

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.544 of 1993

Against the judgment and order of conviction passed on 30th November, 1993 in Sessions Trial No.29 of 1978 arising out of G.R. Case No.918 of 1974 by the learned 8th Additional Sessions Judge, Purnea.

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1. Shyam Narain Chaudhary, son of Munilal Chaudhary
 2. Izabul Haque alias Izabul, son of Inamul Haque
 3. Laxmi Yadav alias Laxmi Narain Yadav, son of Ugra Yadav.
 4. Abdul Rashid son of Tamijuddin
 5. Mantu Bhatia son of Tamijuddin
 6. Amjad Ali son of Ainuddin
 7. Chinar Lal Yadav, son of Tinkauri Yadav
 8. Abdul Kadir, son of Daud Ali

Appellants No.1, 2, 4, 5, 6, 7 and 8 are resident of village Singlumari, appellant no.3 resident of village Talgachi, all under P.S. Dighal Bank, Kishanganj, Purnea.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajesh Kumar Sharma, *Amicus Curiae*
For the Respondent/s : Mr. Ashwani Kumar Sinha, A.P.P.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-10-2017

The appellants, who have been convicted under Section 396 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life vide judgment dated 30th November, 1993 passed by the 8th Additional Sessions Judge, Purnia, have filed this appeal challenging their conviction and sentence.

It is the case of the prosecution that on 24.09.1974 at about 6.30 P.M. when the informant Anup Lal Yadav (P.W.13) was making the daily calculation of sale in his shop situated at Janta



Hat, suddenly a mob of 30.35 persons came over there. One of the persons in the mob, namely Gangeshwar Jha gave a lathi blow on the head of the informant, another member threw a bomb which exploded and smoke screen was created. Thereafter, they, namely the accused, tied the hands of Shiva Charan Das, Manager in the shop of the informant, assaulted him by means of lathi. Thereafter, three members of the mob, namely Lakshmi Yadav, Tahir Bhatia and Izabul Bhatia entered into the shop, pounced upon Sajjan Lal Yadav, brother of the informant, chopped of his neck by means of a Katta, thrust knife into his abdomen and ran away after taking about Rs.500/- from the shop.

Even though, according to the informant, the incident took place at 6.30 P.M. on 24.09.1974, report regarding this was lodged surprisingly, after 22 hours on 25.09.1974 at about 4.30 P. M. by P.W.13 Anup Lal Yadav himself to A.S.I. C.W.4, Shivaji Singh, when he had come to the village for investigating another case bearing G.R. Case No.997 of 1974, wherein a riot had taken place involving more than 400 persons and many houses were burnt. It is said that this incident occurred on 25.09.1979 at about 11 A.M. and on receiving the information, the investigating officer C.W.4 Shivjee Singh had come to the village at about 4.30 P.M. It may be



taken note of that P.W.13 Anul Lal Yadav is the main accused in this incident that took place on 25.09.1974.

To prove the case, the prosecution had examined 16 witnesses of which four are court witnesses, namely C.W.1 Dr. K. N. Ray, C.W.2 Dr. Tarni Prasad Chaterji, C.W.3 Rama Krishna Singh and C.W.4 Shivji Singh are Police Officers. C.W.3 Rama Krishna Singh was the investigating officer in this case and CW4 Shivaji Singh was the investigating officer of case No.16(9) 68, i.e. case No.997 of 1974 in which 14 persons were killed in an incident that took place on the next day i.e. 25.09.1974 between 8 to 11 A.M. The other witnesses are P.W.13, the informant Anup Lal Yadav, P.W.1 Jallaluddin, an eye witness and an injured person, P.W.2 Dhanik Lal Sah, witness to the inquest, P.W.3 Shiv Charan Das, an eye witness, P.W.4 Ganga Prasad Das, an eye witness, who was also injured, P.W.8 Ganesh Hembram, P.W.9 Munsu Hasda, P.W.10 Ganesh Lal Yadav and P.W.14 Bhim Lal Yadav, all eye witnesses, three witnesses were only summoned for cross-examination, namely P.W.11 Yasuddin, P.W.12 Abdul Wahab, P.W.15 Jaglal Rajbhar, three witnesses have turned hostile, they are P.W.6 Aghori Lal Yadav, P.W.7 Khushi Lal Rajbhar and P.W.16 Surang Lal Yadav, brother of the deceased Sajjan Lal Yadav, is an eye witness, who has been disbelieved.



The defence of the accused persons were that no incident took place on 24.09.1974 as alleged by the informant, on the contrary, his brother Sajjan Lal Yadav was killed in an incident that took place on the next day on 25.09.1974 when Surung Lal Yadav (P.W.16) and brother of the informant, who was Mukhiya, with a sword in his hand came to the village Singhimari along with a mob of 400 persons, burnt houses in three villages in which 14 persons were killed and when this happened, Sajjan Lal Yadav, who is the brother of the informant Anup Lal Yadav, might have died in the said incident and the appellants have been falsely implicated.

Having heard learned counsel for the parties at length and after going through the records meticulously, we find that the appellants have been convicted because of their involvement in Sessions Trial No.29 of 1978 which arose out of G.R. Case No.918 of 1974 and the incident with respect to this crime is said to have been committed on 24.09.1974 at 6.30 P.M. However, P.W.13 Anup Lal Yadav, who is the informant and who claims to be an eye witness to the entire incident that took place on 24.09.1974 and the other eye witnesses to this incident, namely P.W.1 Jallaluddin, P.W.3 Shiv Charan Das, P.W.4 Ganga Prasad Das, P.W.8 Ganesh Hembram, P.W.9 Munsu Hasda, P.W.10 Ganesh Lal Yadav and



P.W.14 Bhim Lal Yadav, all keep quite, do not make any complaint or lodge FIR with regard to this incident wherein they say that Sajjan Lal Yadav was done to death and the accused persons looted, hurled bomb and fired gun and ran away after injuring P.W.13 Anup Lal Yadav, and P.W.1 and 4 respectively. It is surprising that such an incident took place on 24.09.1974 and no information or complaint is made about it. On the contrary, when on 25.09.1974, another incident takes place in the same village at 11.30 A.M. wherein house of Abdul Sattar, Mazrul Haque and others are put to fire leading to arson and killing of persons, for which offence under Section 147, 148, 302, 324, 323, 149, 380, 120B, 326, 436 and 109 IPC is registered in G.R. No.997 of 1974 and in this case, the informant Anup Lal Yadav, P.W.13 is the prime accused and he was put to trial in Sessions Trial No.28 of 1978 and he is convicted by a judgment rendered on 30th November, 1993, i.e. on the same day when the Sessions Trial No.28 of 1978 is held, the FIR for the incident of 24th September, 1974 is recorded.

Now, on going through the facts of that case, i.e. Sessions Trial No.28 of 1978 what transpires is that when the incident takes place in Hat Bazar on 25th September, 1974 in which Anup Lal Yadav is the main accused and when C.W.4 Sri Shivji Singh comes



to investigate this offence to the village at 4.30 P.M. and while he is making enquiry with regard to the said incident, he says that he was informed about another incident which took place on the previous evening in the shop of Anup Lal Yadav and bodies lying there and for this Anup Lal Yadav, P.W.13 makes a complaint which becomes *ferdbeyan* and report for this case. If the incident that takes place on 25.09.1974 is established and if in Sessions Trial No.28 of 1978, various persons have been convicted, then the possibility of the event that is alleged to have taken place on 24.09.1974 may have not at all happened cannot be ruled out as no report or information was lodged by anybody with regard to the incident on 24.09.1974 after it happened at 6. 30 P.M. till happening of the incident on 25.09.1974 makes the case of the prosecution doubtful. This vital aspect of the matter has been totally ignored and lost sight by the trial Court.

Available on record is a judgment rendered by the trial Court on the same day, i.e. 30th of November, 1993 in Sessions Trial No.28 of 1978 wherein the informant Anul Lal Yadav is accused No.1 and has been convicted for offences under Sections 302, 324, 323, 149, 380, 120B, 326 etc. of the Indian Penal Code and if we go through the judgment of the aforesaid case, we find that it pertains to an incident that took place on 25.09.1974 in the



morning when the accused Surang Lal Yadav, P.W.16 riding on a horse with a sword in his hand is said to have come to the Village Singhimari along with a mob of 400 persons, burnt houses and killed 14 persons. In fact, if the FIR and the other documents pertaining to this case are analyzed, it is seen that on 25.09.1974, the incident occurred in villages, namely, Lohakanti, Haribhitha, Simaldangi, Haldibari and the present village Janta Hat and in this incident, the informant of the present case Anup Lal Yadav P.W.13 is the prime accused and there is reference of his brother Surang Lal Yadav instigating the mob to commit the offence and in this incident in all, seven persons were killed in Village Lohakanti, five in Haribhitna and two in the present village Janta Hat. In this incident, several houses in these villages were burnt and the informant's family members are said to have committed this offence.

However, the defence of the appellants in this case is rejected by the learned trial Court on the basis of a very peculiar and legally unacceptable proposition. He says that in his view, the defence of the appellants cannot be accepted because P.W.13 Anup Lal Yadav wanted to take revenge from the appellants' family members, therefore, he kept quiet, did not make the report and committed the offence along with his brother Surang Lal Yadav on



the next day on 25.09.1974. We are constrained to note that this finding and proposition put-forth by the learned trial Court is not at all supported by any evidence or material available on record. This seems to be his thinking which has no legal backing or legal evidence. This could not be a ground for rejecting the lacunae in the present case with regard to delay of 22 hrs in reporting the matter to the police. That apart, even if for a moment, it is assumed that the view as indicated by the learned Trial Court that Anup Lal Yadav, P.W.13, did not lodge the complaint, is correct, on scanning of the evidence, we find that apart from Anup Lal Yadav, P.W.13 and his brother Surang Lal Yadav, P.W.16, there are seven more eye witnesses to the incident. They are P.W.1 Jallaluddin, P.W.3 Shiv Charan Das, P.W.4 Ganga Prasad Das, P.W.8 Ganesh Hembram, P.W.9 Munsu Hasda, P.W.10 Ganesh Lal Yadav, P.W.14 Bhim Lal Yadav. It is surprising that these persons were eye witnesses to an incident of the dacoity that took place on 24.09.1974 at 6 P.M. in which a shop is looted and a person is done to death, but in spite of this, none of these seven persons chose to make a complaint about the incident. There is an explanation for the delay and is a vital lacunae in the entire case of the prosecution.



That apart, P.W.16 Surang Lal Yadav is an eye witness to the incident in question, but the learned trial Court has disbelieved his statement and holds that he was not present at the spot and has not witnessed the incident. Further, we may take note of the fact that P.W.1 Jallaluddin in his evidence says that he saw the incident, bomb was thrown and in the explosion of the bomb at Janta Hat, he sustained injury. He further in his cross-examination says that he was treated in the hospital where he was admitted for two days. Now, if this eye witness, P.W.1, Jallaluddin suffered an injury due to explosion of the bomb on 24.09.1974 and was admitted to the hospital and treated for two days, it is surprising that even a report with regard to this is not lodged by the doctor who treated him. The evidence available on record further shows that it is C.W.1 Dr. K. N. Ray who treated P.W.1 Jallaluddin and from the statement of this witness, it is seen that he had treated this witness and the certificates given by him with regard to treatment are dated 02.10.1974 and this doctor also says that he treated Jallaludin on 02.10.1974.

Similarly, P.W.4 Ganga Pd. Das, who is also an eye witness to the incident, is said to have suffered an injury because of the explosion of the bomb and he is also said to have been treated for the injury arising out of splinters of bomb falling on his body and



C.W.1 Dr. K. N. Roy admits about treating P.W.4 also. Again this witness is treated on 02.10.1974 and not on the date of incident when the injury was caused i.e. on 24.09.1974.

Looking to the totality of the circumstances, silence of P.W.13 Anup Lal Yadav not making the report for 22 hours, silence of eight eye witnesses not whispering a word about the incident and peculiar circumstances in which P.W.1 and P.W.4 are said to have suffered injuries and treated on 24.09.1974 and even no report was lodged, is surprising, but at the same time, the injury caused by P.W.1 Jallaluddin and P.W.4 Ganga Prasad Das are treated by C.W.1 Dr. K. N. Roy on 02.10.1974. This again creates suspicion as to whether any incident took place on 24.09.1974.

In our considered view, if we analyze the totality of the evidence, we find that it is a case where the story as is put forth by the prosecution suffers from various infirmities which are not at all explained and, therefore, the benefits of all these infirmities have to go to the appellants. The circumstances in the case and the happening of the events are not at all proved by the prosecution as narrated in the FIR.

Merely because in the ferdbeyan lodged by Anup Lal Yadav, 14 persons, including the appellants herein, were named with regard to incident that took place on 24.09.1974 without taking



note of the totality of the circumstances about the occurrence that took place on 25.09.1974, the conviction has been ordered, in our considered view, the possibility of only one incident happening on 25.09.1974 and non incident occurring on 24.09.1974 cannot be ruled out for the simple reason that for the incident that took place on 24.09.1974, no FIR or complaint was ever lodged and it was only on 25.09.1974 that Anup Lal Yadav gave information to the police officer, C.W.4, Shivaji Singh, when he had come to investigate the offence that took place on 25.09.1974 at 11 A.M.. The possibility of such a situation arising cannot be ruled out in the facts and circumstances of the present case.

It is a settled principle of law that if two views with regard to happening of an incident are possible and if one of the views favours the accused persons, the benefit should be extended to the accused persons and it is because of this reason that we are of the considered view that this appeal has to be allowed and the appellants acquitted of the charges levelled against them as the prosecution, in the facts and the circumstances, as are discussed herein above, have failed to prove the case of the prosecution beyond reasonable doubt.



Accordingly, the appeal is allowed. The appellants are acquitted of the charges levelled against them. They be discharged from the liabilities of their bail bonds and set free.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
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