

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.146 of 2013

Arising Out of PS.Case No. -125 Year- 2009 Thana -BIHARIGANJ District-Madhepura

Shashi Yadav Son Of Taula Yadav Resident Of Village - Rajgunj, P.O. And P.S. - Biharigunj, District - Madhepura

..... Appellant/s
Versus
The State Of Bihar
..... Respondent/s
with

Criminal Appeal (DB) No. 25 of 2013

Arising Out of PS.Case No. -125 Year- 2009 Thana -Bihariganj District-Madhepura

Gulabchand Yadav S/O Sukhdeo Yadav Resident Of Village- Rajganj, P.S- Bihariganj, District- Madhepura.

..... Appellant/s
Versus
The State Of Bihar
..... Respondent/s
with

Criminal Appeal (DB) No. 35 of 2013

Arising Out of PS.Case No. -125 Year- 2009 Thana -Bihariganj District- Madhepura

1. Shashi Yadav S/O Janardan Yadav Resident Of Village- Sahuria, P.S.- Janki Nagar, District- Purnea
2. Rajeet Yadav S/O Kishan Yadav Resident Of Village- Sahuria, P.S.- Janki Nagar, District- Purnea

..... Appellant/s
Versus
The State Of Bihar
..... Respondent/s

Appearance :
(In CR. APP (DB) No. 146 of 2013)
For the Appellant/s : Mr. Ajay Kumar Thakur
Mr. Pawan Kumar
For the State : Mr. S.N. Prasad, APP
(In CR. APP (DB) No. 25 of 2013)
For the Appellant/s : Mr. Rana Pratap Singh
Mr. Rajeev Ranjan



For the State : Mr. Ajay Mishra, APP

(In CR. APP (DB) No. 35 of 2013)

For the Appellant/s : Mr. Durgesh Kumar

For the State : Mr. M.N. Jha, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

and

HONOURABLE MR. JUSTICE SANJAY KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SANJAY KUMAR)

Date: 02 -03-2017

1. These three appeals are cognate as they arise out of S.T. No. 107 of 2010. By the judgment of conviction dated 12.12.2012, passed by the learned Additional Sessions Judge, Ah hoc-II, Madhepura, the appellant Shashi Yadav, son of Taula Yadav of Cr. Appeal (DB) 146 of 2013 was held guilty under section 302 IPC as well as section 27 of the Arms Act whereas the appellants of Cr. Appeal (DB) No. 25 of 2013 and Cr. Appeal (DB) No. 35 of 2013 were held guilty under section 302/34 IPC as well as section 27 of the Arms Act. By an order of sentence dated 18.12.2012, the appellant of Cr. Appeal (DB) No. 146 of 2013 was sentenced to undergo R.I. for life under section 302 IPC and R.I., for 05 years with fine having default clause under section 27 of the Arms Act. The rest of the appellants in Cr. Appeal (DB) No. 25 of 2013 and Cr. Appeal (DB) No. 35 of 2013 were sentenced to undergo R.I. for life under section 302 and 34 IPC and R.I. for 05 years with fine having default clause under section 27 of the Arms Act.

2. P.W.7 Veena Devi, widow of Late Naresh Prasad Yadav, presented a written report signed by her before the SHO,



Bihariganj police station, alleging that on the night of 04.11.2009 at about 9.00 P.M. she along with her family members and other guest which includes the prosecution witnesses were talking with each other at her house. The guest had arrived as a fair was organized at her village on the occasion of Kartik Purnima. In the meantime, Pramod Kumar (deceased) went outside at the door to urinate. After urinating, as soon as he tried to return back, 10-15 culprits armed with lethal weapons, surrounded the deceased which caused some noise (**Shorghul**) which attracted her attention. She went to the Darwaza and peeped through the door and saw that the appellant Shashi Yadav (appellant of Cr. Appeal No. 146 of 2013) fired shot at the deceased. At that time, P.W.3 Lalan Yadav (brother of the deceased) and P.W. 1 Pampal Kumar (cousin of the deceased) were also with her and they saw the co-accuseds Mantu Yadav, Virendra Yadav, Kishan Yadav, Ranjeet Yadav (one of the appellants of Cr. Appeal No.35 of 2013), Janardhan Yadav, Shashi Yadav (another appellant of Cr. Appeal No. 35 of 2013) and Arun Yadav fleeing from the door of the informant. The informant further alleges that she herself saw the accused Taula Yadav Dayanand Yadav, Uday Shankar Yadav Santosh Yadav amongst the culprits. Seeing that the job has been done, they all fled away therefrom. The written report was submitted by her on 05.11.2009 which gave rise to a formal FIR.



3. The Investigating Officer (P.W. 9) took up investigation and prepared the inquest report (Ext. 3) of the dead body and dispatched the same for autopsy. After concluding investigation, he submitted chargesheet against the appellants, whereon, cognizance of the offence was taken and the case was committed to the Court of Sessions Judge. On transfer, the case came on the file of Additional Sessions Judge, Adhoc Court-II for trial where charges were framed under the relevant sections on 19.01.2011, which was read and explained to the appellants / accuseds to which they pleaded not guilty. Hence the trial.

4. In order to prove the charges, the prosecution examined nine witnesses. P.W.7 (Veena Devi) is the informant of this case and P.W. 2(Manjesh Kumar) is her son. Both have claimed to be eye-witnesses to the occurrence. P.W. 1 Pampal Kumar @ Pampal Kumar Yadav, P.W. 3 Lalan Kumar Yadav, P.W.4 Ratan Kumar Yadav, P.W. 5 Uday Yadav and P.W. 6 Randhir Kumar Yadav have been examined on the point of manner of occurrence. They all, except P.W. 4 have claimed to be eye-witnesses to the occurrence. P.W. 8 Dr. Akhilesh Kumar is the Doctor who held autopsy on the cadaver and submitted the post mortem report (Ext. 2). P.W. 9 Pankaj Kumar Sigh is the Investigating Officer who conducted investigation and finding the accusations true led the chargesheet. After conclusion of the evidence the statement of the



accuseds under Section 313 (1) of the Cr.P.C. was recorded wherein they abjured the guilt. Besides the oral evidence the prosecution also brought on record the post mortem report (Ext. 2), inquest report (Ext. 3), written report (Ext. 1), F.I.R. of Bihariganj P.S. Case No. 20/1992 (Ext. 6) and certified copy of the chargesheet of P.S. Case No. 36/1992 (Ext. 7). The defence side also produced documents related to some criminal cases in order to show enmity of the appellant with the informant. The trial court on close scrutiny and evaluation of the evidence produced at the trial found the charges having been proved beyond shadow of reasonable doubt against the appellants and held them guilty as stated above.

5. We have heard Sri Ajay Kumar Thakur, Sri Rana Pratap Singh and Mr. Durgesh Kumar for the appellants and Mr. S.N.Prasad, Mr. Ajay Mishra and Mr. M.N. Jha, learned APPs for the State. Mr. Thakur made the leading argument on behalf of the appellant (s).

6. The judgment of conviction recorded by the learned trial court has been criticized by the appellants on diverse counts. The learned counsel for the appellants submitted that all the appellants have been implicated by the informant only on account of prevailing enmity going on between the parties. The appellants of Appeals No. 146 of 2013 and 25 of 2013 are on inimical term



for land dispute. The appellants of Criminal Appeal No. 35 of 2013 are residents of village Pakilpar which situates at a distance of about 10-15 kilometers from the place of occurrence (village Rajganj). All the witnesses except the informant and her son are residents of village Pakilpar. They are closely related to the informant. The maternal grandfather of the husband of informant was resident of village Pakilpar and the witnesses are descendant and agnates of the maternal grandfather of the husband of informant. All the witnesses are on inimical term with the appellants. The informant had enmity with her Patidar and several criminal cases were going on between them.

7. Another contention of learned counsel for the appellants is that neither the informant nor any of the witness is an eye-witness to the occurrence. None of them had actually seen the occurrence. The prosecution has further failed to prove the place of occurrence. The deceased was killed by someone else and the informant in collusion with the cognates of her husband who are also witnesses of this case has lodged the case against the appellants who are her enemy as well as enemies of the witnesses. The F.I.R. has been lodged after much delay. The F.I.R. was formally registered on 05.11.2009 at about 9.00 A.M., but it was withheld on the following day and it reached to the court of C.J.M. on 07.11.2009. There are several material contradictions in the



statement of witnesses given before police under Section 161 of the Cr.P.C. as well as before the trial court. The manner of occurrence as projected by the prosecution becomes doubtful in view of the fact that not a single witness has been examined from the village of the place of occurrence. The court below has not appreciated the material contradictions in the evidence of witnesses who are partisan to the informant. The judgment of conviction is not sustainable in the eyes of law and is fit to be set aside.

8. In contra, the learned APPs for the State supported the impugned judgment and conviction. They have submitted that the prosecution has proved the case by convincing and reliable evidence. They all are the eye-witnesses to the occurrence and they had occasion to see the appellants while committing the crime. The prosecution has further proved the place of occurrence which is the door of the residential premises of the informant. All the witnesses were present in the 'Aagan' of the informant and hearing the sound of hot-talk between the appellants and the deceased, they immediately came out from the Aagan and saw the deceased surrounded by the appellants who committed murder of the deceased in the manner as stated by the witnesses. The prosecution has proved the case against all the appellants beyond reasonable doubt and so the appeal has no merit.

9. We shall now examine the evidence of prosecution



witnesses to find out as to whether their evidences are reliable and convincing to prove the guilt of appellants / accused persons.

10. The death of the deceased by gun shot injury is not in dispute. The Doctor (P.W. 8) in his evidence has stated that he conducted autopsy on the dead body of Pramod Yadav (aged 23 years) on 05.11.2009 at 10.30 A.M. and found the following injuries on the person of the deceased:-

“External

- (i) Firearm bullet entry wound 1 1/2 inch x 1 1/2 inch x deep up-to the exit wound present over left side of skull, circular in shape, margin-inverted, blackening and tattooing mark present around entry wound which shows close discharge within six inch.
- (ii) Firearm bullet exit wound 2 inch x 2 inch x deep to entry wound present over right temple. Lacerated type margin-inverted.

On Dissection

- 1. Laceration and haemorrhage of brain tissue making those sides of skull and entry and exit wound.

Cause of Death

Shock and hemorrhage due to firearm bullet injury

Time elapsed since death – in between 12 to 16 hours.”

11. The post mortem report has been marked as Ext. 2. P.W. 9 is the investigating officer who inspected the place of occurrence and prepared inquest report which has been marked as Ext. 3. The inquest was prepared on the same day i.e. 05.11.2009



at 6.30 A.M. As per the written report and evidence of prosecution witnesses, the occurrence took place at about 9 P.M. So, from the evidence of Doctor, it is established that the death of deceased took place at around 9 P.M. of 04.11.2009 by the firearm injury.

12. Now, we shall proceed to scan the evidence of prosecution witnesses to see as to whether the prosecution has been able to prove the case against the appellant beyond shadow of reasonable doubt.

13. The witnesses P.W. 7 (informant) and her son P.W. 2 (Manjesh Kumar) are residents of village Rajganj. Both of them have stated that in the evening of 04.11.2009, they were in their Aagan. Besides them the deceased Pramod Yadav and P.Ws. 1, 3, 4, 5 and 6 were also present and they were gossiping amongst themselves. Out of them, deceased Pramod Yadav went at the Darwaja of the informant to urinate. After few minutes, the informant and the witnesses present in the Aagan heard noise (shorgul). They came out at the Darwaja and saw the deceased surrounded by the 13-14 persons who were armed with firearm and other weapons. Out of them, Shashi Yadav son of Taula Yadav shot at the temple of the deceased. The deceased in course of running towards the Aagan, fell down in the lane. These witnesses have further stated that they carried the injured to the clinic of Dr. Binod Kumar where he was declared brought dead.



14. The witnesses P.Ws. 1, 3, 5 and 6 are residents of village Pakilpar. They have stated that on the relevant evening they had visited the village of informant to attend a Mela which was organized adjacent to the residence of the informant at a distance of about half kilometer. After visiting Mela they came and stayed in the house of the informant in the night. All the witnesses have stated that P.W. 4 Ratan Kumar (brother of the deceased) was also present in the Aagan at the time of occurrence with them and had seen the occurrence.

15. We have carefully gone through the evidence of all the witnesses. We find that P.W. 4 in his evidence has specifically stated that on the date of occurrence he was at his village Pakilpar where he got the information about the occurrence through telephone. After 4-5 days, the police had visited at his village home and they had asked about the addresses of the accused persons. This witness is full brother of the deceased and in cross-examination he has stated that he had not visited the house of the informant or her village to see the mela. As against this, P.W. 6 at paragraph-8 has stated that at the time of causing firearm injury this P.W.4 Ratan Yadav was also present with him at the Darwaja of the Aagan. He has further stated that the witnesses Pampal Yadav, Uday Yadav, Lalan Yadav, Pramod Yadav, Veena Devi and her son were in the Aagan. At paragraph-9, he has stated that



he had not given any statement before police and he for the first time has deposed in the Court. We further find that this witness at paragraph-13 of his cross-examination has refused to identify Tola Yadav and his son Shashi Yadav who is the main assailant.

16. P.W. 3 Lalan Yadav @ Lalan Kumar Yadav is another full brother of the deceased as also P.W. 4 (Ratan Kumar Yadav). At paragraph-1 he has stated that his brother Ratan Yadav (P.W.4) was also present at the time of occurrence. This statement contradicts the statement of P.W. 4 as regards his presence at the place of occurrence. He has further stated that his brother Pramod Yadav was surrounded by 10-15 miscreants and appellant, Shashi Yadav son of Taula Yadav caused firearm injury on account of which Pramod Yadav fell down and thereafter, they escaped from the place of occurrence. His evidence contradicts the evidence of P.Ws. 1, 2 and 3, who have stated that after sustaining firearm injury the injured seen towards the Aagan, but subsequently fell down in the Gali. The Investigating Officer (P.W. 9) in his evidence has described about the place of occurrence. He inspected the place of occurrence as also the Aagan of the informant. The house of the informant is facing east and there is a Sahan on front side. The said Sahan is fenced by a chachri. He has further stated that the person who while entering into the house of the informant will have to enter from the northern side to go to Southern portion.



There is a Baithaka towards the east adjoining north to the said passage. The informant has got a room in the Aagan. The accused persons allegedly caused firearm injury to the deceased in the said Gali. In the evidence of P.W.1 at paragraph-9, P.W. 2 at paragraph-8, P.W.3 at paragraph-11, P.W. 5 at paragraph-16 and P.W. 7 at paragraph-16 it has come that the Aagan of the informant is surrounded by fencing having height of about six feet and there is no visibility of outside from the Aagan of informant.

17. The contention of learned counsel for the appellants is that the Gali which is said to be the place of occurrence is not visible from the Aagan and so it was not possible for the witnesses to see the appellants from the said Aagan. It is further stated that after the occurrence, a large number of people including Chaukidar had assembled at the place of occurrence, but not a single villager / neighbour or the Chaukidar has been examined by the prosecution. The police station situates at a distance of about two kilometers from the place of occurrence. In the evidence of the Investigating Officer, we find that the Investigating Officer was on patrolling duty and on getting information about occurrence at about 12 P.M. he reached at the place of the occurrence. He did not find any source of light there to early on investigation. On the following morning, at about 6 A.M. he revisited the place of occurrence where the informant gave a written report containing the facts as



regards manner of occurrence committed by the appellants / accused persons. This written report is undated and it does not disclose the date of occurrence. This written report surprisingly contains the name of five witnesses at the bottom without disclosing their role or relevancy in the body of the written report. The informant P.W. 7 at paragraph-22 has stated that the written report of this case was got written by one Bhupendra Yadav who happens to be brother in law of the deceased. The said Bhupendra Yadav has not put his signature as scribe. None of the witnesses examined in this case has stated about his presence at the date of occurrence or even subsequent to the occurrence. The Police in course of investigation has also not recorded his statement. The inquest report Ext. 3 bears signature of Manjesh Kumar P.W. 1 and his brother Sandip Yadav. The witnesses other than the informant and her son claims to be present at the place of occurrence at the time of occurrence and also on the following day. They allegedly accompanied the injured to the clinic of Dr. Binod Kumar. But none of the witnesses either put their signature on written report or inquest report which creates doubt as regards their presence at the place of occurrence at the time of occurrence. Not only this, the P.W. 3 at paragraph-11 has stated that on the information of Uday Kumar P.W.5, the S.H.O. of Bihariganj Police Station had visited at the clinic of Dr. Binod Kumar to whom they shown the injuries



of the deceased. But the Investigating Officer in his evidence says that on getting information about murder at 12.30 midnight, he visited at the place of occurrence i.e. house of the informant where he found that situation of chaos was prevailing there and there was no light. The informant gave him a written report in the morning. Thus the evidence of P.W. 5 does not appear to be trustworthy.

18. The appellants have filed Ext. G and A to show that the informant is at inimical term with the appellants and she cannot be believed as she does not speak truth. She had lodged Bihariganj P.S. Case No. 167 of 2008 against the appellant Shashi Yadav, S/o Taula Yadav and also against her two step Dewars. The informant and her son Mitu Kumar have put their signature on the Fardbeyan. The informant is an accused in Madhepura P.S. Case No. 96 / 96 (Ext. A) registered for the offence under Section 304-B of the Indian Penal Code. Ext. B and C are chargesheet and the charges which were framed against her and two others. But the informant P.W. 7 at paragraph-10 has denied about institution of any case against her for the offence under Section 304-B of the Indian Penal Code. Her son P.W. 2 at paragraph-15 of his evidence has also denied about the institution of Bihariganj P.S. Case No. 96/96 against his mother (informant) P.W. 7 informant in her cross-examination at paragraph-8 has denied that her husband was an accused in case registered for the murder of her father-in-law. She



has at paragraph-9 of her evidence has admitted that accused Uday Yadav and Santosh Yadav (named in F.I.R. but investigation is pending) are her own step Dewars. P.W. 6 at paragraph-7 has admitted that one of the F.I.R. named accuseds Birendra Yadav (not before this Court) of this case had lodged Murliganj P.S. Case No. 133 of 2008 against him and his four brothers. P.W. 4 at paragraph-3 has admitted that the father of one of the named accused of this case (Ranjit Yadav) had lodged Jankinagar P.S. Case No. 131 of 2008 against his uncle and family members.

19. Thus, we find that all the witnesses examined on behalf of prosecution are close relatives of the informant who are resident of different village situating at a distance of about 10 kms. They have axe to grind against the appellants. In cross-examination practically all have admitted enmity with the appellants/accuseds. They do not appear to be trustworthy as there are much contradiction on the point of manner of occurrence. Their presence at the place of occurrence being eye-witnesses to the occurrence also appears to be very doubtful. On the strength of the evidence on record we also find that immediately after the occurrence when the deceased was examined and declared dead the police had visited the clinic of the doctor (vide paragraph 11 of P.W.3) but the case was not stated and registered. On the following day a pre-written report was presented to the Investigating Officer.



20. Therefore, in view of discussions made above we find that the prosecution has failed to prove the charges against all the appellants beyond shadow of doubt. The impugned judgment and order of sentences are set aside and appeals are allowed. The appellants be set at liberty if not required in any other case.

(Sanjay Kumar, J)

I agree

(Kishore Kumar Mandal, J)

ajaypd./-

AFR/NAFR	NAFR
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