

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.114 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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1. Bangali Yadav son of Dalsingar Yadav
 2. Ramesh Yadav son of Moti Yadav
 3. Indradeo Yadav, son of Dalsingar Yadav
 4. Nasib Yadav @ Nasib Lal Yadav son of Netram Yadav
 5. Ambika Yadav son of Lalji Yadav
 6. Brijnandan Yadav, son of Ramdeo Yadav

All resident of village – Dharmchak, P.S. Dulhin Bazar, District- Patna.

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant s : Mr. Ajay Thakur, Adv.
Ms. Swati Sinha, Adv.
Mr. Nilesh Kumar, Adv.

For the Respondent : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 21-03-2018

All the appellants stand convicted under Section 307/34 of the IPC and sentenced to undergo R.I. for five years, further been sentenced under Section 324/34 of the IPC and sentenced to undergo R.I. for two years and also convicted under Section 452 of the IPC and sentenced to undergo R.I. for two years and also been convicted under Section 341 of the IPC and sentenced to undergo S.I. for one month.

2. The prosecution case as stands from the fardbeyan of Sri Ram Janam Yadav (not examined) recorded by Sri Bipin Kumar, S.I. of Dulhin Bazar Police Station Case on 11.2.1991 at 2.00 A.M. in short is that in the night of 11.2.1991 while he was sleeping in his



Dalan at about 11.30 P.M. he went out to ease himself and when he came to his *Dalan* he heard some sound and saw the appellant Bangali Yadav variously armed and the appellant Bangali Yadav started cutting his neck, on which the informant raised alarm and caught hold the arm with right hand, as such he received injuries in the neck and hand. Thereafter the accused persons fled away and on *hulla* being raised, his younger brother Lakshman Yadav & Ram Swaroop Yadav and nephew Sahdeo Kumar and others reached at the place of occurrence and saw the accused persons while fleeing away. The aforesaid fardbeyan led to registration of Bikram (Dulhin Bazar) P.S.Case No.34 of 1991. Post investigation, charge-sheet has been submitted and the cognizance of the offence has been taken, as Section 307 of the IPC is triable by the court of sessions, the case has been committed to the court of sessions which ultimately came to the file of Sri Chadnra Shekhar Sharma, P.O. Addl. Court no.1, Patna Adhoc Sessions Judge, Fast Track Court No.1, Patna.

3. All the appellants stand charged under Sections 307/34 of the IPC, Sections 324/34 and Sections 452/34 of the IPC. As appears from the FIR, the reason behind the occurrence is that grand father of Bangali Yadav was killed and for that this occurrence has been caused.

4. The prosecution in order to establish its case has



examined following witnesses, they are P.W.1 Lakshman Yadav brother of the informant, P.W.2 Awadh Bihari Yadav, nephew of the injured, P.W.3 Ram Swaroop Yadav brother of the informant, P.W.4 Sahdeo Kumar nephew of the informant, P.W.5 Bipin Kumar, S.I. of the case.

5. The defence has not adduced any ocular or documentary evidence, however, as per the cross examination and statement under Section 313 of the Cr.P.C., it is of false implication and of innocence.

6. The learned trial court on conclusion of the trial has convicted the appellants under 307/34 of the IPC, Sections 324/34 and Sections 452/34 of the IPC and sentenced as stated above.

7. Assailing the impugned judgment, contention of the learned counsel for the appellants is that in this case neither the informant has been examined nor the Doctor has been examined, as such there was no evidence so far injury caused to the informant is concerned and further submission is that though all the witnesses are related witnesses and evidence of P.Ws. 1, 2 & 4 discloses that they had not seen the occurrence and P.W.3 is the father of Surajdeo Yadav, who is accused in the case of murder of the grand father of the appellant Bangali Yadav, as such he is related and inimical witness.

8. Further submission is that the I.O. in this case has been examined but his evidence itself shows that the case diary was not available and he has stated in his cross examination that in absence of



case diary he can not say as to who has stated what before him and he has also not stated about the place of occurrence in absence of the case diary, as such the place of occurrence has not been established and on the basis of the above submission, the learned counsel for the appellants has contended that the prosecution case suffers from infirmities and inconsistencies as submitted above but in spite of that the learned trial court has convicted the appellants under Sections 307/34 of the IPC, Sections 324/34 and Sections 452/34 of the IPC, it does not appear to be sustainable in the eye of law.

9. The learned counsel for the State has defended the judgment stating that though the informant has not been examined as he died after three years of the occurrence but the other witnesses had supported the occurrence as such conviction of the appellants is just and proper.

10. In the background of the submission of the parties, on perusal of the evidence, it appears that the informant injured has not been examined in this case and the Doctor has also not been examined, as such there is nothing available on record, so far prosecution story of injury on the person of the informant is concerned. No doubt there are some oral evidence available on the record but from perusal of the cross examination of P.W.1, 2 and 4 it appears that they had reached at the place of occurrence after the occurrence and so far P.W.3 is concerned, evidence of P.W.1 and 4



shows that grand-son of P.W.3 is accused in murder case of father of Bangali Yadav, as such it appears that he is interested and inimical witness. It further appears that the I.O. has deposed that in absence of case diary, he can not say as to what the witnesses have stated before him and hence prejudice has been caused to the defence. Furthermore the I.O. also in absence of the case diary could not establish the place of occurrence in this case.

11. The learned trial court has failed to appreciate the aforesaid discrepancies and inconsistencies in the prosecution case and come to a conclusion that there is no material contradiction in the evidence of the witnesses and as such no prejudice has been caused to the defence by non-availability of the case diary and also tried to explain the enmity on the ground that enmity is double edged weapon and can not be the sole criteria to discard the prosecution evidence and if independent witnesses are not coming forward, the evidence of the prosecution evidence can not be discarded and also explained the non-examination of the Doctor by saying that the witnesses have consecutively stated about the assault, hence, the whole prosecution case can not be brushed aside but the learned trial court has failed to consider that neither the informant nor the Doctor has been examined. As such prosecution evidence on the point of assault is not clinching. So far other witnesses are concerned, P.Ws. 2 and 4 do not appear to be eye witness in this case and on perusal of their cross examination,



they do not appear to be eye witness of the occurrence and P.W.3 is the highly inimical and accused in the murder of the grand father of the appellant Bangali Yadav, as such the learned trial court ought to have consider this aspect of the matter that considering inconsistencies and discrepancies in the prosecution case, the accused appellants were entitled for benefit of doubt in the present case, however, appellants were convicted.

12. In view of the discussions as made above, I find the impugned judgment and order of conviction and the sentence not sustainable in the eye of law and the accused are entitled for benefit of doubt.

13. In view of the aforesaid infirmities and inconsistencies, this appeal is allowed and the judgment and order are set aside and as the appellants are on bail they are discharged from their liability of the bail bonds.

(Vinod Kumar Sinha, J)

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