

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.803 of 2013

Arising Out of PS. Case No.-312 Year-2008 Thana- KHAGARIA District- Khagaria

Arvind Yadav Son of late Janardan Yadav, Resident of village-
Kumharchakki, P.S.- Mufassil,, District- Khagaria

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Criminal Appeal (DB) No. 805 of 2013

Arising Out of PS. Case No.-312 Year-2008 Thana- KHAGARIA District- Khagaria

1. Avinash Yadav S/O Late Janardan Yadav Resident Of Village-
Kumharchakki, P.S- Mufassil, District- Khagaria., At Present
Baluahi, Khagaria, P.S+ Distt- Khagaria.
2. Sanjay Yadav S/O Late Janardan Yadav Resident Of Village-
Kumharchakki, P.S- Mufassil, District- Khagaria., At Present
Baluahi, Khagaria, P.S+ Distt- Khagaria.
3. Dhananjay Kumar @ Dhananjay Yadav S/O Late Janardan Yadav
Resident Of Village- Kumharchakki, P.S- Mufassil, District-
Khagaria., At Present Baluahi, Khagaria, P.S+ Distt- Khagaria.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 803 of 2013)

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Advocate
Mr. Abhay Kumar Singh, Advocate

For the Respondent/s : Mr. S.N.Prasad, APP

(In Criminal Appeal (DB) No. 805 of 2013)

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Advocate
Mr. Abhay Kumar Singh, Advocate

For the Respondent/s : Mr. S.N.Prasad, APP)

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
and

HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date : 15-09-2017

Appellant Arvind Yadav, Avinash Yadav, Sanjay Yadav



and Dhananjay Kumar @ Dhananjay Yadav shall hereinafter referred as A1, A2, A3 and A4 respectively. A1 stands convicted under Sections 302,307, and Section 27 of the Arms Act whereas A2, A3 and A4 have been held guilty only under Section 307/34 of the IPC and Section 27 of the Arms Act vide judgment dated 01.08.2013 passed by learned 1st Additional Sessions Judge, Khagaria in Sessions Trial No.2 of 2009/ 308/2009.

2. Put briefly, the prosecution case disclosed in the '*Fardbeyan*' (Ext. ½) of PW-9, recorded on 23.6.2008 at 12 noon is that on the relevant date the informant with his family members had gone to the field located in Usri Ghat, Bahiar for measurement of the land. PW-3 had two more brothers, namely, PW-7 and the father of appellants. They had land in the said Bahiar which was partitioned. The prosecution side was suspecting that the accused persons had forcibly ploughed some part of their land. On that date, they had gone to the field for the measurement of the land. After having measured the land and found some part of it encroached by the appellants they were getting the land ploughed with the tractor. The accused persons armed with rifle and guns arrived at the field and resorted to firings.



The prosecution party began to retreat. One of the shots fired from the gun hit the informant while he was escaping from the field. Another gun shot injury was caused to him on his front. Such firing was made initially from a distance. However, when the witnesses, including the deceased started retreating, it is alleged, that A1 chased them fired on the head of the victim which ripped off his skull. The further allegation is that A2, A3 and A4 also fired causing injury to PW-7. On recording of the '*Fardbeyan*' at the place of occurrence itself the Investigating Officer (IO) (PW11) conducted the death-inquest proceeding at the field itself at 12.30 PM witnessed by PWs 4 and 8. The dead body was dispatched for postmortem examination. PW-9, amongst others, accompanied the dead body to the hospital for postmortem examination. PW-10 was then posted at the Khagaria Hospital as the Medical Officer. He conducted the autopsy on the dead body on 23.06.2008 at about 4.50 PM. In the postmortem report (Ext.2) the autopsy surgeon found the following ante mortem injuries on the deceased:

“External:-

(I) One lacerated wound 8” x 6” x cranial cavity deep, extending from forehead to occipital region of scalp right side, with fracture of frontal, both parietal.



(II) Right temporal and occipital bone into multiple pieces with brain material outside the cranial cavity with blood and blood clots. Parts of frontal bone, right parietal, right temporal was absent. Part of brain material was absent. There was charring on the surrounding area over left side eyebrow and left side margin of the wound. Body and clothes contain blood stain.

Internal Dissection:-

(1) Skin and subcutaneous tissues corresponding to the side of injury contained blood and blood clots. Brain material was lacerated and outside the cranial cavity. All viscera- e.g. liver, spleen, lung kidneys were pale. Both side chambers of heart were empty.”

3. On the same day at about 5.45 PM the doctor (PW10) medically examined the informant (PW9) and found several lacerated wounds caused by fire arm on the front part as well as back part of his body. On receiving the postmortem report, the injury report (Ext.3) and after recording the statement of the witnesses, PW-11 laid the charge sheet which gave rise to the present trial on the file of learned Trial Judge. With regard to the said occurrence, A4 had also lodged a case against the present prosecution side which too was recorded by I.O.(PW11) (Ext. A/D) .

4. The appellants denied the charge and claimed to be tried. The defence of the appellant was complete denial of the



occurrence and their false implication in the case. A plea of alibi was also taken on behalf of the A1. With a view to prove the same, the defence adduced the evidence of DWs-1 and 2.

5. To bring home the guilt, the prosecution examined 12 PWs. Out of them PWs 1,2,3,7 and 9 have been projected as the eye-witness to the occurrence. For better appreciation of the contention of the defence, it is apposite to highlight few facts manifested from the records. A1 to A4 are the sons of Janardan Yadav whereas PWs 1,2,9 and the deceased are the sons of Arjun Yadav (PW3). PW3, 7 and Janardan Yadav are full brothers. It has distinctly surfaced during trial that the three brothers had land in the said '*Bahiar*' which was partitioned. The accused(s) agnates had allegedly ploughed the land in excess of their share. Apprehending this, the prosecution party had gone to the field for measurement of land and re-possession of the land if found encroached by the appellants. PW-1 is the brother of the informant and the deceased. He, like other PWs, had accompanied the informant and the deceased to the place of occurrence. He has testified as an eye-witness. In course of occurrence, he is stated to have received gunshot injury caused by A4 which caused superficial injury in his palm. His injury report is, however, not on record. PW-2 is also the full brother



of the informant and the deceased. He too has given the description of the occurrence as an eye-witness implicating the appellants in the crime. PW-3 is the father of the informant and the deceased. He too was present at the place of occurrence when the appellants arrived there armed with various weapons and started firing at them. He has vividly narrated the manner in which two witnesses and the deceased received injury at the hands of the appellant(s). Pws 4 and 8 are the witnesses to the drawing up of the inquest report by the I.O. at the place of occurrence itself. PW-5 is the mother of the deceased and the informant on whom the trial Court has not placed reliance. PW-6 is an independent witness who arrived at the place of occurrence on hearing the sound of gun firing(s). The prosecution, however, did not rely on his evidence and was declared hostile. PW-9 is the informant himself. He was present at the scene of occurrence through out and narrated ocular account of the entire occurrence. As noted above, he too received several injuries caused by gunshot and was treated by the doctor (PW-10) at the hospital. His injury report is on record as (Ext.3). The doctor found the following injuries on his person:

“(i) One lacerated wound on left lower arm diameter about 1/6” muscle deep round in



shape with inverted margin.

(ii) One lacerated wound on left upper forearm diameter about 1/6" muscle deep round in shape with inverted margin.

(iii) Four lacerated wound on left thigh two on posterior and two on anterior side diameter about 1/6" muscle deep, round in shape with inverted margin.

(iv) One lacerated wound on right leg diameter about 1/6" muscle deep round in shape with inverted margin.

(v) Four lacerated wound on back of body. Two on inter scapular region and two on thoracic-lumber region each diameter about 1/6" muscle deep round in shape with inverted margin.

(vi) Abrasion on left forearm 1c.m.x 1c.m.

(vii) Abrasion on back side of left ankle joint 2 c.m .x 1 c.m.

(viii) Abrasion on right leg 2 c.m. x ½ c.m."

6. PW-7 is the uncle of the informant and full brother of PW-3. He, too, was present at the scene of occurrence during the relevant date when the appellants arrived there armed with fire arms and started indiscriminate firings causing injury to the deceased and the witnesses. He also received gunshot injury fired from behind which hit in his left shoulder. He was treated in a private nursing home by the Doctor (PW-12). His injury report is proved as Ext.5. The I.O. is stated to have visited him in the nursing home for recording his statement. PW-10 is the doctor who treated some of the witnesses and also conducted



the autopsy. PW-11 is the I.O. who had quickly reached the place of occurrence and recorded the '*Fardbeyan*' witnessed by PW1. He also conducted the death inquest proceeding at the place of occurrence, conducted the investigation and laid the charge-sheet.

7. In appreciation of the evidence adduced by the prosecution, the Trial Court found the evidence on record sufficient enough to prove the charge(s) beyond shadow of reasonable doubt and held them guilty.

8. Heard Mr. Kanhaiya Prasad Singh, learned Senior Counsel assisted by Mr. Abhay Kumar Singh, advocate for the appellants and Mr. S.N. Prasad APP for the State.

9. The impugned judgment is criticized by the appellants on various counts. It is submitted that the prosecution has failed to adduce evidence of any independent witness which renders the prosecution case doubtful. The witnesses produced are highly interested witnesses inasmuch as they are the own family members. Several litigations are between them. Only PW-6 was an independent witness on whom the prosecution did not rely. Referring to the postmortem report wherein the doctor found injury on the forehead of the deceased having charred surroundings, it has been argued with vehemence that



the medical evidence sharply contradicts the prosecution case. The charred injury was not possible from a distance as spoken by the prosecution. It is a most fundamental defect in the prosecution case unless reasonably explained. In order to sustain the said submission, reliance has been placed in the case of *Santa Singh v. State of Punjab* reported in *AIR 1956 SC 526* and *Ram Narain vs. State of Punjab* reported in *AIR 1975 SC 1727*. Arguing further, he would urge that if the evidence of the informant (PW-9) is analyzed minutely, it shall appear that he was not present on the place of occurrence. The occurrence, in all probabilities, was witnessed by the driver of the tractor who was employed in ploughing the field at the behest of the prosecution party but the prosecution did not produce him as a witness. This again is a serious flaw in the prosecution case. Lastly, it is contended that the manner of occurrence has not firmly been established by the prosecution. How the uncle (PW7) of the informant received injury both on the front side as well as on the back side remained unexplained.

10. In contra, Mr.S.N. Prasad, APP, supported the findings of the guilt recorded by the learned Trial Court. It is submitted that the prosecution case has been proved on all fours by the ocular evidence of PWs-1, 2, 3,7and 9. Out of them at



least PWs-7 and 9 are the injured witnesses who received injuries in course of the occurrence. Their presence and claim of having witnessed the occurrence cannot be doubted. This part of the prosecution case, is admitted by the documents exhibited by the defence. To counter the submission with regard to the objective findings of the doctor in the autopsy report (Ext.2), it has been contended that the informant in the FIR itself had alleged that the A1 reached near the deceased and fired from his rifle which hit him on his skull. The doctor found the right temporal and occipital bone of his skull in multiple pieces with brain material oozing outside the cranial cavity. He drew attention of the Court to the relevant prosecution evidence wherein it is stated that the deceased had fallen on the ground and was cajoling the accused(s) to spare him when A1 approached him and fired from a close distance. At least PWs-1,2 and 9 have stated that such firing was made by a rifle from a close distance between 10 to 12 ft. The weapon which is used in the crime is also relevant in appreciating the criticism of the defence. The Court has to confine only to the evidence produced by the parties and judge whether the prosecution has been able to prove the case beyond shadow of reasonable doubt and does



not suffer from inherent improbabilities.

11. The first attack on the prosecution case by the defence is that family members of the deceased have only taken the dock to narrate the prosecution case as eye-witnesses. Pws 1,2 and 9 (informant) are the own brothers of the deceased whereas PW-7 is own uncle. There is no legal principle that the evidence of a family member should be treated as partisan. There may be cases where only family members are expected to be present. Even otherwise, the independent witness seldom display courage and interest to appear in Court for deposition. There are multiple reasons for doing so. The Court is required only to be cautious in appreciating their evidence. If the evidence of such witness, on scrutiny, is found cogent and trustworthy, they can be relied upon. Keeping in mind the aforesaid principle, the other contentions made on behalf of the appellant shall be scrutinized.

12. PW-1, has narrated the case as stated in the '*Fardbeyan*'. He along with the informant, the deceased and PW-7 (uncle) were at the field engaged in ploughing the field when the appellants armed with licensed rifle, double barrel gun, country made gun and country made pistol arrived. A1 fired at the deceased which hit him on his forehead. The



witnesses present there started fleeing when at the orders of A1, A2 fired at PW-7 which hit him in his back. He attempted to help him when A3 fired with his country made pistol which hit him in his right palm and the pellets also injured him near his eyes. A2 also fired which hit the informant in his back and other parts. PW-2 has also narrated the prosecution case consistent with the deposition of PW1. Both of them have stated about the genesis of the occurrence. PW-9 (informant) has also described the prosecution case as narrated by his two brothers. Bhim Yadav (PW7) being the uncle of Pws 1,2 and 9 as also the uncle of the accused persons was also present at the field for the purpose of measurement of land and ploughing of the field. The bone of contention was the excess land encroached and earlier ploughed by the accused persons even after partition. PW-7, received injuries at the hands of A3. He has candidly stated that A1 fired at the deceased from a close range (ref. Para 4 of his deposition). Dr. Ajay Kumar (PW10) then posted at Sadar Hospital, Khagaria had treated informant (PW9) on 23.6.2008 at 5.45 P.M. and found the following injuries present on his person:-

“(i) One lacerated wound on left lower arm diameter about 1/6” muscle deep round in shape with inverted margin.

(ii) One lacerated wound on the left upper



forearm diameter about 1/6" muscle deep round in shape with inverted margin

(iii) Four lacerated wound on the left thigh two on posterior and two on anterior side diameter about 1/6" muscle deep round in shape with inverted margin.

(iv) One lacerated wound on right leg diameter 1/6" muscle deep round in shape with inverted margin.

(v) Four lacerated wound on back of body. Two on inter scapular region and two on thoracic-lumber region each diameter about 1/6" muscle deep round in shape with inverted margin.

(vi) Abrasion on left forearm 1c.m.x 1c.m.

(vii) Abrasion on back side of left ankle joint 2 c.m .x 1 c.m.

(viii) Abrasion on right leg 2c.m. x 1/2 c.m."

13. In the opinion of the doctor injury nos. 1 to 3 , 4 and 5 were caused by fire arms whereas injury nos. 6,7 and 8 caused by hard blunt object. PW-7, however, got him treated in a private nursing home at Begusarai. Dr. Ashok Kumar Sharma (PW 12) has taken the dock to state that on 26.3.2008 at 2.30 PM he had examined PW7 of his injuries. He found an entry wound 2" x 1/2" on the back of left side of chest with inverted and singed margin caused within six hours. It was found grievous in nature caused by fire arm. He also found and reported that two pieces of bullet were removed from the left shoulder of the injured.



14. At least three witnesses received injury in course of occurrence. The injury report of PW-1 is not on record whereas PWs-7 and 9 were treated by the PW-10 and PW-12 respectively who found presence of injuries grievous in nature on their person caused by fire arm. Presence of such nature of injuries on these witnesses which match the time of occurrence clearly establish their presence at the place of occurrence with the deceased. The defence has not been able to show any material discrepancies in their evidence to discredit them. The evidence of PWs 1 and 2 reinforce the prosecution case. It may be recalled here that the prosecution suspecting encroachment over their land by the appellants (agnates) had gone to the field. It was, thus, natural for the witnesses to go with the deceased to the field.

15. Mr. Kanhaiya Prasad has laid much emphasis on the findings of the doctor in the postmortem report (Ext.2) wherein he found charred marks on the surrounding area over left side eyebrow and left side margin of the wound. He argued that the aforesaid findings give a clue of the distance from which the deceased was fired which does not fit in the prosecution case. In fact, it runs counter to the prosecution case as most of the witnesses have spoken about the assault by A1 on the deceased



with rifle from a distance. He referred the evidence of PW-2 at para 15 and PW-9 at para 3 where they have estimated the distance between 10 to 12 ft.

16. We are not oblivious of the fact that when the prosecution party was at the field there was a sudden emergence of several accused persons including the appellants who all were armed with lethal weapons. As deposed by PW-9 and few other witnesses, the appellants emerged near the place of occurrence with indiscriminate firings. Such firing had started when they were at the fairly large distance. Seen the appellants charging on them the prosecution party was on retreat towards the riverlet flowing close to the field. PW-9 received assault from a distance on his front part and again while he was running from the place of occurrence. The narration of the prosecution case by the witnesses including the informant himself fully explains the circumstances in which he received fire arm injuries both on his front part and on his back part. The doctor found several injuries on him caused by fire arm. In a situation like this , the Court shall not expect a graphic detail of the every part of the incident from the witnesses who are closely related to the deceased. The aforesaid principle has been employed invariably by the



Courts in appreciating the evidence. In ***Nand Kumar Vs. State of Chhattisgarh 2015(1) PLJR 47 SC*** the similar principle was endorsed when the Court observed that the witnesses are not expected to describe the incident in graphic detail and with such precision that which member and in what manner participated in the commission of crime. In the case at hand, fortunately, we have a clear indication of the distance from which A1 fired at the deceased. PW-7 (uncle of the deceased) in para 4 has stated that A1 moved close to the deceased and fired at his skull, as a result whereof, he died. There is evidence on record, that the deceased had fallen on the ground and finding himself helpless was praying to spare him but he was not. In the case of ***Darbara Singh vs. State of Punjab (2012)10 SCC 476***, the Apex Court held as under:-

“10. So far as the question of inconsistency between the medical evidence and the ocular evidence is concerned, the law is well settled that, unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy. In the event of contradictions between medical and ocular evidence, the ocular testimony of a witness will have greater evidentiary value vis-a-vis medical evidence and when medical evidence makes the oral testimony improbable, the same becomes a relevant factor in the process of evaluation of such evidence. It is only when the contradiction between the two is so extreme that the medical evidence completely rules out all possibilities of the ocular evidence



being true at all, that the ocular evidence is liable to be disbelieved.(Vide State of U.P. v. Hari Chand and Bhajan Singh v. State of Haryana.)”

17. In order to negate the said criticism by the defence, we may profitably referred to the opinion of the Supreme Court expressed in ***Prem vs. Daula and others (1997)9 SCC 754.*** One of the contention of the defence in the said case was that medical evidence contradict the testimony of the eye witness as the nature of the injury found on the deceased could not have been caused by *ranpi*. The Court, on analyzing the ocular evidence that the injury was caused by *ranpi*, negated the contention and finding the evidence unimpeachable affirmed the guilt.

18. Applying those principles and in the light of the evidence on this point adduced by the prosecution, we have no hesitation in negating the main contention of the appellant . If the ocular account of the occurrence given by the witnesses do not suffer from inherent inconsistency or material discrepancy, the Court, in the event of contradiction between the medical and ocular evidence, accords greater evidentiary value to the evidence of eye witnesses. It is not shown to us, in the attending facts of the case, that such contradiction is so extreme that the medical evidence completely rules out all the



possibility of the ocular evidence being true. We remind ourself that at least two of the eye witnesses, namely, the informant (PW9) and PW7 had received grievous injury on their persons caused by the appellants in course of incident. In our view, reliance placed by the defence on Ram Narain (Supra) does not take the defence too far.

19. In the light of the discussions made above, the Court is unable to find any legal flaw in the findings of the guilt recorded against the appellants by the Trial Court. All the appeals fail and are dismissed. Since the appellants of Cr. Appeal (DB) No. 805 of 2013 are on bail, their bail bonds are cancelled and they are directed to surrender forthwith.

(Kishore Kumar Mandal, J)

I agree

(Madhuresh Prasad, J)

shyambihari/-

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