

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.295 of 1992

Arising Out of G.R. No.1184 of 1984 PS.Kumarkhand, District-MADHEPURA giving rise to Sessions Trial No. 16 of 1985.

1. Achhelal Yadav

2. Anmol Yadav

Both sons of Shri Bindeshwari Yadav, Village Ranipatti, P.S. Kumarkhand,
District Madhepura

.... Appellants

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant/s : Shri Anil Kumar Singh, Advocate (Amicus Curiae)

For the Respondent : Dr. Maya Nand Jha, A.P.P.

CORAM: HONOURABLE SHTRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI. JUSTICE DHARNIDHAR JHA)

Date: 20-01-2015

Nine accused persons were initially charged by the learned 1st Additional Sessions, Saharsa at Madhepura under Sections 148,302/34 and 379 of the Indian Penal Code. Out of them accused Bindeshwari Yadav, Mahendra Yadav and Kusum Lal Yadav died and proceedings against them were directed to be dropped by the trial court by various orders. The trial of accused Bindeshwari Yadav son of Bani Lal Yadav and Dipu Yadav was separated on 11.4.1991 by the trial court. Thus, six accused persons survived on their trial. The



judgment in the case was delivered by the learned 1st Additional Sessions Judge, Madhepura on 30.6.1992 in Sessions Trial No 16 of 1985 and while four accused persons, namely, Uttim Lal Yadav, Jai Kumar Yadav, Janardan Yadav and Sudishta Yadav were acquitted of the charges under Sections 148, 302/34 and 379 of the Indian Penal Code, the present two appellants, namely, Achchelal Yadav and Anmol Yadav were held guilty of committing the said offences. After hearing them on sentence, the learned trial Judge directed each of the two appellants to suffer rigorous imprisonment for life under Section 302/34 of the Indian Penal Code and rigorous imprisonment for three years each on each of the two counts of Sections 148 and 379 of the Indian Penal Code.

2. The appellants have preferred the present appeal to challenge the judgment of conviction and order of sentence passed against them.

3. The facts of the case were that Chit Narayan Yadav, the informant, who died during the pendency of the trial, was informed by his two brothers that the nine accused persons, who were initially charged, with 20-25 persons having formed a *Hanseri*, were harvesting paddy crop from his land appertaining to *Khata* No. 415, *Khesra* No.5692 area 5 *bigha* 7 *dhurs* out of which 2 ½” *bigha* had fallen in the share of the informant. The informant stated that he had planted different varieties of paddy in 2 *bigha* of land and on the rest of the area in his possession there were 5 bamboo clumps. The informant and his witnesses came to the field and found the accused persons harvesting the paddy crop and also cutting the bamboos themselves with the help of 20 to 25 other persons. The informant came back to his house and came again on to his field together with Badri Yadav (P.W.3), Deo Narayan Yadav (P.W.2) and his Bhagina



(sister's son) deceased Kapileshwar Yadav. He saw the unlawful assembly of the accused persons cutting the paddy and standing bamboos. Out of them, he identified nine accused persons who were initially put on trial. Seeing the informant and his witnesses the accused persons ran to assault them. The informant, P.Ws. 2 and 3 and deceased Kapileshwar Yadav started running away from the place of occurrence. When they reached near the house of Sarpanch Manbodh Yadav (not examined) , accused Bindeshwari Yadav (died during the trial), shot an arrow from his bow which hit the deceased on the upper part of his right arm near scapula causing injury to him. The arrow had gone through and through the injury. Accused Bindewhari Yadav (also died during the trial) fired a shot from his country made pistol which hit Kapileshwar Yadav on his left temple near the eye and he fell down. Thereafter accused Dipo Yadav and Bindeshwari Yadav, whose trial was separated along with acquitted accused Janardan Yadav, Jai Kumar Yadav, Sudishta Yadav and Uttim Lal Yadav, dealt blows with their farsa to the deceased Kapilishwar Yadav. The two appellants Achchey Lal Yadav and Anmol Yadav were said to have given blows with lathi when the deceased was lying on the ground stating that the deceased had to be killed.

The informant stated that he raised a hue and cry which attracted Hari Yadav (P.W. 5), Ramji Yadav (P.W. 6), Rajaram Prasad Yadav (P.W. 4) Shiv Narayan Yadav (P.W. 7) and others who saw the occurrence. Kapileshwar Yadav died there at the spot. Accused Bindewhari Yadav alias Ghoghai Yasdav as also accused Bindewhari Yadav son of Nakchedi Yadav asked the other accused persons to take away the dead body of Kapileshwar Yadav to cause its disappearance, but that was protested by the villagers who had

assembled there by then, as a result of which they could not succeed in taking away the dead body. The informant stated that he took the dead body to the *Darbaja* of Shivam Yadav and after putting the same under watch of three Chaukidars came to the Police Station to lodge a report.

The Investigating Officer has not been examined but what we find is that inquest was held on the dead body and the same was sent for post-mortem examination and P.W.1 Dr. Jang Bahadur Singh held autopsy and had issued the post-mortem examination report (Ext.1). After close of the investigation, the nine accused persons, as noted above, were sent up for trial and they were duly put on trial.

4. The defence of the appellants was that they had purchased the land in sale in execution of a decree (Ext./C). The sale certificate was dated 15.6.1957 and delivery of possession over the purchased land was made to them on 20.5.1958 and the bamboo clumps had been grown by them and that the informant and others having formed an unlawful assembly, had trespassed over their land to unsettle the appellants from their possession, which had resulted in some clash and the deceased might have received injury at somebody else's hand. Thus, what appears from the evidence is that the accused persons had pleaded exercise of their right of private defence over the property.

5. Nine witnesses were examined by the prosecution, out of whom P.W.6 Ramji Yadav was tendered for cross-examination. P.Ws. 8 and 9 were formal witnesses having brought on record the Fardbeyan and F.I.R. of the case. Out of the remaining six witnesses P.W. 1 Dr. Jang Bahadur Singh had held post-mortem examination and had prepared the post-mortem examination report. P.W.2 Deo

Narayan Yadav, brother of the informant with P.W. 3 Badri Yadav another brother of the informant, P.W. 4 Ramji Prasad Yadav and P.W. 5 Hari Yadav had given eye witness account to the occurrence along with P.W. 7 Shiv Narayan Yadav. The defence had not examined any witness and had merely brought on record Ext./A the F.I. R. of the counter case and Ext. B showing delivery of possession in favour of the accused and the sale certificate, Ext./ C.

6. While we were being taken through the evidence of the witnesses, what we found was that there were specific allegations against accused Mahendra Yadav of hurling a farsa blow on to the deceased, while accused Kusum Lal Yadav and Dipu Yadav and these two appellants Achelal Yadav and Anmol Yadav were said to have given lathi blows to the deceased. This evidence, as per submission of the learned counsel appearing on behalf of the appellants as also the learned counsel appearing on behalf of the State, is consistent as regards the evidence of the witnesses, like, P.Ws. 2,3,4,5 and 7. However, what we find is that P.W.1 who held post-mortem examination on the dead body had found no lacerated wound on any part of the dead body so as to corroborating the evidence of the above eye witnesses regarding the two appellants having given lathi blows to the deceased. P.W. 1 found a penetrating wound which was caused by an arrow on the right arm situated medially, cutting laterally into the muscles with iron part of the arrow still sticking up in the flesh of the deceased. In addition to the above, three incised wounds were caused- one on scalp bone, fracturing it into four pieces, the 2nd on occipital region and the third causing fracture of the left zygomatic bone. In the opinion of P.W. 1 death had occurred on account of laceration of brain matter which had been caused by injuries no. 3 and 4, i.e., incised wounds caused by sharp cutting weapon on occipital region as also on

the head. P.W. 1 was very definite that the injuries were caused by sharp cutting weapon. There was no injury caused by hard and blunt substance. Accused Janardan Yadav, Jai Kumar Yadav, Sudishta Yadav and Uttm Lal Yadav against whom there were allegations of dealing farsa blows, were acquitted by the trial court. As regards the two appellants the evidence that they had given numerous lathi blows on the deceased stating that the deceased be killed, does not get corroborated from the evidence of Doctor Jang Bahadur Singh (P.W.1). Thus, what we find is that participation of the appellants in the occurrence pales, in fact, into serious doubt. This is the limited ground on which we have to acquit the present two appellants. From the volume of evidence which was produced before the court below, we find that it was a case in which these two appellants ought also have been acquitted by the court below after giving benefit of doubt to them.

7. Accordingly, the appeal succeeds and is allowed. The appellants are acquitted of the charges after being given the benefit of doubt to them.

8. The two appellants are on bail. They are discharged from the liabilities of their bail bonds.

9. Shri Anil Kumar Singh, has assisted us as Amicus Curiae and we direct that a fee of hearing be paid to him by the Patna High Court Legal Services Committee.

(Dharnidhar Jha, J)

(Amaresh Kumar Lal, J)

Kanth/-

U		T	
---	--	---	--