

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.115 of 2013

Arising Out of PS.Case No. -72 Year- 1998 Thana -NAYA RAM NAGAR District- Munger

Against the Judgment of conviction dated 19.12.2012 and Order of Sentence dated 21.12.2012 passed by 1st Ad hoc Additional Sessions Judge, Munger, in Sessions Trial No. 757 of 1999 arising out of Naya Ram Nagar P.S. Case No. 72 of 1998.

Binodi Yadav S/o Late Tara Yadav @ Tarni Yadav Resident of Village-Borna (Bangalwa), P.S- Dharhara, District- Munger.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ajit Kumar Singh, Adv

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

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

20-12-2016 The extant appeal is filed by the sole appellant against the judgment of conviction and sentence dated 19th December, 2012, passed in Sessions Trail No. 757 of 1999, by learned Ad-hoc Additional District & Sessions Judge-1, Munger whereby the appellant was convicted for the offence under Section 364/34, 302/34 of the Indian Penal Code and 27 of Arms Act. For the offence under Sections 364/34 of the Indian Penal Code, the appellant has been sentenced to undergo R.I. for 10 years, and for the offence under Section 302/34, he has been sentenced to life



imprisonment. The appellant has also been sentenced to 03 years imprisonment for offence under Section 27 of the Arms Act. However, all the sentences have been ordered to run concurrently.

2. The informant Binod Kumar Himanshu stated that on 28.05.1998 at about 7:00 pm, he along with his elder brother Arun Yadav (deceased), Akhileshwar Kumar, Bipin Kumar, Makeswar Paswan were going to catch the Lakhisarai Train from Safia Sarai to Dakra Mor. As they reached pukki sarak Bridge, Suresh Yadav, Sharan Yadav, Vijay Yadav, Badri Yadav, Nawal Yadav, armed with musket intercepted them. Suresh Yadav asked them to stop, otherwise he would kill them. In the meantime, Nawal Yadav caught the collar of the deceased (Arun Yadav) and pointed pistol at his ear. The informant and others tried to run in the backward direction but were apprehended by Binodi Yadav, Pankaj Yadav, Jai Kishore Yadav, Suresh Yadav, all armed with double barrel gun. They took them towards Bahiyar (agriculture land) south of the road. The accused held them till 11:00 pm. They were assaulting Arun Yadav with butt of pistol, etc. After continuous pleading, the accused decided to let the informant and others go. They took them to Jamalpur Railway Station and got them seated on Danapur Passenger train. They reached their house around 2:00 AM on 29.05.1998. When the informant reached his house, he



narrated the incident to his family members/relatives. After taking advice, he started searching for his brother on 30.05.1998. In course of search, they learnt at about 07:00 A.M., that a dead body is lying near Teen Mohania River, Brahma Asthan east of Dakra Nala. They immediately proceeded to the site where the dead body was lying. They saw gun shot injuries on the person of the deceased. The informant stated that his brother along with others was going to surrender in the court, as he had decided to leave the crime world. His brother had given Rs. 95,000/- to Binodi Yadav for purchasing rifles and two double barrel guns, which the latter had not returned. As the informant's brother insisted for refund of his money and rifles, the appellant and his associates murdered him.

3. On the basis of the fardbeyan, Naya Ram Nagar P.S. Case No. 72 of 1998 was registered on 31.05.1998 for offence under Sections 364, 302/34 of the Indian Penal Code. The police after investigation submitted charge-sheet against the appellant and others, whereafter cognizance of the offence was taken and the case of this appellant and one Suresh Yadav was committed to the court of Sessions. The case of this appellant was bifurcated and charges under Sections 364/34, 302/34, 201/34 and 27 of the Arms Act were framed on 27.11.1999 to which they pleaded not guilty



and claimed to be tried.

4. The prosecution, in support of its case, examined as many as nine witnesses namely, P.W. 1 Mohan Kumar Yadav, P.W. 2 Dilip Yadav, P.W. 3 Surendra Yadav, P.W. 4 Umesh Yadav P.W. 5 Bipin Kumar Yadav, P.W.6 Akhilesh Kumar, P.W.7 Binod Kumar Himanshu (informant), P.W.8 Dr. Rajendra Chaudhary and P.W.9 Kapildeo Ram.

5. Apart from the oral evidence, the prosecution also adduced documentary evidence. The fardbeyan was marked as Ext.1 proved by P.W.7, Post-Mortem Report is Ext. 2 proved by P.W. 8 and Inquest report is Ext. 3 proved by P.W. 9.

6. On the other hand, no oral or documentary evidence was adduced on behalf of the defence.

7. The case of this appellant under Section 313 of the Code of Criminal Procedure was total denial of the occurrence. On consideration of materials on record, the trial court convicted the appellant under Section 364/34, 302/34 and 27 of the Arms Act and sentenced as mentioned in the above paragraph.

8. As noticed above, the prosecution examined nine witnesses in support of its case. However, four of these witnesses, P.W. 1, 2, 3 and 4 did not support the prosecution case and were declared hostile. P.W. 5 (Bipin Kumar Yadav), P.W. 6 (Akhilesh Kumar)



have supported the prosecution case along with the informant.

9. P.W. 8 Dr. Rajendra Chaudhary, has conducted the postmortem on the deceased and found two gun shot injuries on the person, which were the cause of death. The postmortem (Ext. 2) and the evidence of the doctor duly establish that the deceased was murdered by fire arm injuries and the death was not accidental.

10. It is relevant to state that P.W. 5 and P.W. 6 are close relatives of the informant.

11. P.W. 5 stated that in the evening of 28.05.1998, he was coming to Chandania from Saliabad with Arun Yadav, Binod Kumar Himanshu, the deceased Akhileshar Kumar and Makeshwar Paswan. When they reached near Dakra Nala, Suresh Yadav, Soren Yadav, Bijoy Yadav, Nawal Yadav, Badri Yadav, Binodi Yadav and Jai Kishore Yadav came out from under the bridge, where they were hiding. All of them were armed with musket. Suresh Yadav asked them to stop otherwise they would be killed. Nawal Yadav caught the collar of his brother Arun Yadav and pointed pistol at his ear. When the informant and others tried to escape, they were surrounded by the accused persons. They took them towards Bahiyar (agriculture land) south of the road. The accused held them till 11:00 pm. They were also



assaulting Arun Yadav with butt of pistol, etc. After continuous pleading, the accused decided to let the rest go. They took them to Jamalpur Railway Station and got them seated on Danapur Passenger train. When the informant reached his house, he narrated the incident to his family members/relatives. After taking advice, he started to search his elder brother. In course of search at about 07:00 A.M. on 30.05.1998, they learnt that a dead body is lying near Teen Mohania River, Brahma Asthan east of Dakra Nala. They accordingly proceeded for the place, where they saw the dead body of Arun Yadav lying.

12. The evidence of P.W. 6 is also to the same effect. The informant (P.W. 7) too has fully supported the prosecution case in his evidence.

13. Learned APP appearing for the State submits that the appellant has rightly been convicted for charge of abduction/kidnapping, murder. The appellant Binodi Yadav was a terror in the locality and Arun Yadav was a member of his gang. On account of internal feud, the gang of Binodi Yadav has killed him. In support of his submissions, learned counsel has referred to statement of P.W. 3 and P.W. 4.

14. However, learned counsel for the appellant submits that there is lot of deficiencies in the prosecution case coupled with



material contradictions which cut at the root of the prosecution case. He next submits that there is a delay of one and a half day in lodging of the F.I.R. Besides this, P.W. 6 in his evidence stated that he had not met the accused earlier and he learnt the name of all the nine accused persons from their conversation. Furthermore, it is very difficult to identify as many as nine persons from their conversations. The postmortem report also does not support the prosecution case as there is no external injury on the person of the deceased though he was continuously assaulted with butt of pistol etc. The appellant is in custody since 13 years.

15. Heard the counsel for the parties and produced the materials on record:

16. There is no opposition to the fact that Arun Yadav was done to death by fire shot injuries. The issue for consideration is whether the prosecution has been able to establish that it is the appellant who committed the crime. In support of its case, the prosecution produced seven witnesses out of which four witnesses did not support the prosecution case. The main testimony of the prosecution is based on the evidence of informant and his two cousins namely, P.W. 5 Bipin Kumar and P.W. 6 Akhileshwar Kumar. All the three witnesses stated that the appellant along with others armed with musket intercepted them at 07:00 P.M. on



28.05.1998 near Dakra Nala and dragged them towards Bahiyar south of the road and began to assault Arun Yadav. However, the accused let them off except Arun Yadav at the platform and they reached their house in the night of 28/29/05/1998. It is further the evidence of the informant that search for deceased Arun Yadav started on 30.05.1998

17. It is surprising that no effort was taken by any of these three witnesses to search Arun Yadav on 29.05.2008, though, they knew the place where he was assaulted and also they knew the name of the accused who assaulted them. They also did not report about the incident in the police station which was at the distance of 6 Km. from the station the whole of 29th May 1998. Besides this, P.W.-7 in his evidence stated that the accused persons brought the informant and others to Jamalpur Railway Station and told them to go to their house straight P.W. 5 and 6 stated that the accused persons brought them to the station. P.W. 6 stated that only two accused persons brought them to the station, whereas P.W. 7 stated that four accused persons had brought them to the Station. Besides this, the informant stated that they waited for one an a half hour on the Jamalpur Railway Station and boarded the train when it arrived. All these discrepancies create a doubt, whether the occurrence took place in the manner and at the time as



suggested by the prosecution side. As such, the trial court ought to have granted benefit of doubt to the appellant and had acquitted him of the charge(s).

18. In the result, this appeal is allowed. The impugned Judgment of conviction dated 19.12.2012 and Order of sentence dated 21.12.2012 passed by 1st Ad hoc Additional Sessions Judge, Munger, in Sessions Trial No. 757 of 1999 arising out of Naya Ram Nagar P.S. Case No. 72 of 1998 is set aside. The appellant, who is in jail custody, is directed to be released forthwith, if not wanted in any other case, after due verification from S.P. Lakhisarai and Munger.

(Samarendra Pratap Singh, J)

rohit/-

(Sanjay Kumar, J)

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