

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.26 of 2016

Arising Out of PS.Case No. -220 Year- 1995 Thana -BAGHA District-
WESTCHAMPARAN(BETTIAH)

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Ajay Kumar Yadav son of Ramdeo Yadav, resident of village- Sukhwan,
P.S.- Bagaha, District- West Champaran

.... Appellant/s

Versus

1. The State of Bihar

2. Kanedi Yadav @ Vijay Yadav

3. Ramesh Yadav

Both sons of Late Adalat Yadav, village- Sukhwan, P.S.- Bagaha, District-
West Champaran

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arvind Kumar

For the Respondent/s : Mr. D.K.Sinha(APP)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

2 08-03-2016 By the judgment and order, dated 06.10.2015,

passed, in Sessions Trial No. 281 of 97, C.I.S. No. Sessions Case
No. 2627 of 2015, by the 3rd Additional Sessions Judge, Bagaha,
the learned trial Court has acquitted the respondent Nos. 2 and 3
of the charges framed under Sections 307, 324 and 427 read with
Section 34 of the Indian Penal Code and Section 27 of the Arms
Act, 1959.

2. The case of the prosecution, as unfolded at the
trial, may, in brief, be described as under:

(i) On 30.10.1995, at 10:00 A.M., when the
informant's driver, namely, Rajesh Ram (P.W.-3), was starting
the informant's tractor and the sisters of the informant were



standing by the Tractor, the informant's grandfather, namely, Adalat Yadav, scolded the driver for starting the tractor and asked him to come down from the tractor. Thereafter, the informant called some persons from the neighbourhood to push the tractor, then, the informant's grandfather said that anybody, who dares to come near the tractor, will be shot. In the meantime, the sisters of the informant started pushing the tractor, whereupon accused Ramesh Yadav (respondent no. 3 herein) came with a rifle and shot at the rear tyre of the tractor, which burst instantaneously. Accused Vijay Yadav @ Kenedi Yadav (respondent no. 2) came with a gun and fired at the informant and his sisters, who sustained fire-arm injuries. The occurrence took place in presence of many persons.

(ii) On the basis of the *fardbeyan* of the informant, Bagaha P.S. Case No. 220 of 1995, under Sections 307, 324, 427 and 506 of the Indian Penal Code and Section 27 of the Arms Act. 1959, was registered. On completion of investigation, a *charge sheet* was laid, under Sections 307, 324, 427 and 506 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act. 1959, against three named accused persons, namely, Vijai Kumar, Adalat Yadav and Ramesh Yadav. During pendency of the trial, accused Adalat Yadav died on 06.11.1998.

3. At the trial, charges were framed against accused

Vijai Kumar and accused Ramesh Yadav. The accused pleaded not guilty to their respective charges.

4. In support of their case, prosecution examined altogether 9 (nine) witnesses. Accused were, then, examined under Section 313(1)(b) of the Code of Criminal Procedure and, in their examinations aforementioned, the accused denied that they had committed the offence, which was alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced by the defence.

5. Having, however, arrived at the finding that the charges against the accused-respondent Nos. 2 and 3 had not been proved, the learned trial Court acquitted them.

6. Aggrieved by the acquittal of the respondent Nos. 2 and 3, the informant of the case has preferred this appeal.

7. Heard Mr. Arvind Kumar, learned Counsel for the appellant, and Mr. D.K. Sinha, learned Additional Public Prosecutor for the State.

8. The learned trial Court has dealt with the evidence adduced, at the trial, threadbare. The most important witness, the driver, namely, Rajesh Ram (P.W.-3), said to be present, at the place of occurrence, was crucial in determining the facts so that the case of the prosecution could have been proved beyond reasonable doubt, but he has become hostile to the extent



that he has denied to have any knowledge about the incident. The evidence of P.W.-4, P.W.-5 and P.W.-6, being the three sisters of the informant, is that accused Ramesh Yadav fired at the wheel of the tractor and accused Vijai Yadav fired at the leg of the informant and his three sisters with a double barrel gun. P.W.-2 is a hearsay witness and P.W.- 1 is the father of the informant, who has stated that his brother, Ramesh Yadav, fired shot by his gun at the rear wheel of the tractor; whereas, accused Vijai Yadav fired from the gun belonging to Adalat Yadav, whereupon children sustained injuries on their leg. He has deposed that his father had partitioned the land which was not proper. It has also been deposed by this witness that though the police had seized the tractor and pellets, the same were released later on. He has further deposed that his son, Ajay, had sustained injuries on his leg. The informant (P.W.-7) has deposed that the driver was sitting on the seat and he, along with his minor sisters, was pushing the tractor. His uncle, accused Ramesh Yadav, fired on the wheel of the Tractor and uncle Vijai Yadav has fired upon him and his sister, as a result thereof, they sustained injuries. P.W.-8 is the doctor, who has examined the injured persons and found the injuries to be simple in nature and has not found fire-arm injury on the persons of the injured sisters of the informant. P.W.-9 is an Advocate clerk, who has been described,

as Sankat Mochan witness, and, therefore, his statement has no evidentiary value.

9. Having heard learned Counsel for the appellant, and learned Counsel, appearing on behalf of the State, it appears that the learned trial Court, upon carefully appraising the evidence, has come to the finding that the accused and the informant/prosecution side are sons of Adalat Yadav, who was also one of the accused person, who died during the pendency of the trial. It has also transpired that the parties were at loggerheads on account of the partition effected by the accused Adalat Yadav, father of the informant, resulting in animosity between the brothers, P.W.-1, on the one side, and the accused Ramesh and Vijai Yadav, on the other side. The learned trial Court has observed that out of the five persons, present at the place of occurrence, the only independent witness, namely, the driver (P.W.-3), has not supported the prosecution version and has denied having any knowledge about the incident, thus, seriously prejudicing the prosecution version. P.W.-2, another independent witness, has also claimed to be absent from the place of occurrence and is, admittedly, a hearsay witness. The learned trial Court, on appraisal of the statement of P.W.-4, has further come to the conclusion that it appears that if at all the shot had been fired, the same having come from the eastern side, the firing

would have hit the head of the tractor.

10. The injury reports also do not go to substantiate the prosecution version and though P.W.-7, the informant, who is said to be a student of Class VI and is claimed to have been injured, was not found to have sustained even a single injury. This in itself places the prosecution version under a cloud. The prosecution has also failed to explain, as to why a child of Class-VI has been used to lodge the First Information Report and not the father (P.W.-1) himself. The Investigating Officer of the case has also not been examined, though it is stated that he had visited the place of occurrence and allegedly seized the pellets scattered around at the place of occurrence along with the tractor. Non-examination of the Investigating Officer also seriously prejudices the case and the learned trial Court has come to the finding that the testimonies of the members of the family, being full of serious contradictions, cannot fully establish the guilt of the accused persons and it appears that they have supported this case only to satisfy their grudge against the other family members.

11. It is in the wake of such findings that the learned trial Court, having come to the conclusion that there is no such material to sustain a charge against the accused persons, under Section 307 of the Indian Penal Code, and that the prosecution has failed to prove its case beyond reasonable doubt, has

acquitted the accused persons.

12. Having perused the judgment under appeal and having considered the matter in its entirety and upon consideration of all facts and circumstances, we find that the judgment, under appeal, is based on sound rationale. As such, we find no infirmity in the order of acquittal passed by the learned trial Court.

13. This appeal is, therefore, not admitted and is accordingly dismissed.

(I.A. Ansari, ACJ)

(Anjana Mishra, J)

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