

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1025 of 2011

Against the judgement of conviction dated 16.08.2011 and order of sentence dated 17.08.2011 passed by Shri Anand Singh, learned Additional Sessions Judge, (FTC-III), Khagaria in connection with Sessions case No. 45/1999, Trial No.48 of 2011 arising out of Parbatta P.S. case No. 145 of 1997.

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1. Indradev Yadav S/O Late Amik Yadav @ Anik Yadav R/O Vill- Arria P.S- Parbatta Distt- Khagaria.
 2. Bilas Yadav S/O Amik Yadav @ Anik Yadav R/O Vill- Arria P.S- Parbatta Distt- Khagaria.
 3. Hakim Yadav S/O Amik Yadav @ Anik Yadav R/O Vill- Arria P.S- Parbatta Distt- Khagaria.
 4. Manoj Yadav S/O Amik Yadav @ Anik Yadav R/O Vill- Arria P.S- Parbatta Distt- Khagaria.
 5. Ajay Yadav S/O Indradev Yadav R/O Vill- Arrua P.S- Parwatta Distt- Khagaria.
 6. Rabindra Yadav S/O Janu Yadav @ Janaradan Yadav R/O Vill- Arria P.S- Parbatta Distt- Khagaria.
 7. Viveka Yadav S/O Shibu Yadav R/O Vill- Arria P.S- Parbatta Distt- Khagaria.

.... Appellants

Versus

1. The State Of Bihar

.... Respondent

with

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Criminal Appeal (SJ) No. 1157 of 2011

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1. Harinandan Yadav S/O Janardan Yadav Resident Of Village- Araria, P.S.- Parbatta, Distt.- Khagaria

.... Appellant

Versus

1. The State Of Bihar

.... Respondent

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Appearance :

(In CR. APP (SJ) No. 1025 of 2011)

For the Appellants : Mr. Amrendra Kumar, Advocate
Mr. Ravi S. Pankaj, Advocate

For the Respondent: Mr. Sujit Kumar Singh, APP

(In CR. APP (SJ) No. 1157 of 2011)

For the Appellant : Mr. Ranjeet Kumar Singh, Advocate

For the Respondent: Mr. Z. Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT
Date: 03-02-2016

Heard learned counsel for the appellants and the State.

2. These two appeals have been heard together and are being disposed of by this common order as both arise out of common judgement dated 16.08.2011 passed by Sri Anand Singh, learned Additional Sessions Judge, FTC-III, Khagaria in Sessions case No. 45 of 1999, Trial No. 48 of 2011 arising out of Parbatta P.S. case No. 145 of 1997.

3. The appellants of both these cases have been convicted under section 148 of the IPC and sentenced to undergo R.I. for two years and the appellants, Manoj Yadav, Rabindra Yadav, Viveka Yadav, Harinandan Yadav, Indradev Yadav and Hakim Yadav have further been convicted under section 307/149 of the IPC and sentenced to under R.I. for 10 years and a fine of Rs. 3,000/- and for non payment of fine to undergo R.I. for two months. The appellant, Bilash Yadav and Ajay Yadav have been convicted under section 307 of the IPC and sentenced to undergo R. I. for 10 years and a fine of Rs. 2,000/- and for non payment of fine to undergo R.I. for two months.

4. The prosecution case lodged on the basis of fard bayan of informant, Kinu Prasad Yadav, is that on 02.10.1997 at about 10



AM two goats of Indradev Yadav were grazing the wheat crop of informant, adjoining east of the house of informant, and so he was driving out the goats towards the south of the village and as soon as he reached on the *Parti* land of Jarman Yadav then Karelal Yadav @ Sanjay Yadav, Ajay Yadav, sons of Indradev Yadav, Indradev Yadav, Bilash Yadav, Hakim Yadav, Manoj Yadav, son of Anik Yadav, Rabindra Yadav, Harinandan Yadav, son of Janu Yadav and Viveka Yadav, son of Shibu Yadav surrounded him from all four sides with their three-nuts and guns. On hulla, Sachida Yadav (not examined), Yogi Yadav (not examined) and Dhyani Yadav (not examined) came. Further case is that the accused persons, who surrounded the informant with their three-nuts and guns, fired by which informant got injuries. Out of firing of Karelal Yadav @ Sanjay Yadav the informant received injuries on his left ear and right shoulder. Further case is that Ajay Yadav fired by which Sachida Yadav got injuries and thereafter Indradev Yadav fired by which Yogi Yadav got injuries and Bilash Yadav fired, which caused injury to Dhyani Yadav. On receiving fire arm injuries all the four injured were taken by the villagers on cot and then by Tata Maxi to the Referral Hospital, Gogari where the informant and three injured were treated.

5. The occurrence has been witnessed by Jarman Yadav (PW3), Satto Yadav (PW6), Abodhi Yadav (PW2), son of Dhyani

Yadav, and Ramanand Yadav (PW1).

6. The case was instituted on the fard bayan of Kinu Prasad Yadav recorded by S.I., R. Sharma (not examined) on 02.10.1997 at about 12.45 PM. The police after investigation submitted charge sheet, cognizance was taken and the case was committed to the court Sessions and thereafter charge was framed under 148 of the IPC against all the eight accused persons. Further, charge was framed under section 307 of the IPC against Ajay Yadav and Bilash Yadav and against the rest six appellants the charge was framed under section 307/149 of the IPC.

7. After framing of charge, the trial proceeded and during the trial 8 witnesses were examined by the prosecution.

8. PW 1, Ramanand Yadav, though supported the case of prosecution, however, he deposed that at the time of occurrence he was at his Darwaja and while the informant, Kinu Prasad Yadav, was coming from his wheat field driving two goats and reached at the *Parti* field of Jarman Yadav then there was verbal altercation for leaving the goats and then the accused persons fired causing injuries to informant, Dhyani Yadav, Yogi Yadav and Sachida Yadav. However, in his cross- examination, he stated that at the time of occurrence he was at his Darwaja and heard sound of firing of 10-20 rounds. The firing continued for 15-20 minutes and till then remained

at his Darwaja and when he went to the place of occurrence he found four persons in injured condition fallen on the ground.

9. PW 2 is Abodhi Yadav and though he has also supported the prosecution case about the occurrence but in his cross-examination he has stated that at the time of occurrence he was at his Darwaja.

10. PW 3 is Jarman Yadav. He has also stated that at the time of occurrence he was at his house and on hearing hulla he came to the Darwaja and saw quarrelling between Kinu Yadav and Indradev Yadav. There was verbal altercation and thereafter there was firing between both of them. However, he has stated that there were 50-60 persons between the place of occurrence and the house of Kinu Yadav and due to crowd he did not identify any person except Sanjay Yadav. He has further stated that he did not see the shot of firing and he saw only the injured. He has stated that firing was between both the parties in field. Though, he has stated that Sachida Yadav and Yogi Yadav were also injured but he did not see who fired the shot though he has stated that Kinu Yadav received injuries by firing of Sanjay Yadav.

11. PW 4 is Kinu Prasad Yadav, the informant. He has also supported the prosecution case and stated that firing by Karelal Yadav @ Sanjay Yadav hit on his ear and shoulder. Ajay Yadav fired causing injury to Yogi Yadav, Bilash Yadav fired causing injury to

Dhyani Yadav and firing of Indradev Yadav caused injury to Sachida Yadav and all the four injured fell down.

12. PW 5 is the doctor who has examined Yogi Yadav, Sachida Yadav, Dhyani Yadav and Kinu Yadav. He found four pellet injuries on the Yogi Yadav, i.e., on right side of chest, left side of the wrist, right side of abdomen and on right side of thigh. Similarly, he found eight injuries on the person of Sachida Yadav caused by fire arm but the nature of the injury was simple. The injuries were found on chest, shoulder, neck, right hand, right thigh, left lower leg and middle part of neck. The doctor found two pellet injuries on the person of Dhyani Yadav over right side of back and right side of chest. He also found two pellet injuries on the person of Kinu Yadav over right shoulder and right side of scalp near right year which were also simple in nature. The doctor though proved the injury report marked as 2 to 2/3. However, in his cross-examination he has stated that he has not mentioned that the injuries were caused by pellet or about the age of injuries. He has further stated that according to version of patient he has mentioned the age of the injuries. He has further stated that he has mentioned pellet injuries in his injury report according to version of the patient. He has further stated that he has not recovered any pellet. He has further stated that he did not find swelling. He has further stated that he has not directed any patient for

X-ray and hence, the evidence of doctor is fluctuating and as per his evidence in cross-examination though he did not find any pellet but mentioned the pellet injuries only as per reported by the patients. He neither found pellet injuries nor directed for X-ray.

13. PW 6 is Satto Yadav. He has supported the prosecution case and stated that at the time of occurrence he was at his Darwaja and after hearing hulla he went to the place of occurrence and then saw the verbal altercation between Indradev Yadav and Kinu Prasad Yadav. He has stated that Ajay Yadav and Sanjay Yadav were armed with guns by which they fired causing injuries to Kinu Yadav, Yogi Yadav, Sachida Yadav and Dhyani Yadav. Hence, as per evidence of this witness Ajay Yadav and Sanjay Yadav fired. However, Sanjay Yadav is not facing trial and he is not appellant here. He has further stated that other accused persons brick-batted and pelted stones. However, in cross-examination he has stated that when he reached the place of occurrence he saw all the four injured persons. In his cross-examination he has stated that though he stated before the police that there was exchange of abuses between both of them and there was brick-batting but in his cross-examination he has given go-bye to the prosecution story about the firing.

14. PWs 7 and 8 are only formal witnesses who have formally proved the fard bayan and formal FIR.



15. Hence, taking into consideration the entire evidence of witnesses, except the informant, there is no eye witness to the occurrence of firing. PW 1 in his cross-examination in paragraph 10 has specifically stated that at the time of occurrence he was at his Darwaja and only on hearing sound of firing he went to the place of occurrence and saw four persons in fallen condition and, hence, he is not an eye witness of occurrence of firing. PW 2 in his cross-examination has stated that he went to the place of occurrence after hearing sound of firing. He has further stated that after the occurrence he did not meet with Kinu Prasad Yadav and when the injured returned from the hospital then he met them. The informant disclosed him that he has been named as a witness and he had talked with the injured after their return from the hospital and they did not disclose the name of persons who fired. In his cross-examination he has stated that he did not see who received the shot fired by Karelal Yadav. Hence, his evidence does not inspire confidence of being eye witness of the occurrence.

16. So far PW 3 is concerned, he has stated that there was firing from both sides and then only remains the evidence of PW 4. However, the evidence of doctor is that he has mentioned the pellet injuries received by the injured according to the version of patient and he never advised for any X-ray. The I.O. of the case has not been

examined.

17. The defence of the accused persons, as appear from the cross-examination and the suggestion, is that prosecution party entered into the house of accused persons and fired at the accused persons and from the side of prosecution party themselves Sanjay Yadav got injured and, hence, the defence is that injuries by fire arm is by same side. However, the defence set up is not acceptable. Though, the defence has been set up that there was firing by prosecution party and attention has been drawn to the evidence of Jarman Yadav, who in his evidence has stated that there was firing from both sides in the field, however, no injury has been proved by the accused persons to have been received by fire arm. The defence also proved Exhibit-B, certified copy of FIR of Parbatta P.S. case No.144/97, in which Sanjay Yadav @ Karelal Yadav was informant and there is allegation of firing by Kinu Yadav.

18. Taking into consideration the evidence of witnesses, it is apparent that except the informant none appears to be eye witness of the occurrence as they stated that at the time of occurrence they were at their house and when they reached the place of occurrence they saw the injured in fallen condition. PWs 1, 2, 3 and 6 in their cross-examination stated that they are not eye witnesses of the occurrence. The evidence of doctor also does not inspire confidence



as he stated that he mentioned about the pellet injuries in the injury report on the saying of patients. Further, except the informant none of the injured in the case has been examined. I. O. has also not been examined to say about the objective finding regarding the place of occurrence, whether he found grazing of the goats in the field and further objective finding about the firing at the place of occurrence.

19. Hence, having regard to the facts and circumstances of the case that in the FIR there is mention of firing by four persons, however, in the evidence it has been attributed to Ajay Yadav and Sanjay Yadav by the witness, PW 6, the same does not inspire confidence. The injury report, mentioning pellet injuries, also does not inspire confidence as the injuries are simple in nature and it cannot be said that such injuries were inflicted with intention to kill and, hence, having regard to the facts and circumstances of the case, even assuming that the injuries were received by the injured, it cannot be said that the injuries were inflicted with an intention to kill as injuries found, even though on vital part of body, were only simple and superficial and it cannot be said that such injuries were caused with intention to kill and, hence, section 307 of the IPC is not made out. Moreover, having regard to the fact that except the informant none has come to support the prosecution case and they are not eye witnesses of the occurrence of firing, hence, the appellants are entitled to get the

benefit of doubt as the prosecution has not been able to prove the charges beyond all reasonable doubt and hence I find and hold that the prosecution has not been able to prove the charges beyond reasonable doubt and acquit the appellants of the charges. The judgement of conviction dated 16.08.2011 and order of sentence dated 17.08.2011 passed by Shri Anand Singh, learned Additional Sessions Judge, FTC-III, Khagaria in connection with Sessions case No.45/1999, Trial No. 48/2011, arising out of Parbatta P.S. case No. 145/1997, are hereby set aside and both the appeals are allowed. Appellants, namely, Indradev Yadav, Bilas Yadav, Hakim Yadav, Manoj Yadav, Rabindra Yadav, Viveka Yadav and Harinandan Yadav are on bail. They are discharged from the liability of bail bond. Let the appellant, namely, Ajay Yadav of Cr. Appeal No. 1025 of 2011, who is in custody, be released forthwith if not wanted in any other case.

(Gopal Prasad, J)

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