

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.30 of 2013

Arising Out of PS.Case No. -27 Year- 2010 Thana -Morkahi District- KHAGARIA

- =====
1. Sanjay Yadav S/O Shri Shakaldeo @ Shri Ram Sakal Yadav Resident Of Village Ladaura, P.S. Alauli, District Khagaria.
 2. Shakal Yadav @ Ram Sakal Yadav S/O Shri Madan Yadav Resident Of Village Ladaura, P.S. Alauli, District Khagaria.

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Ms. Soni Shrivastava, Advocate
Mr. Anjani Kumar Jha, Advocate
Ms. Madhuri Kumari, Advocate
For the Respondent/s : Mr. S.N. Prasad, APP

=====

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

and

HONOURABLE MR. JUSTICE SANJAY KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SANJAY KUMAR)

Date: 29-03-2017

The appellant Sanjay Yadav is the son of the appellant Shakal Yadav. Both of them have been held guilty under the judgment dated 17.12.2012, passed by the Ad hoc Additional Sessions Judge-I, Khagaria in S.Tr. No. 22 of 2011 under sections 302,307/34 and 394 IPC including section 27 of the Arms Act and by an order of sentence dated 19.12.2012 they have been directed to undergo R.I. for life with fine having default clause, R.I. for 10 years with fine having default clause, R.I. for 10 years with fine having default clause and R.I. for 07 years with fine having default clause respectively. They have filed the present



appeal assailing the said judgment of conviction and sentence.

2. P.W.7 lodged the Fardbayan (Ext.1/3) on 30.04.2010 at 9.00 P.M. when he was admitted in the clinic of a private doctor at Begusarai before the Station House Officer (SHO), Morkahi (P.W.9) the first I.O. alleging that on 30.04.2010 at about 8 o'clock in the morning he, along with his father (deceased), went to Khagaria on a motorcycle driven by his father. After disposing of some work at Khagaria, they went to the State Bank where his father withdrew from the bank Rs. 2, 74,400/-. At about 1.20 P.M., they left Khagaria. He was sitting/riding as a pillion. As soon as they reached near Lachka Pool at about 2.00 P.M., he could see one motorcycle coming from behind on which the two appellants and one unknown person were riding. It came parallel to his motorcycle whereafter both the appellants started firing at his father with their respective fire-arms/weapons as a result whereof his father received four fire-arms injuries. The informant himself received two fire-arms injuries. Both of them fell. His father died at the spot. The appellant relieved the deceased of the cash amount withdrawn from the bank and again riding the same motorcycle drove back to Khagaria. In the meantime, one motorcycle was seen coming from Alouli side. It was P.W.1 who finding the informant lying in the injured condition, on request,



gave lift to him and the informant sat on his motorcycle and drove to Khagaria hospital where he was first treated of his injury and thereafter referred to the higher medical centre. Accordingly, the informant was taken to Begusarai and admitted in the private clinic of Dr. Ashok Sharma where the police arrived and recorded his Fardbayan at about 9.00 P.M. in the night on 30.04.2010. The recording of the Fardbayan gave rise to drawing up of a formal FIR (Ext.4) which ignited the investigation. The police went to the place of occurrence and carried the death inquest proceeding over the deceased and dispatched the deadbody for the post mortem examination. Upon receiving the post mortem report (Ext. 3) as well as the injury report of the informant (Ext.3/1) from the doctor who first gave the medical assistance to the informant at Khagaria Sadar Hospital, the I.O. recorded the statement of the witnesses. Be it noted that in the meanwhile P.W. 10 took over the investigation with effect from 24.07.2010 and finding the accusation(s) true against the appellants, submitted the charge-sheet whereupon the cognizance of the offence was taken on 24.08.2010 and the case was committed to the court of sessions for trial. On transfer, the case came on the file of the learned trial Judge where charges were framed under the relevant penal provisions on 29.03.2011 which were read over/explained to the appellants to which they pleaded not guilty and claimed to be tried.



3. In order to prove the prosecution case beyond shadow of doubt, the prosecution examined 10 witnesses, namely, P.W. 1 Nitish Kumar Nirala, who immediately reached at the place of occurrence, P.W. 2 Fantus Yadav, P.W. 3 Bateshwar Yadav, P.W. 4 Tara Devi, P.W. 5 Mukesh Kumar and P.W. 6 Mantun Yadav are family members / close relatives of the deceased related as his son, brother-in-law, widow, son-in-law and nephew respectively. P.W. 7 Pandav Kumar is the informant and son of the deceased. P.W. 8 Dr. Raja Ram Choudhary is the Medical Officer, who conducted autopsy on the cadaver. P.W. 9 Mukesh Kumar and P.W. 10 Ranjan Kumar are the Police Officers, who conducted investigation. The prosecution has also proved the Fardbeyan, inquest report, injury report of the informant and F.I.R. as Ext. 1/3, 2, 3, 3/1 and 4 respectively. They have proved the signatures and writings on seizure list of empty cartridge.

4. The defence has also adduced the oral evidence and examined D.W. 1 Rajendra Yadav and D.W. 2 Ranjeet Yadav on the point of *alibi* of the appellants. They have stated that the appellants were with them at different places for loading husks on a cart.

5. The trial court on appraisal of evidence and relying on



the evidence of informant and other witnesses found both the appellants guilty, convicted and sentenced them in the manner stated above.

6. We have heard Mrs. Soni Srivastava, the counsel for the appellants in support of the appeal as well as Sri S.N. Prasad, learned APP for the State.

7. The death of the deceased by firearm at the place of occurrence at the relevant time is not much in dispute. The Doctor P.W. 8 in his evidence has stated that on 30.04.2010 at about 4.50 P.M. he had examined the dead body and found as follows:-

“(1) Lacerated wound on right thigh size 1/3” x 1/3” x round with inverted margin and black margin on the front of upper part of the thigh.

(2) Lacerated wound on the posterior surface of upper part of right thigh size 1/2” x 1/2” with inverted margin.

(3) Lacerated wound on back of chest lower part and black. Size 1/2” x 1/2” x 1/2” in inverted margin with hole on the shirt and ganji.

On dissection

The doctor has opined the injuries as ante mortem in



nature which was caused by firearm. Within 6 to 12 hours preceding to the post mortem examination, he has proved the post mortem report as Ext. 3. He had examined the informant Pandav Kumar on the same day at 2.45 P.M. and found the following injuries:-

“(i) Lacerated wound on right arm laterally. Size 1 1/2” and 1 1/2” superficially.

(ii) Lacerated wound on right chest below 6 ribs. Size 1 1/2” x 1/2” cavity deep.”

The patient was referred to higher centre for needful. The injury no. 1 was simple in nature and injury no. 2 was grievous caused by firearm. The injuries were caused within six hours. He has proved the injury report of the informant as Ext. 3/1.”

8. P.Ws 1 and 6 have stated that they received telephone call from the informant Pandav Kumar regarding occurrence and immediately reached at the place of occurrence and saw the deceased lying on the place of occurrence in pool of blood. They also found profused bleeding at that place. The Investigating Officer has also stated about profuse bleeding at the place of occurrence at the relevant time. The evidence of the aforesaid witnesses is sufficient to establish the fact that the deceased died at



the place of occurrence at the relevant time on account of injuries caused by firearm. From the evidence of Doctor as well as the informant P.W. 8 and P.W. 1, it is also established that the informant sustained injuries at the place of occurrence at the relevant time which was caused by firearm. So, we have no doubt in accepting the prosecution case that the informant and deceased sustained firearm injuries on their person(s) at the relevant time at the place of occurrence and that the deceased died on the spot immediately thereafter.

9. Now, we shall examine as to whether the prosecution has been able to prove the guilt of the appellants in committing murder of the deceased and causing firearm injuries with intention to commit murder of the informant.

10. The witnesses P.Ws. 2, 3, 4, 5 and 6 are family members / relatives of the deceased / informant. They are hearsay witnesses as they, on getting information on mobile, reached at the place of occurrence and / or at Sadar Hospital Khagaria and / or at the nursing home of Dr. Ashok Kumar at Begusarai where the informant got treatment of his injuries. The informant P.W. 7 in his evidence has stated that on 30.04.2010 at about 1.20 P.M. he along with his father left Khagaria for going to his home and when they



reached at the place of occurrence at about 2 P.M., the appellants along with one another (total in three) riding on a motor-cycle came from behind moving in same direction and while moving parallel to his motor-cycle, both the appellants started firing on him and at his father. At that time, his father (deceased) was driving the motorcycle. The deceased and the informant sustained firearm injuries and fell down from the motorcycle. The appellants, thereafter, took an amount of Rs. 2,74,400/- from the pocket of the deceased and returned back towards Khagaria side on the motorcycle. He has further stated that in the meanwhile a motorcyclist came from his village side and took him to Khagaria Sadar Hospital from where he was referred to higher institution for better treatment. Subsequently, he went to Begusarai and got his treatment at a nursing home of Dr. Ashok Kumar.

11. Thus, we find that the informant is the only eye-witness in whose presence his father was shot dead and he also sustained injuries. Another witness, who immediately reached at the place of occurrence is P.W. 1 Nitish Kumar Nirala. He has stated that he saw the occurrence just from a distance of 50 yards when he was coming from opposite direction to go to Khagaria. He reached at the place of occurrence and saw the deceased and the informant in injured condition. In order to help the informant, he took him to



Khagaria Sadar Hospital on his motorcycle for his treatment. He has further stated that he kept the money in the pocket of the informant which he got from the possession of deceased and told this fact to the informant. This witness, however, did not identify the appellants in court dock at the time of his evidence. As we have already observed and stated that the remaining witnesses are hearsay and have stated only those facts which they heard from the informant at the time of his treatment at Khagaria / Begusarai. So, we have examined the evidence of these two witnesses very minutely to find out the truth and ascertain as to whether their evidences are sufficient to prove the guilt of the appellants.

12. Reverting back to the first version recorded in Fardbeyan, we find that the Fardbeyan was recorded on the same day at about 9 P.M. at the nursing home of Dr. Ashok Kumar at Begusarai. This Fardbeyan was recorded after seven hours of the occurrence. In Fardbeyan Ext. 1/3, we find that the appellants were known to the informant from before. The appellants are the residents of same locality and were fully acquainted with the informant. The informant has not alleged any enmity with the appellants in his first version while giving his Fardbeyan, but in course of evidence, he has stated that his father had business rivalry with the appellants as both were engaged in milk business.



The motive behind committing crime was enmity on account of said business rivalry. The P.W. 1 in his evidence has stated that the informant was in conscious condition. He was the first man, who reached at the place of occurrence and took him to Sadar Hospital, Khagaria on motorcycle after a journey of 20 minutes. The informant has also stated that there was none with him or the informant at the time of accompanying him Khagaria by his motorcycle. The injured informant was fully conscious and there was no other person to give him support. This witness P.W. 1 has stated that in the way to Khagaria Sadar Hospital, the informant did not disclose the name of the assailants, although, the appellants were well known to the informant. This witness also appears to be well known to the deceased and the informant. At the time of evidence he has clearly stated by their name that when he reached at the place of occurrence, he saw the informant and the deceased. He has further stated that he heard sound of firings and also saw the accused persons fleeing away from the place of occurrence on the horses. He has not stated about presence of any other person on the place of occurrence or causing injuries by three persons and taking money from the possession of the deceased before returning back towards Khagaria side by the motorcycle. The version of the informant is that the appellants took money from the possession of his father stands falsified from the version of the P.W. 1, who in



clear words has stated that he gave the money to the informant which he got from the possession of the deceased. This witness has neither been declared hostile nor cross examined on this point. The evidence of P.W. 1 completely demolishes the version of the informant that the assailants reached at the place of occurrence on their motorcycle and after causing firearm injuries, and committing murder of his father, they decamped from place of occurrence on the motorcycle after taking the cash amount. P.W. 1 had seen the occurrence just from a distance of about 50 yards. He heard the sound of firing and quickly reached at the place of occurrence and saw the deceased in pool of blood and also the informant in an injured condition. He further took pains to move the informant to Sadar Hospital Khagaria to save his life. His conduct in moving the informant to hospital and giving the money which he got from the possession of deceased, to the informant inspires us to accept his entire evidence on the manner of occurrence.

13. Thus, we find that evidence of the informant, P.W. 7 and P.W. 1 (who to some extent can be said to be an eye witness) are contradictory to each other. The informant in his evidence at paragraph no. 11 has stated that when he reached at the nursing home at Begusarai, the witnesses P.W.3 Bateshwar Yadav, P.W. 5 Mukesh Kumar and one Sunil Kumar (not examined) were present



at the nursing home. As against this, P.W. 5, Mukesh Kumar and P.W. 3 Bateshwar Yadav have stated that when they reached at the nursing home at Begusarai, the informant was being treated by the Doctor. The witnesses have stated that the informant gave information about the occurrence by his mobile whereas the informant has not stated as such either in his evidence or in his statement given before Police nor witnesses P.Ws. 1, 2 and 6 have stated that they reached at the place of occurrence and saw the deceased in pool of blood. P.Ws. 2, 4, 5 and 6 have stated that they received calls from the informant over mobile and got information about the occurrence. This shows that the informant was fully conscious and immediately gave information to his family members. Had the informant been aware of the assailants, their names would have been disclosed to all the witnesses who received calls from the informant. The inquest report Ext. 2 was prepared at 2.30 P.M. in presence of the family members, but at that time also the names of appellants were not disclosed to the police. The inquest report was prepared at 2.30 P.M. in their presence. The witnesses P.W. 6 and Amarjeet Yadav (not examined) put their respective signatures on the inquest report. They have not stated to the police about the occurrence or any enmity with the appellants. The informant was treated firstly at Sadar Hospital Khagaria at about 2.45 PM as it appears from his injury report Ext. 3/1. His full



brother P.W. 2 at paragraph 1 has stated that his brother (informant) at Sadar Hospital Khagaria had stated that these appellants had caused firearm injuries. The informant was taken to Begusarai for his treatment at the nursing home of Dr. Ashok Kumar. The prosecution has neither produced the injury report/ papers of treatment of Dr. Ashok Kumar nor the said Doctor has been examined by the prosecution. At the time of recording of Fardbeyan, the witnesses Mukesh Kumar, Bateshwar Yadav and Sunil Kumar were present. The informant has also not stated about the enmity with the appellants. The prosecution has failed to prove the motive of business rivalry also. The appellants and informant are residents of different village. The appellants in their statements have disclosed their occupation as agriculturist. However, the family of informant is engaged in doing milk business. There is absolutely no evidence on record to show any enmity or business rivalry between the parties. The complicity of the appellants was disclosed after a gap of seven hours from the time of occurrence for the first time at the nursing home at Begusarai although the brother of informant P.W. 2 Fantush Yadav says that his brother disclosed the name of appellants at 2.30 PM at Khagaria. The evidence of P.W.2 and is quite contradictory to the statement of P.W. 1, who immediately reached at the place of occurrence and saw the two assailants fleeing away on the horses. The evidence of



informant P.W. 7 is quite different to the evidence of P.W. 1 on the manner of occurrence. The evidence of P.W.1 has neither been challenged by the prosecution nor this witness has been declared hostile. So, it would not be safe to sustain the judgment of conviction and sentence on the strength of contradictory statement of witnesses on the manner of occurrence and the complicity of the appellants in the crime. We find that the clouds of doubt are hovering all around the prosecution case for which benefit of doubt must go to the appellants.

14. In view of the discussions made above, we find and hold that the prosecution has not been able to prove the case beyond shadow of doubt. The judgment of conviction and sentence is not sustainable and is, accordingly, set aside. The appeal is allowed. The appellants be set at liberty forthwith if not wanted in any other case.

(Sanjay Kumar, J)

I agree

(Kishore Kumar Mandal, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	20.03.2017
Uploading Date	30.03.2017
Transmission Date	30.03.2017

