

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.316 of 1992

Sadhu Prasad @ Nabab Yadav, son of Late Jilal Yadav, resident of Village-
Bhelura Raghunathpur, P.S. Naubatpur, District- Patna

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 398 of 1992

1. Girja Yadav, son of Mohan Yadav
2. Mohan Yadav, son of late Das Yadav,
Both residents of village Raghunathpur Belura Police Station Naubatpur,
District- Patna

.... Appellant

Versus

The State of Bihar

.... Opposite Party

**(Against the judgment dated 6.8.1992 rendered by the
Court of 7th Additional Sessions Judge, Patna in Sessions
Trial No.521/90)**

Appearance :

(In CR. APP (DB) No. 316 of 1992)

(In CR. APP (DB) No. 398 of 1992)

For the Appellants : Smt. Rina Sinha, Adv.

For the Respondents : Smt. Shashi Bala Verma, Adv.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 23-04-2015

These two Appeals arise out of the judgment
dated 6.8.1992 rendered by the Court of 7th Additional
Sessions Judge, Patna in Sessions Trial No.521/90.The
three accused by name Girija Yadav, Mohan Yadav and



Sadhu Prasad @ Nabab Yadav, were tried for the offence of committing the murder of two persons, by name Awadhesh Kumar Yadav and Saryug Yadav at about 7:30 p.m. on 14.8.1992 near Bhelura Tand, within the Naubatpur police station of District- Patna. Through the judgment under appeal, the trial court convicted for offences punishable under Section- 302 I.P.C. and 27 of Arms Act. For the offence punishable under Section-302 of I.P.C. the sentence of imprisonment for life was imposed, and for the one under Section-27(3) of the Arms Act punishment of three years' imprisonment was imposed. Both the sentences were directed to run concurrently. Accused No.3 filed criminal appeal No.390/92, and the other two filed Cr.Appeal No.398/92.

The case presented by the prosecution before the trial court was as under:

P.W.5, by name Ramashray Yadav and his two brothers are the residents of Raghunathpur Bhelura and all the three went to Naubatpur Market which is about 3 kilometers away from their village at about 4:00 p.m. on 14.8.1992 and after purchasing some materials there, they were returning to their village by walking. After they had walked about 500 meters from Tilwa Math, Bhelura Tand,

the accused attacked the Awadhesh Yadav and Saryug Yadav with firearms by firing bullets through pistol and on seeing that P.W.5 ran away from the place and reached the house. There, he is said to have informed the women folk about the incident and that all of them have gone to the place of occurrence. By the time they reached, P.W.6, the Station House Officer, was said to be present and there he recorded the statement (fardbeyan) of P.W.5.

P.W.6 has commenced the investigation, caused the inquest and post mortem of the dead bodies and then filed the final report. On the basis of the same, charges were framed against the appellants and trial was conducted.

P.Ws.1 to 7 were examined and the documentary evidence comprised of the F.I.R. and post mortem report. The trial court convicted and sentenced the appellants, as mentioned in preceding paragraphs.

The appeal was listed before us on 17.4.2015. There was no representation for the appellants either on that day or today. We requested learned counsel Smt. Reena Sinha to assist the Court and she argued the matter on behalf of the appellants. The arguments on behalf of the State were advanced by Smt. Shashi Bala Verma.

This is a typical case in which the incident



leading to two murders is said to have taken place in the presence of eye-witness who is none other than the brother of the deceased, but the first information in relation thereto was not passed on to the police by him. According to P.W.6, the Investigating Officer, the information about the incident was received by him through the writer in the police station. However, the writer was not examined. That, however, may not be of much significance though it can be one of the circumstances, to be taken into account.

P.W.5, who is said to be the eye-witness, stated in his deposition that his two brothers while returning from Naubatpur were walking in front and the assailants have fired at them with pistols and seeing that he ran away in the fields by taking a turn. In his statement, he named the accused 1 and accused 2 and did not mention the name of the third accused. The manner in which the name of the third accused surfaced was not explained by the I.O. In the cross-examination of P.W.5 stated that though he mentioned the name of the third accused, P.W.6 did not take note of it. However, P.W.6 denied this allegation.

P.W.5 further stated that after the incident he ran to his house in the neighbouring village and all through



he did not find anyone, much less did he share the information. He deposed that after reaching home, he informed the women folk and except the three women from the house, nobody accompanied them to the place of incident, and that by the time they reached, except the two dead bodies no one was present there at the dead bodies. He stated that he did not raise any hue and cry either when the incident took place or when he ran to his house or while returning to the place of occurrence. One does not expect such a conduct, if two brothers of an individual are done to death right in front of him. It is also somewhat unbelievable that when the incident had taken place right in the middle of the village where many persons were present, no one had raised any hue and cry, and the police arrived at the spot on their own accord.

The manner in which the fardbeyan was recorded was also not properly explained. While according to one witness, it was prepared in the light of the head lamp of a Jeep, the version of other witnesses, is different.

The prosecution tried to derive support from the evidence of P.W.1. to the evidence of P.W.5. This witness stated that when he and two brothers were sitting at Devi Sthan (temple of Goddess) near the native village of



deceased P.W.5, they heard gun shots from the western side and when they ran there, they found the three accused running away, with firearms in their hands. That was nobody's case. Added to that, the version of P.W.5, the crucial witness, that he did not see any person when he went to the village or while he was coming back, runs contrary to this.

There are contradicting versions about the motive for the appellants, to commit the offence. The evidence discloses that the deceased, on the one hand, and some of the appellants, on the other hand, are closely related and are from the same village. Though some witnesses sought to mention that there were long standing land disputes between the parties, that was not substantiated at all.

In our endeavour to ensure that none of the relevant facts miss our attention, we have gone through the entire record carefully. What we find from it is that there is hardly any consistency between the versions presented in the fardbeyan, on the one hand, and the evidence that is adduced in the trial court, on the other hand.

To our mind, the police made an endeavour to connect the appellants herein, to the death of the 2

deceased, by presenting a version which is far from truth. The evidence of P.W.1 makes our doubt, in this behalf, stronger. When P.W.5 himself did not speak about the presence of P.W.1, it is quite understandable as to how he came to be cited as a witness, that too, for presenting a detailed version about the incident. Another aspect is that though the I.O. stated that he found not only the fired bullets but also some live cartridges at the scene of occurrence and seized them, he did not make them as material exhibit. The record is silent as to whether any fire arms were seized from the appellants. Viewed from any angle, we find that the prosecution failed to prove its case against the appellants herein.

We, therefore, allow the Appeal and set aside the conviction and sentence ordered by the trial court. Since the appellants are already on bail, their bail-bonds shall stand cancelled.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

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