

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.36 of 1998

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Rajendra Yadav, son of Late Sakal Yadav, resident of village -Basant Bigha,
P.S. Paliganj, District- Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate. Md. Imtiyaz Ahmad, Advocate. Mr. Nitesh Kumar, Advocate. Ms. Babita Kumari, Advocate. Mr. Pravin Kumar, Advocate.
For the State	:	Mr. Dilip Kumar Sinha, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 28-06-2018

1. Heard learned counsel for the appellant as well as
learned Additional Public Prosecutor for the State.

2. The sole appellant has been convicted for the
offence punishable under Section 302 of the Indian Penal Code
and Section 27 of the Arms Act and sentenced to undergo rigorous
imprisonment for life for the offence punishable under Section 302
of the Indian Penal Code and two years rigorous imprisonment for
the offence punishable under Section 27 of the Arms Act by the
impugned Judgment of conviction and sentence order dated
02.12.1997 and 03.12.1997, respectively, passed by the learned



Additional Sessions Judge-XI, Patna, in Sessions Trial No. 498 of 1993. The sole appellant being aggrieved by the aforesaid impugned Judgment of conviction and sentence order has preferred this criminal appeal.

3. P.W.3, namely, Shiv Poojan Yadav, gave his Fradbeyan to Officer-in-Charge of Paliganj Police Station, at about 5.30 A.M., on 14.07.1992, in presence of Kamlesh Yadav (P.W.1), Brida Yadav (P.W.2) and one Baijnath Yadav to this effect that, on 13.07.1992, at about 9 P.M., he along with his son were sitting on the door and in the meantime, he heard some noise coming from his house and having heard the aforesaid voice, he along with his son went on road, where he saw that appellant and others were abusing to each other. In the meantime, his son, Mahesh Kumar, went near the aforesaid persons but the F.I.R. named accused, Naresh Yadav caught hold his son, Mahesh Kumar, and this appellant took out country made pistol and shot fire upon Mahesh Kumar, as a result whereof, he having sustained firearm injury fell down there and died immediately. On alarm, Kamlesh Yadav (P.W.1), Brida Yadav (P.W.2), Subhas Yadav and Ram Pravesh Yadav (P.W.4) etc. came there and saw the occurrence. The appellant and his associates fled away towards north side. The deceased had no enmity with the appellant and his associates. Shiv



Poojan Yadav (P.W.3) further claimed that since there was late night he could not go to the Police Station and next day in the morning, he along with his Mohalla Choukidar, namely, Biajnath Yadav and others went to the Police Station and gave his Fradebyan.

On the basis of Fradbeyan of P.W.3, Paliganj P.S. Case No. 47 of 1992 was registered and, accordingly, formal F.I.R. was drawn up against appellant and others for the offence punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

Pasupati Nath Thakur (P.W.5) took the charge of investigation and after completion of investigation, he submitted charge sheet against appellant. Subsequently, cognizance was taken and the case was committed to the court of Sessions. The appellant was put on trial and accordingly, he stood charged for the offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, in which, he denied the charges and claimed to be tried.

To prove the charges levelled against the appellant, prosecution examined, altogether, six witnesses and also got exhibited certain documents including the postmortem report. The statement of the appellant was recorded under section 313 of the



Cr.P.C., in which, he denied the prosecution story and claimed himself to be innocence. The learned trial court after perusing and analysing the evidences available on record convicted and sentenced the appellant in the manner as we have already stated above.

4. Learned counsel appearing for the appellant challenged the impugned Judgment of conviction and sentence order arguing that the so-called eye witnesses pretended themselves before the trial court as eye witnesses of the alleged occurrence, but as a matter of fact, they were not the eye witness of the alleged occurrence, as they have improved there statement in course of trial. Learned counsel for the appellant further submitted that prosecution could not succeed to prove the place of occurrence because the Investigating Officer frankly admitted in his deposition while he was examined as P.W.5. that a sketch map of the place of occurrence was available on the case diary and the aforesaid sketch map is quite different to the place of occurrence as disclosed by the so-called eye witnesses. He further submitted that the learned trial court failed to take notice of the aforesaid facts and committed error in convicting and sentencing the appellant.



5. On the other hand, learned A.P.P. supported the impugned Judgment of conviction and sentence order arguing that all the prosecution witnesses, unequivocally, stated that it was the appellant, who shot fire on the deceased and not only this the witnesses also proved the place of occurrence as well as manner of occurrence. He submitted that the postmortem report of the deceased also corroborates this fact that deceased sustained firearm injury and died. He further submitted that the learned trial court has discussed that the Investigating Officer was hostile to the informant and informant had lodged complaint against the Investigating Officer and that was the reason the Investigating Officer had not properly recorded the statement of prosecution witnesses in course of investigation and, therefore, the learned trial court rightly overlooked the minor contradictions which occurred in the deposition of prosecution witnesses.

6. Having heard the contentions of both the parties, we went through the record. Admittedly, altogether, six prosecution witnesses were examined by the prosecution in course of trial and out of aforesaid prosecution witnesses, P.W.1 Kamlesh Yadav, P.W.2 Brida Yadav, P.W.3 Shiv Poojan Yadav, the informant, claimed themselves to be eye witness of the alleged occurrence.



7. P.W.1, Kamlesh Yadav, claimed that at the time of alleged occurrence he was sitting at his door and saw the appellant and two others going towards East side and at that time appellant was carrying pistol whereas Naresh Yadav was carrying torch in his hand and all the aforesaid persons started quarreling near the house of one Dudhari Choudahry. In the meantime, deceased, Mahesh Kumar and Subhas Yadav came there and thereafter, Naresh Yadav caught hold the hand of deceased and ordered to shoot him and thereafter, appellant shot fire on the deceased and thereafter all the above stated three persons fled away towards north side. This witness claimed that he went near Mahesh Kumar and found him dead. This witness further claimed that the blood was fallen on the place of occurrence. However, on being cross-examined by the defence this witness admitted that he had not come out of his hosue when he heard noise but when he heard the sound of firing he came out of his house and when he proceeded towards place of occurrence, no one met him. Further, this witness claimed that when he reached near Mahesh Kumar, he found him lying dead. This witness stated that he did not inform any person in respect of the aforesaid occurrence. The attention of this witness was drawn towards his previous statement recorded under Section 161 of the Cr.P.C. and when a specific question regarding his



previous statement was asked by the defence, this witness stated that he had disclosed before the police that appellant was carrying pistol whereas Naresh Yadav was carrying torch at the time of alleged occurrence. This witness further claimed that he had made statement before the police to this effect that Naresh Yadav caught hold the hand of the deceased and the appellant opened fire on the deceased.

P.W.5 is the Investigating Officer and at paragraph 21 of his cross-examination, P.W.5 stated that P.W.1 had not made statement before him to this effect that at the time of alleged occurrence appellant was carrying pistol in his hand nor had stated that the appellant had opened fire causing injury to deceased.

8. P.W.2, Brida Yadav, also claimed that he was sitting at the door of Sukhari Choudhary at the time of alleged occurrence and saw the appellant, Rajendra Yadav, and two others, namely, Naresh Yadav and Bhushan yadav coming from East side and they were quarreling with each other. This witness further stated that Mahesh Yadav and Subhas Yadav also came there but Naresh Yadav caught hold the hand of Mahesh and thereafter appellant, Rajendra Yadav, opened fire on deceased, as a result whereof, deceased sustained firearm injury at his chest and fell down there. This witness further stated that he noticed that the blood was fallen



on the ground. This witness further claimed that he had identified the appellant and others in moon light. On being cross-examined, this witness stated that the place of occurrence was at the distance of 10 steps from the door of Sukhari Choudhary. This witness also admitted that no one had come to intervene into the aforesaid quarrel. This witness further admitted that information regarding the death of deceased, Mahesh Yadav was not given to concerned Police Station in the night of the alleged occurrence, but in the next morning after due deliberation and consultation the F.I.R. was lodged. The attention of this witness was drawn towards its previous statement and this witness denied to have made statement to this effect that on the alleged night of occurrence, he along with his father came out of his house and saw the appellant and two others running towards East side. This witness further admitted that he had made statement before the police to this effect that Naresh Yadav caught the deceased whereas appellant shot fire on the deceased.

P.W.5 at paragraph 22 of his cross-examination admitted that P.W.2 had not made statement before him to this effect that Naresh Yadav caught hold the deceased and the appellant shot fire on the deceased.



9. On careful examination of P.W.1 and P.W.2, we find that both the aforesaid witnesses have not stated about the presence of informant, P.W.3, at the place of occurrence and the aforesaid witness claimed that one Subhas Yadav had come at the place of occurrence. Furthermore, we find that P.W.1 had not claimed himself to be eye witness of the alleged occurrence before P.W.5, but in course of trial, he claimed himself to be eye witness of the alleged occurrence and similarly, P.W.2 had claimed before the Investigating Officer only to this extent that he had seen the appellant and two others running from the place of occurrence but in course of trial, he claimed that appellant shot fire on the deceased.

10. P.W.3, Shiv Poojan Yadav, is informant as well as father of the deceased. This witness claimed that at the time of alleged occurrence he was sitting at his door along with his son, deceased, Mahesh Yadav, and saw the occurrence. This witness further admitted that he remained at his village along with dead body of his son after the occurrence for whole night and in the next morning at about 4 A.M., he proceeded to lodge the case. This witness, on being cross-examined, admitted this fact that there was a pitch road touching his village. This witness further admitted that the place of occurrence was at the distance of 4 bamboos from his



house. This witness further admitted that deceased sustained firearm injury in front of house of Sukhari Choudhary. This witness admitted that on the alleged date of occurrence his son had taken meal. This witness further admitted that the female members of his family had not come out from the house even after having noise. This witness further admitted that the distance between police station and place of occurrence was at about 4 miles and the vehicles used to ply on pitch road.

11. P.W.4, Ram Pravesh Yadav, claimed that inquest report had been prepared in his presence and there is nothing important in the deposition of P.W.4.

12. P.W.5, Pasupati Nath Thakur, is the Investigating Officer. This witness described the place of occurrence at paragraph 6 of his cross-examination and stated that the place of occurrence was pitch road situated in front of house of Sukhari Choudhary. This witness also stated at paragraph 6 of his examination-in-chief that he had found blood on the place of occurrence. He claimed to have seized the blood from the place of occurrence. This witness further stated at paragraph 10 of his cross-examination that P.W.1 and P.W.2 had claimed to have seen the appellant and others fleeing from the place of occurrence. This witness further stated that the house of deceased was situated at



the distance of 150 yards from the place of occurrence where the dead body of deceased was found. This witness further admitted that he had not found any blood near the house of P.W.3. At paragraph 12 of his cross-examination, this witness admitted that a sketch map of place of occurrence was prepared and the aforesaid sketch map was available on the case diary though he could not say who had prepared the aforesaid sketch map of place of occurrence. At paragraph 13 of his cross-examination, this witness admitted that in the aforesaid map it had been shown that the blood was fallen near the house of P.W.3. This witness further admitted that the house of P.W.3 was situated at the distance of 160 yards from the place of occurrence and according to the above stated may, no blood was found on the place of occurrence. This witness further admitted that there were several houses near the place of occurrence.

13. On careful examination of the evidences available on record, it is obvious that the place of occurrence was at the distance of near about 150 yards from the house of P.W.3 and witnesses stated that the blood was fallen on the place of occurrence. P.W.5 also stated that he found blood on the place of occurrence when he inspected the place of occurrence, but further admitted that a sketch map of place of occurrence was prepared



and in the aforesaid sketch map it was shown that the blood was not lying on the place of occurrence rather the blood was found in front of house of the informant. Furthermore, it is obvious that the deceased was killed at about 9 P.M. of 13.07.1992 but the case was lodged at about 4 P.M. on 14.07.1992 and it is admitted case of the prosecution witness that the dead body was remained lying on the place of occurrence till arrival of P.W.5. The conduct of P.W.3 appears to be unnatural because it has come in the evidence that it was not difficult to go to the police station in late night because the Police Station as well as village of P.W.3 was communicated with pitch road and the distance of Police Station from the place of occurrence could be completed within one and half hours by foot and, therefore, it appears surprising that after occurrence P.W.3 as well as other witnesses did not make any attempt to get provide medical treatment to deceased and to go to the Police Station to lodge the case just after the alleged occurrence. P.W.3 had admitted that deceased had taken food one hour before his death but surprisingly enough Ext-5, the postmortem report of deceased goes to show that digested food material was found by the doctor in postmortem examination. The aforesaid fact creates doubt about the timing of the occurrence. Moreover, it is obvious that the deposition of P.W.5 creates doubt about the place of occurrence



and furthermore the presence of P.W.3 on the place of occurrence at the time of alleged occurrence also appears to be doubtful and it appears to us that none had seen the actual killing of the deceased and subsequently, the informant as well as other witnesses lodged the case claiming themselves to be eye witness and, therefore, in the aforesaid circumstances, we are of the view that the appellant deserves to get the benefit of doubt.

14. On the basis of aforesaid discussions, this criminal appeal is allowed and the impugned Judgment of conviction and sentence order dated 02.12.1997 and 03.12.1997, respectively, passed by the learned Additional Sessions Judge-XI, Patna, in Sessions Trial No. 498 of 1993 is, hereby, set aside. The appellant is acquitted of the charges. The appellant is on bail, therefore, he is discharged from the liabilities of his bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
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