

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1392 of 2010

(Against the Judgment of Conviction dated 16.11.2010 and Order of sentence dated 23.11.2010 passed by the Additional District and Sessions Judge, F.T.C.-III, Nalanda, Bihar Sharif.

Subelal Yadav, son of Chamri Yadav, resident of village - Chero, P.S. Sarmera, District – Nalanda.

Versus Appellant.
The State of Bihar
with Respondent.

Criminal Appeal (DB) No. 134 of 2011

Surendra Yadav, son of Chemari Yadav, resident of village Chero, Police Station Sarmera, District – Nalanda.

Versus Appellant.
The State of Bihar
..... Respondent.

Appearance :
(In CR. APP (DB) No. 1392 of 2010)
For the Appellant : M/s. Binit Kumar and Raj Kishore Prasad, Advocates.
For the State : Mr. Ashwani Kumar Sinha, A.P.P.
(In CR. APP (DB) No. 134 of 2011)
For the Appellant : M/s. Binit Kumar and Raj Kishore Prasad, Advocates.
For the State : Mr. S.C. Mishra, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)
Date: 02-12-2015



Appellant Subelal Yadav has been convicted under Section 302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life and fine of Rs.5000/-, in default of which, simple imprisonment for three years while Appellant Surendra Yadav has been convicted under Section 302 of the Indian Penal Code and sentenced to rigorous imprisonment for life and fine of Rs.5000/-, in default of which, simple imprisonment for three years as also under Section 27 of the Arms Act and sentenced to rigorous imprisonment for five years and fine of Rs.2000/-, in default of which, simple imprisonment for two years by the Additional District and Sessions Judge, F.T.C.-III, Nalanda, Bihar Sharif, vide Judgment of conviction dated 16.11.2010 and Order of sentence dated 23.11.2010 in Sessions Trial No.86 of 2007.

2. The case of the prosecution is that on 22.03.2006 at about 02.00 P.M. when the Informant alongwith his deceased brother and Rameshwar Yadav had gone to the Khalian to get his grains thrashed, the Appellants came there and stopped him from doing so till such time as there was Panchayati with regard to uprooting of gram plants. He and his brother protested and insisted in getting their work done at which Appellant Subelal Yadav gave orders to Appellant Surendra Yadav to shoot at them and then he fired at the deceased on account of which he fell down and died. When he made

attempt to save his brother, Appellant Subelal Yadav having pistol in his hand gave threatening and stopped him. On his 'hulla' a number of persons came there while the Appellants ran away. The Informant stated the reason for the occurrence that one day earlier dispute had taken place in between the parties on account of uprooting of gram plants which had led to the murder of his brother.

3. During trial, the prosecution examined altogether eight witnesses.

4. P.W.1 Haresh Kumar is a formal witness who proved his signature on the Fardbeyan as Ext.1 while P.W.2 Ravindra Kumar is also a formal witness who proved his signature on the Fardbeyan as Ext.2.

5. P.W.3 Rameshwar Yadav is an eye witness. He stated that on 22.03.2006 while he was in his Khalian, he saw the deceased and the Informant coming with crops and putting it on the thresher. Thereafter, Appellants came there and stopped him from doing so. Both of them had pistol in their hands. An altercation took place in between them in course of which Subelal Yadav ordered his brother to shoot him and he fired which hit on the left side of chest of deceased causing his death. Then the Appellants ran away. He stated that the deceased did not have dispute with any co-villagers. He described the place of occurrence as well as the house of the deceased and the

Appellants being at a close distance and that several houses were situated nearby. He asserted that the deceased and the Appellants were at Khalian when this occurrence took place. He further stated that both the Appellants ran having pistols in their hands after firing at the deceased and several villagers gathered but they did not see the Appellants fleeing away from the place of occurrence. The deceased was taken to the police station and from there to the hospital where post-mortem examination of the deceased was performed.

6. P.W.4 Bisho Yadav is the informant and brother of the deceased who stated that on 22.03.2006 while he alongwith the deceased and Rameshwar Yadav had gone to Khalian with the crops, the appellants came there and stopped them from using the thresher to which the deceased protested. On this issue, an altercation took place in course of which Appellant Subelal Yadav ordered to shoot and Surendra Yadav fired at the deceased which hit on his left chest. The deceased allegedly fell down instantly and died. The Appellants ran away. On 'hulla' several persons came there. He proved his signature on the Fardbeyan as Ext.1/2 and stated that one day earlier dispute had arisen between the parties over uprooting the gram plants. In cross examination, he further asserted that the gram plants were uprooted by Surendra Yadav and his wife and when they had protested, the accused persons had abused them. He clarified that both the

Appellants lived separately and there was no dispute with them earlier. He himself had no dispute with the Appellant Surendra Yadav. There is nothing else in his evidence to be noted down.

7. P.W.5 Shrawan Yadav is the son of the deceased who stated that on the date of occurrence he was in his house while his deceased father alongwith the Informant had gone to the Khalian with their crops. He then heard firing so he went to the place of occurrence and saw the Informant and Rameshwar Yadav there. While the Appellants were running towards south, his father had been injured on the left side of his chest. He was then taken to the police station and from there to the hospital where he died. He further stated that the deceased had fallen down on the 'Bojha' of the crops which he had taken himself and that blood had splattered around the area which the police had seen.

8. P.W.6 is Dr. Jai Prakash Gupta, who conducted the Post-Mortem Examination of the deceased and found the following injuries on his person:

(i). Lacerated wound about 1/2" X 1/2" X Cavity deep with inverted charred margin on the upper and outer part of back of left chest just medial to the posterior auxiliary fold in upper part (wound of entry).

(ii). A metallic bullet like foreign body was recovered.

From right shoulder anteriority which was dissected out from where it was lodged in the spontaneous tissues and muscles under the skin.

(iii). On dissection-Chest, left lung in the wound track was punctured and lacerated in its upper and posterior part. Blood present considerably in left chest cavity. Right lung in upper part punctured. Blood in right chest cavity. Fracture of right clavicle and anterior part of vertebra body and laceration of blood vessels and other soft tissues in the wound track. Heart empty all chambers.

(iv). Abdomen- Liver and other viscera pale. Stomach contain undigested rice meal about four ounce. Urinary bladder-empty.

From his evidence, we find that the doctor did not find any injury on the front portion of the deceased rather he found firearm injury on the upper and outer part of back of left chest just medial to the posterior auxiliary fold and that firing had been made from a close distance.

9. P.W.7 Birbadan Singh is the Investigating Officer of the case who stated that he had recorded the Fardbeyan of the Informant (P.W.4), which he proved as Ext.1 and started the investigation in course of which he examined several witnesses and inspected the place of occurrence. He stated that he found the blood in huge quantity at the place of occurrence but in course of

investigation he had not stated such fact in the case diary. He also stated that he did not take the statement of any of the witnesses who lived at the place occurrence.

10. P.W.8 Abhinanda Mandal is the Investigating Office who merely submitted the chargesheet against the present Appellants.

11. C.W.1 Khurshid Mian was examined as a Court Witness who proved the Inquest Report (Ext.3).

12. On going through the evidence of the witnesses, we find that even though P.W.3 Rameshwar Yadav has deposed as an eye witness and stated that he was present along with the Informant yet his name was not mentioned in the examination-in-chief of the Informant. We only find from his evidence the fact with regard to the role of the Appellants to such extent that after an altercation, the Appellant Subelal Yadav ordered and then Surendra Yadav fired. In cross examination, he has stated that both the accused had come having pistols in their hands and fired shot at the deceased. In such circumstances, we would not like to place reliance on his evidence. Whereas P.W.4 Bisho Yadav is concerned, we find that he is the Informant of the case and his consistent evidence is that on a minor issue both the parties, who are agnates, started altercating in course of which while one of the Appellants ordered, and the other fired at deceased. The Informant (P.W.4) also stated that there was no dispute



between the parties. We also take note that Doctor (P.W.6) found the injury on the back of the deceased which is not only contrary to the prosecution case but also further suggests that the firing was not made with an intent to kill at blank range. In the circumstances, we are inclined to hold that the manner of occurrence suggests that it is not a case punishable under Section 302 of the Indian Penal Code but at best it is a case under Section 304 Part-I of the Indian Penal Code.

13. As far the role of the Appellant Subelal Yadav, it appears that highly unlikely that for no reason he would join the hands of his brother to ensure the death of the deceased. Moreover, the statements of the witnesses that he was an order giver has not been put to him when his statement under Section 313 of the Code of Criminal Procedure was recorded. Hence, this part of the evidence cannot be taken into consideration. In such circumstances, we are inclined to acquit him of the charges.

14. In the result, Criminal Appeal (DB) No.1392 of 2010 filed on behalf of the Appellant Subelal Yadav is allowed. The impugned Judgment of conviction and Order of sentence passed against him is set aside. He is on bail and, hence, he is discharged from the liabilities of his bail bonds.

15. And Criminal Appeal (DB) No.134 of 2011 is dismissed with modification in conviction of the Appellant Surendra

Yadav as noted above and sentence is reduced to the period already undergone by him.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/A.F.R.

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