

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.334 of 2011

(Against the Judgment of conviction and Order of sentence dated 25.02.2011 passed by the Sessions Judge, Jamui, in Sessions Trial No.100 of 2005/Sessions Trial No.117 of 2008).

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1. Govind Yadav.
 2. Mohan Yadav.
 3. Murari Yadav.

All sons of Late Baidy Nath Yadav.

All resident of village- Barna, P.S- Sikandara, P.O- Manjosh, District- Jamui.

.... Appellants.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellants : M/s. Kanhaiya Prasad Singh, Senior Advocate, Pramod Kumar and Jyoti Ranjan Jha, Advocates.

For the State : Mr. S.C. Mishra, 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: 27-06-2016

The Appellant Murari Yadav has been convicted under Section 302 of the Indian Penal Code whereas the Appellants Govind Yadav and Mohan Yadav have been convicted under Sections 302/34 of the Indian Penal Code and all of them have been sentenced to undergo rigorous imprisonment for life under the aforesaid Section with a fine of Rs.10,000/-, in default of which, to undergo further rigorous imprisonment for one year. All the Appellants have further been convicted under Section 27 of the Arms Act and sentenced to

undergo rigorous imprisonment for three years under the aforesaid Section vide Judgment of conviction and Order of sentence dated 25.02.2011 passed by the Sessions Judge, Jamui, in Sessions Trial No.100 of 2005/Sessions Trial No.117 of 2008.

2. The case of the prosecution, according to the Informant Surendra Prasad Verma (P.W.9/P.W.2), is that on 22.08.2003 when he alongwith his father Krishna Prasad Verma, the deceased, were going to the house of Borhan Yadav, suddenly, on the way, the three Appellants surrounded them and then the Appellant Murari Yadav fired at the deceased. The Appellants also attempted to injure him but he ran and locked himself inside his house. The whole night, he remained inside the house and it was only the next morning, he came out of the house and gave this information. The reason for the occurrence was that land litigation was going on between the parties and the accused were telling to him withdraw the case.

3. During trial, the prosecution examined altogether ten witnesses.

4. It appears that two separate trials were held but some of the witnesses are common, for example, P.W.1 Nirmala Devi has been examined as P.W.5 in the subsequent trial whereas P.W.5 Gopal Prasad Gupta has been examined as P.W.1, P.W.7 Chhotu Tanti has been examined as P.W.3, P.W.6 Jay Mala Devi has been examined as P.W.4

and P.W.9 Surendra Prasad Verma, the Informant, has been examined as P.W.2.

5. After going through the evidence of the witnesses in both the trials, we are of the view that the Appellants deserve to be given benefit of doubt, the reasons for which conclusion will be indicated while we discuss the prosecution evidence.

6. P.W.1 Nirmala Devi is the wife of the Informant. She stated that on 22.08.2003, while she was at home, her husband came home at about 09.30 P.M. and locked the door and stated that the deceased, his father, had been killed by the three accused persons. They remained hidden inside the house due to scare and the next morning, her husband, the Informant somehow concealing himself reached the police station and informed the police. The entire family went to the place of occurrence and saw the deceased dead. She stated that the house was adjacent to the Civil Courts and, earlier, they used to live on rent. She further stated that there was some litigation between the Appellant Govind Yadav since last 10-15 years because he had wanted her father-in-law, the deceased, to write his property free of cost. She further stated that the reason for both of them to have gone to Borhan Yadav was to return some money.

In cross-examination, she stated that the door was open when her husband ran inside the house and that they took no steps to go

the police station. Next morning, they informed Gopal Tanti, Ram Swaroop Pandit, Jogi Pandit etc. about the occurrence. She denied the suggestion that the Appellant Govind Yadav had instituted a case for the murder of his wife against the Informant.

When this witness was examined as P.W.5 in the subsequent trial, she repeated the fact of disclosure about the occurrence by her husband and that the area was highly populated. She disclosed the names of some of the neighbours including an advocate. She further stated that they did not cry the whole night and opened the door only in the next morning. In the subsequent trial, she accepted that the Appellant Govind Yadav had instituted a case against her husband in which even Borhan Yadav had gone to jail.

7. P.W.2 Upendra Prasad Verma is the brother of the Informant and the son of the deceased, who has given an eye witness account of the occurrence. He stated that while he alongwith the Informant and the deceased were going to the house of Borhan Yadav, suddenly, the Appellants encircled them and the Appellant Murari Yadav fired at his father on account of which his father fell down dead. His brother, the Informant, ran away and saved his life as also whole of the night, they hid inside the house and only the next morning, his brother went to the police station concealing himself and then all of them went to the place of occurrence. He further stated that there was a



case going on since the year 1999 between them and the accused and they were continuously threatening him on account of land dispute it. He denied knowledge that the Appellant Govind Yadav had instituted a case against his brother which was numbered as Sikandara P.S. Case No.49 of 2003. He also stated that he used to live alongwith the Informant and it was suddenly they had decided to go to the house of Borhan Yadav, who belonged to their own village. He also asserted that when they reached the house, the door was open and that the area was highly populated. He mentions the names of his neighbours.

It appears from his cross examination that his other brothers were also present in the house on the date of occurrence.

8. P.W.3 Shrawan Tanti and P.W.4 Pankaj Kumar Verma have been declared hostile.

9. P.W.5 Gopal Prasad Gupta stated that at night, he heard the sound of firing, so he closed the window and did not come out and the next morning, he saw a big crowd gathered around the dead person, namely, Krishna Prasad Verma. He describes the place of occurrence being heavily populated where many renowned persons used to live including an Advocate, Principal and they all had telephone and mobile facilities. It also appears that the house of Borhan Yadav was close to the residence of the District Magistrate and he himself was a prominent person of the locality. He also stated that he had informed the police

after having heard the sounds of firing but he did not know as to whether the police had arrived after his information.

This witness was examined as P.W.1 in the subsequent trial and he has stated that the next morning, he learnt that the deceased had been murdered and the Informant disclosed to him that it was his father.

10. P.W.6 Jay Mala Devi is the wife of P.W.2 Upendra Prasad Verma and stated that on 22.08.2003 at about 08.30 P.M. after her elder brother-in-law Surendra Prasad Verma, the Informant (P.W.9) and farther-in-law, the deceased, Krishna Prasad Verma came home. They stated that they had to go to the house of Borhan Yadav to return the money and they left the house. It was then the Appellants Mohan Yadav and Govind Yadav caught hold of the deceased whereas the Appellant Murari Yadav fired at the deceased. The accused persons also chased the Informant but he ran away. She further stated that the deceased had land dispute with the present Appellants.

In cross examination, she denied the suggestion that her husband Upendra Verma, the Informant, her elder brother-in-law, Surendra Verma, younger brother-in-laws, Mohan Verma, Sohan Verma, Borhan Yadav and others were accused in a case instituted by the Appellant Govind Yadav numbered as Sikandara P.S. Case No.49 of 2003 but conceded that her husband had gone to jail in the said case from where he came to give evidence. She described that the Informant



had a 'Paan' shop in the court premises. She stated that when her brother-in-law, the Informant, informed them about the murder of her father-in-law, they cried but did not raise any 'hulla' and closed the door out of fear and no one came out. It was only the next morning, a big crowd gathered at the place where her father-in-law was found dead. She stated that the place of occurrence was adjacent to the house of P.W.5/P.W.1 Gopal Prasad Gupta and she had not heard the name of Professor residing in the neighborhood.

11. P.W.7 Chhotu Tanti also deposed as an eye witness and stated that on the date of occurrence, he had seen the Appellants Govind Yadav and Mohan Yadav catching hold of the deceased and the Appellant Murari Yadav firing at him on account of which he fell down dead and when the Informant came, he was also chased by the three accused persons.

In cross examination, he stated that he had gone to jail in one case and he had been arrested in the present case. From his description of the topography, it appears that several persons used to live in the locality including a Doctor, Professor as also Gopal Prasad Gupta P.W.5/P.W.1, who was a very influenced person.

However, this witness was examined as P.W.3 in the subsequent trial but he did not support the prosecution case.

12. P.W.8 is Dr.Vijay Kumar, who held the Post-Mortem

Examination of the dead body of the deceased and found the following injuries on his person:

(i). Lacerated wound 3/4" X 1/2" X skull cavity deep with charring all around with in drawn margin with blood clots in wound on left auricular area (wound of entry).

(ii). Lacerated wound 1/2" X 1/2" X skull deep with blood clot in wound on right side of forehead (wound of exit).

On deep dissection of skull:- fracture of left temporal bone and fracture of right side frontal bone-laceration of ménages and brain tissues-blood and blood clot present in skull cavity.

(iii). Weapon-projectile firearm.

(iv). Time elapsed since death-within 24 hours.

(v). In the opinion of the doctor, the death has been caused by shock and haemorrhage due to abovementioned injuries.

He proved the Post-Mortem Examination Report of the deceased as Ext.1.

13. P.W.9 Surendra Prasad Verma, is the Informant, who reiterated the prosecution case as given out in the First Information Report and that on 22.08.2003 while he was going to the house of Borhan Yadav alongwith his brother Upendra Prasad Verma (P.W.2) and father, the deceased, and had crossed the court premises, suddenly, the Appellants encircled them and the Appellant Murari Yadav fired at

the deceased while the rest of the accused caught hold of him. The Appellant Govind tried to catch him so he ran to save his life and came home and closed the door and remained inside the house whole night. The next morning at about 06.00-06.30 A.M., he went to the police station and narrated about the occurrence upon which the case was instituted. He gave the written statement which he proves as Ext.2.

In cross examination, he stated that the Civil Courts was about 100-150 yards away from their house and it was a heavily populated area where prominent persons of the city used to reside. He further stated that Jamui Police Station was about one kilometer away from the house and towards the south. He names several advocates who lived close by as also others.

He conceded that the Appellant Govind Yadav had instituted a case against him for the murder of his wife which was numbered as Sikandara P.S. Case No.49 of 2003 in which even his brother P.W.2 Upendra Prasad Verma had gone to jail. He asserted that whole night he did not tell anyone about the occurrence except his family members and he denied the suggestion that he did not go to the place of occurrence but saw the dead body of his father the next morning after which he went to the police station. He had also seen big crowd having gathered near the dead body of his father including Gopal Gupta, Chhotu Tanti and others.

When this witness was examined as P.W.2 in the subsequent trial, he more or less repeated the same version.

It appears that subsequently, his brother was also murdered.

14. P.W.10 Ganpati Jha is the Investigating Officer, who stated that on 22.08.2003 while he was posted at Jamui Police Station, he prepared the Inquest Report of the deceased, which is Ext.3. He described the place of occurrence being near the K.K.M. College on the road where the blood splattered dead body was found. About 30 yards away was the house of Gopal Prasad Gupta, a witness, and another 50 yards away was the house of C.L. Prasad. He stated that he did not find any empty cartridge at the place of occurrence and he did not seize blood stained earth from there. He also stated that the place of occurrence was heavily populated .

15. The main reason as to why we find it difficult to rely on the prosecution case is because it does not appear natural that a son and the rest of the family members of the deceased would lock themselves in the house even after witnessing murder of a close family member and emerge only the next morning to report the matter. P.W.9/P.W.2, who was allegedly accompanying the deceased, had witnessed the occurrence and as stated by him is said to have run home and told the rest of the family members, including another male member Upendra Prasad Verma as also other ladies such as Nirmala Devi and Jay Mala

Devi and had close neighbours who held eminent positions in the society.

In such circumstances, the fact that the matter was not reported immediately after the occurrence and it was only by way of written report on the next day, we feel the prosecution case has been set up to falsely implicate the Appellants.

Further, we find the First Information Report reached the court on 25.08.2003, for which delay, there is no explanation even though the police station was merely two kilometers away from the Court as is evident from the evidence of P.W.10 Ganpati Jha.

We also further take note of the fact that P.W.5/P.W.1 Gopal Prasad Gupta, who used to live in the vicinity where the occurrence had taken place and was a prominent person of the locality did not report the matter to the police station on the same night and when he came to the place of occurrence the next morning, he saw a big crowd but does not mention about any names having been disclosed by anyone. Admittedly, the Informant and his family members used to live at the place of occurrence where prominent citizens of the town were residing and there was no reason why they did not seek help which also raises a reasonable suspicion about their presence at the place of occurrence at the time the deceased was shot dead.

Moreover, we find the prosecution has taken pains to foist Upendra Narayan Sharma, another brother of the Informant also as an eye-witness, even though he was not mentioned in the First Information Report. In such circumstances, we are inclined to conclude that in all probability, the prosecution has implicated the present Appellants, who are brothers, for the reason that the Appellant Govind Yadav had instituted a case against the Informant and his other brothers for murdering his wife. Hence, giving benefit of doubt, we acquit all the Appellants of the charges.

16. In the result, this Appeal is allowed. The Judgment of conviction and Order of sentence passed against the Appellants, above named, is set aside. It appears that the Appellant No.3 Murari Yadav, is in jail custody, therefore, he is directed to be released forthwith, if not wanted in any other case. So far as the Appellant No.1 Govind Yadav and Appellant No.2 Mohan Yadav are concerned, they are on bail, therefore, they are discharged from the liabilities of their bail bonds.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

A.B. Bhardwaj/Pradeep Srivastava.

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