

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction, dated 05.05.2011, and order of sentence, dated 10.05.2011, passed by Sri Dina Nath Pandey, learned Additional Sessions Judge, F.T.C.-IV, Begusarai in Sessions Trial No. 361 of 2002 + 328 of 2005 + 85 of 2006, arising out of Sahebpur Kamal P.S. Case No. 184 of 2001)

Criminal Appeal (DB) No.553 of 2011

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1. Girish Yadav, S/O Late Nand Keshri Yadav
2. Prakash Yadav S/O Late Nand Keshri Yadav
3. Chano Yadav S/O Late Ramji Yadav
All resident of Village - Sabdalpur, Police Station - Sahebpur Kamal, District - Begusarai

.... Appellants

Versus

The State of Bihar

.... Respondent

With

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Criminal Appeal (DB) No. 484 of 2011

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1. Dasrath Yadav, S/O Nand Keshri Yadav
2. Ram Sewak Yadav, S/O Late Lalo Yadav
3. Dina Yadav, S/O Late Mathari Yadav
4. Kedar Yadav, S/O Late Ramavatar Yadav
5. Kundan Yadav, S/O Dina Yadav
6. Subash Yadav, S/O Ram Sewak Yadav
All resident of Village - Sabdalpur, Police Station - Sahebpur Kamal, District - Begusarai

.... Appellants

Versus

The State of Bihar

.... Respondent

With

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Criminal Appeal (DB) No. 560 of 2011

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1. Bijo Yadav, son of late Mogal Yadav
2. Kamleshwari Yadav @ Buchka Yadav, son of Bijo Yadav
Both resident of Village - Sabdalpur, Police Station - Sahebpur Kamal, District - Begusarai

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :



(In CR. APP (DB) No.553 of 2011)

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

For the Respondent/s : Mr. A. K. Sinha, APP

(In CR. APP (DB) No.484 of 2011)

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

For the Respondent/s : Mr. S.C. Mishra, A.P.P.

(In CR. APP (DB) No.560 of 2011)

For the Appellant/s : Mr. Ravi Shankar Choudhary, Amicus Curiae

For the Respondent/s : Mr. D. K. Sinha, A.P.P.

For the Informant : Mr. Deepak Kumar, Advocate
Mrs. Nivedita Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARUN KUMAR)

Date: 09-05-2017

All the three appeals have been preferred against the judgment of conviction, dated 05.05.2011, and order of sentence, dated 10.05.2011, passed by Sri Dina Nath Pandey, learned Additional Sessions Judge, F.T.C.-IV, Begusarai in Sessions Trial No. 361 of 2002 + 328 of 2005 + 85 of 2006, arising out of Sahebpur Kamal P.S. Case No. 184 of 2001, by which all the 11 appellants have been convicted under Sections 302/149 of the Indian Penal Code and 27 of the Arms Act. For the offence under Sections 302/149 of the Indian Penal Code, all the appellants have been sentenced to undergo rigorous imprisonment for life and for the offence under Section 27 of the Arms Act, all the appellants have further been sentenced to undergo rigorous imprisonment for three years. However, both the sentences have been ordered to run concurrently.



2. The prosecution case, in short, as made out in the fardbeyan of Matu Yadav of village Sabdalpur, P.S.- Sahebpur Kamal, District- Begusarai, recorded by S.I. P.K. Singh, officer-in-charge of Sahebpur Kamal police station on 26.12.2001, at 19.00 hours, is as follows:

(i) The informant stated that on 26.12.2001, at about 4.00 P.M., he was feeding his cattle and his brother Dewan Yadav @ Debu Yadav (deceased) was sitting on a cot, in front of his Dera. In the meantime, accused persons, 13 in number, variously armed came and surrounded his brother Dewan Yadav @ Debu Yadav. Soon thereafter Dashrath Yadav ordered to kill, whereupon Prakash Yadav and Girish Yadav shot with their guns upon Debu Yadav, who fell on the ground consequent to firearm injuries. Thereafter Chano Yadav assaulted him with iron rod. Rabish Yadav (absconder) also assaulted Debu Yadav with Khanti, causing fracture injury on his legs. The informant hid himself because of fear. When his uncle Sadhu Yadav came and tried to rescue, Kedar Yadav assaulted him with spade on his head, causing bleeding injury. On hearing sound of firing and alarm, co-villagers arrived and on seeing them, the accused persons fled. Thereafter the injured was brought to the clinic of doctor Ashok Sharma at Begusarai for treatment, where he was declared dead. The informant and others brought the deceased (Dewan Yadav @ Debu Yadav) and injured



Sadhu Yadav to police station, where fardbeyan of the informant was recorded. According to the informant, the occurrence took place due to old enmity.

(ii) On the basis of the Fardbeyan of the informant, Sahebpur Kamal P.S. Case No. 184 of 2001 was registered for the offence under Sections 302, 307/34 of the Indian Penal Code and 27 of the Arms Act.

3. The police in course of investigation inspected the place of occurrence, prepared inquest report of the dead body of the deceased and took restatement of the informant and statement of other witnesses. The police obtained post-mortem report and finding the case true submitted charge-sheet under Sections 147, 148, 149, 307 and 302 of the Indian Penal Code and 27 of the Arms against 13 accused persons, showing one Rabish Yadav, as absconder.

4. The learned Chief Judicial Magistrate took cognizance of offence and committed the case to the Court of Sessions in different phases i.e. 05.09.2002, 21.06.2005 and 04.02.2006 respectively, for trial, giving rise to Sessions Trial Nos. 361 of 2002, 328 of 2005 and 85 of 2006. The case record of Rabish Yadav was separated vide order, dated 21.06.2005. Sessions Trial Nos. 328 of 2005 and 85 of 2006 were amalgamated with original Sessions Trial No. 361 of 2002. Charges were separately framed



under Sections 302/149 of the Indian Penal Code against all the accused persons along with other allied Sections to which they pleaded not guilty and claimed to be tried.

5. The case of the defence as appearing from the mode of cross-examination and statement under Section 313 of Cr.P.C. is one of false implication on account of ridge dispute between the fields of two sides. It is further their case that it is the prosecution side, who was aggressor and assaulted Dasharath Yadav first, for which a counter case was lodged. However, the defence did not examine any witness nor adduced any document in support of its case.

6. The trial court on consideration of materials on record convicted all the accused persons under Sections 302/149 of the Indian Penal Code and 27 of the Arms Act. Being aggrieved, the appellants have preferred these three separate appeals.

7. The prosecution, in order to substantiate its case, examined 13 witnesses. P.W. 1 is Chameli Devi. P.W.2 is Arvind Yadav. P.W. 3 is Mahesh Yadav. P.W.4 is Pradeep Yadav. P.W.5 is Satyendra Yadav. P.W. 6 Sajjan Devi is the wife of the deceased. P.W. 7 is Nilesh Yadav, P.W. 8 Matu Yadav is the informant of the case. P.W. 9 is Pawan Yadav. P.W. 10 is Dr. Rakesh Kumar, who examined the injured Sadhu Yadav. P.W. 11 Purushottam Kumar Singh is the investigating officer of the case. P.W.12 is Dr. Bijay



Kumar, who conducted post-mortem on the dead body of the deceased.

8. Out of these 11 witnesses, P.W.2 Arvind Yadav, P.W. 6 Sajjan Devi and P.W. 8 Matu Yadav have claimed to be the eye witness of the occurrence. P.W.5 Satyendra Yadav has also claimed to have seen the part of the occurrence. P.W. 1 Chameli Devi and P.W. 3 Mahesh Yadav have claimed that they have reached the place of occurrence on hearing sound of firing and saw the deceased Debu Yadav lying dead in front of his Dera. The prosecution has examined two doctors. P.W. 10 Dr. Rakesh Kumar examined the injured Sadhu Yadav and P.W. 12 Dr. Bijay Kumar conducted post-mortem on the dead body of the deceased and found as many as 8 ante-mortem injuries including two charred gun shot injuries, apart from lacerated and fracture injuries on the person of the deceased.

9. Out of 9 non-official witnesses, save and except, P.W. 1 Chameli Devi and P.W.5 Satyendra Yadav, the others are close agnates of the informant. For instance, P.W. 6 Sajjan Devi is the wife of the deceased, P.W.2 Arvind Yadav is the nephew of the deceased, P.W. 8 Matu Yadav is the own brother of the deceased. They all stated that occurrence took place on 26.12.2001, at about 4.00 P.M., in front of Dera of the informant. At the relevant time, Dewan Yadav was also sitting in front of his Dera, on a cot. In the meantime, 13



accused persons including all the appellants variously armed came and on order of Dashrath Yadav, Prakash Yadav opened fire at the deceased Dewan Yadav, who fell from the cot, thereafter Chando and Rabish Yadav (absconder) assaulted with Khanti. When Sadho Yadav tried to save Dewan Yadav (deceased), he was also assaulted by Kedar Yadav. These witnesses stated that they were all present near the place of occurrence and witnessed the entire incident.

10. Mr. Kanhaiya Prasad Singh, learned senior counsel appearing for the appellants in two appeals, has assailed the impugned judgment of conviction and order of sentence. He submits that out of 9 non-official witnesses, six of them, save and except, P.W. 1 Chameli Devi and P.W.5 Satyendra Yadav, are own family members of the informant. P.W. 7 Nilesh Yadav has not supported the prosecution case. Furthermore, P.W.1 is an interested witness, because as many as three cases have been lodged against her husband by the accused side. This apart, there are material contradictions in the statement of the wife of the deceased and the informant, as to whether they first brought the deceased to the doctor's clinic or to the police station. The cot, on which the deceased was sitting in front of his Dera at the time of firing, was not found at the place of occurrence by the investigating officer. Furthermore, the investigating officer in the inquest report does not mention of any blood. In his evidence the



investigating officer admitted that he has not mentioned in the inquest report that there was blood on the clothes of the deceased. He next submits that the informant (P.W.8) in his evidence stated that he reached the police station at 8.30 P.M. on 26.12.2001, whereas the time of recording of fardbeyan was 7.00 P.M. He next submits that though P.W.2 and other witnesses claimed to have arrived at the place of occurrence, still none disclosed to them the name of the assailants. He further submits that the prosecution has not been able to establish as to which injuries has been caused by individual accused persons. He alternatively submits that even assuming the prosecution case to be true, there is no sufficient material to bring home the charge against the appellant no.3, namely, Chano Yadav, of Cr. Appeal (DB) No. 553 of 2011 and the appellants of Cr. Appeal (DB) No. 484 of 2011.

11. Mr. Ravi Shankar Choudhary, learned Amicus Curiae, appearing on behalf of the appellants of Cr. Appeal (DB) No. 560 of 2011 reiterates that there is no material on record to establish that they shared the common object of committing murder of the deceased Dewan Yadav, apart from the fact that they came along with the accused. There is no allegation that they even tried to assault the deceased.

12. Conversely, counsel for the State and Mr. Deepak



Kumar, learned counsel for the informant, have defended the impugned judgment of conviction and order of sentence passed against the accused persons-appellants. They submit that the witnesses are natural witness, as they are not only co-villagers, but they stayed very close to the house of the informant. Some of the witnesses, namely, P.W.2 is the nephew of the informant and P.W.6 is the wife of the deceased, who are inmates of the house and their presence, at the time of occurrence, cannot be doubted. Apart from these witnesses, other witnesses have corroborated the occurrence and they have seen the accused persons variously armed at the place of occurrence. They submit that there are no discrepancies in the evidence of the eye witnesses with respect to the place of occurrence.

13. We have heard the counsel for the parties and perused the materials on record. Mr. Kanhaiya Prasad Singh, learned senior counsel appearing for the appellants of Cr. Appeal (DB) No. 553 of 2011 and Cr. Appeal (DB) No. 484 of 2011, has submitted that there are vital contradictions in the evidence of the informant (P.W.8) and the wife of the deceased Sajjan Devi (P.W.6). Learned counsel submits that the informant in his evidence stated that soon after the occurrence, Dewan Yadav was taken to the clinic of Dr. Ashok Sharma at Begusarai and then to Sahebpur Kamal police station, where his statement was recorded. On the other hand, P.W.6



(wife of the deceased) stated that they first went to the police station along with the deceased and then to the clinic of Dr. Ashok Sharma at Begusarai.

14. In our view, the contradiction, if any, is of a minor nature and it will not go to the root of the prosecution case. The witness may have missed to state the sequence correctly, as admittedly only after return from the clinic of Dr. Ashok Sharma, the fardbeyan was recorded at the police station, at 7.00 P.M. Furthermore, the witnesses have been examined after a lapse of 7 years and as such, the discrepancies are only natural, at the best minor in nature.

15. Learned counsel next argued that the informant in his evidence stated that he reached the police station at 8.30 P.M., whereas the time of recording of fardbeyan is 7.00 P.M. On this basis, learned counsel submits that the prosecution has not come out with clean hands. The submission of the appellants is only to be noted to be rejected. The investigating officer fairly stated that he recorded the fardbeyan of the informant at the police station at 7.00 P.M. on 26.12.2001. The informant in his evidence also stated that he made fardbeyan at 7.00 P.M., on which other witnesses (P.W.3 and P.W.9) too had attested and signed.

16. In our view, the discrepancies again is of a minor



nature and one may not lose sight of the fact that informant is a rustic person and made his statement in the court after seven years and as such he could not have remember whether he made his fardbeyan at 7.00 P.M. or 8.30 P.M.

17. Counsel for the appellants have argued that as per the prosecution case, the deceased was sitting on cot at 4.00 P.M. in front of his Dera, where he was shot at by Girish and Prakash Yadav, however, the investigating officer did not find any cot in front of the Dera nor the said cot was produced before the Court. However, again in our view, the submission of the learned counsel is bereft of merit. P.W.1 in para 14, P.W.6 in para 1 and P.W. 8 in para.1 have stated that the deceased was taken on the cot to some distance, whereafter he was taken on a jeep for being taken to the clinic of Dr. Ashok Sharma for treatment. The evidence of these witnesses explains as to why the investigating officer did not find cot near the Dera of the deceased where the occurrence took place.

18. Learned counsel has also argued that the investigating officer had not mentioned that any blood was seized from the clothes of the deceased at the time of preparation of inquest report. On careful scrutiny of the inquest report, we find that the investigating officer has mentioned that blood was coming from the various wounds sustained by the deceased i.e. on hand, face etc., as



such non-mentioning of blood stains at the time of preparation of inquest report would not be of any material significance, in view of the inquest report itself.

19. Learned counsel for the appellants has argued that almost all the witnesses are interested witnesses, except P.W.1 and P.W.5. He submits that P.W.1 ought to have reliable, as he was inimical to the accused side, as three cases have been lodged against him by the former. We would agree with the submission of the learned counsel that P.W.1 cannot be said to be an independent witness, as the accused have lodged three cases against her husband. If we discard the evidence of P.W.3, as many as three witnesses, namely, P.W.8 (informant), P.W.6 (the wife of the deceased) and P.W.5 have seen the part of the occurrence. Besides this, we find that the evidence of these witnesses is consistent with respect to the prosecution case and the inquest report and the post-mortem report also corroborates the prosecution case. The post-mortem report clearly states that the deceased sustained two gun shot injuries opened by the accused side, causing injuries on his hand and lateral part of the chest. Besides this, the deceased sustained fracture injuries on his leg and hand. Apart from this, the deceased had also sustained injuries on his right arm.

20. Learned counsel submits that Chano Yadav,



appellant of Cr. Appeal (DB) No. 553 of 2011, who is said to have assaulted with Iron rod, may be the author of only injury on the hand and leg and, as such, it cannot be said that he shared common object or intention of killing the deceased. He submits that Dashrath Yadav, appellant of Cr. Appeal (DB) No. 484 of 2011, has been falsely assigned as an order giver, as he is the senior member of the family. Furthermore, Kedar Yadav, appellant of Cr. Appeal (DB) No. 484 of 2011, is said to have assaulted Sadho Yadav, however, Sadho Yadav has not deposed as witness, to support the allegation.

21. Counsel for the informant has argued that Dasrath Yadav gave order and Kedar Yadav assaulted Sadho Yadav. However, the injuries sustained by Sadho Yadav are simple in nature, as such the assault made by Kedar Yadav is not sustainable in the eyes of law. So far as appellant Dashrath Yadav is concerned, we find that there is no allegation that he participated in the assault on the deceased. Furthermore, he is the informant of the counter case, as such the charge under Sections 302/149 of the Indian Penal Code are not born out against Kedar Yadav and Dashrath Yadav, appellants of Cr. Appeal (DB) No. 484 of 2011.

22. We find that as per prosecution case, 13 persons differently armed came to the place of occurrence on 26.12.2001, but only three of the present appellants are said to have assaulted the



deceased. Appellants Girish Yadav and Prakash Yadav are said to have fired upon the deceased and Chano Yadav assaulted him with iron rod. There is no allegation that the other accused persons assaulted the deceased. No overt act has been alleged against them, as such, we are of the considered view that the prosecution has failed to establish the charge under Sections 302/149 of the Indian Penal Code or 27 of the Arms Act or any other provisions of the Penal Code against the other appellants, namely, Dasrath Yadav, Ram Sewak Yadav, Dina Yadav, Kedar Yadav, Kundan Yadav, Subash Yadav (Cr. Appeal (DB) No. 484 of 2011), Bijo Yadav and Kamleshwari Yadav @ Buchka Yadav (Cr. Appeal (DB) No. 560 of 2011).

22. In the result, Cr. Appeal (DB) No. 484 of 2011 and Cr. Appeal (DB) No. 560 of 2011 are allowed. All the appellants of both the appeals are on bail and they are discharged from the liabilities of their bail bonds.

23. Cr. Appeal (DB) No. 553 of 2011 is dismissed. Appellant nos. 1 and 2, namely, Girish Yadav and Prakash Yadav, who are already in jail, will continue to remain in custody to serve their part of the sentence. Appellant no.3, namely, Chano Yadav, who is on bail, is directed to surrender before the court below to serve the remaining part of the sentence.

24. The Patna High Court Legal Services Authority is



directed to pay the fixed remuneration to Mr. Deepak Kumar, who is appearing in Cr. Appeal (DB) No. 560 of 2011, as Amicus Curiae.

25. Let the 1st and last page of the judgment be handed over to Mr. Deepak Kumar, who appears in Cr. Appeal (DB) No. 560 of 2011, as Amicus Curiae for needful.

(Samarendra Pratap Singh, J.)

(Arun Kumar, J.)

Uday/-

AFR/NAFR	AFR
CAV DATE	N.A
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