

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction dated, dated 31.05.2011, and order of sentence, dated 01.06.2011, passed by Shri Om Prakash Singh, learned Additional Sessions Judge, F.T.C.-IV, Lakhisarai in Sessions Trial No. 213 of 1996, arising out of Kiul G.R.P. P.S. Case No. 54 of 1994)

Criminal Appeal (DB) No.721 of 2011

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Rakesh Yadav, son of Sachidanand Yadav @ Sachida, Resident of Village- Brindawan, P.S.& District- Lakhisarai

.... Appellant

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (DB) No. 533 of 2011

Arising Out of PS. Case No. -0 Year- null Thana -null District- LAKHISARAI

- =====
1. Sachidanand Yadav @ Sachida Yadav, son of late Deo Narayan Yadav, Resident of Village- Brindawan, P.S. & District- Lakhisarai.
 2. Nirmal Singh, son of late Jang Bahadur Singh, resident of village-Gangaur, P.S. & District- Khagaria, at present address at Kiul Dharmshala, P.S.& District- Lakhisarai.

.... Appellants

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (DB) No. 651 of 2011

- =====
1. Nand Lal Yadav, son of late Ramcharan Yadav,
 2. Amar Yadav, son of late Binda Yadav
 3. Singho Yadav, son of Khakhar Yadav
 4. Shailendra yadav @ Gabbar Singh, son of late Yadu Yadav
- All are resident of Village- Brindawan, P.S. & District- Lakhisarai

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :



(In CR. APP (DB) No.721 of 2011)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

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

(In CR. APP (DB) No.533 of 2011)

For the Appellant/s : Mr. K. P. Singh, Sr. Advocate

: Mr. Rajesh Kumar, Advocate

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

(In CR. APP (DB) No.651 of 2011)

For the Appellant/s : Mr. K. P. Singh, Sr. Advocate

Mr. M. K. Upadhyay, Advocate

For the Respondent/s : Mr. A. Sharma, APP

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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: 21-03-2017

All the three Cr. Appeals have been preferred against the judgment of conviction, dated 31.05.2011, and order of sentence, dated 01.06.2011, passed by learned Additional Sessions Judge, F.T.C.-IV, Lakhisarai in Sessions Trial No. 213 of 1996, arising out of Kiul G.R.P. P.S. Case No. 54 of 1994. The sole appellant, Rakesh Yadav, of Cr. Appeal (DB) No. 721 of 2011, has been convicted under Sections 302 of the Indian Penal Code and sentenced to undergo R.I. for life and a fine of Rs.5,000/- and in default to undergo S.I. for three months; whereas the two appellants, namely, Sachidanand Yadav @ Sachida Yadav and Nirmal Singh of Cr. Appeal (DB) No. 533 of 2011 and four appellants, namely, Nand Lal Yadav, Amar Yadav, Singho Yadav and Shailendra yadav @ Gabbar Singh of Cr. Appeal (DB) No. 651 of 2011, have been convicted



under Sections 120B(1)/302 of the Indian Penal Code and sentenced to undergo R.I. for life and a fine of Rs.5,000/- each and in default to undergo S.I. for further three months.

2. The prosecution case, in short, as made out in the fardbeyan of Brahamdeo Yadav, son of late Tukan Yadav of village Brindawan, P.S. Lakhisarai, the then District- Munger, recorded by S.I. D. N. Prasad of Lakhisarai police station, on 07.06.1994, at 22.50 hours, at referral hospital, Lakhisarai, in short, is as follows:

3. The informant stated that his son Madhulia Yadav used to sell tea on Kiul Railway Station in the trains. On 07.06.1994, at about 8.15 P.M., after taking his food, he went to Kiul Station and lied down on a Bench along with one Jugnu Paswan, out side the petty hotel of Bikram Ram (P.W.4), situated just out side the waiting hall of passengers. At the relevant time, the informant too was standing at a close distance along with his two other sons, namely, Ravindra Yadav (P.W.1) and Kamal Kishore Yadav (P.W.2). The informant along with his sons had gone to Railway Station to prohibit Madhulia Yadav from selling tea, as tension had risen high, on account of demonstration against one Nirmal Singh and his associates. On of his sons, namely, Ravindra Yadav, was Secretary of Hawker Union, as such there was danger to his family. However, Madhulia did not accept the advice and went out of the house and rested on a Bench out



side the platform, in front of the shop of Vikram Ram. At about 9.00 P.M., one Shailendra Yadav @ Gabbar Singh, Nandlal Yadav, Nirmal Singh, Rakesh Yadav, his father Sachidanand Yadav, Singhe Yadav and Amar Yadav were holding meeting and were talking to cut to size Ravindra Yadav, who has become the leader of the Union. Thereafter, Rakesh Yadav armed with country made pistol, advanced towards Madhulia and shot at him at his chest from point blank range. After the incident, the accused persons fled away. The informant's son Madhulia had sustained injury on his person. The informant asserted that apart from Jugnu Paswan, he too saw the occurrence along with other people. The informant believes that Rakesh Yadav had shot at his son at the instance of other accused persons and local contractors on account of differences with the tea vendors. The informant thereafter brought his son to the hospital for treatment where his son was declared dead.

On the basis of the fardbeyan of the informant, Kiul G.R.P. P.S. Case No. 54 of 1994 under Sections 302/34 /120B of the Indian Penal Code and 27 of the Arms Act was instituted.

4. The police in course of investigation visited the place of occurrence, took statement of the other witnesses and also obtained the post-mortem report of deceased Madhulia Yadav. After finding the case to be true, the police submitted charge-sheet against all the



seven accused-appellants under Sections 302/34 /120B of the Indian Penal Code and 27 of the Arms Act.

5. Thereafter, the learned Magistrate took cognizance of the offences and committed the case to the Court of Sessions for trial. Charges were framed against accused Rakesh Yadav under Sections 302 of the Indian Penal Code and 27 of the Arms Act, whereas charges were framed under Sections 302/34 /120B of the Indian Penal Code against other six accused persons. All the appellants pleaded not guilty and claimed to be tried. The case of the defence in the statement under Section 313 of the Cr.P.C. was complete denial of the involvement in the crime.

6. The prosecution, in support of its case, examined as many as 8 witnesses. P.W. 1 is Ravindra Yadav, P.W.2 is Kaml Kishore Yadav, P.W. 3 is Md. Karim, P.W.4 is Bikram Ram, P.W.5 Brahamdeo Yadav is the informant of the case, P.W. 6 is Jugnu Paswan, P.W. 7 is again Jugnu Paswan and P.W.8 is Dr. M. L. Singh.

7. The defence also examined 4 witnesses as well as adduced documentary evidence in support of their case. D.W. 1 is Srawan Yadav, D.W.2 is Sadho Gupta, D.W.3 is Shankar Verma and D.W.4 is Shamim. The evidence of the witnesses and documents produced by the accused were to the extent that P.W.1, 2 and 5 were not present at the place of occurrence and that prosecution has lost his



land dispute case to Sachidanand Yadav, who is one of the accused and father of appellant Rakesh Yadav.

8. Relying upon the evidence of P.W.1, 2 and 5 as well as the post-mortem report, the trial court convicted Rakesh Yadav, the sole appellant of Cr. Appeal (DB) No. 721 of 2011 under Sections 302 of the Indian Penal Code and rest of the six accused under Sections 120(B)(1) read with Section 302 of the Indian Penal Code.

9. Out of these 8 witnesses, the informant, namely, Brahamdeo Yadav (P.W.5) and his two sons, namely, Ravindra Yadav (P.W.1) and Kamal Kishore Yadav (P.W.2) have claimed to be the eye witness of the occurrence. One Jugnu Paswan (P.W.6), who is said to be present at the place of occurrence when the deceased Madhulia was shot at, appeared before the Court, but evaded making any statement before the Court. Bikram Ram (P.W.4) is a formal witness and being a witness of seizure list. He has not claimed to have seen the occurrence. P.W.8 Dr. M.L. Singh conducted the post-mortem on the dead body of Madhulia Yadav on the following day i.e. on 08.06.1994 at 8.15 A.M. in Sadar Hospital, Munger.

10. P.W.5 Brahamdeo Yadav (Informant) in his evidence supported the prosecution case as recorded in the F.I.R. and stated that his house is very close to the Kiul Railway Station. He stated that his son is a tea vendor and after taking food had gone to



Kiul Railway Station for selling tea on platform and in the train. Soon thereafter, he too proceeded towards Railway Station to prohibit him from selling tea. The reason was that his another son Ravindra Yadav (P.W.1) was Secretary of the Hawker Union and they had protested and made demonstrations against the accused persons/contractors, who with aid of police personnel of G.R.P., used to collect illegal gratification from the hawkers, who used to sell tea and other items on the platforms and in the train. He further stated that in the meantime, his son was lying on a Bench out side the hotel of one Bikram Ram, which was situated just near the waiting hall of passengers. The accused persons were also holding meeting and were talking amongst themselves to teach Ravindra Yadav (P.W.1) lesson, who has now become a leader. Soon thereafter, Rakesh Yadav, one of the accused, advanced with country made pistol towards Madhulia Yadav, close from a point blank range. Thereafter, the informant along with others carried Madhulia to his house and thereafter to Sadar Hospital, Munger, where he (Madhulia) was declared dead. The distance of the place of the occurrence from the house of the informant was about 150 yards.

11. P.W.1 Ravindra Yadav too stated that his brother used to sell tea in the trains on Kiul Railway Station platform. His brother had left for railway station after taking dinner at about 8.00-



8.15 P.M. He along with his father and another brother Kamal Kishore Yadav went towards Kiul railway station to prohibit Madhulia Yadav from selling tea. He stated the same reason for prohibiting him from selling tea, as stated by informant (P.W.5) in his evidence. He stated that the accused persons were holding meeting in hotel of Bikram Ram and on instigation of other accused persons Rakesh Yadav fired at the chest of his brother Madhulia, who got injured. He too stated that he carried his brother on his shoulder to his house and thereafter to the hospital.

12. P.W.2, Kamal Kishore Yadav, in his evidence too stated that after taking food, at about 8.00 P.M. his brother wanted to go to Kiul station for selling tea. P.W.1 prohibited him from selling tea, because there was hostile atmosphere, as Nirmal Singh and others had grudge against them, as they had held demonstrations against them from collecting illegal gratifications. He stated that the accused persons were holding meeting in the tea shop of Ramanand and in the meantime one of the accused Rakesh Yadav armed with country made pistol proceeded towards his brother, who was lying on a bench outside the hotel of Bikram Ram (P.W.4), at the relevant time. Rakesh Yadav shot at Madhulia Yadav from point blank range, thereafter he along with his other family members carried to his house and then to the hospital, where he was declared dead.



13. P.W.8 Dr. M.L. Singh conducted the post-mortem on the dead body of Madhulia Yadav on the following day i.e. on 08.06.1994 at 8.15 A.M. in Sadar Hospital, Munger. He found one fire arm injury on the chest of the deceased, “margin- blockiest, surrounded by tattooing marks”, which supports the prosecution case that the deceased was shot at from a very-very close range.

14. On these premises, the prosecution has tried to establish the charge against the accused persons.

15. Mr. Ajay Kumar Thakur, learned counsel appears for Rakesh Yadav, the sole appellant of Cr. Appeal (DB) No. 721 of 2011, whereas Mr. K. P. Singh appears on behalf of the appellants, in rest two appeals, bearing Cr. Appeal (DB) No. 533 of 2011 and Cr. Appeal (DB) No. 651 of 2011.

16. Mr. Thakur, learned counsel appearing for appellant Rakesh Yadav, submits that the prosecution has not been able to prove either the place of occurrence or the manner of occurrence. He submits that the three eye witnesses have given three different versions with respect to the place of occurrence. He submits that P.W.5 (informant) stated that his son was sitting near the waiting hall of passengers, where he was shot at by the appellant Rakesh Yadav. On the other hand, P.W.1 stated that the deceased Madhulia was sitting at the shop of P.W.4 when Rakesh Yadav shot at him. P.W.2



stated that Madhulia was sitting outside the hotel of P.W.4 on a bench when Rakesh Yadav is said to have opened fire at him. On these basis, learned counsel submits that as three witnesses have given different versions with respect to the place of occurrence, where the deceased was shot at. The reason for non-examination of the investigating officer is that as the witnesses have given different versions with regard to the place of occurrence, the prosecution has deliberately withheld him, who could have ascertain the place of occurrence.

17. However, on closer scrutiny of the evidence, we find that there is not much deviation in the statement of the witnesses with regard to the place of occurrence. P.W.1 stated that Rakesh Yadav was shot at the shop of Bikram Ram (P.W.4). P.W.2 in paragraph 3 of his evidence too stated that the deceased was shot at the shop of Bikram Ram. It is true that P.W.5 (informant) stated that his son had gone towards passengers' waiting hall outside the platform, where he was shot at by Rakesh Yadav. It has come in the evidence of P.W.5 itself that the shop of Bikram Ram (P.W.4) is situated by the side of waiting hall of passengers and as such we do not find that there is any deviations with respect to the place of occurrence in the statement of three witnesses.

18. The appellants next stated that all the three witnesses had given different stories with respect to arriving at the place of



occurrence. P.W.5 in his evidence stated that as soon his son Madhulia left for Kiul station on the fateful night, he soon followed him at 8.15 P.M., whereas P.W.1 stated that he along with P.W.2 and P.W. 5 left the house together soon after his brother left his house for selling tea at Kiul station. P.W. 2 stated that when his deceased brother Madhulia wanted to go to the Railway station for selling tea, P.W.1 advised him against it to which he agreed. P.W.2 thereafter stated that he along with P.W.1 and 5 went towards the railway station for stroll. In the meantime, Madhulia also reached, whereafter he was shot dead. On these basis, counsels for the appellants submit that the witnesses are not consistent in the evidence as to whether all went together or went alone.

19. In our view, the discrepancies occurring in the statement of the witnesses are of minor nature. The hotel of Bikram Ram was hardly 150 yards from the house of the deceased and it is the consistent case of the prosecution that all of them were present, when he was shot at around 8.00-8.30 P.M., near the hotel of Bikram Ram. Furthermore, the occurrence was of the year 1994 and the witnesses deposed after lapse of six years, and as such it is quite natural that there would be minor deviations in the statement. As such, we are of the considered view that such minor discrepancies are only but natural, and in any view of the matter the same do not go to the root of



the prosecution case.

20. The appellant argued that there could be no reason for appellant Rakesh Kumar to kill the deceased Madhulia. He submits that some of the prosecution witnesses have admitted that neither Rakesh Yadav nor his father Sachidanand Yadav are tea vendors, as such he would have no grudge, as the demonstrations led by P.W.1 in front of G.R.P. police station at Kiul station, were against the contractors and others. He submits that on the other hand, the prosecution side would have motive to implicate him in the case, as informant had lost the land dispute case involving in 18 bighas of land in a proceeding under Section 145 of Cr.P.C. to Sachidanand Yadav, the father of the appellant Rakesh Yadav.

21. In our view, motive would not matter much in case of direct evidence. Enmity cuts both ways, as such it cannot be exclusively inferred that the appellant has been implicated due to land dispute between the parties in absence of any cogent materials.

22. Learned counsel next submits that the prosecution has deliberately not examined P.W.6 Jugnu Paswan, who was an important witness in this case. He submits that P.W.5 and P.W.1 have admitted the presence of P.W.6 along with the deceased, when he was shot at. In our view, the non-examination of all material witnesses cannot be a mathematical formula for discarding the weight of the



testimony of eye witnesses, whose testimony is natural, trust worthy and reliable. Reference can be made to the case of State of Himachal Pradesh Vs. Gian Chand, reported in AIR 2001 SC 2075 in this respect.

23. Situated thus and in view of the specific case of the witnesses that Rakesh Yadav fired at the deceased, which is dully corroborated by the post-mortem report, we are of the considered view that the prosecution has been able to establish the charge against the appellant Rakesh Yadav. We, accordingly, uphold the conviction and order of sentence passed against Rakesh Yadav under Section 302 of the Indian Penal Code.

24. As far as six appellants of Cr. Appeal (DB) No. 533 of 2011 and Cr. Appeal (DB) No. 651 of 2011 are concerned, the charge against them is one of conspiracy along with the main assailant Rakesh Yadav to commit the murder of the deceased.

25. In the instant case, we find that none of the witnesses stated that these accused-appellants were armed with lathi or any weapon. Furthermore, the defence has drawn the attention of the witnesses that before the police, they have not stated that at the instigation of these appellants, Rakesh Yadav opened fire at the deceased Madhulia. We would agree with the submission of learned counsel for the appellants that non-examination of the investigating



officer had caused prejudice, as they were not able to take necessary contradictions from investigating officer, in this respect. Furthermore, the case of prosecution that the accused persons had assembled in a hotel and were conspiring to commit murder of a member of the prosecution side in presence of large number of persons seems very unconvincing and unnatural. The Hon'ble Supreme Court in case of Darshan Singh @ Bhasuri & Ors vs State Of Punjab, reported in 1983 SCC (2) 411 at para 8 observed that it is difficult to believe that accused persons in presence of stranger would make plan to kill anybody in a public place.

26. Accordingly, we find that the prosecution has failed to produce cogent materials to bring home the charge under Sections 120(B) (1) of the Indian Penal Code against six appellants of Cr. Appeal (DB) No. 533 of 2011 and Cr. Appeal (DB) No. 651 of 2011, as such we set aside the judgment of conviction and order of sentence passed by the learned trial court against them and acquit them of the charges under Sections 120(B)(1)/302 of the Indian Penal Code. All the six appellants Cr. Appeal (DB) No. 533 of 2011 and Cr. Appeal (DB) No. 651 of 2011 are already on bail and are discharged from the liabilities of their bail bonds.

27. In the result, Cr. Appeal (DB) No. 533 of 2011 and Cr. Appeal (DB) No. 651 of 2011 are allowed and Cr. Appeal (DB)



No. 721 of 2011 is dismissed. The appellant Rakesh Yadav of Cr. Appeal (DB) No. 721 of 2011 is in custody. He is directed to remain in custody for serving out the remaining part of the sentence.

(Samarendra Pratap Singh, J.)

(Arun Kumar, J.)

Uday/-

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