

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.730 of 2010

Arising Out of P. S. Case No. -14 Year- 2005 Thana – Neemchack Bathani District- GAYA

Anil Yadav son of Ram Autar Yadav, resident of Village Mirja Bigha, P.S.
Neemchack Bathani, District Gaya

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Shri Fakhruddin Ali Ahmad with
Ms. Anjum Perween, Advocates

For the Respondent : Shri Dilip Kumar Sinha, APP

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
and
HONOURABLE SHRI JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 08-07-2015

The appellant Anil Yadav along with eight others were put on trial in Sessions Trial No. 324 of 2008/295 of 2009 by the Presiding Officer, Fast Track Court-III, Gaya after being indicted of committing offences under Sections 148 and 302/149 of the Indian Penal Code and Section 27 of the Arms Act. Nine accused persons were jointly charged by the



Presiding Officer, Fast Track Court-III, Gaya under Sections 148 and 307/149 of the Indian Penal Code and Section 27 of the Arms Act in Sessions Trial No. 324 of 2008/295 of 2009. The present appellant Anil Yadav was distinctly charged also under Section 302 of the Indian Penal Code and 27 of the Arms Act and by judgment dated 12.05.2010, the appellant was held guilty of committing the offences under Section 302 of the Indian Penal Code and 27 of the Arms Act while other eight accused persons on trial with him were acquitted of the charges they had been indicted with. The appellant is before this Court through this appeal, setting up a challenge to the correctness and propriety of the judgment of conviction and the order of sentence.

2. P.W.-1 Gariban Yadav had stated that he along with his son deceased Awadhesh Yadav and grand son Sikandar Kumar (P.W.-2) had come to village Singhaul and he along with his son and grand son as also with the deceased Birendra Yadav, Deena Nath Mandal (P.W.-6) and others had gone towards south of the village to attend to the call of nature. When they were near a '*pipal*' tree situated at some distance from the village, fourteen accused persons named in the F.I.R. which included the nine accused put on trial, emerged from hiding and



surrounded the informant and others. Accused Arjun Yadav ordered to kill them upon which accused Rajeshwar Yadav fired a shot from his rifle which hit Awadhesh Yadav and he fell down east of the road. Accused Vijay Yadav who was carrying a '*tangi*' (small axe) gave a blow to the head of Awadhesh Yadav. This appellant Anil Yadav, in the meantime, had caught the other deceased Birendra Yadav and had fired a shot into his head as a result of which he also fell on the ground. The other accused persons, thereafter, assaulted incessantly the two deceased persons.

3. People from Singhaul village were attracted by the sound of gunshots and the alarms raised by the witnesses. The informant stated that he was as frightened as to run helter-skelter to gain safety. It was also stated by the informant that the incident was the result of old enmity existing between the parties and that deceased Birendra Yadav who was injured at that moment was carried away by the villagers for treatment. The informant and others who had run away from there did not go to the site of occurrence immediately and came subsequently there, when he found that Ramanuj Singh (P.W.-8) the Officer-in-Charge of Neemchack Bathani police station had arrived there who recorded the statement of P.W.-1 Gariban Yadav.



4. It appears from the evidence of P.W.-8 who was the Officer-in-Charge of Neemchack Bathani police station that after recording the statement of P.W.-1, he found the dead body of his son Awadhesh Yadav lying there and he also learnt there that another person, namely, Birendra Yadav had also been injured who had been taken to Patna for treatment. The fardbeyan of the informant (P.W.-1) has been marked Ext.-3. P.W.-8, thereafter, held inquest upon the dead body of deceased Awadhesh Yadav and prepared the inquest report (Ext.-4) in presence of witnesses. He recorded the statements of P.W.-2 Sikandar Kumar and Mahendra Prasad (not examined) and, thereafter, he inspected the place of occurrence.

The site of occurrence was near a '*pipal*' tree which was located on the road going from the village Singhaul to Sheikhpura. There was copious blood found on the road and the road was about 8 feet in width, the place was situated at a distance of 500 yards from village Singhaul in its east-south and village Sheikhprua was about one and half kilometers away from the site of occurrence. Just west to it was village Mirjabigha.

P.W.-8 sent the dead body for postmortem examination. He came back to the police station and drew up



the F.I.R. (Ext.-5). The statement of Deena Nath Mandal (P.W.-6) was recorded by Pirbahore police station and the same was produced by P.W.-6 before him who also stated that the deceased Birendra Yadav, who had been injured in the same incident, had died during treatment. He recorded the statements of other persons and obtained copies of postmortem examination reports and handed over the charge of investigation to S.I. Chandra Kumar (P.W.-9) who again handed over the charge of investigation to P.W.-11 Sachitanand Mandal who submitted chargesheet sending up the nine accused persons for trial keeping the investigation pending against the three accused, namely, Arjun Yadav, Vijay Yadav and Rajeshwar Yadav.

5. The defence of the appellant was of being falsely implicated on account of admitted enmity with the informant.

6. Eleven witnesses were examined by the prosecution to bring the charge home to the accused. P.W.-1 Gariban Yadav, the informant of the case and P.W.-2 his grand son and son of the deceased Awadhesh Yadav had supported the charges as eye witness to the occurrence. Likewise, P.W.-6 Deena Nath Mandal had also given an eye witness support to the occurrence. P.W.-3 Gyatri Devi who happened to be the wife of deceased Birendra Yadav, was not an eye witness as



she, after arriving at the scene of occurrence, had found her husband injured and the people were in the process of shifting him to Patna for treatment and she was told by P.W.-6 as to what had happened to her husband. Bidhan Chandra Lal (P.W.-7) had partly investigated the case to the extent that he had received the station diary entry from Pirbahore police station and had also obtained the postmortem examination report of deceased Birendra Yadav and had sent up Surendra Yadav only for trial by submitting chargesheet. P.W.-8 S.I. Ramanuj Singh had investigated the case on most of its parts. P.W.-9 Chandra Kumar had received the charge of investigation from P.W.-7 Bidhan Chandra Lal and had again made over the charge of investigation to P.W.-11 Sachitanand Mandal, who had submitted chargesheet keeping the investigation pending against three accused persons, namely, Arjun Yadav, Vijay Yadav and Ramanuj Yadav.

7. The defence had not produced any oral or documentary evidence in support of its case.

8. Shri Fakhruddin Ali Ahmad, learned counsel appearing on behalf of the appellant had submitted that the trial Court appears discriminating against the present appellant and those who were acquitted inasmuch as at the strength of the



same evidence, he was acquitting eight accused persons and was convicting this appellant for offences under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. By taking us through the evidence of witnesses, it was contended that the witnesses were related to each other and it does not appear from record as to why the accused persons should come together to kill two persons. Thus, it was contended that there was a lack of motive which could have impelled the accused persons to commit the two murders. Submission also was that the occurrence had taken place at about 7:00 P.M. and it appears not possible for the witnesses to pick up the identities of the accused persons so as to naming them in the FIR.

9. Shri Dilip Kumar Sinha, learned counsel appearing on behalf of the State submitted that the evidence of P.W.1 Gariban Yadav, P.W.2 Sikandar Kumar and P.W.6 Deena Nath Mandal was consistent as regards the individual participation of all accused persons and as may appear from the medical evidence the allegation against this appellant was corroborated by it. The investigating officer had found the evidence regarding the occurrence having taken place at the place alleged by the prosecution and thus, the trial Court was fully justified in convicting the appellant of the charges he had

been indicted with.

10. While we were being take through the evidence of the witnesses, we found that no particular reason was brought on record as to why the informant and his grand son P.W.2 Sikandar Kumar would come forward to implicate the accused persons falsely. During cross-examination of the witnesses, suggestions were given that deceased Awadhesh Yadav had been accused in a murder case along with other persons, but that does not appear pointing out to us that any of the accused persons were either a witness or some how related to any of the witnesses. The reason which was assigned by the informant for his presence at village-Singhaul and especially at the place of occurrence was that he along with the son Awadhesh Yadav and grand son Sikandar Kumar (P.W.-2) had come to negotiate the marriage of his sister with a groom in the house of Deena Nath Mandal (P.W. 6). During course of cross-examination, P.W.2 was put a question as to whether it was for the first time that they had arrived there he had replied that it was their first visit to village Singhaul. P.W. 6 Deena Nath Mandal had replied in paragraph-9 of his evidence that the negotiation for the marriage has going on from before and it was finally on 16.03.2005 that they had arrived at the house of the deceased Birendra Yadav.



The evidence of P.W.-1 vindicates that they were about to leave but they were requested to stay over the night so that they could have detailed talks during night and, as such, they had stayed over and they had moved out of the village for attending to the call of nature when, all on a sudden, the accused persons emerged from nowhere and the incident had taken place. We were very much conscious as to why the informant, the son of Awadhesh Yadav and his grand son Sikandar Kumar should be found at a different village and why after all Awadhesh Yadav was shot dead. We do not see any particular reason assigned by the prosecution for killing Awadhesh Yadav except that a faint suggestions appears given to the witnesses that Awadhesh Yadav was an accused in a murder case and probably he was murdered by some of his enemies. That suggestion is there, but what we find is that there is a specific allegation coming from the witnesses that at the orders of accused Arjun Yadav, it was accused Rajeshwar Yadav who had fired the shot at Awadhesh Yadav which hit him and he fell east of the road when the other accused Vijay Yadav gave a '*tangi*' blow to his head. The presence of witnesses to us appear acceptable as during the lengthy cross-examination of those two witnesses, namely, Gariban Yadav and Sikandar Kumar (P.Ws.1 and 2), no fact



was brought on record which could create any doubt regarding their claim of having come to the village in connection with negotiating the particular marriage. It is true that the reason that they had come to negotiate the marriage was not stated in the fardbeyan, but it has definitely been stated that the deceased along with the informant and Sikandar Kumar were there at the village-Singhaul as they had come to the deceased Birendra Yadav's house for negotiating a marriage. It is not an improvement inasmuch as there was no attention drawn on the witnesses which could suggest that that particular improvement was made by them so as to justifying their presence firstly, at the village and thereafter at the place of occurrence. Thus, what we find is that the witnesses have assigned sufficient acceptable reasons for their individual presence at the scene of occurrence.

11. Consistency is never the hallmark of trustworthy of a witness, but then we examine the evidence of a witness only to find out as to whether the witness could be trustworthy or not. While carrying that exercise out what the Courts have to do is to scan the evidence of witnesses as meticulously as to find out whether there was any material conflict between the evidence of the witnesses on the material parts of the prosecution story and especially, on the description of the



manner of occurrence given by them. The two witnesses, namely, Gariban Yadav and his grand son Sikandar Kumar were consistent, as we have just noted, as regards their purpose and that of the deceased Awadhesh Yadav, for coming to village-Singhaul. They appear giving yet another reason as to why they had moved out of the '*darwaja*' of the deceased Birendra Yadav with him and P.W.6 Deena Nath Mandal, when they were cross-examined on that fact of going towards south of the village to attend to the call of nature. We found that they had stated that they had picked up a '*lota*' (water pot) for the purpose and had moved more than one kilometer away from the village to attend to the call of nature. The description of place of occurrence given by P.W.-8 S.I. Ramanuj Singh also indicates, as may appear from paragraph-4 of his evidence, that it was a place about one and half kilometers away from the village on Singhaul-Sheikhpura road near the '*pipal*' tree which was situated on that particular road. The experience of village life informs us that for the purpose of attending to the call of nature people in village still traverse some distance away from the village and they carry water pots, may be a '*lota*' or anything else, to wash themselves. Thus, it does not appear unusual if the witnesses had travelled up to the distance of one and half

kilometers away from the village to attend to the call of nature.

The place of occurrence was by the side of the road near the '*pipal*' tree and as appears stated by the witnesses including P.W.8 S.I. Ramanuj Singh, copious blood was found on the road and the dead body of deceased Awadhesh Yadav was found lying east of the road which appears consistent with the initial prosecution version contained in the fardbeyan in which Gariban Yadav (P.W.-1) had stated that after having received the gun shot which was fired by accused Rajeshwar Yadav, deceased Awadhesh Yadav had fallen on the road and, thereafter, had tumbled down towards the south of it. Witnesses again are consistent in describing the manner of occurrence, when they were stating that it was Arjun Yadav who ordered to kill them and the first shot was fired by Rajeshwar Yadav at Awadhesh Yadav who was again given a blow with '*tangi*' by Bijay Yadav and after Awadesh Yadav had tumbled down on the road, it was this appellant Anil Yadav who caught the other deceased Bijendra Yadav and fired a shot into his head.

While we were taken through the evidence of witnesses, we found that P.W.-4 Dr. Anand Prakash Anand who had held postmortem examination on the dead body of deceased Awadhsh Yadav had found two ante-mortem injuries

on his dead body:-

(i) One wound measuring 3"x1/4"x bone deep at the left side of the head adjacent and above the mastoid with commuted depressed fracture of underlying occipital bone. Underlying brain was grossly lacerated with massive intra cranial haemorrhage. Margin of the wound was clean cut.

(ii) Entry wound measuring 1/2" x muscle deep, on right side of back of neck over trapezius with irregular inverted margin and abraded collar on its upper margin. The track of wound was directed down words and to the right, passing over the scapula through trapezium and latismus dorsey muscles. The track was continued up to exit wound of 1"x 3/4" x muscle deep size over inferior angle of scapula. Margin of the wound was irregular and everted. The track was containing dark blood.

While rendering opinion on the nature of the injuries and the weapons which could have caused them, P.W.4 had pointed out that injury no. (i) was grievous in nature caused by heavy sharp cutting weapon and that was the cause of death which had resulted due to shock and haemorrhage to the deceased. Injury no.(ii) had been caused by firearm. An axe is a heavy sharp cutting weapon and as may appear from the description of injury no.(i) given by P.W.4, externally injury



no.(i) might not be looking as serious and danger but when the doctor had dissected the injury, he had found the underlying occipital bone depressed and fractured and underlying brain matter grossly lacerated with massive intracranial haemorrhage. The internal damage which had been caused by the blow given by Bijay Yadav with a '*tangi*', in fact, was as massive as could be sufficient, in our opinion, to cause the death of deceased Awadhesh Yadav. The firearm injuries had indeed not done any damage to any vital organs of deceased Awadhesh Yadav and it had only passed through and through the muscular structures of the deceased on the right side of his back.

12. So far as allegation against this appellant is concerned, he was stated to have caught the deceased Birendra Yadav and he further is stated to have fired a shot into his head. The three witnesses, i.e., P.Ws.1, 2 and 6 are consistent on this part of the story when they were supporting the above line of the prosecution story. We find from perusal of the evidence of P.W.-10 Dr. Pankaj Kumar that on holding postmortem examination on the dead body of the deceased Birendra Yadav, he had found the following ante-mortem external and internal injuries:-

(i) One entry wound measuring $\frac{1}{2}$ "x $\frac{1}{2}$ " on the left



temporal region 1 ½” away from left ear and 2 and ½” left from the midline. The margin of the wound was lacerated inverted and blackened. One metallic bullet was found lodged in the brain matter and that was recovered, sealed and handed over to the accompanying constable as appears from the original postmortem report Ext-2/1.

(ii) The other lacerated wound measuring 1”x ½ ” on the right forehead, near right eye-brow 1 ½” from midline upto muscle deep.

It was opined by Dr. Pankaj Kumar that injuries were caused by firearm within 6-24 hours of holding of postmortem examination and further that the blackening which was found around injury no.(i) suggested that the shot had been fired from a very close range.

13. While we were perusing the evidence of witnesses, like, P.Ws.1 to 6, we found them stating that after having caught the deceased Birendra Yadav, this appellant had fired at him after putting his weapon on his left temporal region. Thus, the oral evidence also suggested that the resultant injury could be having the features of being caused by a firearm which was shot from point blank range. The evidence of P.W.10 fully supports that particular oral evidence and thus, we find that the



witnesses who had come forward to depose in Court, appropriately detailed the manner of occurrence not only by assigning the roles but also by describing as to how the blows were given to the two deceased persons. This particular aspect of the evidence of witnesses further convinced us that they were trustworthy witnesses and we cannot doubt their credibility as regards their claim of being eye witnesses.

14. Motive or intent of commit an offence is the mental state of an accused and it could not be known firstly to the prosecution and, secondly, even if it had been asserted and not proved, it was not going to have any bearing on the proof of the charges. Law is now well settled that in a case of direct evidence non-assertion of the motive or non-proof thereof is of no consequence. In a case of motive having not been established inspite of being assessed, the prosecution story has never to be thrown out outright; the Court has only to apprise the evidence with care and caution. Why the accused persons had chosen to assemble themselves by arming themselves in the manner as stated by the witnesses, could be known best to them. The witnesses are supposed to narrate the incident in the manner as had happened and as was perceived by them. As such, the submission of the learned counsel for the appellant that the

appellant does not appear bearing any motive for committing the murder appears of no consequence. Witnesses do not have any means to read the minds of the accused merely by seeing them committing the murder.

15. So far as the submission of the learned counsel appearing on behalf of the appellant regarding the acquittal of some of the accused on the same evidence is concerned, we may point out that the witnesses had definitely alleged that the accused persons came and surrounded them but specific roles appear assigned to only four persons, out of whom, Arjun Yadav, Rajeshwar Yadav and Birendra Yadav were not sent up for trial and, as such, they were not placed on the same trial which had resulted in the conviction of the appellant. While scanning the evidence of the witnesses what we came across was that no specific role has been assigned to any of the nine accused persons who had been put on trial by the present appellant than what was alleged and stated by the witnesses against the present appellant and three others, namely, Arjun Yadav, Rajeshwar Yadav and Birendra Yadav. It is true, that the charge was under Section 302 or 307 read with Section 149 of the Indian Penal Code, but the evidence does not suggest that they had indeed formed an unlawful assembly and they were



acting in prosecuting of the same common object. Thus, the acquittal of eight accused persons by the same judgment to us does not appear of much consequence. If the evidence was not inviting the Court to convict those who were acquitted that could never be a ground for acquittal of an accused against whom the evidence could be clinching as appears in the case of the present appellant.

16. However, while we were perusing the papers, we were thoroughly discouraged to find that the learned Judge who drafted and delivered the judgment was absolutely untrained in the art of writing judgment and this was the reason that he did not assign any reason particularly weighty one in support of the findings recorded by him either on guilt of the present appellant or the acquittal of those eight accused persons. It is a long judgment spread in twenty typed pages, but is extremely poor as regards the reasons which could have been assigned in support of the findings of guilt as regards the present appellant or acquittal of eight accused persons. However, reappraisal of the evidence is the domain of the Appellate Court and it is supposed that the Appellate Court should be least concerned with the findings recorded by the court below, unless any particular finding of the trial court is

attacked before it. After reappraising the evidence, we could find the reason which we could get from evidence to uphold the conviction of the appellant and sentence passed upon him.

17. In the result, we find no merit in the appeal and the same is dismissed.

(Dharnidhar Jha, J)

(Ahsanuddin Amanullah, J)

B.Kr./Anjani-

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