

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.362 of 1994

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

Bindeshwari Yadav @ Bindeshwari Yadav And Ors

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 372 of 1994

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

Pawan Yadav @ Pawan Prasad Yadav & Ors

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Kumar Mukund, Adv.
Mr. Anirudh Pandey, Adv.
Mr. Purnendu Keshav, Adv.

For the Respondent/s : Mr. Shivesh Ch. Mishra, APP
Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 24-08-2018

Both the above stated Criminal Appeal have arisen out of the impugned Judgment of conviction and sentence order dated 13.07.1994 passed by learned 1st Additional Sessions Judge, Saharsa in Sessions Trial No. 83 of 1986 and, accordingly, both the above stated Criminal Appeals are heard together and being disposed of by this common Judgment.

2. All the appellants have been convicted for the



offences punishable under sections 302/149 and 447 of the Indian Penal Code and appellant Chandeshwari Yadav has, separately, been convicted for the offence punishable under sections 302/149, 323, 447 and similarly, appellant Shyam Yadav has been convicted, separately, for the offence punishable under sections 302/149 and 447 of the Indian Penal Code and again appellant Kappo Yadav and Raghuni Yadav have, separately, been convicted for the offence punishable under sections 147 and 447 of the Indian Penal Code.

3. The appellants Bindeshwari Yadav, Laturi Yadav and Surendra Yadav @ Digambar Yadav have been sentenced to undergo for life imprisonment for the offence punishable under section 302/149 of the Indian Penal Code and to undergo rigorous imprisonment for one month under section 447 of the Indian Penal Code. The appellant Shayam Yadav has been sentenced to undergo for life imprisonment for the offence punishable under section 302 of the Indian Penal Code and to undergo rigorous imprisonment for one month for the offence punishable under section 447 of the Indian Penal Code. The appellant Chandeshwari Yadav has been sentenced to undergo imprisonment for life for the offence punishable under section 302/149 of the Indian Penal Code and to undergo six months rigorous imprisonment for the offence punishable under section 323 of the Indian Penal Code and one month rigorous imprisonment for the offence punishable under section 447 of the Indian Penal Code. Appellants Kappo Yadav, Pawan Yadav and Raghuni Yadav have



been sentenced to undergo rigorous imprisonment for one month for the offence punishable under section 447 and to undergo rigorous imprisonment for six months for the offence punishable under section 147 of the Indian Penal Code. However, all the sentences were ordered to run concurrently.

4. PW-5, namely, Rajdeep Yadav is the informant and he gave his fardbeyan to officer-in-charge, Saharsa Police Station on 08.05.1986 at about 3 a.m. at Sadar hospital, Saharsa to this effect that on the same day at about 7 p.m., he along with his two brothers, namely, Ramji Yadav (deceased) and Rajnandan Yadav (PW-6) were talking at their door and a lamp was burning at his door. In the meantime, appellants came there and appellant Bindeshwari Yadav ordered the others to kill them and on the aforesaid order, appellant Shyam Yadav assaulted them by means of Samath whereas remaining appellants started assaulting his brother Ramji Yadav by means of lathi as a result whereof, his brother sustained injury on his head and fell down on the earth, his brother became unconscious, he tried to save his brother but the appellant Chandeshwari Yadav gave him lathi blow, causing injury on his right shoulder. On alarm, Manager Yadav (PW-2), Shivnandan Yadav (not examined), Upendra Yadav (PW-3) and several other persons came there and saw the occurrence. The informant took his brother to Sadar Hospital, Saharsa for treatment but his brother Ramji Yadav died in course of his treatment. PW-5 Rajdeep Yadav further claimed in his fardbeyan that in 1977 appellant



Bindeshwari Yadav prosecuted him as well as his brother Rajnandan Yadav (PW-6) for murder of his father and the aforesaid case is still pending. The informant claimed that the aforesaid appellant Bindeshwari Yadav used to give threatening to kill him and his other family members and the appellants committed murder of his brother on account of above stated enmity.

5. On the basis of aforesaid fardbeyand, Saharsa (Sonbarsa Kachari) P. S. Case No. 08 of 1986 for the offences punishable under Sections 147, 448, 323, 307, 302 and 120B of the Indian Penal Code was lodged and formal F.I.R was drawn up on the same day against the appellants for the above stated occurrence.

6. PW-8, D. K. Sinha, took charge of investigation. He inspected the place of occurrence, seized blood stained earth, recorded the statement of witnesses and after completion of investigation, submitted charge-sheet against the appellants. The cognizance of the offence was taken and the case was committed to the Court of Sessions, in usual course.

7. All the appellants stood charged for the offence punishable under section 302/149 of the Indian Penal Code whereas appellant Shyam Yadav was, separately, charged for the offence punishable under section 302 of the Indian Penal Code. Again, all the appellants and one convict stood charged for the offence punishable under sections 149 and 447 of the Indian Penal Code. It appears that the appellants and one convict were charged for the offence



punishable under section 148 of the Indian Penal Code but due to typing error in place of section 148 of the Indian Penal Code, it has been mentioned as section 149 of the Indian Penal Code in the format of charge. Furthermore, the appellant Chandeshwari Yadav was, separately, charged for the offence punishable under section 323 of the Indian Penal Code. The appellants denied the charges and claimed to be tried.

8. In course of trial, prosecution examined, altogether, nine witnesses and also got exhibited some documents including post mortem report. The statement of appellants were recorded under section 313 of the Cr. P. C in which they claimed their innocence. The defence also examined one witness, namely, Lal Mohan Yadav. Learned trial Court after analyzing the evidences available on the record, convicted and sentenced the appellants, in the manner, as we have already stated.

9. Learned counsel appearing for the appellants challenged the impugned Judgment of conviction and sentence order arguing that the learned Court below has not properly appreciated the evidences available on the record, as a result whereof, the learned trial Court came to the wrong conclusion. Learned counsel for the appellants submits that according to the prosecution case, the father of the appellant Bindeshwari Yadav was killed in the year of 1977 and the informant and others were made accused in the aforesaid murder case. He, further, submits that the prosecution claims that alleged



occurrence took place on account of above stated murder of father of the appellant Bindeshwari Yadav which had, admittedly, been occurred ten years prior to the present occurrence and, therefore, it is unbelievable that the appellants shall harbour a grudge against the informant and his family members for such a long period and, therefore, the very motive of the present occurrence appears to be doubtful. He further submits that except the informant and his brother, not a single prosecution witness claimed to have seen the actual killing of the deceased. He further submits that, no doubt, PW-2 and PW-3 are said to be independent witnesses but they improved their statement in course of trial as they had not claimed themselves to be eye-witnesses of the alleged occurrence, when the statement was recorded under section 161 of the Cr. P. C. He further submits that moreover, PW-2 and PW-3 had also inimical terms with the appellants. He further submits that there are several contradictions in the deposition of prosecution witnesses. He submits that, no doubt, the prosecution case can not be thrown only on the ground of non-examination of independent witness but the prosecution case is based only on the statement of interested witnesses PW-5 and PW-6 and if the statement of so-called eye-witnesses PW-5 and PW-6 is examined with care and caution, it is apparent that the aforesaid witnesses are not reliable witnesses. He further submits that the informant (PW-5) claims that he had also sustained injury on his shoulder and PW-4 proved the injury of PW-5 but the injury of PW-5 is superficial in



nature as only swelling was found on his right shoulder. He further submits that the prosecution also failed to prove the place of occurrence because the investigating officer seized blood from different places including the house and courtyard of the appellants and no explanation regarding the seizure of blood from different places was given by the prosecution and, therefore, the aforesaid circumstance creates doubt about the claim of the prosecution and also fortifies this fact that the prosecution has not come with clean hand and the prosecution is suppressing some important facts. He further submits that it is well said principle of law that if two views are possible, the view favourable to the accused shall be taken into consideration and in the present case, the finding of blood from different places creates suspicion about the claim of the prosecution and, therefore, the appellants are entitled to get benefit of doubt on account of the above stated suspicion. He further submits that even if the prosecution's claim is taken as a gospel truth, then also, at best, section 304 Part 1 of the Indian Penal Code is made out only against the appellant Shyam Yadav as the remaining appellants have not taken any active part in assaulting of the deceased.

10. On the other hand, Learned Additional Public Prosecutor supported the impugned Judgment of conviction and sentence order arguing that PW-5 is informant as well as injured and he claims that while he along with deceased was sitting at his door, the appellants came there and assaulted the deceased by means of lathi



and samath and it was appellant Shyam Yadav who gave samath below on the head of the deceased. Learned Additional Public Prosecutor further submits that the statement of PW-4 as well as post mortem report of the deceased corroborates the allegations as, altogether, three injuries were found on the person of the deceased. He further submits that so far as the finding of blood stain from different places is concerned, it is quite natural that after sustaining injury, the deceased tried to flee, as a result of which, the blood was fallen on different places and, therefore, only on the ground that the blood was found from different places, the entire prosecution case can not be thrown out.

11. Having heard the contention of both the parties, we went through the lower court record. We find that, altogether, nine witnesses have been examined. Out of them PW-1 and PW-9 are formal witnesses and they have proved formal FIR as well as fardbeyan etc. Furthermore, we find that PW-2, PW-3, PW-5 and PW-6 claimed themselves to be eye-witnesses of the alleged occurrence in course of trial, but PW-8, the investigating officer of this case at Para-3 of his cross-examination stated that PW-2 had not claimed himself before him as eye-witness rather he claimed himself to be hear-say witness and at the same paragraph PW-8 further stated that PW-3 had also not claimed himself to an be eye-witness before him as he stated that when he reached near the place of occurrence, he saw that the deceased was being taken to the hospital. Therefore, It is obvious



from the aforesaid fact that PW-2 and PW-3 have improved their statements in course of trial PW-2 has admitted at Para 4 of his cross-examination that he was accused in murder case of father of the appellant Shyam Yadav and the aforesaid case was pending at the time of recording his statement. Similarly, PW-3 has admitted at Para 2 of his cross-examination that he was also an accused in murder case of father of the appellant Shyam Yadav. This witness further admitted at Para 6 of his cross-examination that the appellant Shyam Yadav had deposed against him and others in murder case of his father. He further admitted at Para 4 of his cross-examination that he is full brother of PW-8, therefore, it is obvious from the aforesaid facts that PW-2 and PW-3 had inimical terms with the appellant as they were accused in murder case of father of the appellant Shyam Yadav and, therefore, in our view, it is hard to believe on the testimony of PW-2 and PW-3.

12. PW-5 Rajdeep Yadav is the informant of this case. He states that on the alleged date of occurrence, he was sitting at his door along with his brother Rajnandan Yadav as well as deceased Ramji Yadav. In the meantime, the appellants came there and on the order of appellant Bindeshwari Yadav, appellant Shyam Yadav gave one samath blow to the deceased Ramji Yadav whereas remaining appellants assaulted him by means of lathi. He further states that the deceased Ramji Yadav sustained head injury and became unconscious. He further claimed that when he went to save him, the



appellant Chandeshwari Yadav gave lathi blow causing injury on his right shoulder. This witness further stated that the deceased was taken to Sadar Hospital, Saharsa where he died in course of his treatment. This witness further stated that ten years prior to the alleged occurrence, the appellant Bindeshwari Yadav and Shyam Yadav had lodged false case of murder against him as well as the deceased Ramji Yadav. He proved his fardbeyan as Exhibit-5 as well as his signature on inquest report as Exhibit-5/12. He further stated that he had filed a protest petition against the investigating officer. He proved the protest petition as Exhibit-6. He further stated that even after, filing of protest petition, the investigating officer did not send blood stained cloths and blood stained earth for chemical examination. The statement of this witness goes to show that the father of the appellant Shyam Yadav was murdered and the informant PW-5 as well as the deceased were made accused in that murder case and the appellants had given threatening to kill them prior to that alleged occurrence, therefore, it is obvious from the aforesaid fact that there was long standing enmity between the appellants and PW-5 as well as the deceased.

13. PW-6, Rajnandan Yadav is brother of PW-5 and this witness also claimed that the appellants came at his door and assaulted the deceased by means of samath and lathi. This witness also admitted previous enmity between them and this fact that he was, too, accused in the murder case of father of the appellant Shyam Yadav.

14. PW-4, Dr. Jagdish Chandra stated that he had



examined PW-5 Rajdeep Yadav on 08.05.1986 at 7.45 a.m. and found swelling with bruise 4”X2” on the right shoulder. PW-4 further stated that the injury of PW-5 was simple in nature caused by hard and blunt substance such as lathi. This witness further stated that on the same day at about 3.30 p.m., he held post-mortem examination of the dead-body of the deceased Ramji Yadav and found following injuries-

(I) Bruise of 3”X1/2” on the left side of the chest.

(II) Small circular bruise on the left hand just below the elbow.

(III) Fracture of the skull 4” size in the middle at the junction of parietal and frontal bone with a lacerated wound 4”X1/2” bone deep at the right of fracture.

15. This witness further stated that blood was oozing out of the above injury. This witness opined that the death was caused due to haemorrhage, shock and skull injury which had been caused by hard and blunt substance such as samath or mushar. He claimed that the time elapsed since death at the time of post mortem examination was within 6 to 24 hours. He proved post-mortem report as Exhibit-4. This witness admitted in his cross-examination that injury no. 1 and 2 were possible due to fall on the land. He also admitted that the injury no. 3 was rather possible by two blows. This witness further admitted at Para- 5 of his cross-examination that the injury found on the person of the deceased can be self inflicted by lathi blow and the above stated injury was possible due to friendly blow.



16. The statement of PW-4 goes to show that three injuries were found on the person of the deceased but only injury of skull was serious and grievous in nature where as two injuries were found on the person of the deceased were superficial in nature as the aforesaid injuries were also possible due to fall and similarly, the injury found on the person of PW-5 was also superficial in nature and could be manufactured.

17. The investigating officer PW-8 has admitted in his cross-examination that he seized blood from different places including courtyard of the appellants as well as others and prepared seizure list as Exhibit 7 series. It is specific case of the prosecution that entire occurrence took place on the door of the deceased and the deceased was taken to hospital straightway from his door. It is not the case of prosecution that deceased after having sustained injury entered either into his own courtyard or into the courtyard of appellants or others. Therefore, finding of blood in the courtyard of appellants and others including Ramji Yadav creates doubt about the prosecution story and it appears that the prosecution has not come with clean hands and as a matter of fact, it is obvious that something has been suppressed by the prosecution and in our view, the benefit of doubt to the aforesaid suspicion, shall go to the appellants.

18. Admittedly, there was long standing enmity between the appellants and the prosecution party. It is also an admitted position that appellants were prosecuting the informant and others before



Sessions Court for murder of the parents of appellant Bindeshwari Yadav and the murder case lodged against informant and others was pending before the concerned court. It is also an admitted position that the aforesaid case was pending for last ten years, therefore, it is clear that there was long standing enmity between the parties and possibility of false implication of appellants can not be ruled out, specially taking note of the aforesaid facts and also keeping in mind that only interested witnesses have been examined in this case by the prosecution and not a single independent witness have come forward to support the prosecution case. Therefore, after noticing the above stated infirmities in the murder case in our view, the appellants are entitled to get benefit of doubt.

19. On the basis of aforesaid discussion, both the above stated Criminal Appeals are allowed and impugned Judgment of conviction and sentence order are, hereby, set aside. The appellants are acquitted of the charges. The appellants are on bail. They are discharged from the liabilities of their respective bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	29.08.2018
Transmission Date	

