

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction dated, 01.12.2010, and order of sentence dated 04.12.2010, passed by Sri Narayan Prasad Singh, learned Additional Sessions Judge-V, Begusarai in Sessions Trial No. 594 of 2009, arising out of Sahebpur Kamal P.S. Case No. 42 of 2009)

Criminal Appeal (DB) No.1398 of 2010

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1. Ram Binay Yadav, son of Suraj Yadav
2. Ramadhar Yadav, son of Laxmi Yadav
3. Darogi Yadav, son of Bishundeo Yadav
All resident of Village- Ahoghat, Police Station- Sahebpur Kamal, District- Begusarai.

..... Appellants

Versus

The State of Bihar

..... Respondent

With

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Criminal Appeal (DB) No. 53 of 2011

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Sanjay Yadav @ Bhola Yadav, son of Late Anik Yadav, Resident of Village- Ahoghat, Police Station- Sahebpur Kamal, District- Begusarai

..... Appellant

Versus

The State of Bihar

..... Respondent

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Appearance :

(In CR. APP (DB) No.1398 of 2010)

For the Appellant/s : Mrs. Fauzia Shakil, Advocate
Mr. Shailendra Kumar, Advocate

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

(In CR. APP (DB) No.53 of 2011)

For the Appellant/s : Mr. Dr. R.K. Singh, Advocate
Mr. Rana Ishwar Chandra, Advocate

For the Respondent/s : Mr. S. C. Mishra, 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: 28-02-2017



Both the appeals have been preferred against the judgment of conviction dated, 01.12.2010, and order of sentence dated 04.12.2010, passed by Sri Narayan Prasad Singh, learned Additional Sessions Judge-V, Begusarai in Sessions Trial No. 594 of 2009, arising out of Sahebpur Kamal P.S. Case No. 42 of 2009, by which all the four appellants have been convicted under Sections 302/34 of the Indian Penal Code and sentenced to undergo R.I. for life and a fine of Rs.10,000/- each under Section and in default to undergo R.I. for further one year. Appellants, namely, Sanjay Yadav (Cr. Appeal (DB) No. 53 of 2011) and Darogi Yadav (Cr. Appeal (DB) No. 1398 of 2010) have also been convicted under Section 27 of the Arms Act and sentenced to undergo R.I. 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 Siya Ram Yadav (P.W.3) resident of village Ahoghat (Krati Marar Tola), P.S. Sahebpur Kamal, District- Begusarai, recorded by A.S.I. J. N. Baitha of Town police station on 15.03.2009, at 4.00 P.M. in Sadar Hospital, Begusarai, is as follows:

The informant stated that on 15.03.2009 at 12 'o' clock he found the accused persons, namely, Sanjay Singh @ Bhola Yadav, Darogi Yadav, Ram Binay Yadav and Ramadhar Yadav, all co-villagers, irrigating the grass grown by him. When the informant



along with his son Raj Kumar Yadav restrained them from irrigating their land, as the field belongs to them, an altercation ensues. In course of altercation, Sanjay Yadav and Darogi Yadav fired upon his son Raj Kumar Yadav with intention to kill, on account of which the latter sustained fire arm injuries near right side of the chest and left side of the back. On account of the injuries, Raj Kumar Yadav fell instantly on the ground. The informant raising halla rushed towards his son to lift him in his lap. In the meantime, the accused persons fled towards west opening fire in the air. On hearing halla and sound of firing a lot of villagers came running to the place of occurrence. The informant with the aid of his co-villagers brought the injured Raj Kumar Yadav for treatment to Sadar Hospital, Begusarai, where he died in course of treatment. According to the informant, the land dispute is the cause of occurrence.

On the basis of the Fardbeyan of the informant, Sahebpur Kamal P.S. Case No. 42 of 2009, dated 15.03.2009 was registered for the offence under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act.

3. The police in course of investigation prepared inquest report and sent the dead body for post-mortem. He also took restatement of the informant as well as statement of the other witnesses under Section 161 of the Cr.P.C. The police visited the



place of occurrence on the next day of the occurrence. The police after investigation submitted charge-sheet under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act.

4. Thereafter learned Magistrate took cognizance of the offences and committed the case to the Court of Sessions for trial. Charges were framed under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act against all the accused persons to which they pleaded not guilty and claimed to be tried.

5. The case of the accused as appearing from the mode of cross-examination and the statement under Section 313 of Cr.P.C., is one of false implication on account of land dispute and complete denial of the manner of occurrence.

6. The prosecution, in order to substantiate its case, examined as many as 8 witnesses. P.W. 1 Vijay Yadav is the son of the informant, P.W.2 Amla Devi is the wife of the deceased, P.W. 3 Siya Ram Yadav is the informant. P.W.4 Meena Devi is the wife of the P.W.1. P.W.5 Punyadeo Singh is the investigating officer of the case. P.W. 6 is Dr. Ashok Kumar Jha, who has conducted the post-mortem on the dead body of the deceased Raj Kumar Yadav. P.W. 7 Jainandan Baitha has proved formal F.I.R. P.W. 8 Shambhu Prasad Sinha is again a formal witness, who has proved the sale deed executed in favour of prosecution sides by its owner, which was the



subject of the dispute between the parties. P.W.1, P.W.2 and P.W.4 have claimed to be the eye witness of the occurrence.

7. The defence also examined one witness, namely, Uma Shankar Prasad (D.W.1).

8. P.W.3 Siya Ram Yadav (informant) in his evidence has supported the prosecution case. He stated that on 15.03.2009, he along with his son had gone to the field on which they had grown grass. They found the accused persons irrigating the grass grown by them. The informant and his son objected, which led to an altercation. In course of altercation, Sanjay Yadav and Darogi Yadav fired upon his son, which hit the right side of the chest and left side of the back of his son Raj Kumar Yadav.

9. P.W. 1 Vijay Yadav is the other son of the informant, P.W.2 Amla Devi (wife of the deceased) and P.W.4 Meena Devi (wife of P.W.1) stated that at the relevant time they too were weeding and cutting grass in the nearby field. They stated that the accused persons were irrigating the field on which the prosecution side had grown grass. They stated that the informant and his son Raj Kumar Yadav (deceased) protested and Raj Kumar Yadav switched off the pumping machine so that the accused persons could not irrigate his field. In the meanwhile two of the four accused persons, namely, Sanjay Yadav and Darogi Yadav fired upon Raj Kumar Yadav causing injury on the



right side of the chest and left side of the back, whereafter he was carried to Sadar Hospital, Begusarai where he succumbed to the injuries.

10. P.W. 6 Dr. Ashok Kumar Jha, who conducted post-mortem on the dead body of the deceased also found two corresponding injuries on the body of the deceased, one of which was from close range, which are as follows:

(i) 1" lacerated wound with inverted black margin and having black shoots over skin around 3" area on left side of chest in 3rd- 4th intercoastal space in left posterior axillary line.

On dissection, it passed towards right side piercing lungs (both) and came out with 1 ½" oval outlet with everted margin in 7th intercostal space on right side of the chest.

(ii) one ¾" oval lacerated wound with blacked inverted margin in right 6th intercostal space in middle clavicular line. It passed posteriorly and lodged beneath skin 2" right on 8th vertebra posteriorly and in between damaging the liver. The bullet reached sealed in a glass jar and handed over to accompanying constable.

Cause of death: Due to shock and haemorrhage provided by injury to lungs, liver and bleeding. Time elapsed since death-12 to 18 hours.

11. As per the evidence of doctor, time elapsed since



death tallied with the time of occurrence mentioned by the informant in the F.I.R.

12. The trial Court relying upon the evidence of the informant as well as his three family members and the post-mortem report, convicted all the appellants under Sections 302/34 of the Indian Penal Code and appellants, namely, Sanjay Yadav (Cr. Appeal (DB) No. 53 of 2011) and Darogi Yadav (Cr. Appeal (DB) No. 1398 of 2010) have also been additionally convicted under Section 27 of the Arms Act as well.

13. Mrs. Fauzia Shakil, learned counsel appearing in Cr. Appeal (DB) No. 1398 of 2010, has assailed the impugned judgment of conviction and order of sentence on a number of grounds. Learned counsel submits that at the best there is no eye witness of the occurrence, apart from the informant, as the latter has not named any one in his fardbeyan (F.I.R.), as having seen the occurrence. Learned counsel submits that the investigating officer did not find any blood or any tampering sign at the place of occurrence, which would suggest that the occurrence has taken place at a different place other than the place indicated by the informant in the F.I.R. She further submits that the prosecution in course of trial has developed the case and has tried to project P.W.1, P.W.2 and P.W.4 as eye witness, though they are not named in the FIR, as eye witness. Furthermore, all the witnesses



(P.Ws.1, 2 and 4) are family members and none of the independent witness has come forward to depose in support of the prosecution case. Learned counsel submits that all the witnesses are family members, their evidence should be scanned with utter caution and circumspection.

14. Alternatively, learned counsel submits that even assuming the prosecution case to be true, there was no cogent material to convict appellant nos.1 and 2, namely, Ram Binay Yadav and Ramadhar Yadav of Cr. Appeal (DB) No. 1398 of 2010 under Section 302/34 of the Indian Penal Code. Furthermore, there is no allegation that the two appellants either committed any overt act or any offence. There is nothing against them to establish that they shared the same intention, as the one, who fired upon the deceased. Learned counsel submits that the informant should not be held reliable, as he has improved the case in the trial to the extent that Ram Binay Yadav opened fire at him, which brushed past his hand, which does not mention in F.I.R. She submits that there was no injury on the hand of the informant, which belies his evidence that the fire shot opened by Ram Binay Yadav has brushed past his hand.

15. Alternatively, learned counsel has argued that at the best, the case of appellants, namely, Sanjay Yadav (Cr. Appeal (DB) No. 53 of 2011) and Darogi Yadav (Cr. Appeal (DB) No. 1398 of



2010), who are alleged to have opened fire, would fall under Exception 4 of Section 300 of Indian Penal Code. Furthermore, the appellants, namely, Sanjay Yadav (Cr. Appeal (DB) No. 53 of 2011) and Darogi Yadav (Cr. Appeal (DB) No. 1398 of 2010), who are alleged to have opened fire, have remained in custody for more than eight years and the sentence may be reduced to the period already undergone.

16. On the other hand learned counsel for the State submits that the trial court has rightly convicted all the appellants under Section 302/34 of the Indian Penal Code and appellants, namely, Sanjay Yadav (Cr. Appeal (DB) No. 53 of 2011) and Darogi Yadav (Cr. Appeal (DB) No. 1398 of 2010) additionally under Section 27 of the Arms Act. He submits that the evidence of witnesses should not be discarded only because they happened to be the family members, if otherwise the same inspire confidence.

17. We have heard the parties and perused the materials on record. We find that the informant (P.W.3) and the other three eye witnesses, namely, Vijay Yadav (P.W.1), the brother of the deceased, Amla Devi (P.W.2), the wife of the deceased, and Mina Devi (P.W.3), the wife of P.W.1, have supported the prosecution case. The informant stated that on 15.03.2009, he had gone to his field along with his son, on which he had grown grass. They found four accused



persons irrigating the land to which they protested. Upon their protest, appellants, namely, Sanjay Yadav (Cr. Appeal (DB) No. 53 of 2011) and Darogi Yadav (Cr. Appeal (DB) No. 1398 of 2010) opened fire, causing injury on the left side of the back and right side of the chest of Raj Kumar Yadav (son of the informant). P.W.1, P.W.2 and P.W.4 also stated that they were also weeding and cutting grass in the nearby field and they too have witnessed the commission of murder of the deceased. It is true that the informant later on, has tried to develop the prosecution case that he too also got injury/scratching mark on the hand by the fire opened by Ram Binay Yadav. We would agree with the submission of the learned counsel for the appellants that in order to make the prosecution case look graver, the informant has tried to improve the prosecution case, as no injury report has been brought on record showing that he suffered scratching mark on his hand. In any view of the matter, the informant in the F.I.R. did not even mention that any one fired upon him, much less causing any injury on any portion of his body. However, because the informant has tried to improve the case during trial, it is difficult to brush aside the rest of the evidence, which is consistent and has been duly supported by the other three witnesses, namely, P.W.1, P.W.2 and P.W.4.

18. The submission of the appellants that as P.W.1, P.W.2 and P.W.4 are not named in the F.I.R., they cannot be eye



witness of the occurrence is far from convincing and fit to be rejected. The informant may not have noticed P.W.1, P.W.2 and P.W.4, who were weeding and cutting grass in the nearby field. All of them have stated that at the relevant time they were in the nearby field cutting grass from which they saw the occurrence, as such their evidence cannot be discarded simply because they are not named in F.I.R., as witness.

19. Counsel for the appellants have pointed out some contradictions, as to who owned the field, but in our view, such contradictions are minor in nature and will not cut and go at the root of the prosecution case, as such we find and hold that the prosecution has succeeded in establishing the case that the fire opened by appellants, namely, Sanjay Yadav (Cr. Appeal (DB) No. 53 of 2011) and Darogi Yadav (Cr. Appeal (DB) No. 1398 of 2010) caused the death of the deceased Raj Kumar Yadav. However, there is no cogent materials on record to establish that other two appellants, namely, Ram Binay Yadav and Ramadhar Yadav (Cr. Appeal (DB) No. 1398 of 2010) too shared the common intention to cause death of the deceased, as they have not facilitated the offence in any manner. There is no evidence to show their participation in the crime and as such we set aside the judgment of conviction and order of sentence passed against appellants, namely, Ram Binay Yadav and Ramadhar



Yadav (Cr. Appeal (DB) No. 1398 of 2010) and acquit them of the charges levelled against them. As the appellants, namely, Ram Binay Yadav and Ramadhar Yadav (Cr. Appeal (DB) No. 1398 of 2010) are already on bail, they are discharged from the liabilities of their bail bonds.

20. However, the alternative arguments of the appellants, namely, Sanjay Yadav (Cr. Appeal (DB) No. 53 of 2011) and Darogi Yadav (Cr. Appeal (DB) No. 1398 of 2010) that the case at most would fall under Exception 4 of Section 300 require due consideration. As per the prosecution case, we find that the offence took place on account of land dispute. Both the parties were claiming ownership of the land, in question. Both the parties have produced sale deeds in respect of their claim that they are the rightful owners of the land. We further find that a sudden quarrel took place over irrigation of the land and in heat of moment two of the accused fired once each, causing injury on the person of the deceased. As such, we are of the considered view that the case of the appellants, namely, Sanjay Yadav (Cr. Appeal (DB) No. 53 of 2011) and Darogi Yadav (Cr. Appeal (DB) No. 1398 of 2010) would come within the purview of Exception 4 of Section 300 of the Indian Penal Code, which is quoted herein below:

Exception 4- Culpable homicide is not murder if it is



committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

21. We, accordingly, alter their conviction from one under Section 302/34 of the Indian Penal Code to under Section 300 Part-II of the Indian Penal Code and reduce their sentence to R.I. for 10 years from life imprisonment along with fine of Rs. 5,000/-. The conviction and sentence passed under Section 27 of the Arms Act is upheld. However, both the sentences are directed to run concurrently.

22. Cr. Appeal (DB) No. 1398 of 2010 is allowed as against appellants Ram Binay Yadav and Ramadhar Yadav, and dismissed against Darogi Yadav with aforesaid modification in conviction and sentence. Cr. Appeal (DB) No. 53 of 2011 is too dismissed with modification in conviction and sentence.

(Samarendra Pratap Singh, J.)

(Arun Kumar, J.)

Uday/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29.03.2017
Transmission Date	29.03.2017

