Singh for the Respondents.

The Judgment of the Court was delivered by

F **THOMAS, J.** For Bhagelu Singh Yadav, his own residence became most devastatingly unsafe when he and his wife were gunned down by armed assailants during a summer night in the month of June, 1980. His wife Sona Devi fell down dead on the spot though Bhagelu Singh escaped death as the pellets did not injure his vital organs. But the irony of fate of G his neighbour Ram Janam Rai was horrendous as he too was shot dead just because he woke up hearing the sound of commotion from his neighbourhood. Balroop Yadav (first cousin of Bhagelu Singh Yadav). His two sons (Nathuni Yadav and Chela Yadav) and his son-in-law (Chandrika Yadav) were charge-sheeted by the police on the aforesaid incident before H the Sessions Court. After trial learned Sessions Judge acquitted all of them.

But a Division Bench of the Patna High Court has reversed the acquittal and convicted them of murder and sentenced them to undergo imprisonment for life. This appeal, is filed under Section 2A of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 and Section 379 of the Code of Criminal Procedure, 1973.

During the pendency of this appeal, Balroop Yadav passed away on 17.2.1990. Consequently, the appeal against him stood abated. We heard Shri M.P. Verma, senior advocate who argued the appeal for the remaining appellants and Shri B.B. Singh, advocate for the State of Bihar.

Balroop Singh's father (Charvidhar) and Bhagelu Singh's father (Lagatu) were direct brothers, decease Bhagelu Singh had married twice and Sona Devi was his second wife. (His first wife and a daughter born in the first wedlock had died long before this incident.) Sheela Kumari (PW-6) is the daughter of Bhagelu Singh and Sona Devi. They were residing together in his house in Diliyan villlage (Rohtak District, Bihar). Appellants were also residing in the same village.

Bad blood existed between Bhagelu Singh Yadav and Balroop Yadav on account of some family feud. This ghastly incident took place around midnight on 11.6.1980. On that fateful night, Bhagelu Singh and other members of his family were sleeping on the open terrace of his residential building. Sona Devi's brother Saryu Singh (PW-4) was also sleeping on the same terrace. It was during then that the assailants lurked into the house and reached the terrace. As the dog barked, Bhagelu Singh Yadav woke up and saw the assailants armed with guns standing closeby.

Appellant Chandrika opened fire at Bhagelu Singh while appellant Nathuni Yadav shot Sona Devi with another gun. Hearing the sound of nacouth their neighbour Ram Janam Rai woke up and asked from his terrace as to what was happening. Then Balroop Singh Yadav turned the mouth of his gun towards that neighbour and pulled the trigger. Ram Janam Rai slumped down and breathed his last then and there. During the shoot out Saryu Singh (PW-4) sensed that the assailants might be prowling for the little daughter Sheela Kumari also and so he took courage and lifted her up and slipped away from the scene. Assailants then fled from the scene.

A Many nighbourers rushed to the place. Bhagelu Singh Yadav was taken to the Government hospital Sasaram where he was treated for the injuries sustained.

We have no doubt that, on the evidence in this case. Bhagelu Singh
B and his wife were shot at on the ill fated night at the terrace of their residential building nor have we any doubt that their neighbour Ram Janam Rai was shot dead as he woke up in the night and expressed his inquisitiveness as to what was happening in the neighbourhood. We may point out that learned counsel for the appellant did not dispute the above points before us. The contention which learned counsel stressed was that appel-
C lants were not the assailants who intruded into the house of Bhagelu Singh Yadav.

According to the learned counsel, there was no possibility at all for the witnesses to identity the assailants as it was a moonless night and there
D was no lamp burning in the vicinity and hence it would have been pitch dark when the incident happened.

We have considered the said contention from all its angles. Ever assuming that there was no moonlight then, we have to gauge the situation
E carefully. The proximity at which the assailants would have confronted with the injured, the possibility of some light reaching there from the glove of stars, and the fact that the murder was committed on a roofless terrace are germane factors to be born in mind while judging whether the victims could have had enough visibility to correctly identify the assailants. Over and
F above those factors, we must bear in mind the further fact that assailants were no strangers to the inmates of the tragedy bound house, the eye witnesses being well acquainted with the physiognomy of each one of the killers. We are, therefore, not persuaded to assume that it would not have been possible for the victims to see the assailants or that there was possibility for making a wrong identification of them. We are keeping in
G mind the fact that even the assailants had enough light to identity the victims whom they targetted without any mistake from among those who were sleeping on the terrace. If the light then available, though meagre, was enough for the assailants why should we think that same light was not enough for the injured who would certainly have pointedly focussed their
H eyes on the faces of the intruders standing in front of them. What is sauce

for the goose is sauce for the gander. A

Apart from the evidence of PW-4 (Saryu Singh PW-6 (Sheela Kumari) and PW-10 (Bhagelu Singh) identifying the appellants as their assailants, there are certain other materials ensuring confidence in our mind that PW10 would have correctly identified his assailants as appellants. B

PW2 (Muni Yadav) and PW7 (Ram Janam Rai) were very close neighbours of Bhagelu Singh Yadav. The evidence of those two witnesses is to the effect that when they heard sound of gun shots they rushed to the spot within a few minutes and saw the injured persons in bleeding condition. Those witnesses deposed further that Bhagelu Singh (PW10) and C Saryu Singh (PW4) mentioned names of these appellants as the assailants who shot them. PW8 is the son of the Ram Janam Rai. He too deposed similarly that Bhagelu Singh mentioned the names of these appellants when the witness reached the spot soon after seeing his father lying dead with gunshot injury inflicted by somebody from the house of Bhagelu Singh. D

The above evidence of PW2, PW7 and PW8 may not become substantive evidence as *res gestae.* Nevertheless. Such evidence has a utility in the trial as it would fall within the ambit of section 157 of the evidence Act. Any former statement made by a witness at or about the time when the E incident took place becomes usable as of corroborative value under Section 157 of the evidence Act. Though such statements are not part of the main transaction, they have a probative value for corroborative purposes if such statements have been made without delay. If delay was involved in making such statement. Its utility would be restricted to confronting the maker for F contradicting him. Such a statement would have no corroborative value. If there was no appreciable delay the statement made by the witness can be used for corroborating his own testimony as provided in Section 157 of the Evidence Act.

The words "at or about the time" in Section 157 of the evidence Act G are the crucial words to judge the time when the statement was made. Whether the statement was made at or about the time of the incident can be decided on the facts of each case. No hard and fast rule can be laid down for it. However, those words "at or about the time" in Section 157 must receive a pragmatic and liberal construction. The principle is that the H

A time interval between the incident and the utterance of the statement should not be such as to afford occasion for reflection or even contemplation. If the time interval was so short as between the two that the mind of the witness who made the statement was well connected with the incident without anything more seeping into, such statement has a credence, and
B hence can be used, though not as substantive evidence, as corroborating evidence, on the principle adumberated in Section 157 of the Evidence Act.

Vivian Bose J. has observed in *Rameshwar* v. *State of Rajasthan*, AIR (1952) SC 54 that "there can be no hard and fast rule about" at or about condition in section 157. The main test is whether the statement was made
C as early as can reasonably be expected in the circumstances of the case and before there was opportunity for listening and concoction". We respectfully follow the aforesaid observation.

There is nothing on record to doubt the genuiness of the testimony
D of PW2 (Muni Yadav). PW7 (Ram Janam Rai) and PW8 (Ramadhar Singh) that they heard from Bhagelu Singh Yadav (PW10) that appellants were the assailants. We hold that the said statements of Bhagelu Singh Yadav (PW10) and Saryu Singh (PW4) corroborate their evidence in this case.

E

Learned counsel advanced an argument, very vehemently, based on perpetrate the motive attributed to the appellants for committing this dastardly murder. According to the counsel, if appellants were the murders they should have had insatiable thirst for the blood of Sona Devi, but
F prosecution suggested only a pusile or fragile motive for them to perpetrate the brutal murder of an unarmed sleeping woman. What PW10 Bhagelu Singh Yadav suggested as motive for the crime is this : He had given his child Sheela Kumari in marriage to somebody else. As he had no other male progeny first appellant Balroop Yadav had an eye on his landed property. But Bhagelu Singh Yadav had gifted it away to his wife Sona Devi
G - This embittered the appellants and driven them to murder Sona Devi, is the case of the prosecution. Learned Sessions Judge treated it as a very weak motive for this gory murder. Learned counsel for the appellant rightly contended that by murdering Sona Devi appellants could not succeed in securing the property which was gifted away by Bhagelu Singh. Does it
H mean that appellants would have had no motive at all for gunning down

Bhagelu Singh Yadav and his wife? The mere fact that motive alleged by the prosecution is not strong enough for others to develop such a degree of grudge would not mean that the assailants had no serious reasons to do this.

Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impells a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Champbell struck a note of caution in *Reg* v. *Palmer* (Shorthand Report at page 308 SCC May 1850; thus: "But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties". Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant. In *Atley* v. *State of U.P.,* AIR (1955) SC 807 it was held "that is true, and where there is clear proof of motive for the crime, that lends additional support to the finding of the court that the accused was guilty but absence of clear proof of motive does not necessarily lead to the contrary conclusion." In some cases, it may not be difficult to establish motive through direct evidence. While in some other cases inferences from circumstances may help in discerning the mental propensity of the person concerned. There may also be cases in which it is not possible to disinter the mental transaction of the accused which would have impelled him to act. No proof can be expected in all cases as to now the mind of the accused worked in a particular situation. Sometimes, it may appear that the motive established is a weak one. That by itself is insufficient to lead to any inference adverse to the prosecution.

After considering the various arguments addressed by learned counsel and after scrutinising the evidence in this case. We reach the conclusion

A that the High Court has rightly interfered with the order of acquittal passed by the trial Judge. The conviction and sentence passed on he appellants are well merited and warrant no interference. The appeal is accordingly dismissed. The bail bonds executed by the appellants would stand cancelled. The Chief Judicial magistrate, Rohtas Sasaram is directed to take
B immediate steps to put the appellants back in jail for undergoing the sentence.

V.S.S. Appeal dismissed.