

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.900 of 2010**

(Against the Judgment of conviction dated 02.06.2010 and Order of sentence dated 07.06.2010 passed in Sessions Trial No.364 of 2007 by the Additional Sessions Judge, Fast Track Court-III, Siwan).

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Harish Chandra Yadav, son of Vishwanath Yadav, resident of village-Karji Patiyan, Police Station-N.H. Nagar, District-Siwan.

.... .... Appellant.

Versus

The State of Bihar

.... .... Respondent.

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**Appearance :**

For the Appellant : Mr. Dr. Uma Shankar Prasad, Sr. Advocate.  
Mr. Ajay Kumar Pandey, Advocate.  
Mr. Kamala Kant Tiwary, Advocate.  
For the State : Mr. Ashwani Kumar Sinha, A.P.P.  
For the Informant : Mr. Akash and Mr. Ranjeet Kumar, Advocates.

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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: 03-03-2016**

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Appellant has been convicted under Section 396 of the Indian Penal Code and sentenced to rigorous imprisonment for life with fine of Rs.30,000/-, in default of which, further rigorous imprisonment for three years vide Judgment of conviction dated 02.06.2010 and Order of sentence dated 07.06.2010 passed by the Additional Sessions Judge, Fast Track Court-III, Siwan, in Sessions Trial No.364 of 2007.

**2.** The case of the prosecution, according to the



Informant Ranjeet Singh (P.W.4), is that on the night of 23.05.2001, he alongwith others had returned from a meeting in the village and at about 11.30 when he was about to sleep, he heard some noise and then noticed that some persons were trying to take away his bullock carts. When he protested and cried out, he was fired at and when his uncle tried to get up from his cot, he was shot at from a close range by the Appellant, on account of which he died. On his cries, a number of villagers gathered and then the miscreants which he names but none of the witnesses except P.W.1 Ambika Singh, who happens to be his father, has been examined. Amongst the miscreants he identified one Vishwanath Yadav and his three sons, namely, Ramdeo Yadav, Ramchandra Yadav and Harish Chandra Yadav (Appellant). He stated that on 20.05.2011, Appellant had an altercation with his father Ambika Singh (P.W.1) and, therefore, this act has been committed by the Appellant and other accused and, therefore, this occurrence has taken place.

**3.** During trial, prosecution examined altogether seven witnesses.

**4.** P.W.1 Ambika Singh, is the father of the Informant, who supported the factum of the attempt to commit dacoity and identified the present Appellant and his other family members. He also stated that few days earlier, the accused persons had threatened

him because of his protest over fishing.

From his cross examination, it is adduced that Vishwanath Yadav, the father of the Appellant, lived close-by and he had contested the elections against his own brother Amerika Singh and Om Prakash Giri but both of them had lost in the elections whereas the father of the Appellant had won. It was suggested to him that it is on account of this, the Appellant and his other family members were falsely implicated.

5. P.W.2 Parshuram Singh is the uncle of the Informant, who also stated that on cries, he saw the miscreants including the Appellant and his family members stealing the bullocks and firing at them on chase.

In cross examination, he also concedes that the father of the Appellant had contested the elections with Amerika Singh and Om Prakash Giri but both of them had lost. It also appears from his evidence that the house of the Appellant is close-by.

6. P.W.3 Akshaywar Saw has not supported the case of the prosecution and has been declared hostile.

7. P.W.4 Ranjeet Singh is the Informant and he has repeated the version given in the Fardbeyan. He has supported the factum of the manner in which he and the deceased had come back. He once again asserts that the Appellant and his father as also his

brothers were identified as miscreants.

From his cross examination, it also appears that the Appellant used to live close-by and the father of the Appellant had contested the elections against his uncle and Om Prakash Giri, who had lost the elections. When it was put to him that Vishwanath Yadav, the father of the Appellant, was an old man and a respectable person, he denied the same. He asserts that he identified the accused persons in the torch light.

**8.** P.W.5 Dr. Shyam Sundar Prasad conducted the post-mortem examination of the dead body of the deceased Vishwanath Singh and found the following ante mortem injuries on his person:

- (i) External injury-Lacerated wound circular in shape and size 1" X 1" X Chest Cavity Deep. On the left side of back, Margin-inverted and chard 4" below scapula and 2" away from spinal cord.

He also examined P.W.4 Ranjeet Singh and found him injured, Yogendra Singh, who was not examined, P.W.1, Ambika Singh, Sukhdeo Sah, who has also not been examined, P.W.2 Parshuram Singh, Indrasen Singh, who was also not examined and found the firearm injuries on their persons.

**9.** P.W.6 Jagdish Singh was the Investigating Officer, who stated that he had instituted the First Information Report,



which he proves as Ext.3 and the Signatures as Exts.3/1 and 3/2. He further stated that he recorded the statement of the witnesses and visited the place of occurrence and after due investigation, submitted the charge-sheet. In cross examination, he stated that he had noted in the case diary that father of the Appellant was a respectable person, who used to visit other villages to intervene in the dispute around the area and there was no complaint against him.

**10.** P.W.7 Rajesh Prasad is the next Investigating Officer, who proves the Fardbeyan (Ext.1), the Inquest Report (Ext.6) and stated that he had examined P.Ws.1, 2 and 3 in course of investigation. He has also support the fact of the miscreants including the Appellant and his family trying to steal the bullocks and firing a fatal shot at the deceased on account of which he died. He visited the place of occurrence at 03.00 A.M. in the morning and prepared the inquest report and examined the injured, even though, he stated that he had learnt about Mohan Sah having been seriously injured but he did not care to record his statement. He also stated that the witnesses, subsequently, stated that they identified the accused persons in the torch light, which was shown to him.

**11.** From the evidence of the aforesaid witnesses, it

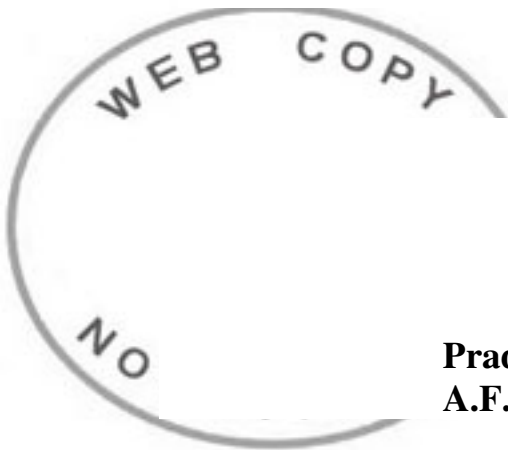


appears that the factum of dacoity or murder is not denied. In the First Information Report, the role of the accused persons including the present Appellant is defined. However it appears to be highly doubtful since they are co-villagers, who used to live close-by to the house of the Informant and it is not probable that they would commit such an Act without taking care to conceal their identification. Also, no independent witness has been examined on behalf of the prosecution.

**12.** Admittedly, the father of the Appellant was a person, who had contested the elections against the uncle of the Informant and the family members of the rest of the supporting witnesses and had won. It is, thus, suspected that there was ample reason to implicate the family in the instant case of serious nature. We also find that apart from Vishwanath Yadav, who was the Mukhiya, and his three sons, no other person has been named in the First Information Report which further creates a doubt about their complicity and they appear to have only been targeted on account of the election dispute.

**13.** In the facts and circumstances of the case, this appeal is allowed. The Judgment of conviction and order of sentence passed against the Appellant, above named, is set aside. He is acquitted of the charges. He is in jail custody, so he is

directed to be released forthwith, if not wanted in any other case.



**(Anjana Prakash, J)**

**(Rajendra Kumar Mishra, J)**

**Pradeep Srivastava/A.B. Bhardwaj/  
A.F.R.**

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