

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.854 of 2013

(Against the Judgment of conviction dated 26.07.2013 and Order of sentence dated 05.08.2013 passed by the Adhoc Additional Sessions Judge-I, Begusarai, in Sessions Trial No.895 of 2008).

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Ram Bilas Yadav @ Bideshi Yadav, son of Gorakh Yadav, resident of village- Raghunathpur, P.S. Sahebpur Kamal, District-Begusarai.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

with

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Criminal Appeal (DB) No. 957 of 2013

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Madho Yadav, son of Shiv Narayan Prasad Yadav @ Sheo Narayan Yadav, resident of village- Raghunathpur, Police Station Sahebpur Kamal, District-Begusarai.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

(In CR. APP (DB) No. 854 of 2013):

For the Appellant : M/s. S.N.P. Sinha, Senior Advocate, J.N. Sinha, Rohit Kumar, Ms. Rashmi Bharti and Ms. Rashmi Sinha, Advocates.

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

(In CR. APP (DB) No. 957 of 2013):

For the Appellant : Mr. Vivekanand Singh, Advocate.

For the State : Mr. A. Sharma, A.P.P.

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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: 03-05-2016

Both the above named Appellants have been convicted under Sections 302 and 448 of the Indian Penal Code and Section 27



of the Arms Act and sentenced to undergo rigorous imprisonment for life and fine of Rs.5000/-, under Section 302 of the Indian Penal Code, in default of payment of fine, to undergo further simple imprisonment for three months, to undergo rigorous imprisonment for one year under Section 448 of the Indian Penal Code and to undergo rigorous imprisonment for three years and fine of Rs.1000/- under Section 27 of the Arms Act, in default of payment of fine to undergo further simple imprisonment for three months vide Judgment of conviction dated 26.07.2013 and Order of sentence dated 05.08.2013 passed by the Adhoc Additional Sessions Judge-I, Begusarai, in Sessions Trial No.895 of 2008.

2. The case of the prosecution, according to the Fardbeyan of the Informant Dhiro Yadav (P.W.2) is that on the night of 19.08.2006 when he and his elder brother Lakhan Yadav were sleeping, at about 01.00 A.M., nine persons came to his door and started looking for Jato Yadav, the son of the deceased Lakhan Yadav. However, when he was not found, the two Appellants shot at him saying that if not son, the father will have to bear the consequences. The reasons for the occurrence was that a year earlier, the brother of the Appellant Ram Bilas Yadav alias Bideshi Yadav had been killed in which his nephew Jato Yadav, son of the deceased, his own two sons Kinodi Yadav and Vinodi Yadav were accused in which all of

them had been sent to jail. It is for this reason, they got executed the present occurrence.

3. After having gone through the entire evidence of the witnesses, we find that there is a serious doubt with regard to the veracity of the statements of the Informant on the complicity of the Appellants and the manner of occurrence. For this reason, we are inclined to deal with the evidence of the First Investigating Officer Ram Surat Mukhiya (P.W.15) at the first instance.

He stated that on 19.08.2006 when he was posted as S.I. at Sahebpur Kamal Police Station, he assumed investigation of the present case and inspected the place of occurrence, which was the house of the deceased, where he found a 'Chowki' on the Varamdah. He did not find anything else at the place of occurrence. He examined P.W.1 Rukmini Devi, P.W.3 Shatrughan Yadav, P.W.4 Balbir Yadav, P.W.5 Kapil Deo Prasad Yadav, P.W.9 Baiju Yadav and P.W.12 Madhu Lata Devi and then handed over the charge of investigation to the other officer.

In cross examination, he stated that the place of occurrence was a hutment and on the north there was a cot. He had examined Balbir Yadav (P.W.4), Shatrughan Yadav (P.W.3), Kapil Deo Prasad Yadav (P.W.5) and one Ajay Yadav and all of them had stated that the deceased had been shot at by someone but they did not disclose any



names. They also stated that there had been a 'Panchayati' between two brothers but instead Kinodi Yadav (son of the informant) had murdered his uncle Lakhan Yadav so as to stall the 'Panchayati'. He also noted in paragraph-36 of the case diary that Kapildeo Yadav (P.W.5) had stated before him that none of the family members of the deceased had disclosed the names of anyone and had speculated that someone close to them must have committed this act. He further stated that Rukmini Devi P.W.1 had not stated that the accused persons had stated that when the enemy was not found, the father should be killed at which the two Appellants had shot at him. She had not stated that the accused persons had left on horses. The Investigating Officer also stated that he had stated in paragraph-87 of the case diary that, in fact, Lakan Yadav had been got murdered by the witness/Informant Dhiru Yadav through his son Kinodi Yadav and the present case had been instituted to put their pressure upon the witnesses of Sahebpur P.S. Case No.96 of 2005 in which his sons and nephew Jato Yadav, son of deceased, were accused.

4. Now, to deal with the evidence of independent witnesses, P.Ws.3, 4 and 9, who were examined during investigation.

5. P.W.3 Shatrughan Yadav stated that while the deceased was sleeping at his door, his nephews son of informant, Dhiru Yadav, i.e, Vinodi Yadav and Kinodi Yadav had shot him dead which

statement he had given to the police as well.

In cross examination, he confirmed that earlier Arun Yadav, the brother of Bilash Yadav had been murdered in which Vinodi, Kinodi, Jato and some others were accused. After it, the villagers wanted some kind of 'Panchayati' but the Informant and his sons, Vinodi and Kinodi did not want the same.

6. P.W.4 Balbir Yadav also stated that Lakhan Yadav had been killed by Kinodi Yadav and Vinodi Yadav and he had given such a statement before the police also. He stated in cross-examination that when he reached the place of occurrence, everyone was saying that Kinodi and Vinodi Yadav, sons of the Informant, had killed the deceased. He also mentioned about the fact of 'Panchayati' having been held in the village after murder of Arun Yadav, the brother of Bilash Yadav to which Lakhan Yadav, the deceased, was agreeable but the Informant had refused to do sign and instead he tried to put some conditions in its respect.

We, thus, find that these two independent witnesses have given a different story about the murder of the deceased and disclosed about the factum of 'Panchayati' which was held earlier and is supported by the two defence witnesses Bachchan Yadav and Bahadur Yadav along with documents.

7. Here, it could be important to discuss the evidence of

P.W.9 Baiju Yadav, who was the Inquest Report witness. He stated that he was a signatory to the Inquest Report but till date he was not confirmed as to who had caused the death of the deceased Lakhan Yadav.

8. Now, to discuss the evidence of the family members of the deceased.

9. P.W.1 Rukmini Devi is the wife of the Informant, who stated that when she was sleeping at her door on the night of the occurrence, suddenly, 9 persons including the Appellants Madho, Bilash and Socho Yadav came there. Socho Yadav stated that if enemy is not found, his father, the deceased, should be killed and then two Appellants shot at him. She mentions the names of other co-accused persons.

In cross examination, she conceded that her two sons were accused earlier in the murder of the brother of Appellant Ram Bilas and that entire family was separate in mess. Her attention was drawn to the earlier statement that, in fact, she was not an eye witness to the occurrence which fact finds confirmed by the Investigating Officer as mentioned above.

10. P.W.2 Dhiro Yadav is the Informant, who stated that on the date of occurrence, suddenly, 10 persons came on horses, out of which, he identified 9 of them and they started to look for Jatwa

Yadav and when they did not find him his brother, Lakhan was shot dead. He stated that it was on account of land dispute, this occurrence had taken place. He also stated that Darogaji had come in the night itself and that earlier, the brother of Appellant Bilas Yadav had been murdered in which his nephew Jato Yadav and his two sons were accused.

In cross examination, his attention was drawn with regard to the 'Panchayati' which had been held in the village in regard to patching up the dispute in respect of the murder of Arun Yadav, the brother of Appellant, Bilas Yadav. He stated that 'Chowkidar' had come to the place of occurrence but he did not tell him about the occurrence and only sent to call Darogaji. It was suggested to him that his two sons, Vinodi and Kinodi had not come for the last rites of the deceased but he denied the same. It was also suggested to him that, in fact, it was they who had killed the deceased but he denied the same.

11. P.W.5 Kapil Deo Prasad Yadav stated that the Informant had disclosed to him that the Appellants and others had come looking for Jato Yadav and not finding him had shot dead Lakhan Yadav. He further stated that he had gone to the place of occurrence after 10 minutes and he had not been examined by the Investigating Officer.

However, we find from the evidence of the Investigating Officer that he had stated about the examination of this witness and also that he had stated that no one had disclosed the names of any assailants.

12. P.W.6 Jato Yadav, the son of the deceased, who is also not an eye witness and because of whom, the entire occurrence had taken place. He allegedly was sleeping in the house of Rambabu Rai and came to know about the occurrence through the Informant. However, he had not been examined during the entire investigation which fact is also confirmed from the evidence of the Investigating Officer, who had not mentioned about the examination of this witness.

13. P.W.7 Ganesh Kapar and P.W.8 Janardan Yadav did not support the case of the prosecution and have been turned hostile.

14. P.W.10 Ranjan Kumar is a formal Police Officer, who conducted part of the investigation.

15. P.W.12 Madhu Lata Devi is the daughter-in-law of the deceased and is not an eye witness to the occurrence. She has only stated that when she was sleeping on the terrace, she got up on hearing some sounds of firing and saw the named accused including the Appellants from the terrace and when came down, she saw her father-in-law dead.

However, in cross examination, she stated that the night was dark and she was sleeping alongwith her children and she had woken up on the sounds of firing which means she could not have possibly witnessed the occurrence.

16. P.W.14 Sanju Kumari is the daughter of P.W.12, who stated that on the sounds of firing, she got down and saw the grand father dead and said that her mother, i.e., P.W.12 was sleeping alongwith her on the terrace. She also does not name any of the accused persons further suggesting that in all probability the Appellants have been belatedly implicated only after due deliberation. Her evidence also directly contradicts that of her mother P.W.12 who stated about the complicity of the Appellants even though both of them were sleeping together on the terrace and came down on hearing gun shots.

17. P.W.11 Dr. Gagan Deo Prasad and P.W.13 Dr. Bijendra Kumar Vidyarthi, were the members of the Board of Doctors, who conducted the Post-Mortem Examination of the dead body of the deceased and found the following injuries on his person:

- (i). Punctured wound with margin inverted 1/2" X 1/2" into going inside on right posterior auxiliary line with charring at the level of last coastal margin.
- (ii). Punctured wound with margin inverted on the right

infra scapular area 1/2" X 1/2" into going inside charring.

On dissection:

- (I). Brain matters-pale
- (II). Thorax, Lungs, Left side ruptured and Thoracic cavity full of blood.
- (III). Heart, left chamber ruptured and two bullets found in the left side of chest.
- (IV). Bullet sealed in a glass vial and handed over to accompanying police personnel.

Liver ruptured, abdominal cavity-full of blood clots, Spleen and Kidneys-failed, Bladder-empty.

Time elapsed since death-within 12 hours.

In the opinion of the doctors, the cause of death was due to massive hemorrhagic shock as a result of above mentioned injuries, caused by firearms.

P.W.13 Dr. Bijendra Kumar Vidyarthi and P.W.11 Dr. Gagandeo Prasad proved the Post-Mortem Examination Reports as Ext.1 and Ext.1/1 respectively.

18. On going through the evidence of the witnesses, it is evident from the statements of the independent witnesses that the complicity of the present Appellants was not disclosed at the earliest



instance and in fact they talk of complicity of the informant and his two sons. It appears that a 'Panchayati' had been held between the two parties after the murder of Arun Yadav. So there was no reason for further grievance of the two Appellants who are supposed to have participated in the occurrence. There is also material to suggest that, in fact, the Informant and his two sons were not ready for settlement and it was they who had opposed the settlement which suggests that the Informant had a reason to implicate the Appellants and their supporters. We further find that the prosecution case is that after the Appellants failed to find Jato they killed his father Lakhan Yadav. This story appears highly improbable for the reason that if the Appellants targeted Lakhan Yadav for the sin of his son there is no explanation why the informant himself was spared when his own sons were also accused in the same case as Jato Yadav. Either the informant has stretched himself to implicate the Appellants on account of the earlier murder or he had not witnessed the occurrence. In such circumstances, we are inclined to give the benefit of doubt to the Appellants.

19. In the facts and circumstances of the case, these Appeals are allowed. The Judgment of conviction and Order of sentence passed against the Appellants, above named, are set aside. They are acquitted of the charges. They are in jail custody, so they

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

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/A.B. Bhardwaj

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