

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.943 of 2016

Arising Out of PS.Case No. -53 Year- 2008 Thana -KHUDAGANJ District- NALANDA
(BIHARSHARIFF)

Binod Yadav Son of late Baleshwar Yadav Resident of Village- Pir Bigha, Police
Station- Khudaganj, District Nalanda.

..... Appellant/s
Versus
The State of Bihar
..... Respondent/s
With

Criminal Appeal (DB) No. 923 of 2016

Arising Out of PS.Case No. -53 Year- 2008 Thana -KHUDAGANJ District- NALANDA
(BIHARSHARIFF)

1. Ram Bali Yadav son of Late Bhatu Yadav.
2. Umesh Yadav son of Ram Bali Yadav both are Resident of Village-
Hurarakhar, Police Station - Khudaganj, District- Nalanda.

..... Appellant/s
Versus
The State of Bihar
..... Respondent/s

Appearance :

(In Cr. Appeal (DB) No.943 of 2016)

For the Appellant/s : Mr. Suraj Narayan Yadav Mr. Rajeev Kumar
For the State Mr. Dilip Kumar Sinha, APP
For the informant Mr. Uday Prasad

(In Cr. Appeal (DB) No.923 of 2016)

For the Appellant/s Mr. Satyanarayan Prasad
Mr. Anil Kumar Singh
For the State Mr. Ajay Mishra, APP
For the informant Mr. Uday Prasad

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR. JUSTICE SANJAY KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 03-05-2017

Both the appeals arise out of the judgment of conviction and order
of sentence dated 11.08.2016 and 24.08.2016 respectively, passed by the



learned 1st Additional Sessions Judge, Hilsa, Nalanda in S.T. No. 485 of 2010/29 of 2012, whereby the sole appellant of Cr. Appeal No. 943 of 2016 and the two appellants of Cr. Appeal No. 923 of 2016 have been held guilty under section 302/34 IPC and sentenced to undergo R.I. for life with fine having default clause. The learned trial Judge, however, did not record any finding on the charges under section 27 of the Arms Act and section 307/34 IPC and hence no separate sentence was imposed.

2. The background profile of the case, as presented at trial, in brief, is that on 01.10.2008 at about 8.30 P.M., P.W. 6, being the full brother of the deceased, lodged the Fardbayan recorded by the SHO, Khudaganj police station (P.W.7) near the clinic of Dr. Praveen Kumar alleging therein that on the said date, the deceased had accompanied him to Islampur for consulting a doctor as the informant had some ailment/illness. They were on way back to village on foot and as they reached close to their village and were passing through the Alang (pathway in field), the appellants appeared from the nearby agricultural field and caught hold of the deceased. The appellants and co-accused Dharmendra Yadav fired from their respective firearms which hit his brother who fell down. The informant started to run away when a fire was also shot on him by co accused Sunil Yadav, but he escaped. On hearing the sound of firing and his screaming, the witnesses/villagers arrived. The deceased was seen lying injured in the field having received injury in his head, neck and abdomen. He was lifted and taken to the clinic of Dr. Praveen Kumar wherefrom he was referred to Patna. Information was, in the meantime, sent to the police station. As the informant was about to take him to Patna, the victim died. P.W. 7 (I.O.) immediately arrived there and promptly the Fardbayan was made in presence of the two witnesses (not



examined.) As the victim died, the body was taken to the police station where the death inquest proceeding was prepared on the victim in presence of the P.W. 6 and P.W.3 and it was dispatched for holding the post mortem. P.W. 8 Dr. Ashok Kumar then posted at Sadar Hospital, Biharsharif conducted the autopsy on 02.10.2008 and submitted the post mortem report (Ext.3). The I.O. on the date of recording the Fardbayan visited the place of occurrence and recorded the statements of the witnesses. On receipt of the post mortem report and after concluding the investigation, the charge-sheet was filed on which cognizance of the offence was taken 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 the charges were framed and read over/explained to the accused appellants. While abjuring the guilt they took the plea of their false implication in the case owing to previous land dispute.

3. To bring home the guilt of the appellants the prosecution examined 08 witnesses. P.W. 1 Joginder Prasad, P.W. 2 Lalu Yadav @ Surendra Gope are the full brothers of the informant as well as the deceased. P.W. 3 is the nephew of the informant. P.Ws 4 and 5 are the co-villagers. In substance, all these witnesses have stated that on hearing the sound of gunshot and screaming of the informant, they immediately rushed to the place of occurrence and saw the appellants escaping along with others from the place of occurrence armed with firearms. They saw the deceased lying injured in the field. P.W. 6 is the informant and is full brother of the deceased. P.W. 7 is the SHO Khudaganj police station who not only recorded the FIR but also investigated the case. P.W.8 is the autopsy surgeon who conducted the post mortem and submitted the report. The defence also adduced oral evidence and examined D.W. 1 Nanhaku Prasad. Copy of the order dated 06.06.2015



passed in LPA No. 309 of 2007 was exhibited. On a conspectus of evidence adduced by the prosecution the trial court found and held that the charges were proved against the appellants beyond shadow of reasonable doubts and connected them in the manner stated above.

4. We have heard Mr. S. N. Yadav appearing in Cr. Appeal No. 943 of 2016, Mr. S. N. Prasad appearing in Cr. Appeal No. 923 of 2016 as well as Mr. Ajay Mishra, APP for the State.

5. It has been urged on behalf of the appellants that both parties were on inimical terms. The informant himself in the Fardbayan has stated about it. On analyzing the oral evidence, it would appear that none of the witnesses had actually seen the assault perpetrated on the victim. It is a case where there is no ocular account of the actual assault. The place of occurrence has also not been firmly established as the I.O. did not find blood-stain marks at the place of occurrence, even though several prosecution witnesses have stated about oozing out of blood at the place of occurrence. The medical evidence is at variance from the ocular account of the prosecution case narrated by the witnesses. It is a case where some of the accuseds named in the Fardbayan and even in the evidence of the informant who were on the relevant date and time of the occurrence lodged in jail custody. A serious doubt is, therefore, created on the prosecution version. The animosity between the parties has been admitted by many of the witnesses. It is a case where manner of assault as well as means of identification have also not been fully proved. He has also highlighted that all the prosecution witnesses are interested or partisan as many of them belonged to one family and that there was previous litigation between them.

6. Mr. S. N. Prasad has additionally submitted that it is a case where



the first version of the prosecution case narrated by the injured himself has been suppressed. The formal FIR (Ext.2/1) although was drawn on 01.10.2008 but the same was received and seen by the Magistrate on 04.10.2008. The informant has made substantial improvement in the prosecution case during trial. Such improvement made by him in the prosecution case should be completely disbelieved. In support of his contention, he has relied on **2017 (1) PLJR 563**. He next submitted that the genesis of the occurrence has also not been proved inasmuch as the prosecution has failed to adduce reliable evidence either oral or documentary to demonstrate that on the relevant date they had actually visited the clinic of the doctor and were returning home. As about the evidence of P.W. 6 wherein he has attributed specific allegation of assault against the present appellants, it has been pointed out that this being incriminating circumstance should have been put to the accuseds under section 313 Cr. P.C. which has not been done. That part of the prosecution case therefore cannot be relied upon.

7. Mr. Ajay Mishra, APP, on the other hand, supported the impugned judgment. He submits that the factum of the occurrence is fully established through the evidence of P.W.1, P.W. 3 and P.W. 6. With regard to the manner of occurrence or non presence of the blood at the place of occurrence, no question was put by the defence to the I.O. providing him an opportunity to explain and, as such, the defence cannot take the benefit of those shortcomings. He also points out that the ocular evidence of all the witnesses is consistent on the place of occurrence and the time of occurrence. Countering the submissions of the appellants that all the details were not set out in the Fardbayan, it is submitted that it is well established principle of law



that the FIR is not the encyclopedia of all sequence of events. He relied in this regard on **1996 (1) PLJR SC 35**.

8. In the light of the submission of both parties, we would now examine the prosecution evidence. Firstly, we consider the submission of Mr. Prasad that the present FIR is not the first version of the prosecution and hit by sections 161 and 162 of the Cr. P.C. Such submission has been advanced on the basis of the deposition of the informant (P.W.6) in paragraph 8 wherein he has stated that the officer-in-charge of Islampur police station had also arrived near the clinic of Dr. Praveen Kumar who first recorded the statement of his brother (Page 40 of paper book) and thereafter his statement was recorded. Be it noted that the FIR was registered on the basis of the fardbayan recorded by the officer-in-charge of Khudaganj police station (P.W.6). As the death had occurred within the jurisdiction of the Islampur police station whereas the occurrence had taken place within the jurisdiction of Khudaganj police station. As such, both the officers-in-charge on getting information had arrived near the clinic of the doctor where the deceased had died. What was stated either by the injured or the informant before the officer-in-charge of Islampur police station would not be very much relevant. It may, however, be noted that the informant has stated in paragraph 16 that the doctor had refused to treat unless the police was informed. Thereafter, he visited the Islampur police station wherefrom a call was made to the officer-in-charge of Khudaganj police station. The I.O. (P.W. 7) was cross examined by the defence. Paragraph 15 of his deposition indicates that in reply to the question put on this point by the defence, the I.O. has answered in negative. Meaning thereby the informant had not said so in his C.D. statement. The defence thus cannot take the advantage of the



statement made by the informant in the said part of his deposition. On the contrary, we find that within two and half hours of the occurrence, the fardbayan was made by the informant which was recorded by the P.W. 7 near the clinic of the doctor. The contention made on this point by the counsel for the appellants is hollow. As regards the submission with regard to the delay in transmitting the FIR to the court which was seen by the Magistrate on 04.10.2008, it is found no question was put by the defence on this point to the I.O. enabling him to explain. At best, it may be a laches on the part of the I.O. for which the prosecution shall not suffer. Mr. Mishra, APP, while countering the said contention of the appellants has rightly placed reliance on **2013 (7) SC 629** wherein the Hon'ble Apex Court in para 21 of the report held as under:-

“21. In the first blush, though the said submission appears to be very sound, on a detailed analysis, we find that it is without any substance for more than one reason. In the first place, it is not shown as to how such a delay caused any prejudice to the accused. Except merely stating that the three days' delay in forwarding the express report belies the case of the prosecution as alleged, nothing else was shown in support of the said submission. In fact the trial court dealt with this very submission. The trial court has noted that the investigating officer was not questioned at all about the reason for not sending the report prior to 24.11.2001. It is further noted that in the “panchnama” of the deceased Mehroof, the crime was clearly mentioned along with the relevant sequence of crime. The trial court has therefore, found that without recording the first information report on that very day, namely, 21.11.2001, the crime number could not have been mentioned in the “panchnama”.”



9. For the reasons noted above, We would negate both the aforesaid contentions of the appellant.

10. It has been argued that P.Ws 1, 2 3 and 6 are closely related to the deceased as well as the informant. P.Ws 4 and 5, in their respective depositions, have also stated that they are distantly related (Gaon ka chacha) to the informant. They are partisan witnesses. Merely because the said P.Ws are related or distantly related to the deceased as well as the informant would not qualify their evidence to be completely ignored. There is no principle in law that a witness who is related, is a partisan witness. On the contrary, it is generally seen that no one unconnected with the prosecution takes the burden to appear for deposition. What the law requires is a deeper scrutiny of such evidence.

11. It has next been submitted that in the evidence of the informant, the animosity between the prosecution and the defence has transpired. In this regard, our attention is drawn to para 21 to 24 of the evidence of P.W. 6 wherefrom it appears that Chandradeo Yadav, one of the accuseds, had lodged a case against P.W. 1 and accused Dharmendra Yadav and the informant whereas the brother of the appellant had lodged a case against Arjun Yadav (deceased), P.W.1 Joginder Prasad and P.W. 2 Lalu Yadav @ Surendar Gope. The wife of one of the accuseds had also lodged a case against the informant, his deceased brother and P.W. 1. The Court, in view of aforesaid, would examine the relevant evidence with circumspection.

12. The next contention of the appellants is that the place of occurrence as well as the means of identification have not been firmly established. On going through the evidence of the witnesses including the informant it is found that they have specifically stated that although it was the dusk time but



visibility was clear. We take also notice of the fact that according to the prosecution case the occurrence had taken place around 6.00 P.M. on the first day of October. The winter was still at least one month away. In view of positive evidence on record with regard to the means of identification, it is difficult to uphold the said contention of the appellants that there was no adequate sunlight to identify the accused. Moreover, it is seen from the records that both the parties are known to each other. They are the residents of the same/adjoining village. It was not difficult for the witness to identify the accused(s) even in dim daylight who were well known to them from before.

13. It has next been contended that the place of occurrence has not been firmly established. The I.O. did not find the bloodstain marks near the place of occurrence. Some of the witnesses have said that the deceased, upon receiving injury caused by firearm, fell in the paddy field where the paddy was grown. Some of the witnesses have also spoken about oozing out blood from the wound. On perusal of the evidence of the I.O. (P.W.7), it is found that on inspection of the place of occurrence he found that the place where the deceased had fallen after the assault was the paddy field. The area around the place of occurrence was also the field where the paddy was grown. P.W. 6, the informant, in his deposition, has stated that when the injured was lifted, mud was seen stuck to his cloth. An inference can be drawn that the field was irrigated. Furthermore, in course of the spot verification by the I.O., the part of the paddy field where the injured had fallen was found trampled. The ocular evidence on the point of place of occurrence is consistent as almost all the prosecution witnesses have spoken on this point. The defence has not even suggested in course of their cross-examination that the deceased was



done to death at a different place and in different manner. These overwhelming circumstances appearing from the records leave no room in our minds to doubt that the prosecution has not proved the place of occurrence as well as the manner of occurrence. Resultantly, we conclude against the defence on these points.

14. We shall now examine another contention made on behalf of the defence that the prosecution has failed to prove the genesis of the occurrence. Such contention is made on the ground that the doctor where the informant and the deceased had gone in the morning to consult has not been examined. It is difficult to appreciate such submission in view of the positive evidence of the informant and several prosecution witnesses on this point. That apart, the prosecution is burdened to prove the genesis of the occurrence if the other circumstances proved at the trial create doubt in the story propounded by the prosecution. We do not find anything from the evidence of P.W. 6(informant) to doubt his statement made in the Fardbayan which was promptly recorded followed by his deposition at the trial on this aspect. Few others witnesses, like P.W. 1, have also stated about returning of the deceased and the informant from the clinic of the doctor. The Court has no reason to disbelieve the informant and other prosecution witnesses deposing on this point. The only circumstance shown to us by the defence is that there was previous hostility/animosity between the parties realizing little that the enmity is a double-edged sword. It might be one of the reasons for the accused persons to waylay/intercept the deceased while passing through the Alang (pathway of the field) and commit the crime.

15. We have carefully gone through the evidence of P.Ws 1, 2, 3 & 6. P.Ws 1 and 2 are brothers of the deceased. Their statements were promptly



recorded by the police on the same date. In their respective depositions, they have claimed to be present at the paddy field close to the place of occurrence when the occurrence had taken place. On hearing the sound of gunshot, they claimed to have rushed/dashed to the place of occurrence only to see the victim lying in an injured condition in the paddy field and the appellant(s) escaping from the place of occurrence armed with fire weapons after having assaulted the deceased. Similar is the evidence of P.W. 3 and 4. They, too, reached the place of occurrence immediately. These witnesses with the help of others had also carried the injured to the clinic of the doctor. What the defence has pointed out from their cross-examination, in our view, is minor omission. Such omission would not constitute contradiction so as to disbelieve or reject their evidence.

16. P.W. 6 is the informant and own brother of the deceased. It has been pointed out that he has spoken categorically about the participation/involvement of the three accused persons who were, during the relevant date and time, lodged in the police custody as submitted by P.W. 3 in paragraph 21. It is argued by the defence that his evidence in its entirety be disbelieved. The principle of *falsus in uno, falsus in omnibus* (false in one thing, false in all) is held generally not applicable in the context in our criminology. By a catena of judgments it is well settled that the maxim has not occupied the status of rule of law. It is merely a rule of caution. Often one comes across a witness whose evidence does not contain a grain of untruth or exaggeration, embroideries or embellishment. Reference in this regard may be made to the case of **Ugar Ahir & Ors. Vs. State of Bihar (AIR 1965 SC 277)**. It is generally seen that the prosecution tends to embellish the case in order to rope in more accused persons against whom the witnesses had



animosity. The courts on repeated occasions reiterated that there is general tendency to drag in more persons. The Court has to see whether after exclusion of the evidence of the witness to that effect the witness is consistent on the manner of assault. Applying the legal principle aforesaid, we perused the evidence of the informant and found him consistent on the vital issue(s). The immediate cause of occurrence was the success of the prosecution in the pending litigation in the High Court in respect of the land, which according to P.W. 3, was in forceful possession of the appellant Rambali Yadav. This was stated to be the immediate motive for the occurrence. One of the contentions to outright negate the prosecution case is that all the injuries on the person of the deceased have not been explained by the prosecution. The counsel for the State relied on **2000(2) PLJR SC 205** and contended that if major part of the injuries have been explained, the prosecution case shall not fail on this account alone. On reading of the evidence of P.Ws. 1,3,4 and 6 and the medical evidence, we do not find much substance in the said contention of the defence.

17. P.Ws. 4 and 5 are not directly related to the informant or the deceased. In his deposition, P.W. 4 has stated about him as 'Gaon Ke Rishte Mein Chacha'. He has also claimed to have rushed immediately at the place of occurrence to see the injured lying after receiving injury and the appellant(s) escaping from the place of occurrence after assault armed with pistol. He has spoken about his presence at the field which was not very far off from the village. His evidence gives further assurance to the Court to conclude that the prosecution has been able to prove the case beyond shadow of reasonable doubts.

18. In view of discussions made above, we hold both the appeals



devoid of merit and uphold the findings of the trial court on the guilt of the appellants.

19. Both the appeals fail and are dismissed.

(Kishore Kumar Mandal, J)

I agree (Sanjay Kumar, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	12.04.17
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