

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1396 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- SEKHPURA

Ramashray Yadav son of late Shibu Yadav, resident of village Faridpur Samastipur,
P.S. Sarmera, District Nalanda

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 92 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- SEKHPURA

1. Bundi Yadav S/O Late Prayag Yadav, Resident Of Village- Funidpur,
Samastipur, P.S.- Sarmera, District- Nalanda

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

Appearance :
(In CR. APP (DB) No. 1396 of 2010)

For the Appellant/s : Mr. S.A. Nasur Warsi, Advocate
Mr. Brij Nandan Prasad, Advocate
Mr. Janki Nandan Prasad, Advocate
Mr. Obaidur Rahman, Advocate

For the Respondent/s : Mr. A. K. Sinha, APP

(In CR. APP (DB) No. 92 of 2011)

For the Appellant/s : Mr. Ajay Mukherjee, Advocate
Mrs. Asha Kumari, Advocate

For the Respondent/s : Mr. A. Sharma, APP

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 08-03-2016

Appellants Ramashray Yadav of Criminal Appeal (DB)

No.1396 of 2010 and Bindu Yadav of Criminal Appeal (DB) No.92 of



2011 have been convicted under Section 302/149 I.P.C. and sentenced to R.I. for life and fine of Rs.2,000/- each, in default of which simple imprisonment for one year, R.I. for two years u/s.148 I.P.C. and R.I. for three years under Section 27 of the Arms Act by judgment dated 4/6.12.2010 passed by the Additional District and Sessions Judge, F.T.C. III, Sheikhpura in Sessions Trial No.239 of 2009/ Trial No.43 of 2010.

2. The case of the prosecution according to P.W.5 Umesh Singh is that on 17.12.2003 at 8 A.M. he was travelling with P.W.8 Ram Balak Singh, P.W.1 Dashrath Singh and his son Pankaj Kumar and one Narain Prasad Singh. When the bus reached a certain point, some 19-20 miscreants variously armed climbed on the bus and pulled away his son and Narain Prasad Singh on the plea that they belonged to village Mehush. He followed them to a distance of one kilometer and saw the two Appellants firing at the two deceased in presence of the rest of the accused persons. He named thirteen accused persons in all in the First Information Report. The statement was given immediately thereafter at 1 0' clock at Mehush Police Station.

3. During trial the prosecution examined eight witnesses. P.W.1 Dashrath Singh, who is named in the First Information Report as one of the persons, who was travelling on the bus, has stated that

while he was in his fields he heard that Narain and Pankaj had been pulled from the bus and shot dead and then he went and saw the two deceased, where a number of persons had gathered. They were all disclosing the names of Kapil Yadav and Bishundhari Yadav, who are not the Appellants. So he has not supported the version of the Informant.

4. P.W.2 Shailendra Kumar has not supported the case of the prosecution and is irrelevant for all purposes. P.W.3 Satish Paswan, P.W.4 Janardan Yadav and P.W.8 Ram Balak Singh have been declared hostile.

5. P.W.5 Umesh Singh, the Informant, is the sole eye witness. Since the law on sole witness is settled that it should be completely unimpeachable, we will examine his evidence in the light of such dicta. In examination-in-chief P.W.5 Umesh Singh has stated that on 17.12.2003 while he along with Jairam Singh (not examined), Dashrath Singh (P.W.1), Dinesh Singh (not examined) and Ram Balak Singh (P.W.8) was travelling along with his son Pankan Kumar and Narain Singh, at a certain point 18-20 persons surrounded the bus. One Kapil Yadav and Vyas Yadav are said to have stood at the gate of bus, whereas the present Appellants and one Prakash Yadav climbed inside and asked as to who belonged to Mehush and then pulled away Pankaj Kumar and Narain Singh and took them about one kilometer



north and then the present two Appellants shot at them. He immediately fell down unconscious but somebody brought him to senses by giving him water. When he regained his consciousness he saw the dead body of his son and he became nervous. Soon thereafter the Police Officers from Nalanda and Sheikhpura arrived. He stated that he took the names of only five miscreants and thereafter again fell unconscious. So he did not know as to who had inserted the names of rest eight accused persons nor was the statement read to him. In cross examination he stated that he knew the present Appellants because they were of criminal antecedents. He stated that no doubt he had fallen unconscious but he had regained the same and then given his statement at 1 P.M. He also stated that the Appellants lived about 5 kilometers away from his village which is by he knew them but there was no previous enmity.

In cross examination when he was asked as to why he was spared he gave an explanation that since he had covered his face he was not targeted. He also stated that apart from these two deceased none of the co-villagers were targeted. He also stated that the dead bodies were found about one kilometer away from the place where the two deceased had been pulled away and he had himself fallen unconscious about 200 feet away from the dead bodies and he had remained in such a condition till from 9 A.M. to 1 P.M. and he was all

alone. A suggestion was given to him that he was not present at the place of occurrence which he of course denied.

From the evidence of this witness we find that he had named only five persons in his statement, whereas admittedly thirteen accused persons are named in the First Information Report. He also stated that the fard beyan had not been read to him before he signed the same. We find from his statement that the Police Officers both from Nalanda as well as Sheikhpura had arrived at the place of occurrence where he had fallen unconscious but the fard beyan reveals that he had given his statement at the Police Station at 1 P.M. Why his statement was not recorded at the place of occurrence itself is not explained. We also find that the motive for the occurrence was that the two deceased belonged to village Mehush. In such circumstances it is left to our imagination as to why he himself and the other persons, who were travelling with him belonging to the same village, had not been targeted especially when he had followed the accused persons to a distance of one kilometer as per his statement.

6. No doubt, P.W.6 Dr. Rakesh Kumar Sinha found two deceased having died of fire arm injuries but since the factum of death is not in dispute, we are not inclined to pay unnecessary attention to the same.

7. P.W.7 Brahamdeo Tiwary is the Investigating Officer,



who stated that on 17.12.2003 while he was posted in Sheikhpura he had taken over investigation of the present case and visited the place of occurrence. He proves his signature on the Inquest report, which is marked as Exhibit 3 and 3/1 and the fard beyan which is Exhibit 1/A. He found the dead bodies about one kilometer from the place where they were allegedly pulled away from the bus. He also stated that a number of police personnels had arrived where the dead bodies were found and that he had examined P.W.1 Dashrath Singh and P.W.8 Ram Balak Singh, but his attention was not drawn to the earlier statement of Ram Balak Singh, who was declared hostile.

We also find that initially names of Kapil Yadav and Bishundhari Yadav @ Vyas Jee and not of the Appellants had been disclosed by the persons who had gathered near the dead bodies thus raising a serious doubt on the complicity of the Appellants.

He also did not find any objective evidence at the place of occurrence. From his evidence, it appears that he had proceeded to the place of occurrence when an information was received on telephone in regard to the incident by the higher officials upon which a Sanha was also instituted. In such circumstances, he corroborates the evidence of P.W.5 Umesh Singh to the extent that the Police Officers of Sheikhpura and Nalanda had gathered at the place where the dead bodies were found and he himself was lying. However, there

is no explanation as to why no statement of any of the witnesses was recorded at that particular place or time and it was recorded only later at the Police Station.

8. In view of aforesaid, we are not inclined to place absolute reliance of the evidence on the sole eye witness and are inclined to give benefit of doubt to the Appellants.

9. In the result, both the Appeals are allowed and the judgment of conviction and order of sentence passed against the Appellants by a judgment dated 4/6.12.2010 passed by the Additional District and Sessions Judge, F.T.C. III, Sheikhpura in Sessions Trial No.239 of 2009/ Trial No.43 of 2010 is hereby set aside. The Appellants Ramashray Yadav son of late Shibu Yadav and Bundi Yadav son of late Prayag Yadav, who are in custody, be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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