

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.429 of 1992

Against the judgment of conviction and order of sentence dated 25.09.1992 passed by the 3rd Additional Sessions Judge, Arrah (Bhojpur) in Sessions Trial No.52 of 1984.

- 1. Devendra Singh @ Devendra Yadav, son of Yogeshwari Singh
- 2. Surendra Singh @ Surendra Yadav, son of Devenandan Singh
- 3. Butan Singh @ Butan Yadav, son of Muruj Singh
- 4. Muruj Singh @ Muruj Yadav, son of Shipiyar Singh
- 5. Chandeo Singh @ Chandeo Yadav, son of Ashok Singh
- 6. Mishri Singh @ Mishri Yadav son of Shipiyar Singh

All are resident of village-Salempur, Police Station-Chandi, District Bhojpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 446 of 1992

Against the judgment of conviction and order of sentence dated 25.09.1992 passed by the 3rd Additional Sessions Judge, Arrah (Bhojpur) in Sessions Trial No.52 of 1984

Dwarika Yadav son of Muruj Yadav, resident of village-Salempur, Police Station Chandi, District-Bhojpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 429 of 1992)

For the Appellant/s : Mr. Rakesh Kumar Sinha, A.C.

For the Respondent/s : Dr. Mayanand Jha, A.P.P.

(In CR. APP (DB) No. 446 of 1992)

For the Appellant/s : Mr. Rakesh Kumar Sinha, A.C.

For the Respondent/s : Dr. Mayanand Jha, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 30-04-2015

Seven accused were put to trial in Sessions Trial No.58 of 1984, on the file of 3rd Additional Sessions Judge, Ara, for the offences punishable under Sections 302 read with Section 149 of the Indian Penal Code. Through its judgment dated 25.09.1992, the trial Court convicted all of them for the offences under Section 302 IPC and sentenced them to undergo imprisonment for life. Punishments of lesser descriptions were also imposed for the offence punishable under Sections 147 and 148 of Indian Penal Code against some of the accused. While A-1 filed Criminal Appeal (DB) No.446 of 1992, rest of the accused filed Criminal Appeal (DB) No.429 of 1992.

The prosecution came to be initiated on account of the death of one Judge Yadav on 03.09.1983 at about 2 P.M. at Salempur



village, Police Station-Keolwar of Bhojpur district. The complaint in this behalf was submitted by P.W.2, a villager and not related to the deceased. He was accompanied by P.Ws. 5, 6 and 7. The complaint was to the effect that when P.W.2 was taking bath near his well, he had seen A-1 coming to the place where the deceased was digging a pit for fixing a peg to tether the cattle, and at that time A-1 objected to it in a raised voice. Verbal exchanges are said to have taken place between the deceased Judge Yadav and A-1 Dwarika Yadav, and later on A-1 is said to have gone in angry mood and returned with a country made gun in his hands within 2-3 minutes, and that he was accompanied by the other accused holding one weapon or the other. All the accused are said to have encircled Judge Yadav, and that A-1 fired gun at him. On receiving bullet injuries, Judge Yadav is said to have fallen on the ground, and even the cow which was tied up in the nearby locality is said to have sustained injuries of gun shot. After committing the offence, the accused were said to have left the place. P.W.2 stated that at the time of incident, P.Ws. 3 and 4, the brother of the deceased and the father respectively of deceased, were present at the scene of the occurrence.

The Station House Officer, P.W.9, came to the spot, conducted investigation and caused inquest and postmortem of the dead body. P.W.8 conducted the postmortem and submitted a report. On the

basis of the investigation, P.W.9 filed the final report and the trial Court framed charges.

On behalf of the prosecution, P.Ws 1 to 10 were examined and the postmortem report and the inquest report were filed as exhibits. No evidence was adduced on behalf of the accused. The trial Court convicted and sentenced the accused.

There was no representation for the appellants. Therefore, we requested Sri Rakesh Kumar Sinha, learned counsel to assist as amicus curiae for the appellants. He submits that the complaint was submitted by P.W.2, and the said witness did not support the case of the prosecution, and that not much was elicited to him in the cross-examination. He submits that though P.W.3, the brother of the deceased, was said to be present, he did not choose to submit any complaint, and the same throws some doubt about the version of the prosecution. He further submits that evidence of P.Ws.3 and 4, are at variance and not only as regards the manner in which the incident is said to have taken place, but also about the presence of various other persons at the spot. He submits that the trial Court has proceeded just on assumptions and did not appreciate the evidence from the correct perspective.

Dr. Mayanand Jha, learned Additional Public Prosecutor, on the other hand, submits that the prosecution has adduced cogent and



consistent evidence to prove its case and the trial Court has analyzed the evidence of each and every witness and arrived at just and proper conclusion. He contends that though P.W.2, the informant, has turned hostile, the evidence of other eye witnesses, such as P.Ws. 3 and 4, withstood the cross-examination and the judgment rendered by the trial Court does not warrant interference. He submits that whatever be the motive or justification, the appellants have caused the death of the deceased, and the conviction and sentence imposed by the trial Court does not suffer from any legal or factual infirmity.

The information about the death of the deceased reached the police station through P.W.2. He is not related to the deceased or his family. He is said to have been accompanied by Ramadhar Yadav (not examined), Ram Nagina Singh, P.W.6, Deo Kumar Yadav, P.W.7 and Sudeshwar Yadav, P.W.5 to the Police Station. If, in fact, the Chowkidar, who is also endowed with the duty to inform the police about the incident in the village, had accompanied P.W.2, there is no reason why the complaint was not received or the statement was not recorded from him, or for that matter he was not examined as a witness.

In his statement, P.W.2 stated that father of the deceased, P.W.4, could not come to the police station on account of his old age. Even if that is true, it is un-understandable as to why P.W.3, brother of the deceased, who was hale and hearty, did not choose to submit the

complaint. Though these aspects may not change the entire course of prosecution or the trial, they need to be kept in mind, while undertaking further discussion.

The entire dispute is said to be about digging of a pit for fixing a peg which, in turn was to be used for tethering a cattle. The place is said to be a Government land. Initially verbal duel was said to be only between the deceased and the A-1. It was not alleged that there was quarrel or assault against each other. If that was only the dispute, one does not expect the serious reaction in the form of bringing a gun and firing at the deceased. Further, in his evidence, P.W.3 stated that there did not exist any altercation or dispute before the incident had occurred. P.W.4, father of the deceased, stated that the entire episode had occurred just in five minutes. This throws some doubt about A-1 going to his house bringing the gun, followed by other accused.

Be that as it may, even if we take the evidence of P.W.4, father of the deceased, as true, it is clear that the incident occurred just on the spur of the moment. There was no prior enmity between the deceased, on the one hand, and the accused, on the other hand. We are of the view that this case fits into Part-II of Section 304 of the Indian Penal Code.

We, therefore, partly allow the appeals by modifying the conviction against the appellants to be the one under Part-II of Section

304 of the Indian Penal Code, and restricting the sentence to the period of the detention or imprisonment already undergone by the appellants, either before or after the judgment.

(L. Narasimha Reddy, CJ)

(Sudhir Singh, J)

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