

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.659 of 2011

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Pappu Yadav, Son of Jodha Yadav @ Ayodhya Yadav, Resident of Village-Kare,
P.S. Sheikhpura, District-Sheikhpura.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Shivendra Kumar Sinha,
Mr. Brij Nandan Singh,
Mr. Abhishek Kumar,

For the Respondent : Mr. Ashwani Kumar Sinha, 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: 28-06-2016

Heard learned counsel for the Appellant and learned

Additional Public Prosecutor appearing on behalf of the State.

2. The above named Appellant has been convicted under Sections 302 I.P.C. and 27 of the Arms Act by a Judgment dated 30.06.2011 and 02.07.2011 and sentenced to undergo Rigorous Imprisonment for life and three years respectively along with fine of Rs. 10,000/- for the offence under Section 27 of the Arms Act passed by the Additional District and Sessions Judge, Fast Track Court-V, Sheikhpura in connection with Sessions Trial No. 501 of 2010/20 of 2011 arising out of Sheikhpura P.S. Case No. 336 of 2007.

3. The case of the prosecution, according to P.W.5

Shashi Yadav is that on the morning of 19.11.2007, while he was making preparation for immersion of Idol along with P.W.6 Kedar Yadav and his cousin brother Karu Sardar @ Kapildeo Yadav, the Appellant came there and started to altercate with them. Later on, the Appellant along with the rest of the accused persons came and started to look for him and not finding him, they fired at his cousin brother Kapildeo Yadav @ Karu Yadav (P.W.6) and Kedar Yadav on account of which they were removed to the hospital. At the Hospital, his cousin brother Kapildeo Yadav @ Karu Yadav was declared dead, whereas Kedar Yadav was sent for further treatment to Patna.

4. During trial the prosecution examined 9 witnesses. The important injured witness Kedar Yadav, who was examined as P.W. 6, did not support the prosecution case along with P.W.3 Prayag Yadav and P.W.4, Shiv Shankar Yadav. P.W.7 Dr. Bibhuti Bhushan held postmortem, whereas P.W. 9 Dr. Arjun Prasad examined the injured Kedar Yadav (P.W.6). P.W.8 Baban Rai is the Investigating Officer. P.W. 1 Jagdish Yadav. P.W. 2 Sunil Yadav though not named in the First Information Report as eye-witnesses have deposed as such in Court. Informant Shashi Yadav had been examined as P.W. 5.

5. Jagdish Yadav (P.W. 1) in Court stated that in the



morning on 19.11.2007 at 9.15 A.M. after having watched the drama for the whole night, an altercation had taken place between the Informant Shashi Yadav and the Appellant and thereafter, the Appellant Pappu Yadav had left threatening him. A little later, he along with other accused persons came and started to look for Shashi Yadav. Then the Appellant Pappu Yadav fired on the stomach of Kapildeo Yadav on account of which he fell down and Santoshi Yadav fired with the rifle at the stomach of injured Kedar Yadav (P.W.6). On account of which he fell down. Both of them were removed to the Hospital boarded on a tractor, where the Doctor declared Kapildeo Yadav dead. He was also a signatory to the *fardbeyan* and identified his signature as Exhibit-1 and the Inquest Report has been marked as Exhibit-2.

In cross-examination, he stated that he was the brother of the deceased Kapildeo Yadav, whereas Kedar Yadav (P.W.6) was his cousin brother. He specifically stated that there was no dispute in between the Appellant and deceased Kapildeo Yadav and injured Kedar Yadav. He further stated that firing has been resorted from a distance of 40-50 feet and the Police had come at 03.00 P.M., whereafter, it was decided as to who was to institute the case.

6. P.W.2 Sunil Yadav, another eye-witness, stated that

on the morning of 19.11.2007, the Appellant had an altercation with Shashi Yadav, thereafter he left threatening him. A little later, he along with rest armed returned and started to look for Shashi Yadav and not finding him, he fired at the deceased Kapildeo Yadav @ Karu Yadav on his stomach whereas, Shantoshi Yadav fired at Kedar Yadav. Both were removed to the Sheikhpura Hospital, where Kapildeo Yadav was declared dead and injured Kedar Yadav was referred to P.M.C.H.

In cross-examination, he stated that Kapildeo Yadav was his cousin brother and the firing resorted at a distance of 40-50 feet. His attention was drawn to the earlier statement that he had not stated before the Police that the Appellant had threatened the informant Shashi Yadav and thereafter came a little while later armed with rifle which he denied.

7. P.W.3 Prayag Yadav and P.W.4 Shiv Shankar Yadav as mentioned earlier have been declared hostile.

8. P.W.5 Shashi Yadav is the informant, who once again stated that on 19.11.2007 at about 7.00 A.M. the Appellant had an altercation with him and he also assaulted him. Thereafter, he left and came a little later armed with rifles and asked as to where the Informant was. Then the Appellant fired at the deceased Kapildeo Yadav and Santoshi Yadav fired on the stomach of



Kedar Yadav on account of which he fell unconscious then they removed them to the Government Hospital at Sheikhpura, where Kapildeo Yadav was declared dead whereas Kedar Yadav was referred to Patna. He further stated that Appellant Pappu Yadav had fired at him, but the same was hit deceased Kapildeo Yadav @ Karu Yadav. He stated that several witnesses had seen the occurrence and that the firing had been resorted to from a distance of about 40 feet from near the house of Nawal Doctor, but he has not been examined. He further stated that first firing was made upon the deceased Kapildeo Yadav and thereafter Kedar Yadav. He further stated that the Police did not make any inquiry of the injured Kedar Yadav and it was only later, his statement was recorded.

9. P.W. 6 Kedar Yadav is the most important witness, injured, had not supported the case of the prosecution and has been declared hostile.

10. P.W.7 Dr. Bibhuti Bhushan held the Postmortem of the deceased on 19.11.2007 and found the following injuries:

External Examination:

1. Wound of entry – A circular inverted lacerated wound about one cm. in diameter. Lateral to umbilicus Right side, 5” lateral to umbilicus. Charring was not present.

On Dissection:

Blood and blood clot was present in the abdominal cavity. Rupture of the 1st kidney was present. Rupture of the large intestine was found. A. Bullet was recovered from the abdominal cavity near the left kidney. It was sealed. All of the organs were found pale. Heart – Both chambers were empty.

Cause of death was due to hemorrhage and shock as a result of above mentioned injuries caused by a fire arm.

Time elapsed since death – within 24 hours.

He proved the Postmortem Examination Report as Exhibit-3.

11. P.W.8 Baban Rai is the Investigating Officer, who stated that on 19.11.2007 while he was posted at Sheikhpura Police Station, he had assumed the charge of investigation. He proves the hand writing of the Police Officer on the formal First Information Report as Exhibit-5. He then inspected the place of occurrence and prepared the Inquest Report, which he proves as Ext.6 and submitted the Chargesheet on inspection of the senior officials.

In cross-examination, he stated that he did not seize the blood stained earth from the place of occurrence. There is nothing else, which is of note in his cross-examination.

12. P.W.9 Dr. Arjun Prasad had examined Kedar

Yadav (P.W.6) on 19.11.2007 and found the following injuries on his person:

(i) Wound of entry 1/2" X 1/4" depth not assessed with charring margin just above umbilicus.

(ii) Wound of exit 1 x 1/2" above left side of ellipse area.

He proves the injury report as Ext.6.

13. On going through the evidence adduced on behalf of the prosecution. We find that in the First Information Report, there is no mention that the Appellant had fired at the deceased. There is just general allegation against all the accused persons of having resorted to firing on account of which the deceased died and P.W.6 Kedar Yadav was injured. We also find that there is no mention of any other witness except Kedar Yadav in the First Information Report. It is the stand of the Informant that the accused persons had come looking for him and not finding him, the Appellant and another accused persons had shot fired at the two persons. In such circumstances, together with the evidence of P.W. 1, Jagdish Yadav and P.W. 2 Sunil Yadav, who also stated that when the Informant was not found by the accused persons, the others resorted to firing meaning thereby that the Informant himself was not an eye witness to the occurrence.

The rest of the two witnesses, i.e. P.W. 1 and P.W.2, both of whom are cousin brothers of the deceased Kapildeo Yadav, were not mentioned as eye witnesses in the First Information Report. It is only subsequent that they appeared and gave a graphic description of the occurrence.

14. In the manner of occurrence, which has been depicted by these two witnesses that the accused came together and thereafter, shot at the two persons evidently the two injured would have sustained injuries from a close range or at least it would be of similar nature. However, we find that whereas the margins of injury of Kedar Yadav (Hostile) were charred, the injuries on the deceased Kapildeo Yadav did not have any charring sign. The prosecution alleged that the Appellant had fired at the deceased from a distance of 40-50 feet, which does not fit in with the prosecution case. This distance, which has been given by the prosecution witnesses evidently, is only to explain the Postmortem Examination Report which did not reveal charring on the margins of injuries of the deceased.

However, in a bid to explain the absence of charring, the prosecution makes the prosecution story highly unreliable, inasmuch as there was no occasion for the Appellant to have fired from a distance of 40-50 feet when it is an admitted case of the

prosecution that all the accused came together and thereafter, shot at the two persons, who were standing there on not finding the Informant.

15. For the aforesaid reasons and the facts that Kedar Yadav, injured, himself did not support the case of the prosecution, we are inclined to give benefit of doubt to the Appellant. Hence, the Appeal is allowed.

16. The Judgment of Conviction dated 30.06.2011 and Order of Sentence dated 02.07.2011 passed against the Appellant by the Additional Sessions Judge, Fast Track Court No. V, Sheikhpura in connection with Sessions Trial No. 501 of 2010/20 of 2011 is set aside. He is acquitted of the charges. The Appellant is in custody, therefore, he is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Shailendra/-Manish

AFR/NAFR			
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