

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2024:AHC-LKO:77389-DB

Judgment Reserved on 28.08.2024

Judgment Delivered on 22.11.2024

Court No.-1

Case :- CRIMINAL APPEAL No. - 490 of 2016

Appellant :- Shiv Prasad Yadav

Respondent :- State of U.P.

Counsel for Appellant :- Vikas Vikram Singh, Ankit Singh, Mahima Dixit, Nagendra Mohan, Salil Kumar Srivastava, Salil Mohan

Counsel for Respondent :- Govt. Advocate

AND

Case :- CRIMINAL APPEAL No. - 491 of 2016

Appellant :- Tribhuwan Yadav And Ors.

Respondent :- State of U.P.

Counsel for Appellant :- Vikas Vikram Singh, Mahima Dixit

Counsel for Respondent :- Govt. Advocate

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per : Ajai Kumar Srivastava-I, J.)

1. Heard Shri Nagendra Mohan, learned counsel for the appellants, Shri Umesh Chandra Verma, learned A.G.A. for the State and perused the entire record.

2. Under challenge in these criminal appeals is the impugned judgment and order dated 28.03.2016 passed by the learned Additional Sessions Judge/Fast Track Court, Bahraich in Sessions Trial No.255 of 2005 arising out of Crime No.150 of 2002, under Sections 307, 302 and 120-B of the Indian Penal Code¹, Police Station Risiya, District Bahraich whereby the appellant, Shiv Prasad Yadav has been convicted and sentenced to undergo life imprisonment for the offence under Section 302 I.P.C. with a fine of Rs.10,000/- and in default of payment of fine, he has further been directed to undergo two years' additional simple imprisonment. He has also been convicted and sentenced to undergo life imprisonment for the offence under Section 307 I.P.C. with a fine of Rs.10,000/- and in default of payment of fine, he has further been directed to undergo two years' additional simple imprisonment. The appellants, namely, Tribhuwan Yadav, Jeete Yadav and Bhanu Yadav have been convicted and sentenced to undergo life imprisonment for the offence under Section 302 read with Section 120-B I.P.C. with a fine of Rs.10,000/- each and in default of payment of fine, they have further been directed to undergo two years' simple imprisonment. They have also been convicted and sentenced to undergo life imprisonment for the offence under Section 307 read with Section 120-B I.P.C. with a fine of Rs.10,000/- each and in default of payment of fine, they have further been directed to

¹ hereinafter referred to as "I.P.C."

undergo two years' additional simple imprisonment. All the sentences were directed to run concurrently.

3. Since the aforesaid two appeals have been preferred to assail the impugned judgment and order dated 28.03.2016 passed by the learned Additional Sessions Judge/ Fast Track Court, Bahraich in Sessions Trial No.255 of 2005, which emanated from same Case Crime No.150 of 2002, under Sections 302, 307 and 120-B of the I.P.C., Police Station Risiya, District Bahraich, therefore, they have been heard together and are being decided by a common judgment.

4. The case of the prosecution, in nutshell, is that on 16.07.2002 at about 7:45 P.M. the informant's nephew, Anganoo Prasad Verma was returning to his village from Risiya township. On the way, he encountered the appellants, namely, Tribhuwan Yadav and Shiv Prasad Yadav, who were on same motorcycle and the other appellants, namely, Bhanu Yadav as well as Jeete Yadav, who were on another motorcycle. In front of scrap shop of Khalil Kabadi, which is located in the Village Maila Badgaon, the aforesaid appellants shot Anganoo Prasad Verma, causing him serious injuries. Thereafter, the aforesaid appellants came to Risiya township on their motorcycles and shot informant's cousin, Ram Sagar Verma at the Hotel of Sharad Chandra Gupta. While Ram Sagar Verma was being taken to the hospital, he revealed names of the aforesaid appellants, however, he died before he could

reach the hospital. This incident was witnessed by Irshad Ali, Anoop Kumar Garg and Uma Shankar Gupta in the light of a gas lamp. Due to this incident, fear and terror spread among the public and the shops were quickly closed. The aforesaid appellants fled towards the southern direction on their motorcycles.

5. On the basis of aforesaid written report, Ext. Ka-1 submitted by the first informant, Shatrohan Prasad Verma, the first information report, Ext. Ka-5 came to be lodged against the accused/ appellants under Sections 302, 307 I.P.C. and Section 7 of Criminal Law Amendment Act.

6. The inquest proceeding started on 16.07.2002 at 10:05 P.M. and got concluded on 16.07.2002 at 11:30 P.M. The inquest report has been duly proved by Virendra Kumar Singh, S.O. as Ext. Ka.2.

7. P.W.-8, Dr. R. N. Tripathi had examined the injured, Anganoo Prasad Verma at about 10:15 P. M. on 16.07.2002. The following injuries described by P.W.-8, Dr. R. N. Tripathi were found on the body of the injured :-

1.	<i>L. W. put over the Rt side chest 10 cm away from the Rt nipple size 2.5 cm x 2 cm x depth 4.0 bl on touch. Blackening and tatooing around the wound with X-ray chest, PA view.</i>
2.	<i>L. W. put over the ant. surface of Rt wrist size 6 cm x 1.5 cm bl on touch.</i>

3.	<i>A L. W. put over the Rt middle finger over the lat. surface size 1 cm x 0.5 cm kept u.o. X-ray (Rt).</i>
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8. The postmortem of the deceased has been conducted by Dr. Subhash Chandra, P.W.-5 and the report has been proved by him as Ext. Ka-3.

9. According to the postmortem report, Ex. Ka-3, the cause of death of the deceased is reported to be shock and haemorrhage as a result of ante mortem injuries and following ante-mortem injuries were reported on the body of the deceased :

1.	Fire arm wound of entry of size 2cm x 1.5cm x left pleural cavity deep oblique on the Rt side of back of chest 5cm lateral to the vertebral column and 7cm. below lower angle of scapula Rt. No blackenning and Tatooing found. Underlying rib on the left side fractured. Direction is Rt to left. Left lung Punctured.
2.	Firearm wound of Exit of size 2.5 cm x 1.75 cm x left pleural cavity deep at the left side of front of chest. Underlying Rib fractured. The wound is 5cm lateral to the left nipple and 14cm below left shoulder joint. No Blackening and Tatooing present. Left lung Punctured.
3.	Lacerated wound 1cm x 5cm x muscle deep on the left arm. 5cm above left Elbow joint on the anterolateral aspect.

10. The Investigating Officer recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure². He visited the places of
² hereinafter referred to as " Cr.P.C"

occurrence and prepared two site plans thereof as Ext. Ka-6 and Ext. Ka-7.

11. Upon conclusion of investigation, the Investigating Officer submitted a charge sheet, Ext. Ka-9 under Sections 302, 307 I.P.C. and Section 7 of Criminal Law Amendment Act against the accused/appellant, Shiv Prasad Yadav as well as charge sheet under Section 120-B I.P.C. and Section 7 of Criminal Law Amendment Act against the accused/appellants, namely, Tribhuwan Yadav, Jeete Yadav and Bhanu Yadav.

12. Charges for the offence under Sections 302 and 307 I.P.C. were framed against the accused/appellant, Shiv Prasad Yadav and charge for the offence under Section 120-B I.P.C. was framed against the accused/appellants, namely, Tribhuwan Yadav, Jeete Yadav and Bhanu Yadav, who denied the charges and claimed to be tried.

13. In order to bring home guilt of the accused/appellant, the prosecution has examined Shatrohan Prasad Verma, complainant as P.W.-1, Anganoo Prasad Verma as P.W.-2, Uma Shankar Gupta as P.W.-3, Jai Jai Ram as P.W.-4, Dr. Subhash Chandra as P.W.-5, Anoop Kumar Garg as P.W.-6, Irshad Ali as P.W.-7, Dr. R. N. Tripathi as P.W.-8, Laxmi Kant Tiwari as P.W.-9 and Arun Kumar Singh as P.W.-10.

14. The accused/ appellants, in their statements recorded under Section 313 Cr.P.C., have stated the prosecution story to be false. They have also stated to have been falsely implicated in this case. They also claimed to be innocent.

15. No evidence in defence was adduced by the accused/ appellants before the learned trial court.

16. The learned trial court, after appreciating the evidence available on record, rendered the impugned judgment and order dated 28.03.2016 whereby the accused/ appellants came to be convicted as aforesaid.

17. Aggrieved by the aforesaid impugned judgment and order dated 28.03.2016, the accused/ appellants have preferred the instant criminal appeals.

18. Learned for the accused/ appellants has submitted that the appellants were falsely implicated in this case. The prosecution has failed to adduce any reliable witness to clinch the charges under Sections 302, 307 and 120-B I.P.C.

19. His next submission is that the appellants, namely, Tribhuwan Yadav, Jeete Yadav and Bhanu yadav were charged for the offence under Section 120-B I.P.C. However, there is no such evidence on the basis of which proves beyond reasonable doubt that the aforesaid appellants, namely, Tribhuwan Yadav, Jeete

Yadav and Bhanu Yadav had ever hatched a conspiracy to kill the deceased, Ram Sagar Verma and to commit an offence under Section 307 I.P.C.

20. His further submission is that the conviction of aforesaid appellants, namely, Tribhuwan Yadav, Jeete Yadav and Bhanu yadav for the offence under Sections 302 read with 120-B I.P.C. and 307 and 120-B I.P.C. is based on surmises and conjectures only.

21. His next submission is that there was no eye-witness of entire incident which is stated to have occurred on 16.07.2002 at about 7:45 P.M. in two legs. The alleged eye-witnesses, who are stated to have seen this incident, have not supported the prosecution case. In this regard, he submits that P.W.-6, Anoop Kumar Garg and P.W.-7, Irshad Ali have turned hostile, who have not supported the case of prosecution at all. He has drawn attention of this Court to the fact that P.W.-4, Jai Jai Ram has also not supported the prosecution's case who was projected by the prosecution to be a witness of alleged conspiracy, which was allegedly hatched by the appellants, Tribuwan Yadav and Shiv Prasad Yadav.

22. His further submission is that though according to postmortem report, the cause of death of the deceased was homicidal, however, there is a complete lack of evidence showing complicity of the appellants in commission of this crime. Therefore, the

conviction of the appellants is palpably illegal and against the weight of evidence available on record, which deserves to be set aside and the appellants deserve to be acquitted of all charges levelled against them.

23. Per contra, learned A.G.A. for the State has submitted that the accused/ appellants rightly came to be convicted vide impugned judgment and order dated 28.03.2016, which is well discussed and reasoned. The accused/ appellants were named in the first information report. The prosecution has proved its case beyond reasonable doubt on the basis of cogent and reliable testimonies of prosecution witnesses. Therefore, interference by this Court is neither warranted nor justified. He, accordingly, prays for dismissal of the instant criminal appeals.

24. Having heard learned for the appellants, learned A.G.A. for the State and upon perusal of record, it transpires that the first informant of this case is P.W.-1, Shatrohan Prasad Verma, who has proved the written report, Ext. Ka-1. A perusal of the written report, Ext. Ka-1 reveals that the entire incident occurred in two legs. Initially on 16.07.2002 at about 7:45 P.M., the nephew of the first informant, P.W.-2, Anganoo Prasad Verma, son of Gurdeen Verma is stated to have been shot by the appellants, namely, Tribhuwan Yadav, Shiv Prasad Yadav, Jeete Yadav and Bhanu Yadav. Thereafter, the aforesaid appellants/

assailants are stated to have fired at the cousin of the first informant, Ram Sagar Verma in the Risiya Township, who succumbed to his injuries while he was being taken to the hospital. According to the first informant, while the deceased, Ram Sagar Verma was being taken to hospital, he disclosed the names of the aforesaid appellants/ assailants.

25. The postmortem report of the deceased, Ext. Ka-3 reveals that there was one entry wound of a firearm and a corresponding exit wound on the left side of front chest of the deceased. There was also lacerated wound of 1cm x 5cm muscle deep on the left side arm of the deceased. Thus, it was a homicidal death of the deceased.

26. The first informant has been examined as P.W.-1, who has stated that this incident happened on 16.07.2002 at about 7:45 P.M. However, a careful perusal of the entire testimony of P.W.-1, Shatrohan Prasad Verma, the first informant shows that neither he was an eye-witness to the incident of assault which happened with P.W.-2, Anganoo Prasad Verma nor he saw Ram Sagar Verma being shot dead by the appellants. The crux of his statement is that when he heard sound of fire, he reached at the spot and saw two persons fleeing away from the place of occurrence on a motorcycle. This witness identified the appellant, Shiv Prasad Yadav, who was carrying a firearm, however, he could not identify the other persons.

27. We notice that P.W.-1, Shatrohan Prasad Verma has proved written report, Ext. Ka-1. He has stated that while P.W.-2, Anganoo Prasad Verma was assaulted by the appellant, Shiv Prasad Yadav, he was accompanied by one Sahaj Ram, who has not been examined by the prosecution.

28. We also notice that P.W.-1, Shatrohan Prasad Verma had admitted, in his testimony, that he had not seen the appellants, namely, Tribhuwan Yadav, Jeete Yadav and Bhanu Yadav at the place of occurrence and has also admitted that he got the names of aforesaid appellants included in written report due to anxiety of this incident.

29. P.W.-2, Anganoo Prasad Verma is an injured witness, who is said to have been assaulted by the appellants in the second leg of the incident, which occurred on 16.07.2002 between 7:45 P.M. to 8:00 P.M. This witness has stated on oath that on the date of the incident, he was going to his home on a bicycle. He had reached at the scrap shop of Khalil Kabadi when he was overtaken by a motorcycle on his right side. Before this witness could speak, he was shot by the appellant, Shiv Prasad Yadav, who was a pillion rider on a red colour motorcycle. Likewise P.W.-1, Shatrohan Prasad Verma, has also stated that when he was shot by the appellant, Shiv Prasad Yadav, he was accompanied by Sahaj Ram. Thus, the crux of the entire testimony of P.W.-2, Anganoo Prasad Verma is that he was shot by the

appellant, Shiv Prasad Yadav and none else. It is also decipherable from his entire testimony that he did not see the incident of killing of the deceased, Ram Sagar Verma.

30. P.W.-3, Uma Shankar Gupta, P.W.-4, Jai Jai Ram, P.W.-6, Anoop Kumar Garg and P.W.-7, Irshad Ali have turned hostile, who have not supported the prosecution case. They have stated that they did not see the incident nor did P.W.-4, Jai Jai Ram hear and see the appellants, Tribhuwan Yadav, Jeete Yadav and Bhanu Yadav hatching a conspiracy to cause this incident.

31. P.W.-8, Dr. R. N. Tripathi, in his testimony, has stated that he had examined P.W.-2, Anganoo Prasad Verma at about 10:15 P.M. on 16.07.2002. The injury report of P.W.-2, Anganoo Prasad Verma has been proved by P.W.-8, Dr. R. N. Tripathi as Ext. ka-4. The injuries were reported to be caused by firearm and the duration was reported to be fresh.

32. Thus, we are left with the testimonies of two prosecution witnesses, namely, P.W.-1, Shatrohan Prasad Verma and P.W.-2, Anganoo Prasad Verma. As stated above, P.W.-1, Shatrohan Prasad Verma is a first informant, who did not see himself any part of this incident whereas P.W.-2, Anganoo Prasad Verma is an injured witness, whose injury report reveals that he sustained a firearm injury on 16.07.2002. His injuries

were reported to be fresh and he was examined at about 10:15 P.M. according to P.W.-8, R. N. Tripathi, who examined the injuries of P.W.-2. Therefore, we find the presence of injured witness, P.W.-2, Anganoo Prasad Verma at the place of occurrence to be consistent with the prosecution's case as contained in Ext. Ka-4. P.W.-2, Anganoo Prasad Verma has stated that he was shot by the appellant, Shiv Prasad Yadav, who was a pillion rider on a red colour motorcycle. However, this witness had not identified the other person, who was driving a red colour motorcycle. The other witnesses of fact have not supported the prosecution's case as already stated above. Therefore, despite the fact that the deceased, Ram Sagar Verma died because of a firearm injury, we are constrained to hold that the prosecution has miserably failed to prove that the appellant, Shiv Prasad Yadav killed the deceased. So far as the recovery of motorcycle by means of recovery memo, Ext. Ka-8 is concerned, we have noticed with concerned that such recovery was made from the house of the appellant, Shiv Prasad Yadav. It is against normal human conduct that any accused person after committing an offence by using a motorcycle will keep the same motorcycle in his house.

33. Insofar as offence of conspiracy is concerned, it is apposite to refer to a judgment rendered by Hon'ble the Supreme Court in **State of U.P. vs. Sukhbasi and others** reported in **AIR 1985 SC 1224**

wherein it has been held that to substantiate a charge under Section 120-B I.P.C., there must be a criminal conspiracy at least between two or more persons. Once there is absence of evidence of association of a particular accused in hatching conspiracy, the charge against him must fail.

34. Thus, having regard to the testimonies of witnesses of fact, namely, P.W.-1, Shatrohan Prasad Verma, P.W.-2, Anganoo Prasad Verma, P.W.-3, Uma Shankar Gupta, P.W.-4, Jai Jai Ram, P.W.-6, Anoop Kumar Garg and P.W.-7, Irshad Ali and having regard to the law laid down by Hon'ble Supreme Court in **Sukhbasi (Supra)**, we are of the considered view that learned trial Court erred in holding the appellant, Shiv Prasad Yadav guilty of the offence under Sections 302 and 307 I.P.C. and appellants, Tribhuwan Yadav, Jeete Yadav and Bhanu Yadav of the offences under Sections 302 read with 120-B and 307 read with 120-B I.P.C. for which they have been convicted by means of the impugned judgment and order dated 28.03.2016. The finding of guilt recorded by the learned trial Court is not based on evidence available on record, therefore, the same deserves to be set aside, which is, accordingly, set aside. As a result, the appellant, Shiv Prasad Yadav is acquitted of charges under Sections 302 and 307 I.P.C. The appellants, Tribhuwan Yadav, Jeete Yadav and Bhanu Yadav are acquitted of charges under

Sections 302 read with 120-B and 307 read with 120-B I.P.C.

35. However, keeping in view the consistent and reliable testimony of P.W.-2, Anganoo Prasad Verma, an injured witness whose presence at the place of occurrence is found to be reliable, we find that P.W.-2, Anganoo Prasad Verma was shot by the appellant, Shiv Prasad Yadav by means of a firearm. Having regard to the situs of injuries sustained by P.W.-2, Anganoo Prasad Verma and absence of any such evidence to suggest that such injuries were caused to the injured, PW-2, Anganoo Prasad Verma with an intention to kill him, we hold the appellant, Shiv Prasad Yadav guilty of the offence under Section 324 I.P.C. and sentence him to undergo three years' rigorous imprisonment and fine of Rs.25,000/-, which shall be given to the injured, Anganoo Prasad Verma as compensation. He shall deposit the aforesaid amount of fine within a period of eight weeks from the date of his release, failing which, the learned trial Court shall be at liberty to recover the same, in accordance with law.

36. Criminal Appeal No.491 of 2016 is, thus, **allowed** and Criminal Appeal No.490 of 2016 is **partly allowed** as indicated above.

37. The appellants, Tribhuwan Yadav, Jeete Yadav and Bhanu Yadav are on bail. Their bail bonds are cancelled and sureties are discharged.

38. The appellant, Shiv Prasad Yadav is in jail. Let the appellant, Shiv Prasad Yadav be released forthwith, if he has already undergone the sentences awarded to him as aforesaid, provided he is not wanted in any other criminal case.

39. In compliance with the provisions contained in Section 437-A Cr.P.C., the appellants, Shiv Prasad Yadav, Tribhuwan Yadav, Jeete Yadav and Bhanu Yadav are directed to furnish personal bonds and two sureties each to the satisfaction of the court concerned within a period of six weeks from today.

40. Let a copy of this judgment be also placed on records of connected Criminal Appeal No.491 of 2016.

41. Let the trial court record along with a copy of this judgment be transmitted forthwith to the learned trial Court concerned for information and necessary compliance through fax/ E-mail.

(Ajai Kumar Srivastava-I, J.) (Attai Rahman Masoodi, J.)

Order Date :- 22.11.2024
Mahesh