

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.678 of 2011

(Against the Judgment dated 10.06.2011 and order dated 22.06.2011 passed by Sri Sheo Gopal Mishra, Vth Additional Sessions Judge, Nalanda at Bihar Sharif in Sessions Trial No. 424 of 2009).

- 1. Bijay Yadav, son of Janak Yadav, deceased.
- 2. Pramod Yadav, son of Subey Yadav, deceased. Both residents of village-Banaulia, P.S.- Bihar, District- Nalanda.

.... Appellants

versus

The State of Bihar

..... Opposite Party

With

Criminal Appeal (DB) No. 638 of 2011

- 1. Ashok Yadav, son of Mahabir Yadav, deceased.
 - 2. Kishore Yadav, son of Mahabir Yadav, deceased.
 - 3. Santosh Yadav, son of Mahabir Yadav, deceased.
 - 4. Ram Lagan Yadav, son of Late Chamari Yadav.
 - 5. Jitendra Yadav @ Paro Yadav, son of Ram Lagan Yadav.
 - 6. Dilip Yadav @ Guddu Yadav, son of Ram Lagan Yadav.
- All residents of village- Banaulia, P.S.- Bihar, District- Nalanda.

.... Appellants

versus

The State of Bihar

..... Opposite Party

With

Criminal Appeal (DB) No. 762 of 2011

Sanjay Yadav, son of Late Janak Yadav, resident of village- Banaulia, P.S.- Bihar, District- Nalanda.

..... Appellant.

versus

The State of Bihar

..... Opposite Party

Appearance :

(In CR. APP (DB) No.678 of 2011)

- | | |
|-------------------------|---|
| For the Appellant No.1: | Mr. Rajendra Prasad, Sr. Advocate. |
| | Mr. Pramod Kumar, Advocate. |
| | Mr. Ritesh Kumar, Advocate |
| For the Appellant No.2: | Mr. Krishna Prasad Singh, Sr. Advocate. |
| | Mrs. Meera Singh, Advocate. |
| For the State | : |
| | Mr. A.K.Sinha, A.P.P. |
| | Mr. S.C.Mishra, A.P.P. |
| | Mr. A. Sharma, A.P.P. |

(In CR. APP (DB) No.638 of 2011)



For the Appellants : Mr. Rajendra Prasad, Sr. Advocate.
Mr. Ritesh Kumar, Advocate
Mr. Pramod Kumar, Advocate

For the State : Mr. A.K.Sinha, A.P.P.
Mr. S.C.Mishra, A.P.P.
Mr. A. Sharma, A.P.P.

(In CR. APP (DB) No.762 of 2011)

For the Appellant : Mr. Pramod Kumar, Advocate.
Kumari Sujata Sinha, Advocate

For the State : Mr. A.K.Sinha, A.P.P.
Mr. S.C.Mishra, A.P.P.
Mr. A. Sharma, A.P.P.

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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: 11-05-2017

All the nine appellants have been convicted under Sections 302/120B, 302/149, 147, 148 of the Indian Penal Code and 27 of the Arms Act by Vth Additional District and Sessions Judge, Nalanda in Sessions Trial No.424 of 2009. For the offence under Sections 302/120B and 302/149 of I.P.C., the trial court passed a composite sentence of life imprisonment along with a fine of Rs.25,000/- and in default of payment of fine to undergo additional imprisonment for one year. For the offence under Section 148 of I.P.C., all the accused have been sentenced to three years imprisonment along with a fine of Rs.5,000/- and in default to undergo six months imprisonment. For the offence under Section 27 of the Arms Act, all the accused have been sentenced to seven years



imprisonment along with a fine of Rs.5,000/- and in default of payment of fine to undergo additional imprisonment of six months. No separate sentence has been awarded for the offence under Section 147 of I.P.C. All the sentences have been directed to run concurrently.

2. The prosecution case in short has made out in the fardbeyan of Rajesh Yadav, resident of Banaulia, P.S. Bihar, District Nalanda recorded by A.S.I., Ramchandra Prasad, Bihar P.S. on 1.1.2009 at 20 hours at Sadar Hospital, Bihar Sharif, Nalanda in short is as follows :

3. The informant stated that on 1.1.2009 at about 4.30 P.M., his brother Upendra Yadav aged about 28 years, was returning to his house from khandak. As soon as he reached the road north to the house of (1) Sanjay Yadav, (2) Bijay Yadav, (3) Santosh Yadav, (4) Kishore Yadav, (5) Jitendra Yadav, (6) Dilip Yadav, (7) Pramod Yadav, (8) Ram Lagan Yadav and (9) Ashok Yadav. All co-villagers variously armed surrounded his brother. One of the co-accused Sanjay Yadav was on his motorcycle. Two of the accused, namely, Santosh and Jitendra held the hands of his brother Upendra Yadav, whereupon Sanjay Yadav fired from his pistol, which hit his armpit. Consequent to the injury, Rajesh Yadav fell, whereupon Pramod Yadav struck on his head with



his sword causing a cut injury. On hearing hulla, Bhagwat Prasad (P.W.1), Rabindra Yadav (P.W.2) and other persons arrived at the place of occurrence and on seeing them, the accused persons started fleeing. The informant and others took his brother to Sadar Hospital, Biharsharif. However, he succumbed to the injuries on the way itself.

4. On the basis of fardbeyan, the police registered Biharsharif P.S. Case No.30 of 2009 dated 1.1.2009 under Sections 147, 148, 149 and 302 of I.P.C.

5. The police, in course of investigation, prepared the inquest report of the deceased and inspected the place of occurrence. The police took further statement of the informant and statement of other witnesses. The police obtained postmortem report and finding the case to be true against the accused persons submitted charge sheet under Sections 147, 148, 149, 302, 120B of I.P.C. and 27 of the Arms Act.

6. The learned Magistrate took cognizance and committed the case to the court of Sessions for trial. Charges were framed under Sections 147, 148, 149, 302, 120B of I.P.C. and 27 of the Arms Act to which accused pleaded not guilty and claimed to be tried.

7. The prosecution in support of its case



examined 10 witnesses and also produced documentary evidence. The defence, however, did not examine any witness nor adduce any evidence. The case of the defence in the statement under Section 313 Cr.P.C. is complete denial of their involvement in crime. However, the trial court, on consideration of materials on record, convicted the appellants under Sections 302/120B, 302/149, 147, 148 of Indian Penal Code and 27 of the Arms Act.

8. Being aggrieved the accused persons have challenged the judgment of conviction and sentence in these three appeals.

9. Before we consider the grounds on which the appellants have challenged the impugned judgment of conviction and sentence, it would be necessary to notice the evidence of the witnesses.

10. As mentioned earlier, the prosecution in order to substantiate his case examined as many as 10 witnesses. Out of these ten witnesses, P.W.1, Bhagwat Prasad, P.W.2, Rabindra Yadav, P.W.3, Ramchandra Prasad, P.W.4, Ruplal Yadav, P.W.5, Munna Kumar @ Munna Yadav, P.W.6 and Rajesh Yadav (informant) have claimed to be eye witnesses of the occurrence. P.W.7, is Dr. Satish Chandra Sinha, who conducted postmortem of the deceased. P.W.8,



Ram Nath Ram is the Investigating Officer of the case. P.W.9 and P.W.10 are witnesses to the inquest.

11. P.W.1 (Bhagwat Prasad) is a co-villager of the informant. He stated that on 1.1.2009 at 6.00 P.M., he was sitting at Darwaza. On hearing hulla, he went to the place of occurrence and saw the deceased Upendra Yadav coming from his house. In the meantime, all the nine accused persons, who were standing on the main road in front of the house of Sanjay Yadav surrounded him and one of the accused, namely, Sanjay Yadav shot at his armpit where after, Pramod Yadav and Bijay Yadav assaulted him with sword and Kakut on his head. Thereafter, other accused persons also assaulted the deceased with lathi.

12. P.W.2 (Rabindra Yadav), P.W.3 (Ramchandra Prasad), P.W.4 (Ruplal Yadav) and P.W.5 (Munna Kumar) are all co-villagers and were present in the village on 1.1.2009 at about 6.00 P.M. They stated that on hearing hulla, they went to the place of occurrence and saw the accused persons, having surrounded Upendra Yadav on the road in front of the house of Sanjay Yadav. He too reiterated the entire incident as narrated by P.W.1.

13. P.W.6 is the informant of the case. He has claimed to have seen the entire occurrence. He saw accused



persons having surrounded his brother Upendra Yadav. As Upendra Yadav tried to escape Sanjay Yadav fired upon him, which hit his armpit and, he fell on the ground. Thereafter, Pramod Yadav and Bijay Yadav assaulted him with sword and Kakut on his head. After assaulting his brother, the accused persons fled and in the meantime, villagers gathered at the place of occurrence. The informant stated that earlier in the day, altercation had taken place on money matter and carrying of sand between Sanjay Yadav and Upendra Yadav. While his brother was on his way back home, some quarrel took place with the mother of Sanjay Yadav and in course of fight, he slapped and proceeded towards his house. As soon as he reached in front of the house of Sanjay Yadav, he was surrounded by accused and killed. P.W.7, Dr. Satish Chandra Sinha, who held postmortem report, opined that the deceased died on account of fire arm injuries. On these premises, the prosecution has tried to substantiate its case against the appellants.

14. On the other hand, three separate appeals have been filed by the convict challenging the judgment of conviction and sentence. Though separate arguments have been advanced by the learned counsels representing their respective appellants, some of the grounds on which the



conviction has been challenged are common to all.

15. We would first deal with the common arguments advanced by the respective counsels.

16. Learned counsels submitted that the place of occurrence has not been established as the I.O. did not find any blood mark at the alleged place of occurrence. It was submitted that the deceased was killed somewhere else and prosecution has falsely tried to project the road in front of the house of Sanjay Yadav as the place of occurrence. Besides this, the prosecution has also not been able to establish the motive for the occurrence. Almost all the P.Ws., who have claimed to have seen the occurrence, are close relatives of the deceased. Even the manner of occurrence has been changed during the evidence.

17. Apart from the common grounds, learned counsels have led separate arguments in their respective appeals.

18. Mr. Rajendra Prasad, learned Senior Counsel represents seven appellants, namely, all the six appellants of Cr. Appeal (DB) No.638 of 2011 and Bijay Yadav, appellant no.1 of Cr. Appeal (DB) No.678 of 2011. He submits that the prosecution has not alleged any overt act against any of the six appellants of Cr. Appeal No.638 of 2011 either in F.I.R. or



evidence. However, in evidence, the witnesses stated that Bijay Yadav, appellant no.1 of Cr. Appeal No.678 of 2011 also assaulted with Kakut on the head of the deceased, whereas no such allegation is made in the F.I.R. There is no allegation that any of the appellants were carrying any fire arms. Furthermore, the doctor has not found any injury on the head of the deceased. On these basis, learned counsel submits that the appellants are entitled to acquittal.

19. Mr. Krishna Prasad Singh, learned Senior Counsel appeared on behalf of the appellant Pramod Yadav, appellant no.2 of Cr. Appeal (DB) No.678 of 2011. He submits that there is material contradictions in the evidence of witnesses with respect to assault committed by this appellant as well as Bijay Yadav, appellant no.1 of Cr. Appeal (DB) No.678 of 2011. The I.O. stated that the informant in his further statement did not state that either this witness or Bijay Yadav assaulted the deceased on the head. P.W.2 in paragraph-5 even does not state that this witness assaulted the deceased at all. He submits that the postmortem report too does not corroborate the prosecution case that deceased was assaulted on his head by sword or Kakut. On these basis, learned counsel submits that the trial court ought to have given benefit of doubt and acquitted the appellant Pramod Yadav.



20. Learned counsel for the sole appellant Sanjay Yadav of Cr. Appeal No.762 of 2011 submits that even assuming the prosecution case to be true there was no intention on the part of Sanjay Yadav, who is alleged to have shot at the deceased Upendra Yadav. The injury is at the armpit of the deceased which is not a vital part of the body and could not have caused death in the ordinary course.

21. Mr. Ashwani Kumar Sinha, learned counsel appearing for the State submits that as many as 5-6 persons have supported the prosecution case. He submits that the evidence ought not to be discarded merely because they are related to the deceased. He further submits that there was latches on the part of the I.O. not to have collected the blood stained clay from the place of occurrence and on that account, the prosecution case should not suffer.

22. We have heard learned counsel for the parties and perused the materials on record. As per the prosecution case in the F.I.R., the occurrence took place on the road in front of the house of Sanjay Yadav, while the deceased Upendra Yadav was returning home at about 4.30 P.M. on 1.1.2009. As per F.I.R., Santosh and Jitendra caught the hands of the deceased Upendra Yadav, whereupon Sanjay Yadav shot in his armpit. Pramod Yadav is said to have given sword



blow on the head of the deceased. However, in the evidence, neither the informant nor any witness stated that Santosh Yadav and Jitendra Yadav held the hand of the deceased, whereupon Sanjay Yadav fired at his armpit. The I.O. in his evidence stated that some independent witnesses had stated that four of the accused were not even present at the time of occurrence. The I.O. in his evidence stated that the informant in his further statement did not state that Pramod Yadav or Bijay Yadav assaulted the deceased on his head.

23. We find for the first time that the witnesses stated in the evidence that Bijay Yadav also assaulted the deceased on his head by Kakut. Besides this, P.W.2 in paragraph-5 did not state that Pramod Yadav assaulted on the head of the deceased. As per the postmortem report, the deceased sustained only one injury on his head. The doctor too had opined that the fire arm injury was the cause of death.

24. In view of the discussions made above, we find that the prosecution has failed to prove the participation of all the six appellants of Cr. Appeal (DB) No.638 of 2011 in the murder of deceased beyond all reasonable doubt. The prosecution has equally failed to prove the charge of conspiracy against them. Besides this, there is no consistent evidence that Bijay Yadav and Pramod Yadav assaulted the



deceased on the head. The I.O. too has not found any blood at the place of occurrence, which is said to be a road in front of the house of Sanjay Yadav.

25. In such situation, we are of the considered view that the trial court ought to have given benefit to all the six appellants of Cr. Appeal (DB) No.638 of 2011 and the two appellants, namely, Bijay Yadav and Pramod Yadav of Cr. Appeal (DB) No.678 of 2011 and ought to have acquitted them of the charge.

26. We will now examine the case of Sanjay Yadav, the sole appellant of Cr. Appeal (DB) No.762 of 2011. The informant both in the F.I.R. as well as in his evidence stated that this witness shot in the armpit of the deceased. The other witnesses too supported the prosecution case that Sanjay shot in the armpit of the deceased. The doctor too opined that the deceased died on account of the fire arm injuries in the armpit. As such, we find that the evidence is consistent on the point that appellant Sanjay Yadav shot in the armpit of the deceased leading to his death. As such, we hold that the appellant Sanjay Yadav is responsible for the death of Upendra Yadav.

27. It was submitted on behalf of learned counsel for the appellant Sanjay Yadav that no case under



Section 302 I.P.C. would be made out as there was no intention on the part of the appellant to commit murder of the deceased as he shot at his armpit, which is a non-vital part of the body.

28. We are unable to agree with the submission made by learned counsel for the appellant Sanjay Yadav. We find that the appellant shot at the armpit of the deceased which according to the doctor was sufficient to cause his death. Injury no.2, which is a fire arm injury attributed to Sanjay Yadave is quoted herein below :

“ Lacerated wound 1.5” x 1” in left armpit with mark of burn explosive partied present 6” radius around wound and left cheek margin of wound inverted, indicating fire arm entry wound.

No other injury mark was present on the body means exit fire arm absent internal examination.

Scalp bone intact, thorax cavity filled with blood and blood clot entry and exit present in left lung right lung intact & congested.

Bullet found in left side of IVth



thoracic vertebra.

Bullet – preserved

Heart intact all four chamber partially filled.

Abdomen – Clonoc contains about 3-4 ounce semi digested food material. The sonat intact liver and spleen intact and pale both kidney intact and pale nary bladder empty.

Cause of death Haemorrhage & Shock followed by cardiopulmonary failure due to fire arm injury.

Time laps in death about 6-24 Hours.

Injury No.2 is sufficient to cause death of Upendra Yadav.

Postmortem report was prepared by me in my pen and signature which is marked as exhibit No.3.”

29. In view of the discussions made above, we hold Sanjay Yadav guilty of charge under Section 302 of the I.P.C.

30. In the result, Criminal Appeal (DB) No.678 of 2011 and Cr. Appeal (DB) No.638 of 2011 are allowed. As



all the six appellants of Cr. Appeal (DB) No.638 of 2011 and appellant Bijay Yadav of Cr. Appeal (DB) No.678 of 2011 are on bail, they are discharged from the liabilities of the bail bond. Appellant No.2, Pramod Yadav of Cr. Appeal No.678 of 2011, who is in custody for 6 ½ years, is set at liberty forthwith, if not wanted in any other case.

31. Cr. Appeal (DB) No.762 of 2011 is dismissed. The appellant Sanjay Yadav, who is in custody, would remain so, to serve the remaining part of his sentence with admissible remissions.

(Samarendra Pratap Singh, J)

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
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