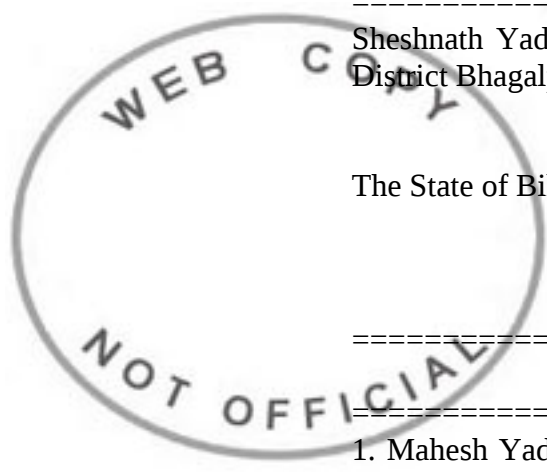




IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.435 of 2013

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Sheshnath Yadav S/o Late Nirmal Yadav Resident of Village + P.S. Ishmailpur,
District Bhagalpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

---with---

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Criminal Appeal (DB) No. 287 of 2013

- =====
1. Mahesh Yadav Son of Late Nandan Yadav Resident of Village- Fulkiya, P.S.-
Ismailpur, District- Bhagalpur
2. Sunil Yadav Son of Late Bindeshwari Yadav Resident of Village- Bhittha, P.S.-
Ismailpur, District- Bhagalpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

---with---

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Criminal Appeal (DB) No. 317 of 2013

- =====
1. Umakant Yadav S/o Late Shashi Dhar Yadav Resident of Village + P.S.-
Ishmailpur, District- Bhagalpur
2. Borhan Yadav S/o Sheshnath Yadav Resident of Village + P.S.- Ishmailpur,
District- Bhagalpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

---with---

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Criminal Appeal (DB) No. 351 of 2013

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Pappu Yadav S/o Sri Siyaram Yadav Resident of Village + P.S.- Ishmailpur,
District- Bhagalpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APPEAL (DB) Nos.435, 317 & 351 of 2013)

For the Appellant/s : Mr. Sharda Nand Mishra
Mr. Dhananjay Kr. Gupta
Mr. Harish Patel

For the State : Mr. Ajay Mishra, A.P.P.
Mr. S.C. Mishra, A.P.P.
Mr. D.K. Sinha, A.P.P.

(In CR. APP (DB) No.287 of 2013)

For the Appellant/s : Mr. Ranjan Kumar Jha

For the State : Mr. A.K. Sinha, A.P.P.

For the Informant : Mr. Bharat Prasad Singh.

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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: 22-06-2016

Heard learned counsel for the Appellants and
learned counsel for the Additional Public Prosecutor.

2. All the Appellants have been Convicted under
section 302/34 I.P.C. and sentenced to undergo Rigorous
Imprisonment for life as well as fine of Rs. 5,000/- each, in default
of which, further Rigorous Imprisonment for three months.
Further Appellant Shesh Nath Yadav and Pappu Yadav sentenced
to undergo Rigorous Imprisonment for 3 years under section 27(i)
Arms Act by a Judgment dated 15/23.03.2013 passed by the 4th
Additional Sessions Judge, Naugachia in connection with Sessions
Trial No. 484 of 1997 arising out of Ismailpur P.S. Case No. 22 of
1997.

3. The case of the prosecution, according to Hira
Mandal (P.W. 9) is that on 10.02.1997 at about 5:30 pm. when he

along with Bilash Sao (P.W. 7), Saligram Gosai, Binod Mandal (P.W. 5), Umesh Mandal (Havildar) and Baman Mandal (P.W. 3) along with the deceased brother Kailash Mandal were sitting in the Tea Shop of Bilash Sao and taking Tea, 8 accused persons variously armed came there and surrounded his brother deceased Kailash Mandal. Then the Appellant Pappu Yadav is said to have caught hold of his brother while Appellant Shesh Nath Yadav fired at him on account of which he fell down injured. On hearing the sounds, the Police Party came and on seeing them, the accused persons fled away.

4. During trial, the prosecution examined 9 witnesses whereas one witness was examined as Court Witness, who proved the Postmortem Examination Report.

5. Whereas P.W. 1 Sitaram Mandal, P.W. 2 Deo Narayan Goshwami, P.W. 4 Kulanand Mandal, P.W. 5 Binod Mandal, P.W. 6 Ram Bilash Goshwami and P.W. 7 Bilash Sao have been declared hostile, P.W. 8 Ramji Yadav is irrelevant. P.W. 6 Ram Bilash Goshwami, who was declared hostile, proved the signature on the *fardbeyan*. In the present case only two witnesses i.e. P.W. 3 Baman Mandal and P.W. 9 Hira Mandal, both of whom brothers of the deceased claim to be eye witnesses.

6. The prosecution has neither produced the

Investigating Officer nor the Doctor and has only proved the Postmortem Examination Report through a formal witness C.W. 1 Shashi Shekhar Choudhary.

7. P.W. 3 Baman Mandal, in Court, stated that on the date of occurrence, he was sitting along with his deceased brother Kailash Mandal, Hira Mandal, the Informant and some others when suddenly accused Seshnath Yadav, Pappu Yadav, Umakanti Yadav, Awadhesh Yadav, Sunil Yadav, Bodan Yadav and Ghotal Gauswami came there and Pappu Yadav fired at the deceased Kailash Mandal and then all of them fled away. The injured Kailash Mandal was removed to Ismailpur Police Station and from there to Naugachia Hospital but on the way he died.

In cross-examination, he explained that he was own brother of the deceased Kailash Mandal and that Mantu Sao, the Tea Shop Owner, was still alive. His attention was drawn to the earlier statement that he had not given such a detailed statement about the manner of occurrence or that he was sitting in the Tea Shop of Mantu Sao. It was suggested to him that in fact, the deceased was a Veteran criminal and had been killed in another occurrence. He conceded that his brother had been convicted by the Sessions Court in a case under section 395 I.P.C., but later on acquitted by the High Court. He also explained that when he

reached Ismailpur Police Station, *Darogajee* was not present.

8. P.W. 9 Hira Mandal, the Informant, stated that on 10.02.1997 while he was in Ismailpur Hatia, accused Shesh Nath Yadav, Pappu Yadav, Abdhesh Yadav, Ghotal Goshwami, Sunil Yadav, Mahesh Yadav and Bodan Yadav and Umakant Yadav came and set next to the deceased Kailash Mandal, who was having Tea, then Appellants Shesh Nath Yadav, Pappu Yadav and accused Awadesh Yadav fired at his brother on account of which he fell down injured. Some persons put his brother on a cot and started to take him to Naugachia Hospital where he was declared dead. His statement was recorded at the Hospital and he proved his signature on the *fardbeyan* as Exhibit-2.

In cross-examination, he explained that the deceased was his brother. He also stated that when he met *Darogajee* he told him to proceed to the Hospital and he would come there but he returned and in the 10-15 minutes, he was with the *Darogajee* and no statement was recorded.

There is nothing else which is of note in his entire cross-examination.

9. Court witness, C.W. 1 Shashi Sekhar Choudhary proved the Postmortem Examination Report as Exhibit-3.

10. On a bare perusal of the evidence of the two eye



witnesses, we find that whereas the case of the prosecution at the initial stage as narrated by P.W. 9, Informant, Hira Mandal was that Appellant Shesh Nath Yadav fired at the deceased while Appellant Pappu Yadav had caught hold of him, during trial, P.W. 3 Baman Mandal stated that it was Pappu Yadav, who fired at the deceased whereas P.W. 9 Hira Mandal, the Informant, stated that three persons i.e. Pappu Yadav, Shesh Nath Yadav and one Awadhesh Yadav fired at the deceased. The statements of the witnesses, thus, vary on a material point and hence, it is difficult to rely on the same with some certitude so as to confirm the conviction of the Appellants on such divergent evidence. We also find that the prosecution neither produced the Investigating Officer nor the Doctor. Even if we look into the Postmortem Examination Report, we find that a single fire arm injury was found on the deceased, which is contrary to the prosecution case. We also find that P.W. 9 Hira Mandal, the Informant neither mentioned P.W. 3 as a witness in the *fardebayan* nor does he confirm the presence of P.W. 3 Baman Mandal, in Court as being present at the place of occurrence, even though P.W. 3 Baman Mandal has stated that he was at the Tea Shop of Mantu Sao along with the Informant.

11. In view of such shaky evidence, we are inclined

to give benefit of doubt to the appellants. In the result, the Appeals are allowed. The Judgment of conviction dated 15.03.2013 and Order of sentence dated 23.03.2013 passed by the 4th Additional Sessions Judge, Naugachia in connection with Sessions Trial No. 484 of 1997 arising out of Ismailpur P.S. Case No. 22 of 1997 against the Appellants, above named, is set aside. They are acquitted of the charges. The Appellants Sheshnath Yadav and Pappu Yadav are in jail custody. Therefore, they are directed to be released forthwith, if not wanted in any other case. The Appellants Mahesh Yadav, Sunil Yadav, Uma Kant Yadav and Borhan Yadav are on bail. They are discharged from the liabilities of their bail bonds.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Shailendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	