

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.210 of 1994

Arising Out of P.S. Case No. - Year- null Thana -null District- SIWAN

- =====
1. Ram Pravesh Yadav,
 2. Ramashray Yadav,
 3. Ramesh Yadav, All sons of Ramashish Yadav, residents of village Narendrapur,
P.S. Aandar, District-Siwan.

.... Appellants

Versus

The State of Bihar

.... Respondent

=====

Appearance :

For the Appellants : Mr. Ranbir Singh (Amicus Curiae)
For the Respondent : Mr. Dilip Kumar Sinha, APP
For the Informant : Mr. Kaushal Kishore Mishra, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

And

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 16-01-2018

The appellants have preferred this Criminal Appeal against the Judgment of conviction and sentence order dated 08.04.1994 passed by learned Addl. Sessions Judge-VI, Siwan in Sessions Trial No. 68 of 1992. The appellants No.1 and 2 have been convicted under Section 324 of the Indian Penal Code and sentence to undergo Rigorous Imprisonment for six months for the above stated offence. However, both the aforesaid appellants No. 1 and 2 were acquitted of the charges framed against them for the offence punishable under Section 302/34 of the I.P.C. The appellant No.3, namely, Ramesh Yadav has been convicted for the offence punishable under Section 302 and 324 of the I.P.C. and he



has been sentenced to undergo life imprisonment for the offence punishable under Section 302 of I.P.C. and sentenced to undergo R.I. for one year for the offence punishable under Section 324 of the I.P.C. Both the sentences were ordered to run concurrently. It is pertinent to note that one Ram Ashish Yadav has been acquitted of the charge framed against him.

2. It would appear from perusal of the lower Court record that deceased Ramadhar Yadav gave his fardbeyan on 22.01.1991, in injured condition, at Darbhanga Medical College Hospital, Darbhanga at about 8.00 A.M. before the A.S.I. Hira Singh (P.W.10) to this effect that on last Sunday (20.01.1991) at about 2.00 P.M., he got information that appellants and one Ram Ashish Yadav were uprooting mustered crop from his field and having got the aforesaid information, he went there and forbade them to do so. The aforesaid field was in his share. The aforesaid persons were pre-prepared and when he forbade them to do so, the aforesaid persons started assaulting him with Lathi, Chhura etc. He further stated that appellant No.3, namely, Ramesh Yadav gave Chhura blow causing injury on his chest and again repeated Chhura blow causing injury on his waist. He has further stated that having sustained above stated injuries he fell down on the ground and raised alarm, which attracted Ramayan Yadav, Bhagirathi Yadav, Parmanand Yadav and others of his village. He further stated that he was taken to Siwan Sadar Hospital from where he was referred to D.M.C.H, Darbhanga, where his treatment was going on. He also



stated that his elder brother Ram Autar Yadav (P.W.3) too sustained injuries. The fardbeyan of informant has been marked as Ext.1. It is pertinent to note here that the assertion of assault of elder brother of informant appears to have inserted in the fardbeyan after preparation of the said fardbeyan as it is evident from perusal of necked eye itself.

3. On the basis of fardbeyan of deceased Ramadhar Yadav, Ander P.S. Case No. 8 of 1991 was registered on 22.01.1991 and on the same day, formal F.I.R. was prepared for the offences punishable under Section 307 and two other minor sections of the Indian Penal Code.

4. The Investigating Officer took the charge of investigation. However, during pendency of investigation one of the injured died. After completion of the investigation, chargesheet has been submitted for the offences punishable under Section 302 and other minor sections of the I.P.C. The cognizance of the offences and commitment of the case were made in usual course and, accordingly, the appellants along with accused Ram Ashish Yadav were put on trial.

5. The appellant No. 3 was separately charged for the offence punishable under Section 302 of I.P.C., whereas remaining appellants along with accused Ram Ashish Yadav stood charged for the offence punishable under Section 302/34 of the I.P.C. The charges were read over to appellants and accused Ram Ashish Yadav to which they denied and claimed to be tried.



6. In course of trial, the prosecution examined, altogether, 11 witnesses and also got exhibited several documents. The statement of appellants and co-accused were recorded under Section 313 of Cr.P.C. in which they reiterated their innocence. However, appellant No.2 Ramashray Yadav, specifically, stated in his statement recorded under Section 313 of the Cr.P.C. that on the alleged date of occurrence he was not at his home, rather he had gone to the house of his relative.

7. The defence also examined one witness and exhibited some documents as documentary evidence.

8. The learned court below after considering and analyzing the evidences available on the record passed the impugned Judgment of conviction and sentence order in the manner as stated above.

9. The learned Amicus Curiae Sri Ranbir Singh appearing for appellants assailed the impugned Judgment of conviction and sentence order arguing that there was long delay in lodging the F.I.R. and the aforesaid delay has not been explained by the prosecution. He further submitted that there was case and counter case between the parties and, allegedly, persons from both sides sustained injuries. He further submitted that the defence lodged the case of Section 307 of the I.P.C. against the prosecution party on 20.01.1991 i.e. on the alleged date of occurrence itself and as a matter of fact, when prosecution party got knowledge about institution of the case against, the prosecution party got



manufactured the fardbeyan of deceased and instituted the present case, but the learned court below discarded the aforesaid fact only on imaginary ground.

10. He further submitted that P.W.2 admitted in his evidence that on the alleged date of occurrence, he had examined appellant Nos. 1, 3 and Ram Ashish Yadav and found injuries on their persons. He further submitted that although prosecution witnesses tried to suppress the aforesaid facts, but P.W.2 very clearly admitted regarding the injuries found on the person of above stated appellants and accused Ram Ashish Yadav. However, the learned court below completely failed to take note of this fact that the prosecution could not succeed to explain the injuries found on the person of above stated appellants and co-accused Ram Ashish Yadav. He further submitted that, even if, for the sake of argument, prosecution evidence is to be accepted as correct, then also the evidences available on the record go to show that a free fight had taken place between the parties in respect of mustered crop planted on filed over which both parties were claiming there right and title. He further submitted that the learned court below having discussed the evidences came to the conclusion that appellant No. 3 gave Chhura blows to deceased in spur of moment and the appellants as well as other accused had no pre meeting of mind but even then the court below convicted the appellant No.3 under Section 302 of the I.P.C. He further submitted that, at best, the appellant No.3 could have been convicted for the offence



punishable under Section 304(1) of the I.P.C.

11. He further submitted that in course of trial, prosecution witnesses came before the Court with a new story stating that the occurrence had taken place at two places and the deceased had sustained injuries near the field of one Hakim Sah and subsequently, when deceased was brought at his door, the appellants and other co-accused followed him and assaulted the other injured at the door of deceased, but the deceased in his fardbeyan had not stated regarding the second occurrence. It is also pointed out by him that the fardbeyan of P.W.4 Ram Chhabila Choudhary was recorded at DMCH, Darbhanga on 23.01.91, which is exhibited as Ext.5 and in the aforesaid fardbeyan also P.W.4 had not disclosed the story of second occurrence and, therefore, the prosecution failed to prove the charge leveled against the appellants No.1 and 2 beyond all shadow of reasonable doubts.

12. On the other hand, learned Addl. Public Prosecutor Sri Dilip Kumar Sinha appearing for the State supported the impugned Judgment of conviction and sentence order arguing that almost all the eye-witnesses have, consistently, supported the prosecution case and moreover, the injured witnesses P.W.3, namely, Ram Autar Yadav and P.W.5 Panna Devi also stated that the occurrence took place at two places during first phase of occurrence, deceased sustained injuries caused by appellant No.3, whereas in second phase of occurrence P.W.3 Ram Autar Yadav and P.W.5 Panna Devi sustained injuries, which was caused by



remaining appellants and other accused and, therefore, there is no ground to doubt about genuineness of the prosecution story.

13. Learned Addl. Public Prosecutor further submitted that no doubt, there was some delay in lodging the F.I.R, but as a matter of fact after the occurrence, deceased was taken to Sadar Hospital, Siwan from where he was referred to D.M.C.H, Darbhanga for better treatment and for the first time, the fardbeyan of the deceased was recorded at Darbhanga Medical College Hospital, Darbhanga, because prior to reaching the D.M.C.H, Darbhanga, deceased was not in a position to make statement and moreover the first priority of the prosecution party was to save the life of the deceased and not to register the case and, therefore, the circumstances itself explain the delay in lodging the First Information Report.

14. Having heard the contentions of both the parties, we went through the lower Court's record. As we have already stated that to prove its case prosecution examined, altogether, 11 witnesses. Out of them, P.W.3 Ram Autar Yadav, P.W.4 Ram Chhabila Chaudhary, P.W.5 Panna Devi and P.W.6 Kalawati Devi claimed themselves to be eye-witnesses of the alleged occurrence and P.W.3 and P.W.5, too, claimed themselves to be injured witnesses. P.W.1 Dukhharan Chaudhary is a formal witness, who has proved formal F.I.R. marked as Ext.1. P.W.2 Dr. Ajit Kumar Sinha, P.W.11 Dr. V.C.S. Verma are two Doctors. P.W.2 Dr. Ajit Kumar Sinha has proved injury report of deceased Ramadhar



Yadav as Ext.2, the injury report of P.W.3 Ram Autar Yadav as Ext.2/1 and the injury report of P.W.5 Panna Devi as Ext.2/2. Apart from this, on recall in his cross-examination, he proved the injury reports of Ramesh Choudhary, Ram Parvesh Choudhary and Ram Ashish Chaudhary as Ext. E, E/1 and E/2 respectively.

15. Firstly, we would like to refer the evidence of P.W.2 Dr. Ajit Kumar Sinha. This witness states that on 20.01.1991 being C.A.S, Sadar Hospital, Siwan examined Ramadhar Chaudhary at 4.55 P.M. and found the following injuries on his person:-

- (i) 1"X1/8"X1/8" sharp wound on right loin posterior.
- (ii) 1 1/2"X1/4"X connecting to cavity right to chest.

He opined that injury No.1 was simple in nature, whereas opinion regarding Injury No.2 was kept reserved as the deceased Ramadhar Yadav had already referred to DMCH, Darbhanga. He further opined that both the aforesaid injuries were caused by sharp cutting weapon such as Chhura and the age of injury was within 12 hours. Furthermore, P.W.2 states that on the same day at about 5 P.M. he examined injured Ram Autar Chaudhary (P.W.3) and found following injuries:

- (i) 2 1/2"X1/4"X1/4" sharp wound on right supra scapular region.
- (ii) 2"X1/4"X1/4" sharp wound over right shoulder.
- (iii) 1"X1/4"X1/4" sharp wound over right loin.
- (iv) 1 1/2"X1/4"X1" sharp wound over left upper



guardant of abdomen.

He opined that all the injuries were simple in nature caused by sharp pointed weapon like Chhura and Bhala. Furthermore, P.W.2 states that on the same day at about 5.30 P.M. he examined P.W.5 Panna Devi and found following injuries:

- (i) 1 ½"X1/8"X1/8" sharp wound over top of scalp.

The injury was simple in nature caused by sharp cutting weapon such as Bhala.

As we have earlier stated that on recall this witness was again cross-examined and proved the Ext. E series. This witness admitted at para 10 of his cross-examination that on 20.01.91 at 5.55 P.M. he examined Ramesh Choudhary (Appellant) and found following injuries:-

- (i) 1 1/2"X1/8"X1/8" lacerated wound over left temporal region.
- (ii) Superficial linear lacerated wound 4" in length over right thigh arterially.
- (iii) Superficial linear lacerated wound 1" in length over right chick.

In the opinion of this witness, the injuries found on the person of appellant Ramesh Choudhary were simple in nature and caused by hard and blunt substance such as blunt portion of Farsa.

He also admitted that on 4.50 P.M. of the same day he examined Ram Parvesh Choudhary and found following injuries:-

- (i) Swelling over upper chest 1 ½"X2".



(ii) Swelling 1 ½" X 1" on left inguinal region.

He opined that the injuries were found simple in nature caused by hard and blunt substance and again on the same day, he examined Ram Ashish Choudhary and found following injuries:-

(i) Lacerated wound 1 ½"X1/8"X1/8" on left temporal region.

(ii) Swelling 1 ½"X1" near angle of mandible in right side.

In the opinion of this witness, the injury No.1 was simple in nature and on the basis of the X-ray reports and plats, he opined that injury No.2 of Ram Ashish Choudhary was grievous in nature.

16. P.W.11 Dr. V.C.S. Verma proved the Post-mortem report of deceased as Ext.9. This witness stated that he did the Post-mortem examination on the corps of deceased Ramadhar Yadav on 23.01.91 and found the following injuries:

(i) One transversely situated 1" stitched wound on the right lower portion of the chest, 4" below right nipple. On removal of stitches the wound measured 1"X3/4X2" leading to abdominal cavity.

(ii) One transversely situated ½" long stitched wound on lower portion of the back near the lumbosacral area. On removal of the stitches the wound measured ½"X3/4X1 ½". The adjacent tissues were found infiltrated with blood.

This witness opined that injury No.1 of deceased was



grievous and dangerous to his life in ordinary course of nature and injury No.2 was simple in nature. This witness also opined that both the said injuries were caused by sharp cutting pointed weapon such as dagger. He also opined that death was caused due to hemorrhage, toxemia and shock.

17. The perusal of testimonies of P.W.2 and P.W.11, at least, this fact is established that on 20.01.91 deceased Ramadhar Yadav and other injured of this case had sustained injury and due to the injury sustained by Ramadhar Yadav, he died later on. No doubt, the fardbeyan of deceased was recorded on 22.01.91 and, thereafter, the case was registered on 27.01.1991, but, admittedly, prior to recording of the fardbeyan of deceased, he was examined by P.W.2 and, therefore, even if, there is delay in lodging the F.I.R., then, also the prosecution case cannot be doubted solely on the ground of delay in lodging the prosecution case.

18. As we have already held that deceased Ramadhar Yadav died of the injuries found by both the Doctors. Now, the question arises, who caused injury to deceased Ramadhar Yadav and in which manner deceased Ramadhar Yadav sustained injuries.

19. P.W.3 Ram Autar Yadav, P.W.4 Ram Chhabila Choudhary, P.W.5 Panna Devi and P.W.6 Kalawati Devi are the witnesses on the point of occurrence P.W.3 is brother of deceased Ramadhar Yadav and this witness states that while he was at his



door, a child of his village came and informed him regarding uprooting of mustered crop from his filed by the appellants and accused Ram Ashish Yadav and having got the aforesaid information, he along with P.W.4, P.W.5 and P.W.6 as well as deceased Ramadhar Yadav went to his filed and while they reached near the filed of Hakim Sah, the deceased forbade the appellants and other from uprooting the mustered crop from the filed, but the appellants and other accused came near them and appellant No.3 gave dagger blow on the chest of deceased Ramadhar Yadav and again repeated his blow of dagger causing injuries on the waist of deceased Ramadhar Yadav. This witness further stated that after the aforesaid occurrence, they took deceased Ramadhar Yadav at their door, but appellants and other accused, too, reached at his door and appellant No.3, namely, Ramesh Yadav gave dagger blow on his abdomen, whereas appellants Ram Parvesh Yadav and Ramashray Yadav gave Bhala blow to him causing injury on his right lumber and shoulder. He further stated that having sustained aforesaid injuries he fell down and, thereafter, accused Ram Ashish Yadav gave Basula blow causing injury on his right shoulder, whereas appellant Ramashray Yadav gave blow causing injury on the head of P.W.5 Panna Devi. The aforesaid occurrence was witnessed by Ramayan Yadav, Bhagirathi Yadav, Parmanand Yadav. It is pertinent to note here that the aforesaid witnesses had not been examined in this case. The attention of this witness was drawn towards his previous



statement recorded under Section 161 of Cr.P.C. and at para 13 of his cross-examination, this witness stated that he had not made statement before the Police that he as well as P.W.5 Panna Devi sustained injury while saving the deceased Ramadhar Yadav. At this juncture, we would like to refer the evidence of P.W.7 Braj Kishore Pandey, who had taken charge of investigation from previous Investigating Officer and recorded the statements of some prosecution witnesses. This witness at para 2 of his cross examination, specifically, stated that P.W.3 Ram Autar Yadav had not made statement before him to this effect that when deceased Ramadhar Yadav was brought to his door, he as well as P.W.5 Panna Devi sustained injury.

20. P.W.5 Panna Devi also narrates almost similar story as stated by P.W.4 Ram Chhabila Choudhary. This witness, too, stated that when deceased Ramadhar Yadav was brought at the door, the appellants and other accused came there and appellant Ramesh Yadav gave dagger blow on the abdomen of the deceased, whereas appellants Ram Parvesh and Ramashray had assaulted her husband by Bhala causing injury on abdomen and right shoulder. She also stated that accused Ram Ashish Yadav assaulted to her husband by means of Basula, whereas she was assaulted by appellant Ramashray Yadav as a result whereof she sustained injury on her eye. The attention of this witness was drawn towards her previous statement recorded under Section 161 of the Cr.P.C. and at para 9 of his cross-examination, she stated that she



had made statement before the Police that when deceased Ramadhar Yadav was brought at the door, he was again assaulted by the appellants and other accused and at the same time she as well as P.W.3 Ram Autar Yadav had also sustained injuries, but P.W.7 Braj Kishore Pandey at para 3 of his cross-examination accepted that P.W.5 had not made statement before him to this effect that when deceased Ramadhar Yadav was brought at the door, the appellants and other accused assaulted P.W.3 Ram Autar Yadav and P.W.5 Panna Devi as well as the deceased Ramadhar Yadav.

21. P.W.4 Ram Chhabila Choudhary also claimed himself to be an eye-witness of the alleged occurrence and narrated almost similar statement as made by P.W.3 and P.W.5. However, he further stated that after the occurrence, deceased Ramadhar Yadav was taken to Siwan Hospital from where, he was referred to DMCH, Darbhanga, where he was got admitted and the Police recorded the fardbeyan of deceased Ramadhar Yadav at DMCH, Darbhanga on 22.01.91 at 8.00 A.M., but unfortunately, deceased Ramadhar Yadav died on 22.01.91 at about 6.00 P.M. This witness also admitted that his statement was also recorded by the Police at Darbhanga and this witness proved his fardbeyan as Ext.3.

22. P.W.10 Hira Singh is an A.S.I. and at the relevant time he was posted at Benta O.P. This witness stated that on 22.01.91 at about 8.00 A.M. he had recorded the fardbeyan of



deceased Ramadhar Yadav. This witness proved his writing and signature, which have been marked as Ext. 3/1. This witness also stated that fardbeyan of deceased was read over to the deceased and having understood the contents of fardbeyan, he put his thumb impression on his fardbeyan and at the time of making statement deceased Ramadhar Yadav was in good mental health and he was able to understand the contents of fardbeyan.

23. P.W.9 Harendra Singh was another A.S.I of Benta O.P. and this witness stated that on 23.01.91 about 9.00 A.M. he recorded the fardbeyan of P.W.4, which have been already been marked as Ext.3.

24. After careful examination of the evidences of the aforesaid prosecution witnesses, it is obvious that neither deceased Ramadhar Yadav nor P.W.4 Ram Chhabila Choudhary had made reference of second occurrence in their respective fardbeyans and moreover, at para 9 of his cross-examination P.W.4 Ram Chhabila Choudhary, specifically, admitted that when deceased Ramadhar Yadav was brought at his door, he was alive and none had assaulted Ramadhar Yadav at his door. Therefore, it would appear from the aforesaid evidences that no occurrence had taken place at the door of deceased Ramadhar Yadav and, subsequently, the story of second occurrence was developed by prosecution in course of trial and, therefore, the second occurrence, which is said to have taken place at the door of deceased Ramadhar Yadav appears to be doubtful.



25. P.W.4 Ram Chhabila Choudhary has admitted at para 9 of his cross-examination that in first phase of occurrence, only appellant Ramesh Yadav had assaulted the deceased Ramadhar Yadav and, therefore, the participation of remaining appellants in assaulting the deceased becomes doubtful and, therefore, we are of the view that learned court below rightly acquitted the appellants except appellant Ramesh Yadav of the charge framed under Section 302/34 of the I.P.C. as the story of second phase of occurrence could not be proved by the prosecution beyond all shadow of reasonable doubts. Therefore, the learned court below ought to have acquitted the appellants No. 1 and 3 of the charges framed against them under Section 324 of I.P.C. and, accordingly, the conviction of appellants No. 1 and 3 for the offences punishable under Section 324 is, hereby, set aside.

26. It would appear from the evidences available on the record that the appellants brought the certified copy of Ander P.S. Case No. 7 of 1991 to show that on the alleged date of occurrence, it was prosecution party who assaulted the appellants for which aforesaid Ander P.S. Case No. 7 of 1991 was registered for the offences punishable under Section 307 and other minor sections of the I.P.C. The appellants also brought the injury reports of appellants as Ext. E series to show that they had sustained injuries in the occurrence for which Ander P.S. Case No. 7 of 1991 had been registered and in course of trial, the defence put specific questions to prosecution witnesses regarding the injuries sustained



by appellants, but prosecution witnesses flatly refused saying that they were not aware of this fact that the appellants had sustained any injuries on the alleged date of occurrence. Moreover, the aforesaid statements of prosecution witnesses is proved incorrect in view of the statement of P.W.2, who frankly admitted that on the date of examination of injured and deceased, he had examined the appellants of this case also and found certain injuries on their person. Though, the aforesaid injuries were superficial in nature, but at least this evidence has come on the record that there was a counter case and in the said counter case, some injuries were sustained by the appellants. It is admitted case of the prosecution that alleged occurrence took place on account of uprooting mustered crop from disputed field over which the prosecution party as well as appellants were claiming their right, title and possession and it is obvious from the perusal of the impugned judgment that taking note of the aforesaid fact, the learned trial court came to conclusion that appellant No.3 gave dagger blow to deceased in spur of moment and there was no pre meeting of mind between appellant No.3 as well as other appellants and accused. In our view, when the learned trial court came to a specific conclusion that the appellant No.3 gave dagger blows to deceased in spur of moment and there was no pre meeting of minds between the appellant No.3 and other appellants, the trial court ought to have not convicted the appellant Ramesh Yadav under Section 302 of I.P.C., particularly, taking note of the above stated facts and



circumstances and, at best, the appellant No.3 could have been convicted for the offence punishable under Section 304(1) of the I.P.C. because it is obvious from the evidences available on the record that a free fight took place between the parties and in that very fight, the appellant No.3 Ramesh Yadav gave dagger blows to deceased Ramadhar Yadav, who after two days of the alleged occurrence died in course of treatment. However, we would like to mention here that the prosecution could not succeeded to prove as to who had assaulted injured P.W.3 and P.W.5 beyond all shadow of reasonable doubts and, therefore, the appellant No.3 Ramesh Yadav could not be convicted for the offence punishable under Section 324 of the I.P.C.

27. On the basis of the aforesaid discussions, we are of the view that judgment of conviction and sentence order are liable to be modified and, accordingly, this appeal is partly allowed and the conviction of appellant No.3 Ramesh Yadav is converted into under Section 304 (1) of the Indian Penal Code, whereas appellant No.3 as well as remaining appellants are acquitted of the charges under Section 324 of the I.P.C. The appellant No.3 was an young chap of 18 years of age at the time of alleged occurrence and furthermore, the alleged occurrence took place due to land dispute, therefore, in our view, the five years rigorous imprisonment would meet the ends of justice instead of sending the appellant No.3 Ramesh Yadav to serve life imprisonment. Accordingly, the appellant No.3 Ramesh Yadav is convicted under Section 301(1) of



the I.P.C. and sentence to undergo rigorous imprisonment for the aforesaid offence. The period undergone by the appellant No.3 shall be set off in his sentence. In the aforesaid manner, the Judgment and sentence order stand modify and this appeal stands disposed of. Let a copy of this Judgment be handed over to Amicus Curiae for needful.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

manish/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	25.01.2018
Transmission Date	25.01.2018

