

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.189 of 1995

Arising out of judgment and order of sentence dated 27th of June, 1995 passed by learned 1st Additional Sessions Judge, Saharsa in Sessions Trial No.41 of 1990

- =====
1. Bandey Lal Yadav, son of Bhola Yadav, resident of village-Gazipatta, Police Station-Sonebarsa, District-Saharsa.
 2. Sachchidanand Rai @ Sachchidanand Yadav, son of Ramjee Yadav @ Ramjee Rai, resident of village-Bahari, Police Station-Uda Kishunganj, District-Madhepura.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 212 of 1995

Arising out of judgment and order of sentence dated 27th of June, 1995 passed by learned 1st Additional Sessions Judge, Saharsa in Sessions Trial No.41 of 1990

- =====
1. Shambhu Yadav, son of Mallar Yadav
 2. Binda Yadav @ Bindi Yadav, son of Bhumi Yadav
 3. Bechan Yadav, son of Thakur Yadav
 4. Mallar Yadav, son of Adhik Yadav

All residents of village –Balaitha, Police Station-Basnahi, District-Saharsa.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 215 of 1995

Arising out of judgment and order of sentence dated 27th of June, 1995 passed by learned 1st Additional Sessions Judge, Saharsa in Sessions Trial No.41 of 1990

- =====
1. Ashok Yadav, son of Yogendra Yadav, resident of village-Kamal Zari, Police Station-Sour Bazar, District-Saharsa.
 2. Jainandan Yadav @ Janwa Yadav, son of Saryug Yadav, resident of village-Balaitha, Police Station-Basnahi, District-Saharsa.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manindra Kishor Singh, Adv.



For the Respondent/s : Ms. S.B. Verma, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 27-03-2018

These three criminal appeals arise out of a common judgment dated 27th June, 1995 passed by learned 1st Additional Sessions Judge, Saharsa in Sessions Trial No.41 of 1990. The appellants in Criminal Appeal (DB) No.189 of 1995 namely Bandey Lal Yadav and Sachchidanand Rai @ Sachchidanand Yadav have been convicted under Section 147 of the Indian Penal Code. The appellants in Criminal Appeal (DB) No.212 of 1995 namely Shambhu Yadav, Binda Yadav @ Bindi Yadav, Bechan Yadav and Mallar Yadav have been convicted under Sections 302/149 of the Indian Penal Code, whereas two appellants namely Ashok Yadav and Jainandan Yadav in Criminal Appeal (DB) No. 215 of 1995 have been held guilty under Sections 302, 302/149 and 148 of the Indian Penal Code and both of them have been accordingly convicted to undergo rigorous imprisonment for life. No separate sentence has been passed under Sections 302/149 and Section 148 of the Indian Penal Code. The appellants in Criminal Appeal (DB) No.212 of 1995 have been sentenced to undergo life imprisonment under Sections 302/149 of the



Indian Penal Code. The appellants Bandey Lal Yadav and Sachchidanand Rai @ Sachchidanand Yadav in Criminal Appeal (DB) No.189 of 1995 have been sentenced to undergo rigorous imprisonment for one year under Section 147 of the Indian Penal Code.

2. The prosecution case as appearing from the records of the trial court and upon perusal of the judgment is briefly stated as under;-

The informant Muneshwar Mandal (PW-3) lodged an F.I.R. giving rise to Saur Bazar P.S. Case No.0028/1989 on 17.02.1989 under Sections 147, 148, 149 and 302 of the Indian Penal Code. In his fardbeyan which was recorded by Sub-Inspector of police Ashok Kumar Rajak (PW-5) the informant Muneshwar Mandal (PW-3) alleged that at about 4.30 am he along with his cousin brother Dhana Mandal proceeded from his house to attend the date fixed in the Sessions court at Saharsa. At about 6.30 am they reached Atalkha and boarded a State Transport Bus for Saharsa. The Bus started at 7.00 am and it was carrying about 40-45 persons. According to informant, he was sitting on the back side seat of the bus and his brother Dhana Mandal (deceased) was sitting on the middle seat. At about 7.15 am when the bus reached near Jamhara Primary School, Yadav Tola, approximately 5-6 persons who were lashed with country



made pistol asked the driver to stop the bus, the driver, however, did not stop on which one of them fired, at this stage the driver stopped the bus. It is alleged that as soon as the bus stopped accused Mallar Yadav, Binda Yadav, Shambhu Yadav and Bechan Yadav entered inside the bus while accused Bandey Lal Yadav, Sachchidanand Yadav, Ashok Yadav and Jainandan Yadav along with 2-3 other persons whom the informant claimed that he can identify remained standing outside the bus.

3. It is alleged that the four accused persons who have entered into bus forcibly dragged out Dhana Mandal out of the bus, Bandey Lal Yadav and Shambhu Yadav ordered to kill him calling that he was a litigant and was indulged in usurping the land of the other persons. It is further alleged that Ashok Yadav fired from his gun which hit the head of the deceased and he fell down. The second firing was caused by accused Jainandan Yadav on the chest of the deceased. The other persons assaulted him by lathi as a result of which Dhana Mandal succumbed to his injuries and died on the spot itself. PW-3 thereafter stated that on hearing sound of firing a number of persons from Jamhara village assembled who had seen the occurrence as well and will tell about the same.

4. He further states that some of the accused persons fled away towards north while some others toward western side. The



reason for murder is stated to be a case in which accused Binda Yadav and Jainandan Yadav were the accused. It is stated that after the accused persons fled away he somehow reached the police station saving himself and made his statement. Later on bus driver also proceeded towards Saharsa. The signature of Muneshwar Mandal on his fardbeyan has been marked as Ext.1 whereas the fardbeyan has been marked as Ext.2 in course of evidence. The formal F.I.R. has been exhibited as Ext.5. After investigation police submitted a charge-sheet and thereupon after taking cognizance the records were transferred to the court of Sessions. The accused persons pleaded not guilty and claimed to be tried.

5. The learned trial court has for the purpose of conviction of the accused persons as stated above relied upon the evidences of PW-1 and PW-2 who were said to be sitting on rooftop of the bus and had claimed themselves to be eye witnesses along with PW-3. The learned trial court also relied upon the evidence of doctor (PW-4) and his opinion stating that the death of the deceased was due to gun shot injury on his head and chest. According to learned trial court, the I.O. has also supported the prosecution case. The learned trial court rejected the argument of the defence that in his fardbeyan (Ext.2) leading to F.I.R. (Ext.5), PW-3 never disclosed the name of the witnesses PW-1 Ram Avtar Mandal and PW-2 Suresh Mandal,



both the witnesses were said to be related to the informant and they had been purposely brought as witness against the accused persons on account of enmity. The learned trial court also rejected the case of the defence that Bilash Mandal, son of the deceased, was also not present nor he was at home rather he was at Punjab, but his presence has been shown in the FIR.

6. The learned trial court discarded the defence argument as regards the evidence of PW-1 and PW-2 holding that their evidence being eye witnesses to this occurrence cannot be brushed aside and discarded on the grounds taken by the defence. Regarding the presence of Bilash Mandal (not investigated), the learned trial court believed PW-3 who had stated that on the date of occurrence he had come from Punjab and met him on the way while he was going home and the informant took with him Bilash at the time of institution of fardbeyan, therefore he was present and had given his LTI. The learned trial court although raised doubt on the evidence of prosecution on this point, but taking into consideration the statement of DW-2 that he had seen Bilash Mandal at his home on the date of occurrence came to a conclusion that on the date of occurrence since he was at his home, at the time of institution of the fardbeyan he might have given the LTI on F.I.R. The learned trial court however found that Bilash Mandal was not made a witness in this case by the



police hence, this controversy is put at rest.

7. The learned trial court held that the accused Mallar Yadav, Binda Yadav, Shambhu Yadav and Bechan Yadav brought out the deceased from the bus forcibly on the ground and there the accused Ashok Yadav and Jainandan Yadav caused gun shot injuries on the deceased due to which he succumbed to his injuries at the place of occurrence. As regards the assault by lathi, the learned trial court found that from the evidence of doctor it was not clear as to whether the deceased suffered any injury by hard and blunt substance. The doctor however certified that the deceased was killed by gun fire. According to the learned trial court, accused persons after forming an unlawful assembly with deadly weapons came on the place of occurrence and committed this crime with a motive to kill the deceased on account of old enmity.

8. As regards the accused Bande Lal Yadav and Sachchidanand Yadav the learned trial court found that the allegations against them is that they exhorted the accused persons to kill the deceased and at their instance Ashok Yadav and Jai Nandan Yadav fired at him. But on this point although the witnesses have stated that they ordered upon which the co-accused persons killed him but in this regard their evidence on the point of exhortation is not fully convincing because the informant was sitting inside the bus and the



two witnesses PW-1 and PW-2 were sitting on the rooftop of the bus and in these circumstances it was not possible to hear and see the accused persons giving order for killing the deceased.

9. While assailing the impugned judgment the learned counsel representing the appellants in all the three appeals has submitted that in the present case the prosecution has examined only five witnesses. On the other hand the defence has also examined four witnesses out of whom at least two witnesses namely DW-2 Sakhichandra Paswan and DW-4 Digambar Singh Thakur who were investigated by the investigating officer were not examined by the prosecution in course of trial and thus they were produced as defence witnesses.

10. It is the common ground of learned counsel for the appellants in all the three appeals that in the present case the trial court has erred in appreciating the prosecution story as stated in the fardbeyan by PW-3 at the earliest opportunity and then the improvement made by him in course of his deposition in trial. Learned counsel submits that there are material contradictions in the prosecution story and it is highly doubtful that any of the prosecution witnesses namely Ram Avtar Mandal (PW-1), Suresh Mandal (PW-2) and Muneshwar Mandal (PW-3) were present at the place of occurrence and had seen the alleged occurrence as claimed by them.



Learned counsel would submit that in his fardbeyan the informant has not stated that PW-1 and PW-2 were also present on the rooftop of the bus. In his evidence PW-3 states that PW-1 and PW-2 were also going to Saharsa and they had boarded the bus. In his evidence, PW-3 has further stated that he had sent Ram Avtar Mandal (PW-1) to the nearest police station and he himself went to Saur Bazar whereas PW-2 was left near the dead body. He had seen Bilash Mandal when the bus stopped and he informed Bilash Mandal that his father was murdered. He proved his signature (Ext.1) on the fardbeyan and has stated that he had put his signature after hearing his statements recorded by Daroga Ji. Learned counsel submits that in the fardbeyan PW-3 has stated that he had reached the police station saving himself after the accused persons fled away and thereafter the bus driver had also left the place with the bus towards Saharsa, but in his evidence in course of trial PW-3 says that he saw Bilash Mandal on way when the bus stopped. He has reiterated that he had put his signature after the statements recorded by the police officer were read over to him. Therefore, according to learned counsel PW-3 has planted PW-1 and PW-2 at a belated stage only as an afterthought.

11. It is further argued by learned counsel for the appellants that the investigating officer (PW-5) has stated that he had recorded the statement of the informant and had read over the same to



him which he had signed in his presence. He has proved the formal FIR (Ext.5). He had prepared the inquest report (Ext.6). Two persons namely Sitaram Yadav and Siyaram Yadav had witnessed the inquest report but both these witnesses of the inquest report have not been examined. It is also pointed out that the I.O. had prepared the seizure list but the seizure list witnesses were also not examined.

12. Learned counsel for the appellants has pointed out that in paragraph 3 of his cross-examination, the I.O. has stated that he had recorded the statement of Sitaram yadav and Siyaram yadav at the place of occurrence. At the same place, he had recorded the statement of witnesses Kedar Sah and Ramesh Yadav, but they have also not been examined. He had recorded the statement of driver Digambar Singh Thakur and the bus conductor Nageshwar Singh in course of investigation, but they were also not examined in course of trial. Sakhichandra Paswan was also investigated by the police whose statement was recorded by I.O., but he was not examined by the prosecution. The I.O. has not stated that either Sakhichandra Paswan or driver Digambar had supported the prosecution story in course of their statement under Section 161 Cr.P.C. The defence has examined Sakhichandra Paswan as well as Digambar Singh Thakur as their witnesses. The I.O. has categorically stated in paragraph 6 of his cross-examination that PW-3 had not told him about the presence of



Suresh Mandal and Ram Avtar Mandal on the rooftop of the bus. He has further stated in his further statement also that the informant had not stated that 10-11 persons had asked the driver to stop the bus and six of them were lashed with gun and others were lashed with lathi. He has also stated that the informant did not tell him about Ashok Yadav calling of other passengers to vacate the bus.

13. Pointing out the deposition of the defence witnesses, learned counsel for the appellants has stated that Shiv Pujan Yadav (DW-1), Sakhichandra Paswan (DW-2), Sitaram Yadav (DW-3) and Digambar Singh Thakur (DW-4) have denied the alleged manner of occurrence and according to Sakhichandra Paswan (DW-2) he was also one of the accused with the deceased in the case and he was going to attend the case on the same date. He has stated that he had boarded the bus for Saharsa and when he reached near Jamhara Primary School, he heard Hulla that somebody has been murdered then he came down from the bus, went near the school and saw the dead body of the deceased whom he identified as Dhana Mandal. He left the bus because he had identified the deceased and then went to his village to inform the cousin brother of deceased (PW-3) and his own brother Ram Avtar Mandal (PW-1). He had informed Muneshwar Mandal (PW-3) and Ram Avtar Mandal (PW-1) about the murder of the deceased Dhana Mandal.



14. Learned counsel for the appellants therefore submits that it is a case of no evidence and the learned trial court has convicted the accused persons only because according to learned court they were inimical to the deceased.

15. On the other hand, learned counsel representing the State submits that the learned trial court has rightly convicted the accused persons as there are consistent evidence of PW-1, PW-2 and PW-3 who are the eye witnesses.

16. Having heard learned counsel for the parties and upon perusal of the records and on going through the deposition of the PW-1, PW-2 and PW-3, at the first instance, we find that the PW-3 has drastically improved upon his case in course of trial. The presence of PW-1 and PW-2 as also the fact that PW-3 had sent PW-1 to the nearest police station were never mentioned in the fardbeyan which according to us could have been naturally mentioned if these witnesses were present and had been the eye witnesses to the alleged occurrence. PW-3 rather says in his fardbeyan that he went to the police station saving himself after the accused persons fled away and the bus also went on to Saharsa, from this statement in the fardbeyan of the informant it is apparent that at the point of recording of fardbeyan the informant could not name the eye witnesses about whom he could disclose only in course of trial. PW-1 and PW-2 have



been introduced only in course of trial. The investigating officer has categorically stated in his evidence that PW-3 had never stated before him with regard to the presence of Ram Avtar Mandal or Suresh Mandal. The statement of PW-3 that he had sent Ram Avtar Mandal to the nearest police station is also a mere afterthought because no evidence at all has been adduced on the point that PW-1 Ram Avtar Mandal had gone to any police station. Both these witnesses PW-1 and PW-2 are closely related witnesses and they have come forward to support the prosecution version only at a belated stage. PW-3 has stated in his deposition that he had placed Suresh Mandal (PW-2) near the dead body but when police came, none of them were found present, the witnesses who signed the inquest report and the seizure list were not examined by the prosecution. The bus driver and other prosecution witnesses were not examined by the prosecution rather they were brought by the defence to support their case. We have also seen that the statements of the accused under Section 313 Cr.P.C. have been recorded without following the mandate of law. A perusal of the statements under Section 313 Cr.P.C. as available on the record which would show that the accused persons were not informed about the incriminating materials which were brought against them by the prosecution and all the accused persons have pleaded that they had been falsely implicated.



17. We are of the considered opinion that the trial court has erred in relying upon the evidence of PW-1, PW-2 and PW-3. We do not find it safe to convict the accused persons-appellants in all the three appeals on the basis of the prosecution evidences available on the record because we have found categorical contradictions in the statement of PW-3 itself and his improvement and shifting of stand are such that it gives rise to a reasonable doubt as to the correctness of the prosecution story. The quality of evidence are highly doubtful. As cumulative effect of the material contradictions found in the prosecution case as regards the manner of the occurrence and non-adherence to the provisions of Section 313 Cr.P.C. in its terms and spirit, we set aside the impugned judgment of the trial court and acquit all the accused in these three criminal appeals from all the charges. They are discharged from the liability of their respective bail bonds.

18. All the three appeals are, accordingly, allowed.

(Rajendra Menon, CJ)

Arvind/-

(Rajeev Ranjan Prasad, J)

AFR/NAFR	NAFR
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