

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1266 of 2010

Arising Out of PS.Case No. 88 Year- 2008 Thana -null District- SAHARSA

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1. Anil Yadav
 2. Sunil Yadav, both sons of Yogendra Yadav
 3. Sanjeet Yadav
 4. Amarjeet Yadav, both sons of late Devi Lal Yadav, all residents of village Rasalpur, Police Station Salakhua, District Saharsa

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ansul Javed, Advocate
Mr. Aslam Archit Rajpal, Advocate
Ms. Salma Naaz, Advocate
Mr. Shreyanshu, Advocate
Mr. Pramod Mishra, Advocate and
Mr. Sabal Kumar Jha, Advocate
For the Respondent/s : Mr. A.K. Sinha, APP
For the Informant : Mr. Pragati Anand, Advocate

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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: 26-11-2015

The Four Appellants have been convicted under Sections 302/149 I.P.C. and sentenced to R.I. for life and fine of Rs.10,000/- and in default of which further one year S.I. as also under Section 148 I.P.C. and sentenced to R.I. for three years and under Section 27 of the Arms Act and sentenced to R.I. for five years by the Additional Sessions Judge 1st, Saharsa in Sessions Trial No.88 of 2008 by a judgment dated 5.10.2010/7.10.2010.

2. The case of the prosecution according to the fard



beyan given by Jaikant Yadav (P.W.6) at 2 P.M. on 21.6.2007 is that on the same day at about 1 P.M. while his elder brother Suresh Yadav was sitting in the Panchayat Relief Bhawan and talking with Sothhi Yadav (P.W.2), suddenly the accused persons, variously armed, appeared on two motorcycles and started firing indiscriminately at Suresh Yadav, on account which he fell down and died. He also saw some accused persons standing on the road and generally firing. They also ran away towards the east. He said that the motive for the occurrence was that Anil Yadav had stood in opposition to deceased in the Gram panchayat elections and had lost the same and his wife, who had stood in the Zila parishad election, had also lost and they had carried a grudge for that reason. The complicity of Appellant Anil Yadav had arisen in a case of kidnapping of a child and he suspected that the deceased had disclosed his name about his involvement. In the First Information Report Balkrishan Yadav (P.W.4), Jawahar Yadav (P.W.8), Fulkesh Yadav alias Fulkesh Kumar (P.W.9) and Anil Yadav (not examined) have been named as witnesses.

3. During trial, the prosecution examined twelve witnesses. P.W.1 Kari Yadav, P.W.2 Sothhi Yadav, P.W.4 Balkrishan Yadav, P.W.5 Gajendra Yadav, P.W.6 Jaikant Yadav, P.W.7 Bipin Yadav, P.W.8 Jawahar Yadav and P.W.9 Fulkesh Yadav alias Fulkesh Kumar have appeared as eye witnesses. P.W.3 is Dr. S.N. Ram, who

conducted the postmortem, whereas P.W.10 Akhilesh Kumar is the Investigating Officer. P.W.11 Chandrashekhar Singh is a formal witness, who brought material Exhibits i.e. bullets in the Court. P.W.12 Hareram Yadav is a seizure list witness but of no relevance.

4. Learned Counsel for the Appellants submits that the witnesses are highly interested since they were on inimical terms with the Appellants and there was reason for them to implicate them. Further they were not in a position to see the actual occurrence and they had deposed falsely to ensure the conviction of the Appellants. The fact that they were not eye witnesses is borne out from the varying statement given about the place at which the deceased was shot at. Later, they tried to develop the case in order to justify the recovery of the dead body from the room. The doctor's evidence also does not support the prosecution case since he found rigor mortis having developed in the extremity, which is not possible within the short period of time, which had lapsed between the death and the postmortem. He also did not find any blackening which would naturally be found had the deceased been shot from a close range.

5. In order to appreciate the aforesaid arguments, we would like to discuss the relevant portion of the evidence of the witnesses.

6. P.W.1 Kari Yadav stated that he was at the door of



Anil Yadav son of Sikandar Yadav when suddenly the accused persons came on a motorcycle and started firing indiscriminately on the deceased, on account of which he died. He further stated that three days back the accused had conspired to commit this occurrence which he had overheard. He had disclosed about this to the Investigating Officer. In cross examination he denied that there was any case between himself and the accused persons and that he was examined one day after the occurrence. His attention was drawn to the earlier statement meaning thereby that he was not an eye witness to the occurrence. The Investigating Officer (P.W.10) corroborated the fact that P.W.1 was not an eye witness and, therefore, we are inclined to reject his eye witness account.

7. P.W.2 Sothhi Yadav stated that on the date of occurrence he was at the Rasalpur Relief Centre along with the deceased and talking with him when the accused boarded on two motorcycles came with carbines and started firing on the deceased, on account of which he immediately died. He stated that on one veranda Jaikant Yadav (P.W.6) was also sitting, who had seen the occurrence. In cross examination he disclosed that he was distantly related to the deceased by virtue of a common relation. He accepted that there were two cases of murder against him. In cross examination he described the place of occurrence being a Relief Centre in which premises two



rooms were built on either side. The veranda was about 30 feet by 15 feet facing east. They were sitting on the north side of the veranda and while he was sitting on a chair the deceased was sitting on a Chouki. It was at that point that the accused persons started firing at the deceased at which he fell down on the veranda itself. He asserted that the deceased was sitting on a Chouki which was about 3 feet wide and while he was sitting on a chair. He stated that the house of the deceased was about 100 feet north east from the Relief Centre and during the firing his family members, such as, his son and wife had gathered. He stated that he had also heard some firing shots on the road. It was suggested to him that the deceased had been murdered on account of some financial transaction.

8. P.W.3 Dr. S.N. Ram is said to have conducted the postmortem at 5.15 P.M. on 21.6.2007 and found the following injuries on his person :

(i) One lacerated circular penetrating wound with inverted margin $\frac{1}{2}$ "x $\frac{1}{2}$ " on the lower part on front of left side of chest and one lacerated wound with everted margin $\frac{3}{4}$ "x $\frac{3}{4}$ " in the back of chest on the left side.

(ii) Four lacerated circular penetrating wound with inverted margin $\frac{1}{2}$ "x $\frac{1}{2}$ " on the right side of abdomen at the lumbar region 3" away from the umbilicus are separated from each other by

distance of about 2".

(iii) Four lacerated wound with everted margin size 1"x1" on the left side back of abdomen.

(iv) Two lacerated penetrating wound sizes ½"x½" with inverted margin on the mid line of front of abdomen at the level of umbilical region separated from each other by the distance of 2".

(v) One lacerated penetrating wound sizes ½"x½" with inverted margin on the front of mid of left thigh.

(vi) One lacerated wound with everted margin size 1"x1" on the posterior aspect of the left thigh.

9. He also removed some bullets from the person of the deceased, which was handed over to the Choukidar. He mentioned about rigor mortis being present in the upper and lower limbs. In cross examination he stated that normally rigor mortis starts from lower limb and starting duration of rigor mortis depends on weather condition. Formation of rigor mortis in June starts from 3 hours to 6 hours and the approximate time of reaching of rigor mortis in upper limb is 12 hours, which persists till 20 hours. He stated that at the time of his examination of the dead body 12 hours had elapsed from the death and that all injuries were from the front side and could not have been caused in a fleeing condition.

10. P.W.4 Balkrishan Yadav stated that while he was

present next to the temple when suddenly he saw the accused persons coming on two motorcycles and reaching the veranda of the Relief Centre where the Mukhiya was sitting and talking with his relative Sothhi Yadav (P.W.2). Appellant Anil Yadav is said to have ordered to rest of the accused persons to fire on the deceased, at which they started firing on the deceased. On the road some other accused persons were firing. The deceased died on account of such firing. He stated that he was an accused in the murder case of the parents of accused Ashok Yadav but it was of no relevance because Ashok Yadav is not Appellant in the present case. He stated that there were two cases going on between himself and Appellant Anil Yadav and Sunil Yadav. His attention was drawn to the earlier statement that he had not stated that Suresh Yadav, Mukhiya, was sitting on the veranda of the Relief Centre. About the place of occurrence he stated that the Relief Centre was bounded on the east and west and the veranda was north to south and the Mukhiya was sitting towards the north side where the room was situated on a Chouki facing north and about two hands away P.W.2 was sitting. He then stated that both of them were sitting on the same Chouki. His further statement was that the deceased continued to sit even after the accused persons came and they started firing immediately on coming and they had climbed on the veranda from the west side and fired at him for about five minutes



from a distance of about 2 hands. The Mukhiya had attempted to enter the room but the accused persons had chased him inside also and fired at him. About his own location he stated that he was about 3 laggas east from the veranda and Sarswati Asthan was east of the Centre. He had hidden for about 10 minutes and had got out only after the accused departed. It was suggested to him that he and the deceased were criminals to which he denied. We thus find that his attention having been drawn to the earlier statement with regard to the exact location of the Relief Centre and that Anil Yadav was the order giver there is no other contradiction. From Paragraph 19 of the Investigating Officer's evidence also we find that the contradiction was only to these two limited points which have no substantial bearing on the case

11. P.W.5 Gajendra Yadav stated about the occurrence but in his examination-in-chief he does not clarify as to whether he was an eye witness. His attention was drawn to his earlier statement before the police that he was not an eye witness and the Investigating Officer in Paragraph 20 of his evidence has corroborated that in fact he was not an eye witness to the occurrence and was examined on 21.7.2007 i.e. about a month later. In such circumstances, we are not inclined to place any reliance upon his evidence.

12. P.W.6 Jaikant Yadav is the Informant and the younger brother of the deceased. He corroborated the version given in



the fard beyan and that on 21.6.2007 at about 1 P.M. while he was in front of the Relief Centre preparing corn he saw the Appellants coming on two motorcycles and thereafter firing at the deceased with their carbines, who was sitting on the veranda along with P.W.2 Sothhi Yadav at Relief Centre. When the deceased attempted to run inside the room he fell down on the veranda on the corn and died. He explained that the deceased had been murdered on account of dispute in the elections. He proves the fard beyan (Exhibit 2) and the signatures of Sothhi Yadav and Fulkesh Yadav as Exhibits 2/1 and 2/2. In cross examination he stated that the firing took place for about five minutes and that the veranda of the Relief Centre was north south about 15 feet long and 7-8 feet wide. On the west of the veranda there was a room which was facing east and the next room was on the north of the veranda which was facing south. The deceased was sitting in the middle of the veranda on a fibre chair and Sothhi Yadav was also sitting on a fibre chair. However Sothhi Yadav was facing south and was about one and half hands away from him. When he saw the accused persons getting off from the motorcycle he ran towards west of veranda of the Relief Centre. He stated that the deceased had sustained injuries even inside the room and Sothhi Yadav (P.W.2) had remained uninjured. He continued to sit on the veranda even while the deceased was running and he ran only after the deceased had fallen



down inside the room. He stated that the deceased had been shot at from a distance of one hand inside the room at which he had fallen down and died. About himself he stated that he had hidden in the bushes away from the vision of the accused persons because of fear to his life. He explained that there was no boundary wall of the Relief Centre and he went to see the deceased in the room after the accused had left. He also explained that the deceased was running even while looking at the accused persons towards the room, the door of which was opened. About his credentials he stated that he was an accused in three cases along with the deceased and one of which was instituted by Appellant Sunil Yadav in a case under Section 307 I.P.C. Further suggestions were given about his antecedents to which he denied. His attention was drawn to the earlier statement given in the fard beyan that he had not stated about the exact location of the Relief Centre and denied the suggestion that the accused had been falsely implicated in his own interest.

13. P.W.7 Bipin Yadav no doubt stated about the occurrence but he does not clarify in his examination-in-chief as to whether he was an eye witness. His attention was drawn in Paragraph 4 to his earlier statement that he was not an eye witness to which he denied, but P.W.10 the Investigating Officer in Paragraph 22 stated that he had not given an eye witness account earlier. In such a

situation we reject the evidence of this witness as well.

14. P.W.8 Jawahar Yadav stated that on the date of occurrence at about 1 P.M. while he was going to shop of Raghunath Poddar and was a little distance from the Relief Centre he saw the Appellants armed with carbines coming on a motorcycle disembarking in front of the Relief Centre and firing at the deceased. He concedes that he was an accused earlier in a case instituted by Appellant Sunil Yadav. His attention was drawn to the earlier statement that he had not stated before the police that he was going to the shop of Raghunath Poddar and that Sunil Yadav was armed with rifle whereas the others were also armed while entering the godown of Relief Centre. He stated that his house was about 150 steps away from the Relief Centre and in between 7-8 houses. A little distance was the shop of Raghunath Poddar. In Paragraph 23 the attention of the Investigating Officer has been drawn but it is only to the extent that he had not stated about Appellant Sunil Yadav being armed or that he had gone to the grocery shop. Where the substantial portion of his eye witness account is concerned, that does not appear any contradiction. In cross examination he was also asked about the topography of the Relief Centre at which he stated that it faced east and the road on which he was going was on the north about 10 steps away. At the time of the occurrence he was about 50 yards on the east from the Relief

Centre. He clarified that no person came on account of fear on sounds of firing. He stated that at the time of occurrence Anil Yadav and the accused persons were only present.

15. P.W.9 Fulkesh Yadav @ Fulkesh Kumar, son of the deceased, stated that he was at the door of Sitaram Yadav when he heard sounds of firing, at which he reached the Relief Centre and saw the Appellants firing at his father, while the co-accused, who have not being sent up, were standing on the road generally firing. On account of firing of the Appellants, his father died. His attention was drawn to the earlier statement given under Section 161 Cr.P.C. that he had not stated that he was at the door of Sitaram Yadav or that he had reached the Relief Centre on hearing the sound of firing. The attention of the Investigating Officer was drawn to the earlier statement of this witness in Paragraph 26 and it appears that he had stated that it was on hearing sounds of firing that he had left the house and, therefore, he does not appear to be eye witness. We thus reject his eye-witness account.

16. P.W.10 Akhilesh Kumar is the Investigating Officer, who stated that on 21.6.2007 at about 1 P.M. he received a rumour that some occurrence had taken place in Rasalpur, at which he had departed to the place of occurrence after recording a Sanha. When he reached Rasalpur, he recorded the statement of the Informant and



prepared the Inquest report (Exhibit 1/2, 2/3, 2/4) and the dead body chalan (Exhibit 1/3). He described the place of occurrence being a cemented structure of Relief Centre which was running in the Panchayat Bhawan. The structure was like a courtyard on which one room was on the north side whereas another room on the south side. In between them, there was a room which opens on the east side in the courtyard. There was another door towards the south which was closed and a window on the west. Adjacent north was a room which opened into the Hall and in the Hall about 100 mounts of dry corn was found stored. It was in this place that the deceased Suresh Yadav and his brother-in-law Sodhhi Yadav (P.W.2) were said to have been talking when the accused persons came and shot him dead. He found blood scattered all around and the dead body inside the Hall. Around the dead body about 6.9 MM wounds of bullet were found. On the east several houses, some pakka and some thatched were located and also there was open space. He further stated that he examined the witnesses and after closing the investigation submitted charge sheet against the four Appellants. In cross examination he clarified that he had assumed investigation himself. He explained in cross examination that he had not stated in the Inquest that the dead body was found on the chouki and in fact had stated that it was found inside the room nor had he mentioned blood having been found on the veranda or the

walls of bullet found there in the case diary. He had not seized blood stains nor mentioned about marks of motorcycle tyres within the premises of the Relief Centre. We have already discussed the contradictions of the witnesses elicited from him and we do not wish to repeat it again.

17. P.W.11 Chandra Shekhar Singh is a formal police constable, who brings the material exhibits of bullet found at the place of occurrence.

18. P.W.12 Hareram Yadav has stated that no doubt he signed on the seizure list but he did so without knowing the contents of the same.

19. Now to deal with the arguments of the Counsel for the Appellants, much stress has been paid on the fact that the witnesses were interested since they were relatives of the deceased his allies since they were jointly accused in other cases, some of them also accused in case instituted by the Appellants. Under these circumstances, they should not be relied upon without any corroboration from independent source.

20. To meet this argument we find that P.W.2 no doubt stated that he was a distant relative of the deceased and he has been an accused along with him in some cases but there is no animosity between him and the Appellants. In such circumstances, it would be



difficult to reject the evidence of P.W.2 on this score. On a fair analysis of the evidence, we find that the eye witness account of P.W.2 Sodhhi Yadav is unimpeachable since it is completely independent. He had no animosity with the Appellants and thus no motive to falsely implicate them. His evidence is further corroborated by P.W.6 Jaikant Yadav and P.W.8 Jawahar Yadav on all material particulars. We also find that while the occurrence took place on 21.6.2007 at 1 P.M. the matter was immediately reported to the police at 2 P.M. itself when it arrived. Such prompt reporting of the matter leaves no scope for possible speculation that the prosecution had built up a case false especially to frame the Appellants. No doubt there is no positive evidence that any information was given by the Informant or any of his family members to the police but when the police had arrived at the place the occurrence, almost such action is condonable.

21. We also do not find any reason to discredit the prosecution evidence on the ground that there is some variance with regard to the actual point where the deceased had been shot at and where his dead body was recovered. From the description of the place of occurrence it appears that what the Police Officer says is a room in fact appears to be like a courtyard and the dead body was found within the same which is described as a room. As per the Doctor's evidence, all the injuries were sustained by the deceased from the

front meaning thereby that there was no opportunity of the deceased to even turn around and take shelter.

22. Further we do not find any merit in the arguments with regard to presence of rigor mortis which could lead to an inference that the occurrence had taken place earlier. The doctor's evidence as discussed above is that he had found rigor mortis present on the upper and lower limbs which is normally within 12 hours and he had conducted postmortem within this period. In such circumstances, in fact the evidence of the doctor corroborates the prosecution case even with regard to the time of occurrence. As for not finding any blackening of charring on the injuries only one witness has stated that the deceased was shot at from a close range. Thus this itself would not be enough to reject the prosecution case in the whole when substantially the case has been proved beyond all reasonable doubt.

23. In such circumstances, we find no merit in the appeal. The same is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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