

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.631 of 2007

Arising out of P.S. Case No.251 Year-2004 Thana-Muffasil District- MUNGER

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1. Uday Yadav @ Mahant, Son of Kamleshwari Prasad Yadav
 2. Rinku Yadav, Son of Sidho Yadav
 3. Murli Yadav @ Murari Yadav, Son of Late Sulo Yadav
 4. Shambhu Yadav, Son of Late Shibu Yadav

All Resident of Village Shankarpur, P.S. Muffasil, District Munger.

.... Appellants

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (DB) No. 463 of 2012

Arising out of P.S. Case No.251 Year-2004 Thana-Muffasil District- MUNGER

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Satish Yadav, Son of Late Deo Nandan Yadav, Resident of Village Shankarpur,
Police Station Mufassil, District Munger.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

(In Cr. App.(DB) No.631 of 2007)

For the Appellants : Ms. Anukriti Jaipuriyar, Amicus Curiae

(In Cr. App.(DB) No.463 of 2012)

For the Appellant : Mr. Satish Chandra, Advocate

For the State : Mr. A. K. Sinha, APP

(in both the appeals)

For the Informant : Mr. P.K. Jaipuriyar, Advocate

Mr. Anshuman, Jaipuriyar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 27-02-2017

All the four appellants of Cr. Appeal (DB) No.631 of 2007 along with one Sarjan Yadav, who died during the pendency of the appeal, were convicted by judgment, dated 30.03.2007, passed by the learned Additional Sessions Judge, Fast Track Court-IV, Munger



in Sessions Trial No.339 of 2005, under Sections 302, 364/34 and 201/34 of the Indian Penal Code as well as Section 27 of the Arms Act. For the offence under Sections 302/364/34 of the Indian Penal Code, the appellants were sentenced to life imprisonment. For the offence under Section 201/34 of the Indian Penal Code and Section 27 of the Arms Act, the appellants were sentenced to 3 years under each of the counts. However, all the sentences were directed to run concurrently.

2. The sole appellant of Cr. Appeal (DB) No.463 of 2012, namely, Satish Yadav has been convicted under Sections 302/34, 364/34, 307/34 and 201/34 of the Indian Penal Code and Section 27 of the Arms Act vide judgment of conviction, dated 13.03.2012 and order of sentence, dated 14.03.2012, passed by the learned Additional Sessions Judge, Fast Track Court-IV, Munger in Sessions Trial No.140 of 2008. He too has been sentenced to undergo imprisonment for life with a fine of Rs.5000/-, each, under Sections 302/34 and 364/34 of the Indian Penal Code. Furthermore he has been sentenced to 10 years rigorous imprisonment along with a fine of Rs.2000/- for the offence under Section 307/34 of the Indian Penal Code and 3 years rigorous imprisonment and a fine of Rs.1000/- under Section 201/34 of the Indian Penal Code. The appellant has been sentenced to 3 years rigorous imprisonment and a fine of Rs.1000/- under Section 27 of the Arms Act and in default of payment of fine, appellant would



undergo 2 years extra simple imprisonment. All the sentences were directed to run concurrently.

3. The prosecution case in short, as made out in the *fardbeyan* of Shailendra Kumar, Son of Arvind Prasad Yadav of Village Diyara Chandanpur, P.S. Falka, District Katihar recorded by S.I. Navin Kumar, Officer-in-Charge, Muffasil P.S. on 21.10.2004 at 10.00 A.M. at Satsang Bhawan, Shankarpur, is as follows:-

The informant stated that on 16.10.2004, he along with his mother had come to his maternal uncle's (*Mama*) Suresh Yadav place to witness Durga Puja. On 21.10.2004, at about 7.00 A.M., he proceeded for *Satsang Mandir* along with his *Mausera* brother, Manish Kumar Yadav. As soon as they reached the mango orchard of Suresh Yadav, one Sarjan Yadav and Satish Yadav (cousin maternal uncle), both residents of Shankarpur came armed with pistol and intercepted them. After catching them, they stated that they should leave this place otherwise they would be killed. The informant was also assaulted by them by butt of their pistol on his head on account of which he sustained injury and fell down. In the meantime, 4-5 unknown persons, whom he does not recognize, also came armed with pistol and gun and they dragged his cousin Manish Kumar Yadav away. The informant returned to his maternal uncle's place raising *hulla* and narrated the entire incident to his maternal uncle. Soon thereafter, the informant along with his maternal uncle Suresh Yadav,



cousin Virendra Yadav, co-relative Anirudh Yadav and some villagers tried to follow the accused persons. By the time they reached east to *Pir Pahar*, the accused Sarjan Yadav and Satish Yadav with the aid of some unknown persons got boarded Manish Kumar Yadav on the boat. As soon as they tried to proceed towards the boat, Sarjan Yadav and Satish Yadav fired at Manish Kumar Yadav, who fell on the boat itself. The accused persons also fired at them but some how they managed to escape. The accused persons took the boat towards the middle of the river. The two accused persons, who happen to be cousin of his maternal uncle Suresh Yadav have committed the murder in order to grab his property as he was issueless.

4. On the basis of *fardbeyan*, the police registered Muffasil P.S. Case No.251 of 2004, dated 21.10.2004, under Sections 364/302/201/307/323/324/504 of the Indian Penal Code and 27 of the Arms Act. The maternal uncle of the informant, namely, Suresh Yadav also attested the *fardbeyan* of the informant recorded by the police. On the same day the police seized the boat and also seized blood stained '*Kash*' spread on it. After three days, on 24.10.2004, the police recovered the dead body of Manish Kumar Yadav floating in the river. The inquest was prepared and the dead body was sent for post-mortem. The police took the restatement of informant and other witnesses. The police in course of investigation arrested Uday Yadav, Rinku Yadav, Murli Yadav, Shambhu Yadav as well as Sarjan Yadav



and submitted charge-sheet against them. On submission of charge-sheet, the learned Magistrate took cognizance of the offence against the five accused and committed the case to the court of sessions. Charges were framed to which they pleaded not guilty and claimed to be tried. It is relevant to state that as Satish Yadav, one of the accused, was absconding, a charge-sheet was subsequently submitted showing him an absconder, whereafter cognizance was taken and his case too was committed to the court of sessions for trial. The commitment of two cases gave rise to two separate trials. Sessions Trial No.339 of 2005 relates to appellants Sargan Yadav, Murli Yadav, Rinku Yadav, Shambhu Yadav and Uday Yadav and the judgment of conviction was passed in this case on 30.03.2007, whereas appellant Satish Yadav was put on trial vide Sessions Trial No.140 of 2008 in which also, judgment of conviction was passed on 13.03.2012. All the four accused of Sessions Trial No.339 of 2005 filed one appeal giving rise to Cr. Appeal (DB) No.631 of 2007 and the appeal filed by the convict Satish Yadav of Sessions Trial No.140 of 2008 is numbered as Cr. Appeal (DB) No.463 of 2012.

5. As both the appeals arose from a common First Information Report, both were made analogous and have been heard together and disposed of by a common judgment. It is relevant to state that Sarjan Yadav died during the pendency of Cr. Appeal (DB) No.631 of 2007, as such the case of five appellants in total are now



before us.

6. The prosecution in order to substantiate its case, examined eight witnesses in Sessions Trial No.339 of 2005, who are Suresh Yadav (PW1), Virendra Yadav (PW2), Officer Yadav (PW3), Rajesh Yadav (PW4), Shailendra Kumar Yadav @ Guddu Yadav (PW5), Dr. Parshuram Prasad (PW6), Dr. Yogendra Kumar (PW7) and Navin Kumar (PW8). On the other hand, seven witnesses have been examined in Sessions Trial No.140 of 2008, who are Suresh Yadav (PW1), Virendra Yadav (PW2), Rajesh Yadav (PW3), Dr. Parshuram Prasad (PW4), Shailendra Kumar @ Guddu Yadav (PW5), Dr. Ashok Kumar (PW6) and Navin Kumar (PW7). Thus except Officer Yadav, who was examined as PW3 in Sessions Trial No.339 of 2005, rest of the witnesses in both cases are common.

7. In Sessions Trial No.339 of 2005, Suresh Yadav (PW1), Virendra Yadav (PW2) and Shailendra Kumar Yadav @ Guddu Yadav (PW5) have claimed to be eye witnesses of the occurrence. Similarly the said three witnesses are also eye witnesses in Sessions Trial No.140 of 2008. Officer Yadav (PW3) and Rajesh Yadav (PW4) of Sessions Trial No.339 of 2005 are chance witnesses and they have seen only part of the occurrence to the extent the accused persons were carrying the deceased towards the river. They are not eye witnesses to the actual commission of murder. In Sessions Trial No.140 of 2008, only Rajesh Yadav (PW3) has been examined



as chance witnesses. Dr. Parshuram Prasad, who is a witness in both the cases, found four injuries on the person of the informant, which are as follows:

- (i) A lacerated wound over left side of cheek 2" in posterior to left lateral canthus of eye size 1/4" x 1/6" x 1/6".
- (ii) A lacerated wound over left parietal temporal junction size 1/4" x 1/6" x 1/6"
- (iii) Abrasion over right dorsen of hand 1/2" x 1/6"
- (iv) Swelling over left side of scale 1/2 inch in diameter.

Dr. Yogendra Kumar (PW7) of Sessions Trial No.339 of 2005 and Dr. Ashok Kumar (PW6) of Sessions Trial No.140 of 2008 conducted post-mortem on the dead body of the deceased and found two injuries one wound of entry and the other wound of exit.

8. The Investigating Officer, namely, Navin Kumar has been examined as PW8 in Sessions Trial No.339 of 2005 and PW7 in Sessions Trial No.140 of 2008. As noticed earlier the informant Shailendra Kumar Yadav @ Guddu Yadav, the maternal uncle Suresh Yadav and cousin Virendra Yadav have claimed to be eye witnesses of the occurrence.

9. The informant Shailendra Kumar Yadav @ Guddu Yadav has supported the prosecution case. He stated that on 21.10.2004, he started for *Satsang Mandir* from the place of his



maternal uncle along with his cousin Manish Yadav. As soon as he reached the mango orchard of his maternal uncle, he was intercepted and assaulted by Sarjan Yadav and Satish Yadav by butt of pistol on account of which he sustained injuries. Soon thereafter, 4-5 persons also variously armed, arrived at the place of occurrence. All of them dragged his cousin Manish Yadav towards the river side. He came running back to the place of his maternal uncle and narrated the incident. Thereafter, the informant along with his maternal uncle Suresh Yadav (PW1), Virendra Yadav (PW2) and some others tried to follow the accused persons towards the river. By the time, they had reached near *Pir Pahari*, the accused persons had boarded his cousin Manish Yadav on the boat and thereafter was shot dead by Sarjan Yadav and Satish Yadav.

10. Suresh Yadav (PW1) and Virendra Yadav (PW2) have deposed in same terms before the Trial Court. Officer Yadav (PW3) and Rajesh Yadav (PW4) of Sessions Trial No.339 of 2005 are chance witnesses. They stated that while they were coming from the river side, they saw all the appellants taking away Manish Yadav towards the river side. The inquest report and the post-mortem report too established that the deceased was shot at by firearm on his head. The injury report of the informant would also support his case that he too was assaulted by Sarjan Yadav and Satish Yadav by butt of the pistol on his head.



11. Separate arguments were advanced on behalf of the four appellants of Cr. Appeal (DB) No.631 of 2007 as well as sole appellant Satish Yadav of Cr. Appeal (DB) No.463 of 2012.

12. Learned counsel appearing in Cr. Appeal (DB) No.463 of 2012 submits that there are material discrepancies in the statement of the prosecution witnesses and as such the Trial Court erred in passing judgment of conviction against the appellants. He submits that none of the witnesses, namely, Suresh Yadav (PW1), Virendra Yadav (PW2) or the informant Shailendra Kumar Yadav @ Guddu Yadav have seen the occurrence. He submits that Manish Yadav has been killed in a different manner and they have been falsely implicated on mere suspicion. Elaborating his submissions, learned counsel submits that the informant Shailendra Kumar Yadav @ Guddu Yadav in the First Information Report stated that both Sarjan Yadav and Satish Yadav opened fire at Manish Yadav, who died on account of the injuries. However, the informant in paragraph-3 of his examination-in-chief stated that it was only Satish Yadav who fired at the deceased. He further submits that the informant again in paragraph-14 has stated that two fire shots were opened at the deceased. The first fire shot was opened by appellant Sarjan Yadav on account of which the deceased fell down on the boat whereafter the second shot was made by Satish Yadav. He submits that in view of vacillating stand of the informant, his evidence should be discarded



from reckoning. He next submits that the doctor conducting the post-mortem on the cadaver, found only one firearm injury on the head, which contradicts the evidence of this witness that both Sarjan Yadav and Satish Yadav fired upon the deceased. He submits that Suresh Yadav (PW1) and Virendra Yadav (PW2) also stated in their evidence that both the accused persons opened fire which too should be discarded for similar reasons as the doctor found only one wound on the person of the deceased. He next submits that Suresh Yadav (PW1) had stated before the police that by the time Shailendra Kumar Yadav @ Guddu Yadav (PW5) informed him of the incident, Manish Yadav had already been killed as such learned counsel submits that neither the informant nor Virendra Yadav (PW2) had seen the actual occurrence. On these premises, learned counsel submits that benefit of doubt should be given to appellant Satish Yadav, who is already in custody for last ten years.

13. On the other hand, learned *amicus curiae* appearing on behalf of the four appellants in Cr. Appeal (DB) No.631 of 2007 by adopting the arguments tendered by the learned counsel for the appellant of Cr. Appeal (DB) No.463 of 2012, additionally submits that the case of the appellants whom she represents, is on a better footing than that of the appellant Satish Yadav. She submits that admittedly none of the witnesses stated that these appellants also opened fire at the deceased or assaulted him in any manner. She



submits that the appellants are not named in the First Information Report. The informant in the First Information Report stated that two accused, namely, Sarjan Yadav (now dead) and Satish Yadav intercepted them and both of them assaulted him on his head by the butt of the pistol. Soon thereafter 4-5 unknown accused came who all dragged his cousin Manish Yadav towards the river. She further submits that the First Information Report was lodged in presence of Suresh Yadav (PW1) and others. It is surprising that Suresh Yadav (PW1) has subsequently named these persons in his evidence as one who accompanied the deceased, but name of these persons were not disclosed in the First Information Report though the First Information Report was narrated in his presence to which he is also signatory. Had the appellants been actually present, Suresh Yadav could have revealed the name to the informant, who narrated the First Information Report in his presence, moreso the appellants were co-villagers.

14. On the other hand, Mr. Ashwini Kumar Sinha, learned Additional Public Prosecutor appearing for the State and learned counsel for the informant have supported the judgment of conviction and sentence passed against the appellants. Learned counsel submits that all the three eye witnesses, namely, the informant, Shailendra Kumar Yadav @ Guddu Yadav (PW5), Suresh Yadav (PW1) and Virendra Yadav (PW2) have fully supported the prosecution case as



eye witnesses to the occurrence. Suresh Yadav (PW1) and Virendra Yadav (PW2) stated that they too saw appellants Sarjan Yadav and Satish Yadav firing at the deceased in the boat near the river shore. They submit that that the post-mortem report too supports the prosecution case that the deceased was killed by firearm injury.

15. The main argument of the learned counsels for the appellants is that none of the witnesses have seen the actual occurrence. In support of the submissions learned counsels had submitted that Suresh Yadav (PW1), Virendra Yadav (PW2) and the informant Shailendra Kumar Yadav @ Guddu Yadav (PW5) have stated in their evidence that Sarjan Yadav and Satish Yadav, both fired at the deceased, whereas the doctor found only one wound of entry on the head. In order to address the points raised by learned counsel for the appellants, it would necessary to examine the evidence of the witnesses.

16. The informant Shailendra Kumar Yadav @ Guddu Yadav in the First Information Report as well as in the evidence stated that on 21.10.2004, he was going to *Satsang Mandir* along with his cousin Manish Yadav at 7.00 A.M. from the house of his maternal uncle Suresh Yadav. As soon as they had reached the mango orchard of his maternal uncle, both of them were intercepted by Sarjan Yadav and Satish Yadav with pistols in their hands. The two accused abused the informant and his cousin daring them not to frequently come to



the maternal uncle's place, otherwise dire consequences would follow. Soon after giving the threats the two accused assaulted the informant on his head with the butt of the pistol causing injuries. In the meantime, 4-5 unknown accused arrived and they all dragged Manish Yadav towards the river side. The informant rushed to the house of his maternal uncle Suresh Yadav (PW1) and narrated the incident. So immediately they tried to follow the accused towards the river side. From a distance of about 1/2 k.m., they saw the accused having boarded Manish Yadav on the boat. In the meantime, Sarjan Yadav and Satish Yadav shot at him causing his death.

17. So far as first part of the occurrence regarding assault on the informant and kidnapping of Manish Yadav is concerned, the informant is consistent in his evidence. The defence has not been able to elicit any material contradictions to make his evidence unreliable rather the injury report of the informant supports his case that he was assaulted on his head by a hard and blunt substance. Besides this, chance witness, namely, Rajesh Yadav (PW3) in Sessions Trial No.140 of 2008 stated that while he was coming from the river side, he saw the appellants along with late Sarjan Yadav dragging Manish Yadav towards the river side. Similarly, Officer Yadav (PW3) in Sessions Trial No.339 of 2005 has also made statement to the same effect, as such the prosecution has been able to establish, at least, that Manish Yadav was kidnapped and dragged by the two appellants and



4-5 unknown persons leading to his killing. So far as killing of the deceased is concerned, learned counsel appearing on behalf of appellant Satish Yadav duly supported by learned counsel for the other appellants, submit that infact none of the witnesses have seen the occurrence. All the three witnesses, namely, Suresh Yadav (PW1), Virendra Yadav (PW2) and the informant, Shailendra Kumar Yadav @ Guddu Yadav (PW5) had stated that both Sarjan Yadav and Satish Yadav opened fire at the deceased, whereas the doctor found one firearm injury. Had they seen the occurrence, they would not have stated that both the accused had opened fire. In our view, the submissions of the appellants are only noticed to be rejected. It has come in the evidence of the informant and other witnesses that the informant was going to *Satsang Mandir* from the house of his maternal uncle Suresh Yadav along with Manish Yadav which is at a distance of 1 k.m. However, when he was near the mango orchard, they were intercepted and Manish Yadav was kidnapped and taken towards the river side. The informant went back running and narrated the incident to his uncle, whereafter they all proceeded along with the villagers towards the river side. While they were east to *Pir Pahari*, they saw the accused persons having forced Manish Yadav on the boat. Soon thereafter the witnesses stated that both of them opened fire. The submission of the defence is that the deceased sustained only one firearm injury which renders the statements of informant and



others that two persons had opened fire unreliable. It is further submission of defence that at one point Suresh Yadav (PW1) also stated that by the time the informant narrated the incident, Manish Yadav was already killed. In my view, no weightage can be given to the evidence of Suresh Yadav (PW1) as it was a mere conjecture. Even we discard the evidence of Suresh Yadav (PW1), the informant and Virendra Yadav (PW2) have seen killing of the deceased by the accused. Their evidence cannot be discarded merely because they named both Sarjan Yadav and Satish Yadav as having fired as they were witnessing the occurrence from quite some far off distance. One of them could have fired to scare anyone who dared to save Manish Yadav. The witnesses could easily identify them as they kidnapped Manish Yadav along with others. There could not have been any difficulty to identify them in the day time. Furthermore, on the same day, the boat was seized and blood stained *Kass* grass was seized from the boat, which further corroborates the prosecution case. The dead body was also recovered and there is no dispute that he died of firearm injury and his body was retrieved from the river. The post-mortem also supports that the deceased died of firearm injury.

18. Situated thus, we are of the considered view that the prosecution has established the culpability of the appellant Satish Yadav both in kidnapping and murder of the deceased. As such, we uphold the conviction of the appellant Satish Yadav under Sections



302 and 364/34 of the Indian Penal Code and Section 27 of the Arms Act and the sentence awarded thereof.

19. So far as appellants Murli Yadav, Rinku Yadav, Shambhu Yadav and Uday Yadav of Cr. Appeal (DB) No.631 of 2007 are concerned, we find that they are not named in the First Information Report. The informant stated that he was intercepted by Sarjan Yadav and Satish Yadav and 4-5 unknown persons who all carried Manish Yadav towards the river side. The witness Suresh Yadav (PW1) has claimed that he had identified all these four appellants as persons who were on boat along with Sarjan Yadav and Satish Yadav, on which the deceased was killed. In our view, had he identified these appellants as the persons who were there on the boat along with Sarjan Yadav and Satish Yadav, their names would have definitely found place in the First Information Report, as it was being recorded in his presence and after discussion with him by informant who was his nephew. As such, we hold that the prosecution has not been able to prove the involvement of the appellants of Cr. Appeal (DB) No.631 of 2007 beyond all reasonable doubt. We accordingly, acquit them of their charges and set them at liberty, if not wanted in any other case. As the appellants of Cr. Appeal (DB) No.631 of 2007 are on bail, they are discharged from the liabilities of their bail bonds.

20. In the result, Cr. Appeal (DB) No.631 of 2007 is allowed. Cr. Appeal (DB) No.463 of 2012 is dismissed. Appellant



Satish Yadav of Cr. Appeal (DB) No.463 of 2012 would continue in incarceration to serve out the remaining part of the sentence, which are all to run concurrently.

21. We have been ably assisted by Ms. Anukriti Jaipuriyar, who was appointed *Amicus Curiae* in Cr. Appeal (DB) No.631 of 2007, to assist this Court. We direct that Ms. Jaipuriyar be paid the prescribed fee of one hearing by the Patna High Court Legal Services Committee for assisting the Court. Let the first and the last pages of the judgment be handed over to her.

(Samarendra Pratap Singh, J.)

(Arun Kumar, J.)

S. Kumar/-

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