

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.532 of 2015

Against judgment of conviction dated 25.5.2015 and order of sentence dated, 29.5.2015, passed in Sessions Trial Case No.862 of 2008/Sessions Trial Case No. 358 of 2010.

1. Pankaj Yadav S/o Mahendra Yadav
 2. Sunil Yadav son of Ram Yadav
 3. Pravesh @ Prabhash Yadav S/o Bishundeo Yadav All resident of village-Harpur, P.S.- Harpur, District- Munger Appellants
- Versus

The State of Bihar Respondent

Appearance :

For the Appellants : Mr. Surendra Singh, Senior Advocate and
Mr. Akhileshwar Prasad Singh, Senior Advocate
For the State : Mr. Satya Narain Prasad, APP
For the Informant : Mr. Sayed Sabir Alam, Advocate

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 10-01-2018

The appellants have assailed the judgment of conviction dated 25.5.2015, passed in Sessions Trial Case No.862 of 2008/Sessions Trial Case No. 358 of 2010, whereby the learned trial court held appellants no.1 and 2 guilty under sections 302/34 of the Indian Penal Code (herein after referred to as 'the IPC'), whereas appellant no.3 was held guilty under section 302 IPC and section 27(1) of the Arms Act, 1959 (herein after referred to as 'the Arms Act'). Vide order dated 29.5.2015 all the three appellants have been sentenced to undergo life imprisonment and a fine of Rs.5000/- each and in default of fine six months SI to each. Further, appellant no.3 has been sentenced to undergo three years RI for offence under the Arms Act and a fine of Rs.1000/- and in default of paying the fine,



one month SI. For the sake of convenience, appellant Pankaj Yadav, Sunil Yadav and Pravesh @ Prabhash Yadav hereinafter shall be referred as the A-1, A-2 and A-3 respectively.

2. Occurrence had taken place on 5.2.2008 at 7 AM. The informant Lalbahadur Yadav (PW 4), who is brother of the deceased lodged the *fardbeyan* (exhibit 1) when PW 9, Sub-inspector of police, reached the spot. The *fardbeyan* was recorded at 8.30 AM by Dina Nath Yadav PW 9. Son of the deceased had eloped with daughter of co-accused TuntunYadav (since absconding). On the relevant date, PW 4 had gone to attend call of nature. Earlier to him, the deceased had gone to Bahiyar to ease himself. Co-accused Mahadev Yadav and Tuntun Yadav (both absconding) reached him. Co-accused Mahadev Yadav fired at the informant which however did not hit him. The brother of the informant Om Prakash Yadav who had also gone to the field to ease was returning. The appellants caught hold of the deceased. He was surrounded by 10 accused persons including A-1, A-2 and A-3. A-3 placed *Katta* (country made pistol) behind his right ear and fired resultantly he dropped dead. The police immediately reached the place of occurrence and the *fardbeyan* was recorded. After conducting the inquest proceeding on the cadaver the dead body was sent for autopsy. Dr. R. P. Singh, PW 6 held the post mortem examination and proved the post mortem report (exhibit 3). On conclusion of investigation, charge sheet was filed which culminated into the present trial on the file of the learned Additional Sessions



Judge II, Munger.

3. At the trial, prosecution examined nine witnesses. PW 2 Meena Devi, PW 4 Lal Bahadur Yadav @ Tripurari (the informant) and PW 7 Amarnath Kumar, who is the brother-in-law of the informant, have testified as eye witness to the occurrence. PW 3 Abhiram Yadav soon reached the place of occurrence where the informant disclosed the manner in which the incident had occurred. PW 5 Bhagirath Yadav has turned hostile. PW 6 Dr. Ramprit Singh is the autopsy surgeon. PW 8 Gautam Kumar is the second I.O. who took over the investigation on 19.7.2008. PW 9 Dinanath Yadav is the I.O. who had recorded the *fardebayan* and conducted the investigation, until it was made over to PW 8 for filing charge sheet. The defence examined two DWs and produced exhibit A which is the order of the cognizance, passed in Complaint case no. 514 of 2006.

4. The leaned trial court, on appraisal of the evidence, found the evidence of PW 4 (the informant), PW 2, PW 3 and PW 7 trustworthy which found support from the medical evidence and convicted the appellants negating their defence of false implication and the probability of the deceased having been killed by unknown accused persons.

5. Heard Mr. Surendra Singh, senior counsel assisted by Mr. Akhileshwar Prasad Singh for the appellants, Mr. Sayed Sabir Alam, counsel for the informant and Mr. Satya Narain Prasad, Additional



Public Prosecutor for the State.

6. It has been urged on behalf of the appellants that the evidence of PWs. 2, 4 and 7 suffer from serious inner contradictions. PW 4, the informant has narrated a different manner of occurrence not compatible with the medical evidence. Depositions of PWs. 2 and 7 contain material contradiction from what they stated before the I.O. during the investigation. Their evidence do not inspire confidence. If the evidence of PWs 2 and 7 are excluded, then it becomes a case of solitary evidence of PW 4. In this regard, learned counsel highlighted the relevance of CD statement and relied on the case of **V. K. Mishra and another Vs. State of Uttarakhand and another**, reported in **AIR 2015 SC 3043; para 15**. Counsel for the appellants would also urge that evidence on record indicates that the bad blood was prevailing from before between the parties. In such a case, there is general tendency to rope in the innocent persons falsely. To buttress the said legal proposition reliance is placed on a decision in case of **Budhwa alias Ramcharan and others Vs. State of Madhya Pradesh**, reported in **AIR 1991 SC 4; para 4**. He would further submit that PWs 1 and 3 allegedly gathered information from the informant PW 4 which shall be hit by rule of hearsay as PW 4 has not said so in court. On the strength of the aforesaid submissions, it has been contended that the prosecution case, as projected at the trial, has not been proved beyond the shadow of reasonable doubt and the appeal deserves to be allowed.



7. Mr. Alam, learned counsel for the informant, combating the submissions of the appellants, submits that the evidence of P Ws. 2, 4 and 7 suffers only from minor omissions which is natural. The consistent case of the prosecution spelt out by PWs. 2, 4 and 7, is that only two firings were made by the accused persons. Firstly, a fire was shot at the informant by co-accused Mahadev Yadav which, however, did not hit him, whereafter all the accused persons including A-1 and A-2, caught hold of the victim, and A-3 fired at the deceased behind the right ear from a close range which resulted in his death. Referring to the post mortem report (exhibit 4) and the evidence of the doctor (PW 6) he would urge that the objective findings of the doctor completely align with the prosecution case narrated by these witnesses. The evidence of PW 3 lends required credence to the prosecution case where he deposed that on hearing the firing, he had reached the place of occurrence immediately and found PW 2 (widow of the deceased) and PW 4 (the informant) present near the dead body. PW 4 disclosed to him about the assault by fire arms made by A-3. Referring to Section 6 of the Evidence Act, it has been urged that such immediate disclosure, without loss of time completely rules out a chance of fabrication of a false case sparing the real culprits.

8. Before dealing with the rival contentions of the parties, the Court would first notice the objective findings of the doctor (PW 6). The doctor, in the post mortem report (exhibit 3) found the following ante mortem injury on the dead body:-



“Wound of entry $\frac{1}{2}$ ” x $\frac{1}{2}$ ” at upper lateral part of right neck below ear. On dissection, a bullet was recovered from left upper neck below and behind left ear neck, vessels of neck was injured.”

According to him, the death had occurred within 36 hours owing to the above injury caused by fire arms. He had conducted the autopsy on 6.2.2008 at 10.10 AM.

9. On going through the evidence of the doctor (PW 6), which has not been questioned before us, we find that the death was homicidal in nature caused by fire arms, The findings of the doctor overwhelmingly supports the prosecution case that the deceased was shot from a very close range.

10. Submission of the counsel for the appellants centers around the evidence of the informant, PW 4. Referring to the examination-in-chief of PW 4 it is submitted that this witness has claimed to have seen the firing by co-accused Mahadeo Yadav, Tuntun Yadav (since absconding), Pankaj Yadav (A-1) and Sunil Yadav (A-2). It is pointed out from paragraph 5 of his deposition that this witness was on the run when the second firing was made at the victim. He had no opportunity to see who actually fired. Counsel for the informant placed his entire examination-in-chief and submits that the informant had stated about the accused taking the victim in the circle by other co-accused but the allegation of firing was attributed only to A-3. We have carefully perused the evidence of PW 4. He stated about firing at the deceased by A-3. If he intended



to say that others also fired, then he could have plainly said that all accuseds including A-3 had fired from their respective weapons. The Court entertains no iota of doubt that PW 4 stated only about firing at the deceased by A-3 in the manner the allegation was set out by him in the first version of the case. There is nothing questionable in his evidence.

11. PW 2 is widow of the deceased. She has testified as an eye witness and supported the prosecution case as narrated by the informant (PW 4). She being a rustic lady has put her thumb impression on her deposition. Her evidence has been criticized referring to the evidence of the I.O. (PW 9), wherein she did not claim herself as an eye witness during investigation. On adverting to the evidence of the I.O. (PW 9) it is found that there was no cross-examination by the defence with reference to the previous case diary statement made by PW 2 before the I.O. Her presence at the place of occurrence soon after the incident is well established from the evidence on record. PW 7 while revealing the prosecution case has said about the presence of PW 2 at the spot. His C.D. statement like that of PW 4 (informant) and PW 2 (widow of the deceased) was recorded by the I.O. (PW 9) on the spot. The defence failed to discredit her evidence, except suggesting to her that she was deposing falsely.

12. PW 7 Amarnath Kumar is the brother-in-law of the informant. He has projected himself as an eye witness and narrated



the case unfolded in the *fardbeyan* and deposed in the court by the informant (PW 4). His CD statement was recorded by the I.O. on the date of occurrence itself. He is also witness to the recording of the FIR which was lodged at the place of occurrence within 1 ½ hours of the incident. The defence has criticized the evidence PW 7 referring to his statement made at page 29 of the brief and the statement of PW 9 (I.O.) at paragraph 8. It appears that PW 7 although reached the place of occurrence immediately after the incident but he had not claimed himself as an eye witness to the occurrence. Even if the ocular account of the occurrence stated by PW 7 is held unbelievable but his presence at the place of occurrence soon after the incident is well established. As noted, he is an attesting witness to the *fardbeyan* which was recorded without loss of time at the spot by the I.O. (PW 9). His evidence establishes presence of the informant and PW 2 at the site of the incident as also immediate disclosure of the entire manner of occurrence and the complicity of the appellants in the crime. Such disclosure to him by none else than the informant is a relevant consideration in appreciating the evidence on record on the touch stone of probability. We are mindful that the incident had occurred in the winter morning when presence of villagers around the place of occurrence, which is Bahiyar, is not expected.

13. The defence has similarly criticized the evidence of PW 2 stating that she has not claimed herself as an eye witness to the



incident. In this connection, our attention was drawn to the evidence of the I.O. at page 55 of the brief. On going through the relevant evidence of PW 2 read with evidence of the I.O. (PW 9), the Court finds it difficult to sustain the contention of the appellants that this witness had stated entirely different to what was deposed by her in Court. Her CD statement was recorded at the spot on the same day. PW 7 has stated about presence of two persons at the spot when he reached the place of occurrence. In the considered view of the court the evidence of PW 2 supports the prosecution case substantially. Even accepting the contention of the appellants that the evidence of PWs 1 and 3 is hit by rule of hearsay, as the informant (PW 4) has not stated about their presence at the spot, in the light of legal principle as also the proposition of law spelled out in the case of **Yasin Gulam Haider Vs. State of Maharashtra**, reported in the **AIR 1980 SC 878**, , the evidence of PWs 2, 4 and 7 conclusively prove participation of the appellants in the crime as disclosed in the *fardebayan* and in the evidence of PW 4 (the informant) in the court.

14. It has been argued with much emphasis that PW 4 remains the solitary eye witness of the occurrence and his evidence is contradicted by the medical evidence. The Court is unable to accept the said contention for the reason that the deposition of PW 4 (the informant) is well supported by the evidence of PW 2 and PW 7. The findings of the doctor in the post mortem report, (exhibit 3) convincingly prove the manner of assault inflicted on the deceased



by A-3 as stated by PW 4. The testimony of the witnesses referred to above also conclusively prove the presence and active participation of A-1 and A-2 in the crime.

15. The appellants defended their case by adducing oral evidence of DW 1 (Manish Bharti) and DW 2 (Dinesh Kumar Yadav). The plea of *alibi* was taken. On close perusal of their evidence it is difficult to accept their evidence for the reason that no documentary evidence in support of the defence spoken by them was brought on record. There is common experience that a plea of *alibi* is taken by the accuseds. It is easy to take such plea but difficult to prove the same so as to disbelieve the prosecution case supported by the evidence describing the oral account of the prosecution case which get support from the medical evidence. Exhibit A placed on record by the defence is also not much relevant so as to create a serious doubt on the prosecution case.

16. Much stress has been laid on the previous animosity between the parties. The son of the victim had a soft corner with the daughter of one of the accuseds (Tuntun Yadav), as he had married with the daughter of said Tuntun Yadav for which it appears the criminal litigation was also pending between them. It is settled rule of law that enmity cuts both ways. It may provide a basis for false implication but at the same time may be the reason for committing the offence. In face of the prosecution case well established by the oral evidence and supported by the post mortem report it is very



difficult for the Court to accept the contention of their (appellants) false implication by the prosecution.

17. The discussions of the relevant evidence and the conclusion drawn above lead to the conclusion that the prosecution has established the charge levelled against the appellants beyond pale of doubts. The judgment under challenge recorded by the trial court does not merit interference.

18. Resultantly, the appeal fails and is dismissed accordingly.

(Kishore Kumar Mandal, J)

(Madhuresh Prasad, J)

Shashi.

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