

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.417 of 2015**

Arising Out of PS.Case No. -137 Year- 2003 Thana -SAHEBPUR KAMAL District- BEGUSARAI

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1. Dashrath Yadav son of Nandkeshri Yadav, resident of village- Sabdalpur, P.S.-  
Sahebpur Kamal, District- Begusarai

.... .... Appellant/s

Versus

1. The State of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Diwakar Prasad Singh  
Mr. Om Prakash Sing

For the Respondent/s : Ms. Abha Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

**ORAL JUDGMENT**

**Date: 20-11-2017**

Sole appellant, Dashrath Yadav, has been found guilty for an offence punishable under Section 429 of the Indian Penal Code and sentenced to undergo R.I. for one year, vide judgment of conviction and sentence dated 23.05.2015 passed by Additional Sessions Judge V, Begusarai in Sessions Trial No. 06/2005.

2. Informant, Shrawan Yadav, PW 7, while was admitted at Kalpana Nursing Home, Begusarai, gave his fardbeyan on 28.09.2003 at about 2:00 PM disclosing that on the date of occurrence i.e. 27.09.2003 at about 5:00 PM while he was cutting fodder for cattle, Dashrath Yadav, Arun Yadav, Prakash Yadav, Girish Yadav, Saroj Yadav, Shashi Yadav, Deena Yadav, Kundan Yadav, Kripal Yadav, Julmi Yadav and Shambhu Yadav armed variously came to



his Darwaja chasing Mato Yadav. They had also fired at Mato Yadav at his house, out of whom, the firing made by Dashrath Yadav had struck upon the cow of Mato Yadav. It has also been disclosed that Arun Yadav fired, as a result of which, he sustained injury over his right thigh and fell down. Then thereafter, another shot was given by Kripal Yadav causing injury over left hand of Mato Yadav. Shashi Yadav and Shambhu Yadav also fired causing injury over Raju Yadav.

3. The motive for occurrence has been shown as accused persons were insisting upon Mato Yadav to withdraw a case, which he had instituted against them for murder of his brother Devo Yadav.

4. On the basis of the aforesaid fardbeyan, Sahebpur Kamal P.S. Case No. 137/2003 was registered followed with an investigation as well as submission of charge-sheet against six accused persons keeping the investigation pending against remaining, on account of their apprehension as well as being under judicial custody. After cognizance, the trial commenced and concluded in the manner, subject-matter of the instant appeal.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial as well as false implication.



However, neither any D.W. nor documentary evidence has been adduced.

6. In order to substantiate its case, the prosecution had examined altogether 8 P.Ws., P.W.1-Indradeo Yadav, P.W.2-Dr. Ashok Kumar Sharma, P.W. 3-Dr. Brahmadeo Prasad Singh, P.W. 4-Mato Yadav, P.W.5- Sajjan Yadav, P.W.6-Dablu Yadav, P.W.7-Shrawan Yadav and P.W.8-Raju Yadav as well as had exhibited Ext.1- Injury Report, Ext.2-Injury Report, Ext.3-Signature of informant over fardbeyan, Ext.4- C.C. of Judgment of Sessions Trial No. 361/2002 along with 328/2005, 85/2016, Ext.5-C.C. of F.I.R. of Sahebpur Kamal P.S. Case No. 16/2004, Ext.6- Seizure list of Sahebpur Kamal P.S. Case No. 16/2004, Ext.7-Certified Copy of Charge-sheet of Sahebpur Kamal P.S. Case No. 16/2004, Ext.8- C.C. of F.I.R. of Sahebpur Kamal P.S. Case No. 182/2002, Ext.9, 9/1-Original/Supplementary charge-sheet relating thereto, Ext.10-Evidence of witness Prakash Yadav in Sessions Trial No. 737/2005, Ext. 10/1-Deposition of witness Kundan Yadav in connection with Sessions Trial No. 737/2005, Ext. 10/2-Deposition of witness Arun Yadav in connection with Sessions Trial No. 737/2005. As stated, neither documentary nor oral evidence has been adduced on behalf of the petitioner.

7. From perusal of L.C. Record, it transpires that



appellant Dashrath Yadav was independently charged for an offence punishable under Section 429 of the Indian Penal Code, while he along with others, namely, Arun Yadav, Kripal Yadav, Girish Yadav, Kundan Yadav and Saroj Yadav @ Sinku Yadav (since acquitted) were charged for offence punishable under Section 307/149 of the Indian Penal Code as well as Section 27 of the Arms Act. It is further evident that learned lower court, after scrutinizing the evidence, concluded under para 7 of the judgment impugned that on account of inconsistency prevailing amongst the evidence of the witnesses, no offence under Section 307/149 of the Indian Penal Code and Section 27 of the Arms Act is made out, as prosecution had failed to substantiate the same and for that, all the accused including the appellant were acquitted. In same stroke, the appellant was found guilty for the offence punishable under Section 429 of the Indian Penal Code as learned lower court had observed that there happens to be consistency amongst the witnesses regarding firing made by the appellant Dashrath Yadav, which hit the cow of Mato Yadav.

**8.** There happens to be prosecution version that all the accused, so named, armed variously came at the Darwaja of Mato Yadv, chased in order to kill him and during course thereof, firing was made and the firing made by the appellant caused injury to the cow of Mato Yadav. Furthermore, they continued with chasing of Mato



Yadav, came at the place of Shrawan Yadav, P.W.7, where they fired causing injury to Shrawan Yadav, Mato as well as Raju. The offence has been committed in its continuity. P.W.8, Raju Yadav, an injured and P.W.7 Shrawan Yadav, informant as well as injured have not supported the case of the prosecution even to the extent of firing having been made by Dashrath Yadav causing injury to the cow of Mato Yadav.

**9.** From the evidence of remaining witnesses, it is evident that cow had died after ten days of the alleged occurrence and so, at least there should have been a prima facie material that the firearm injury, which the cow had sustained, was caused by the appellant.

**10.** Ext.2, which has been exhibited by the Animal Husbandry doctor P.W.3, Brahmadeo Prasad Singh is dated 13.10.2003 and the same has been issued without doing post-mortem over the dead body of cow and so the injury, whichever been found, could not found duly connected, apart from, having absence at the end of P.W.3, the exact time of causing injury. Furthermore, oral evidence did not disclose that the cow had died on account of firearm injury.

**11.** Furthermore, on account of consistent version of the prosecution that there was unlawful assembly consisting of so many persons, so named, who armed variously raided the Bathan of



Mato Yadav (P.W.4), where firing was made and further the aforesaid unlawful assembly chased Mato Yadav to the place of Shrawan Yadav, P.W.7, has been disbelieved by the learned lower court.

12. That being so, presence of unlawful assembly, that means to say, if the finding of the learned lower court is accepted, then, in that event, presence of Dashrath Yadav would be alone, which is not the case of the prosecution. Apart from the fact that acquittal of appellant under Section 27 of the Arms Act, could not attract his activity for causing death of cow of Mato Yadav by means of shooting.

13. In the background of aforesaid inconsistency, so persisting, the judgment of conviction and sentence as recorded by the learned lower court against the appellant could not survive, as a result of which, is set aside. The appeal is allowed. The appellant, who is on bail, hence is discharged from its liability.

**(Aditya Kumar Trivedi, J.)**

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