

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.996 of 2015

Arising Out of PS.Case No. -274 Year- 2012 Thana -BAKHTIYARPUR District- PATNA

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Naresh Yadav @ Naresh Jadav, Son of Ramadheen Yadav,
resident of Village - Ghanghdih, Police Station - Bakhtiyarpur,
District - Patna.

.... **Appellant/s**

Versus

1. The State of Bihar.

2. Lauli Yadav,

3. Hareram Yadav,

4. Chandramauli Yadav,

All are Sons of Prakash Yadav.

5. Prakash Yadav, Son of late Dallu Yadav.

All are the resident of Village - Ghanghdih, Police Station -
Bakhtiyarpur, District - Patna.

.... **Respondent/s**

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Appearance :

For the Appellant/s : Mr. Ansul, Advocate

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

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH)**

Date: 05-02-2016



This appeal, under the proviso to Section 372 of the Code of Criminal Procedure, 1973, has been filed against the judgment and order, dated 21.09.2015, passed by the learned Additional District and Sessions Judge, Barh, in Sessions Trial No.98 of 2013, whereby he has recorded acquittal of respondent Nos.2 to 5, who stood charged for the offences punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959.

2. The informant of Bakhtiyarpur P.S. Case No.274 of 2012, which gave rise to aforesaid Sessions Trial No.98 of 2013, is the appellant in the present case.

3. According to the case of the prosecution, as revealed by the *fardbeyan* of the informant/appellant, on 06.10.2012, at about 8.30 A.M., the informant, along with his brother, namely, Shailendra Yadav, and his son, namely, Bablu Yadav (the deceased), was returning home from the field, carrying cattle feed on their heads. When they reached close to the house of one Ramdeo Yadav, respondent Nos.2 to 5, who were carrying country-made pistols, accosted the deceased, Bablu Yadav, who was slightly ahead of the informant and his brother, Shailendra Yadav, and opened fire upon him. It is alleged that respondent No.2 fired the first shot, which hit the shoulder of the deceased. The shot, fired by respondent No.3, hit the left side of the neck of the

deceased. The shot fired by respondent No.4, hit his arm, whereas the fire caused by respondent No.5, hit his thigh. The deceased fell down on the earth and before he could be taken to hospital for treatment, he died.

4. The police, upon completion of investigation, submitted *charge-sheet*, against respondent Nos.2 to 5, whereupon cognizance was taken and the case was committed to the Court of *Sessions* for trial, giving rise to Sessions Trial No.98 of 2013. Charge, against respondent Nos.2 to 5, was framed for commission of the offences, punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959. Since respondent Nos.2 to 5 denied the charge, framed against them, they were put on trial.

5. At the trial, altogether 9 witnesses were examined by the prosecution including the informant, as P.W.6, and his brother, namely, Shailendra Yadav, as P.W.4, who are said to have accompanied the deceased, when the occurrence had taken place within their view. The nephew of the informant, namely, Raju Gope, was examined as P.W.1. He claims to be an eye-witness of the occurrence and has deposed that, at the time of occurrence, he was carrying cattle feed and saw the occurrence taking place. According to his evidence, respondent No.2 opened the first shot, which



hit the thigh of the deceased. The shot, fired by respondent No.3, hit the right side of the neck of the deceased; the shot, fired by respondent No.4, hit the armpit of the deceased, whereas the shot, fired by respondent No.5, hit the arm of the deceased. According to P.W.1, when he reached the place of occurrence, he saw the deceased injured and lying and, thereafter, he took the deceased to his home.

6. P.W.2, namely, Pintu Yadav, has also claimed to be an eye-witness of the occurrence, who is another nephew of the informant. In his *cross-examination*, he has deposed that the first shot, fired by respondent No.2, hit the deceased in his thigh, the shot, fired by respondent Nos.3 and 4, hit the neck of the deceased. According to P.W.2, the shot, fired by respondent No.5, hit the armpit of the deceased. From the impugned judgment and order, we find that P.W.2, in his *cross-examination*, deposed that he had heard the sound of firing, when he was coming back from the field in the morning.

7. P.W.3, namely, Urmila Devi, the widow of the deceased, has also claimed to be an eye-witness of the occurrence, describing the manner in which the occurrence had taken place.

8. P.W.4, namely, Shailendra Yadav, is the brother of the informant, who, according to the First



Information Report itself, was there at the place of occurrence and was accompanying the deceased. He has deposed that he did not make any effort to remove the dead-body of the deceased from the place of occurrence, as he did not have the courage to do so. Only after 50-100 co-villagers gathered there, he tried to remove the dead-body of the deceased from the place of occurrence. He named Biseshar Yadav, Ganauri Yadav, Ramdeo Yadav, etc., the co-villagers, who had assembled there after the occurrence had taken place. He appears to have specifically deposed that Raju Gope (P.W.1) and Pintu Yadav (P.W.2) had not come to the place of occurrence. He has also deposed that Urmila Devi (P.W.3) and Savita Devi (P.W.5) had not come at the place of occurrence. According to his evidence, his brother, namely, Naresh Yadav (informant/appellant-P.W.6) and his sons, namely, Vijay Yadav and Devendra Yadav, had, thereafter, lifted the dead-body of the deceased and carried the same on a cot to their home.

9. P.W.5, namely, Savita Devi, did not appear in her *cross-examination*, and, therefore, the evidence, given by her, in her *examination-in-chief*, has not been considered by the learned trial Court.

10. The informant, namely, Naresh Yadav, adduced his evidence as P.W.6 and supported the case of the

prosecution, as narrated by him in the First Information Report.

11. From the deposition of the witnesses, as discussed above, all of whom claim to be the eye-witnesses of the occurrence, it is evident that the deceased had received four gun shot injuries.

12. From the medical evidence, it transpires that following *ante-mortem* injuries were found on the person of the deceased:

(i) *Lacerated wound ½" inverted margin track size blackening around the margin of wound, wound of entrance on the anterior surface of Rt. upper arm just below right shoulder.*

(ii) *Lacerated wound oval in shape ½" radius inverted margin track size on the right axillary fossa wound of exit of wound no.(1).*

(iii) *Lacerated wound oval in shape ½" radius inverted margin track blackening around the margin of wound on the area of axilla of right side-wound of entrance.*

(iv) *Lacerated wound oval in shape ½" radius inverted margin track size-blackening around the wound of margin on the left thigh anterior surface wound of entrance.*

(v) *Lacerated wound oval in shape 1" radius inverted margin on the*

left side buttock wound of exit of wound No.(5).

(vi) *Lacerated wound oval in shape ½" radius inverted margin track blackening around the wound on the back side of 8th and 9th thoracic vertebra.*

13. Learned trial Court, upon analyzing the medical evidence, arrived at a conclusion that there were apparent material inconsistencies in the evidence of the witnesses, which he has discussed in the impugned judgment and order. He has held that the evidence of the prosecution witnesses could not be corroborated by the medical evidence for the reason that the witnesses claims that the deceased had received four gun shot injuries, wherea only three entry wounds were found by the Doctor. The eye-witnesses claim that the deceased had received gun shot injuries on his neck, but no entry wound was found on the neck of the deceased by the doctor. The wound on the neck of the deceased was found to be an exit wound and an exit wound was also found in the armpit of the deceased. Learned trial Court has also doubted the claim of some of the witnesses to be eye-witnesses of the occurrence. Considering these aspects, learned trial Court has recorded acquittal of respondent Nos.2 to 5 by the impugned judgment and order.

14. We have heard Mr. Ansul, learned Counsel,

appearing on behalf of the appellant, and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor, appearing on behalf of the respondent-State of Bihar.

15. Mr. Ansul, learned Counsel, appearing on behalf of the appellant, has submitted that all the witnesses supported the case of the prosecution and the evidence were corroborated by the *postmortem* report also. He has submitted that the learned trial Court has given undue weightage to the time of death, recorded in the postmortem report, according to which, the deceased had died before 7.00 A.M. He submits that when the ocular evidence is definite that the occurrence had taken place at 8.30 A.M., medical evidence ought not to have been given undue weightage. He has also submitted that learned trial Court has unnecessarily gone into the minor discrepancies and contradictions in the evidence of the witnesses and the medical evidence for recording acquittal of the respondents.

16. We have perused the materials available on the record including the impugned judgment and order of the learned trial Court. We have also given our anxious consideration to the submissions advanced on behalf of the appellant. The sole question, which is required to be considered in the present appeal, preferred against an order of acquittal, is as to whether the impugned judgment and



order of the learned trial Court can be said to be perverse or containing a view, which cannot be said to be a reasonably possible view. Said differently, can it be said, on the basis of the evidence discussed in the impugned judgment and order, that the prosecution was able to establish the charge, against respondent Nos.2 to 5, beyond all reasonable doubt and their conviction could be the only possible view on the basis of the said evidence?

17. This is trite that in an appeal, preferred against an order of acquittal, the appellate Courts are generally loath in interfering with the findings of fact recorded by the trial Court, because the trial Court has an advantage of seeing the demeanor of the witnesses and the accused. Secondly, there is a presumption of innocence of a person, who is put on trial, for commission of a criminal offence. Such presumption stands strengthened, once his acquittal is recorded by the trial Court. The appellate Court is not required to interfere with the decision of the trial Court, recording acquittal, unless such decision is found to be palpably wrong or based on erroneous view of law. Merely, on the basis that a different view is also possible, on the basis of the evidence available on the record, the appellate Court cannot disturb the judgment and order of the trial Court, recording acquittal of an accused.



18. In the present case, it is the case of the prosecution that occurrence had taken place at 8.30 A.M. in the presence of P.W.6 (informant/appellant) and P.W.4 (brother of the informant). From their evidence, it transpires that there is material contradiction with respect to the fact as to whose shot hit which part of the body of the deceased. Both of them have deposed that the deceased had received four gun shot injuries including a gun shot injury on his neck. Only three entry wounds have been found on the body of the deceased, according to the medical evidence. Further, both these witnesses have deposed that the deceased had received injury on his neck, but no entry wound has been found in the medical evidence on the neck of the deceased, an exist wound, though, has been found on the neck of the deceased. Further, we find that according to the prosecution witnesses, occurrence had taken place at 8.30 A.M., whereas medical evidence shows that the deceased had died before 7.00 A.M. In addition, we find that some other witnesses, such as, Raju Gope (P.W.1), Pintu Yadav (P.W.2) and Urmila Devi (P.W.3), also claim to be the eye-witnesses of the occurrence. From the evidence of P.W.4, Shailendra Yadav, as mentioned in the impugned judgment and order, it appears that he specifically said that P.Ws.1, 2 and 3 had not come to the place, where the deceased was lying. We also

find that the Investigating Officer, namely, Birender Singh, who was examined as P.W.9, has deposed that he did not find any sign of blood at the place of occurrence nor did he recover used cartridge.

19. We must record here that the appellant has not taken any plea that description of the evidence of the witnesses, as given in the impugned judgment and order, is incorrect.

20. In view of the above discussion, we do not find any legal or factual infirmity in the judgment and order, under appeal, whereby the respondent Nos.2 to 5 have been acquitted of the charge, levelled against them, for commission of the offences punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959, giving them benefit of doubt.

21. There is, thus, no merit in this appeal, which is, accordingly, dismissed.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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