

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 928 of 2010

Arising out of P.S. Case No. -122 Year- 2006 Thana -
Salakhuwa District- SAHARSA

- =====
1. Sushil Yadav S/o Domi Yadav Resident of Village- Parasbanni,
P.S.- Salakhua, District- Saharsa.
 2. Sunil Yadav S/o Nepali Yadav Resident of Village- Parasbanni,
P.S.- Salakhua, District- Saharsa.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Shri Kanhaiya Pd. Singh, Sr. Adv.
Mr. Chandra Mohan Jha, Adv.

For the Respondent/s: Mr. A.K. Sinha, APP.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 30-10-2015

01. The Appellants have been convicted under Sections 302 and 201 of the Indian Penal Code and sentenced to RI for life and fine of Rs. 3,000/- in default of which SI for six months and RI for five years and fine of Rs. 2,000/- in default of which SI for three months respectively as also under Section 27 of the Arms Act and sentenced to RI for three years and fine of Rs. 1,000/- in default of which SI for two months by a judgment of conviction dated 14/17.07.2010 by the Additional Sessions Judge, F.T.C.-III, Saharsa in S.Tr. No. 117 of 2007/91 of 2008 arising out of Salakhuwa P.S. Case No.

122 of 2006 (G.R. Case No. 1302 of 2006).



02. The case of the prosecution according to P.W. 8, Suraj Yadav is that on 01.09.2006 at about 6 A.M. the accused persons numbering eleven came variously armed to his house looking for his sons Socho Yadav and Narad Yadav (deceased) but did not find them there. When they went looking for them towards the house of the Chowkidar, Kailash Paswan they found out the deceased, Narad Yadav and shot him dead and took away his dead body towards south river side. He stated that the occurrence had been witnessed by his two sons Ganesh Yadav, P.W. 2 and Madhav Yadav, P.W. 3 as also other family members and co-villagers who would narrate when asked. He stated that just few days back Anil Yadav had been killed in which his sons and nephews had been named as accused on account of which the present occurrence had taken place.

03. During Trial the prosecution examined ten witnesses.

04. P.W. 1, Jugo Yadav stated that on the date of occurrence when he had gone to ease himself he saw that Narad Yadav was running and hiding inside the "Bhushaghar" of Kailash Paswan, D.W. 1. Then the accused Subhash Yadav and Ranjeet Yadav pulled him out and the present Appellants shot him dead. He names



the accused persons as being fifteen in number who then took away the dead body on a horse towards the south on account of which they could not find the dead body. He stated that he was the nephew of the Informant and initially he tried to deny knowledge about the murder of Anil Yadav brother of the Appellants but later on he conceded that he was also an accused in his murder case along with the Informant, Suraj Yadav. He explained the relation-ship between the witnesses and that P.W. 2 and P.W. 3 are the sons of the Informant and his wife, Lukho Devi, P.W. 9 is also a witness. P.W. 4, Ghoghan Yadav and himself were the nephews of the Informant. He stated that the place of occurrence was situated about thirty laggas away from the house of the Informant and he himself was thirty laggas away near a tree watching the occurrence. He stood there for about fifteen minutes after the occurrence. His attention was drawn to the earlier statement that he had not stated that it was the Appellants who had fired at the deceased where the rest of the accused persons were present.

05. P.W. 2, Ganesh Yadav is the son of the Informant and a named witness in the First Information Report but he did not support the case of the prosecution. In cross-examination, he stated that the occurrence was on account of the murder of Anil Yadav, the brother of the

present appellants as also that he was being examined first time in the case and had not seen anything.

06. P.W. 3, Madhav Yadav another son of the Informant has also not supported the case of the prosecution and has been declared hostile. He also stated that he was being examined first time in Court.

07. P.W. 4, Ghoghan Yadav, the nephew of the Informant is tendered and in cross-examination he stated that he did not know anything about the occurrence.

08. P.W. 5, Girish Yadav is also a hostile witness and in cross-examination he stated that he was being examined first time and he had not seen nor heard anything about the occurrence.

09. P.W. 6, Yogendra Yadav is a formal witness who proved his signature on the fardbeyan Exhibit-1. He stated that the document was not executed in front of him and he did not know anything about the occurrence.

10. P.W. 7, Manna Singh Kuntiya is also a formal witness on the First Information Report and proved the signature as Exhibits-2 & 2/1. He also stated that the document was not prepared in his presence and he did not know anything about the occurrence personally.

11. P.W. 8, Suraj Yadav is the Informant who stated that at about 6 A.M. in the morning the accused persons variously armed came to his house while he was





there and started to look for him and his sons, Socho Yadav and Narad Yadav. His son started to run towards the west at which the accused persons chased him and when they found him the Appellants shot at him and took away his dead body on a cart. He asserted that his sons, Ganesh Yadav, P.W. 2, Madhav Yadav P.W. 3 and his wife P.W. 9 had seen the occurrence. He proves his signature in fardbeyan being Exhibit-3. In cross-examination, he stated that Socho Yadav and Dinesh Yadav were his sons who were accused in Sessions Trial Case No. 201 of 2007 which pertained to the murder of Anil Yadav. He also explained that Ghoghan Yadav, P.W. 4, P.W. 1, Jugo Yadav were his cousin brothers and they were also accused in the case of murder of Anil Yadav. In cross-examination, he further stated that when the accused persons started to look for his sons, he and his wife were present in the house and after looking for them the accused ran towards the west. His son Narad Yadav, the deceased ran away on account of being afraid whereas he himself stood there stunned. He further stated that he was scared.

12. P.W. 9, Lukho Devi is the next eye-witness who happens to be the wife of the Informant. She deposed that on the date of occurrence eight accused persons variously armed came to his house and started to look for



the deceased Narad Yadav and Socho Yadav but they were not found so accused persons went towards the west and then the Appellants pulled out Narad Yadav from the pile where the wood was kept and shot him dead. She had followed the accused persons. After the same, the accused persons took away the dead body on a horse. She stated that she did not know the accused persons by name but identified them only by face. She also explained that she had four sons Socho Yadav, Dinesh Yadav, Narad Yadav and Madhaw Yadav, P.W. 3. She asserted that there was no case against her son and that Anil Yadav was the brother of the Appellant, Sunil Yadav in which case his sons and others were accused. Her sons Socho Yadav, Dinesh Yadav, Ghoghan Yadav, P.W. 4 had gone to jail in its connection. She further stated that when she saw the armed accused she and her husband became afraid and sat down having been stunned. She stated that on the date of occurrence, P.W. 2, Ganesh Yadav, P.W. 3, Madhav Yadav, Jugo Yadav, P.W. 1, Ghoghan Yadav, P.W. 4 and Girish Yadav, P.W. 5 were also present and that the room of Kailash Paswan was in the village half of which was filled with cattle-feed and half full of firewood for burning which was bounded with jute. She stated that her son, Narad Yadav used to stay in the house and before the present occurrence no body had come looking for him.



13. P.W. 10, Akhilesh Kumar is the Investigating Officer, who stated that on having heard a rumour with regard to this occurrence he came to the village, took the fardbeyan of the Informant and visited the place of occurrence. He found some empty cartridges and fifteen small red pellets and prepared the seizure-list Exhibit-4. He then examined the witnesses. While discussing the evidence of Girish Yadav, P.W. 5 and Ganesh Yadav, P.W. 2, Ghoghan Yadav P.W. 4, Madhav Yadav, P.W. 3 he merely stated that they had stated that the accused persons had entered the house variously armed looking for Narad Yadav at which he had fled to the room of Kailash Paswan where he was pulled out and shot dead and the dead body was taken away. He does not say anything that any names had been disclosed by these witnesses.

14. The Defence has also examined two witnesses namely Kailash Paswan and Pulkit Sharma. Kailash Paswan is the person in whose hutment the occurrence is said to have taken place. He has stated that Sunil Yadav was the brother of Anil Yadav on 25.05.2006.

15. D.W. 2, Pulkit Sharma has stated that Anil Yadav was the brother of Appellant, Sunil Yadav and he had been murdered in which Socho Yadav, Ghoghan Yadav, Khedo Yadav and Dinesh Yadav were accused and

that the deceased was not accused in the said case.

16. From the narrative of the evidence of the witnesses, we find that P.W. 1, Jugo Yadav, P.W. 8, Suraj Yadav and P.W. 9 Lukho Devi are the three eye-witnesses. P.W. 1, Jugo Yadav was an accused in the murder case of Anil Yadav, brother of the Appellants. The case of the prosecution is that the occurrence took place on account of the suspicion that the deceased was involved in the murder of Anil Yadav, brother of the Appellants. However, from the evidence of the witnesses, it is clear that deceased was not an accused in the said case. In fact, P.W. 1, Jugo Yadav, P.W. 8, Suraj Yadav, Informant were accused in the said case. It does not stand to reason as to why the Appellants would kill Narad yadav who was not an accused and spare Jugo Yadav, P.W. 1 and Informant, Suraj Yadav both of whom were available and within their reach. P.W. 1, Jugo Yadav has stated that he was present at the place of occurrence and was in a position to see the occurrence. Evidently, in such circumstances, he was visible to the accused. Why then he was not nabbed and killed by them is not explained. Also, we find P.W. 1, Jugo Yagav has stated that he was about thirty laggas away from the place of occurrence and hence it is not believable that the occurrence was visible to him moreso because paddy plants waist high were standing in between.





17. If the motive is to be believed the presence of P.W. 1 and P.W. 8 as eye-witnesses is highly doubtful since had they been present who had allegedly come looking for the killers of Anil Yadav would have killed them and not chased Narad Yadav deceased who was not an accused in the case. In such circumstances, we are inclined to reject the prosecution case both the motive as well as eye-witnesses account of P.W. 1 and P.W. 8.

18. However, since this is the pivotal point of the prosecution case we wish to discuss it a little further and reach to the inevitable conclusion that there was ample reason for the witnesses to implicate the present Appellants so as to revenge themselves for being accused in the case of the brother of the Appellants.

19. P.W. 9, Lukho Devi, the wife of the Informant has no doubt stated that she followed the Appellants to the hutment of Kailash Paswan but when her husband, P.W. 8 did not do so it is highly unlikely that she would have followed the accused when the accused were armed and she herself has stated that she and her husband were both scared and stunned. She also did not know the accused by name and yet she has named them which further makes her evidence doubtful.

20. These eye-witnesses are further not trustworthy since we find that the own sons of the



Informant namely P.W. 1, Ganesh Yadav and P.W. 2, Madhav Yadav, his nephew, Ghoghan Yadav, P.W. 4 have not supported the case of the prosecution who were mentioned as eye-witness in the First Information Report. We further find that even though P.W. 2, Ganesh Yadav, Madhav Yadav P.W. 3 and Girish Yadav. P.W. 5 have been declared hostile during trial but when we examine the evidence of the Investigating Officer in regard to their earlier statement, we find that they had merely stated that the armed accused persons entered the house and started to look for Narad Yadav at which he ran away and then the accused persons pulled him out and fired at him and dragged away his dead body. No names had been disclosed by these witnesses even in their earlier statements.

21. In such circumstances, when the witnesses who were named in the First Information Report and close relatives of the Informant had not named the present Appellants, at the first instance we are inclined to reject the eye-witness account of P.W. 1, P.W. 8 and P.W. 9 far of doubtful category for reasons aforesaid earlier.

21. For the reasons aforesaid, the Appeal is allowed and the judgment of conviction dated 14/17.07.2010 passed by the Additional Sessions Judge, F.T.C.-III, Saharsa in S.Tr. No. 117 of 2007/91 of 2008

arising out of Salakhuwa P.S. Case No. 122 of 2006 (G.R. Case No. 1302 of 2006) is, hereby, set aside. The Appellants, Sushil Yadav and Sunil Yadav are discharged from the liabilities of their respective bail bonds. The Appellant, Sunil Yadav, who is in custody, shall be released forthwith, if not wanted in any other case.



(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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