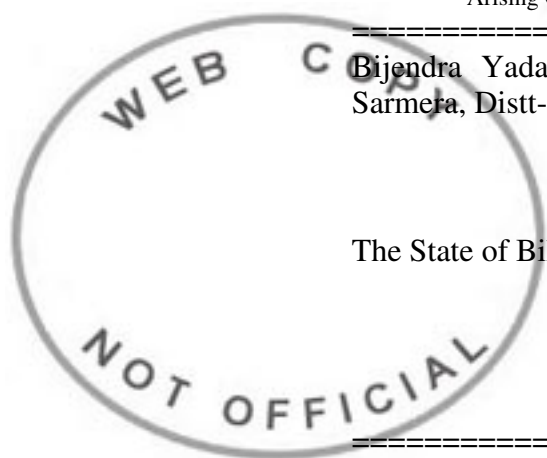




IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.47 of 2013

Arising Out of PS.Case No. -41 Year- 2004 Thana -null District- NALANDA (BIHARSHARIFF)

=====

Bijendra Yadav S/o Sudhdeo Yadav R/o Vill-Banshi Bigha Mohanpur, P.S.- Sarmera, Distt-Nalanda

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

---with---

=====

Criminal Appeal (DB) No. 1160 of 2012

=====

Subhash Yadav, S/o Late Deonandan Yadav, R/o Vill. Mohanpur, P.S. Sarmera, District – Nalanda.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

---with---

=====

Criminal Appeal (DB) No. 1163 of 2012

- =====
1. Indradeo @ Rudal Yadav @ Rudal, S/o Late Parmanand Yadav
 2. Raj Kumar @ Sadhu Yadav, S/o Sukhdeo Yadav

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

---with---

=====

Criminal Appeal (DB) No. 11 of 2013

=====

Ram Badan Yadav S/o Hori Prasad Resident of Village- Banshi Bigha Mohanpur, Police Station- Sarmera, District- Nalanda

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

---with---

=====

Criminal Appeal (DB) No. 14 of 2013

=====

Guddu Yadav S/o Sri Ambika Yadav Resident of Village- Mohanpur, P.S-
Sarmara, District- Nalanda.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. B.K. Singh Mr. Vikram Deo Singh Mr. Rudal Singh
For the Respondent/s	:	Mr. Aswani Kumar Singh.

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 24-06-2016

Heard learned counsel for the Appellants and learned
counsel appearing on behalf of the State.

2. All the above Appellants have been convicted
under sections 302, 341, 148 and 149 I.P.C. and sentenced to
undergo Rigorous Imprisonment for life along with fine of Rs.
10,000/- each, in default of which, further Rigorous Imprisonment
for two years and further they have been convicted under section
27 Arms Act and sentenced to undergo Rigorous Imprisonment
for three years along with fine of Rs. 2000/- each, in default of
which, three months Rigorous Imprisonment by a Judgment dated
07/10.12.2012 passed by the Adhoc Additional Sessions Judge-V,

Nalanda at Biharsharif in connection with Sessions Trial No. 772 of 2007/392 of 2010 arising out of Sarmera P.S. Case No. 41 of 2004.

3. The case of the Informant (P.W. 2) Rajendra Singh is that on 04.07.2004 when he was returning with his brother deceased Mahendra Singh at 5:30 am. from the maize field, 17 accused persons variously armed, including the Appellants surrounded them. Then deceased Mahendra Singh started running, who was chased and caught hold off by all of them and accused Rakesh Yadav fired at him. When he fell down, Appellant Guddu Yadav and accused Rakesh Yadav caught hold off his both hands, whereas Appellants Subhash Yadav and Ram Badan Yadav caught hold off his legs and accused Sudhir Yadav caught hold off his head whereas Appellant Bijendra Yadav cut his neck with *fasuli*. He anyhow escaped but all the accused persons surrounded his house and indiscriminately firing. When the Police Force came, all the accused persons fled away.

4. During trial, the prosecution examined 10 witnesses whereas the Informant P.W. 2 Rajendra Singh, who was the sole eye witness, according to *fardbeyan*, himself did not support the case of the Appellant and was declared hostile. Similarly P.W. 1 Satendra Singh, P.W. 4 Yogendra Singh, brother

of the deceased and P.W. 5 Chhote Yadav, co-villager, did not support the case of the prosecution.

5. Only P.W. 3 Uttam Devi, wife of the deceased Mahendra Singh, had given an eye witness account in Court. She stated that on the date of occurrence, when she had gone to relieve herself in the field, she saw 7 accused persons namely, Subhash Yadav, Bijendra Yadav, Rakesh Yadav, Sudhir, Ram Badan, Sadhu and Rudal firing at her husband. They then cut his neck with *fasuli* and ran away. At that point of time, the deceased was all alone. She allegedly saw the accused persons fleeing away.

In cross-examination, she stated that it was because the accused persons were of powerful and dominating caste, they had committed this act. She also stated in cross-examination that she was examined 2-3 days later. It was suggested to her that in fact, at the time of occurrence, she was at her home and she had learnt about the occurrence from the brother of her husband later on, but she denied such suggestion.

6. P.W. 6 Sanjay Kumar is the Investigating Officer, whose attention was surprisingly not drawn to the statement of the sole eye-witness P.W. 3 and appears to have been cross-examined very half-heartedly by the defence when he was examined. He stated that on 04.07.2004 when he was posted at Sarmera Police

Station. He proves his signature on the *fardbeyan* as Exhibit-2 and also forwarded the same to the concerned Police Station for institution case as also put his signature over it, which is marked as Exhibit-2/1. He assumed the Investigation and proceeded to the place of occurrence and prepared the Inquest Report, which is marked Exhibit-3. He found the place of occurrence about 700 yards that it was an open field. Surprisingly, he did not confirm finding any Pellet marks on the house of the Informant nor any other incriminating articles.

He was cross-examined but nothing is found relevant in his evidence.

7. P.W. 7 Sunil Kumar Mandal is a formal Police Officer, who is only on the point of arrest of some of the accused persons.

8. P.W. 8 Dr. J.P. Gupta conducted the Postmortem Examination on 04.07.2004 and proved the Postmortem Examination Report as Exhibit-4. He found the following injuries on the person of the deceased :

i) Dead body brought in two parts.

ii) One part the beheaded body.

iii) Second Part the head.

The head was totally cut off from the body

near the root of the neck at level between 5th and 6th cervical vertebrae.

The wound margin was sharp and both the body and neck corresponds with each other.

Perforating wound ½” x ½” 2 from the posterior surface of the root of neck adjacent and at the time of transected cut wound. Perforating wound margin was charred with about 1” surrounding present in skin tag of margin and trends.

On Dissection : - Chest - Lungs intact and pale, Heart – both sides chambers empty. Abdomen – liver and other viscera pale. Stomach contains digested liquid ½ ounce. Urinary bladder empty.

Opinion : - Cause of death – Hemorrhage and shock, caused by above mentioned injury.

Weapon used – Transected wound caused by sharp cutting weapon and perforating wound caused by fire arm.

9. P.W. 9 Kripa Sagar had assumed investigation on 18.12.2005 and submitted charge-sheet against some of the accused persons.

His attention was drawn to the statement of the P.W.

3 Uttam Devi recorded by the previous Police Officer P.W. 6 under section 161 Cr. P.C. that she had previously stated before the Investigating Officer that she was at her home at the time of occurrence. In such circumstances, the evidence of P.W. 3 will have to be rejected.

10. P.W. 10 Manish Ranjan is a formal witness, who had submitted the charge-sheet. He had proved the signature of Investigating Officer of Sarmera Police Station on the same, which is marked as Exhibit-5/1.

11. Thus, as discussed earlier, on going through the evidence, we find that apart from P.W. 3 Uttam Devi, no other witness supported the prosecution case. And even though she has given an eye witness account in the Court, we find that she has stated that she was at home at the time of occurrence at an earlier instance. We also find that she was examined two days after the occurrence. We are, thus, constrained to hold that she was not an eye witness since had she been an eye witness, she would have been, being an important witness, even by relation; being the wife of the deceased, immediately examined. In such circumstances, the Appeals are allowed.

12. The Judgment of Conviction and Order of sentence dated 07/10.12.2012 passed against the above Appellants

by the Adhoc Additional Sessions Judge-V, Nalanda at Bihar Sharif in connection with Sessions Trial No. 772 of 2007/392 of 2010 arising out of Sarmera P.S. Case No. 41 of 2004 is set aside. They are acquitted of the charges. The Appellant Bijendra Yadav is in jail custody, therefore, he is directed to be released forthwith, if not wanted in any other case. So far as rest of the Appellants are concerned, they are on bail. Therefore, they are discharged from liabilities of their bail bonds.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	02/07/2016
Transmission Date	02/07/2016