

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.795 of 2015

Arising Out of PS.Case No. -131 Year- 2010 Thana -HARNAUT District- NALANDA
(BIHARSHARIFF)

=====

Mauli Yadav Son of Late Bacchu Yadav, resident of village- Chanda, P.S.-
Athmalgola, District- patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

---with---

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Criminal Appeal (DB) No. 835 of 2015

Arising Out of PS.Case No. -131 Year- 2010 Thana -HARNAUT District- NALANDA
(BIHARSHARIFF)

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Jaipal Yadav Son of Bacchu yadav resident of Village Chanda ,P.s Athmalgola
District Patna.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

---with---

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Criminal Appeal (DB) No. 889 of 2015

Arising Out of PS.Case No. -131 Year- 2010 Thana -HARNAUT District- NALANDA
(BIHARSHARIFF)

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1. Ramesh Yadav @ Chhote Yadav son of Krishna Yadav resident of Village-
Bangachha, P.S.- Telmar, District- Nalanda.
2. Mantu Yadav Son of Sabita Yadav, resident of Village- Chanda, P.S.- Athmal
Gola, District- Patna.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Yogesh Chandra Verma, Sr. Adv.
Mrs. Priyanka Singh, Adv.

For the Respondent/s : Dr. M.N. Jha, A.P.P.
Mr. Ajay Mishra, A.P.P.
Mr. S.N. Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)
Date: 28-02-2018

All the above appeals have arisen out of judgment of conviction dated 14.08.2015 and order of sentence dated 20.08.2015 passed by learned Additional District and Sessions Judge-VI, Nalanda at Biharsharif in Sessions Case No. 185 of 2011 arising out of Harnauth (Chero) P.S. Case No. 131 of 2010, whereby and whereunder the appellants Mauli Yadav in Cr. Appeal (D.B)No. 795 of 2015, Jaipal Yadav in Cr. Appeal (D.B.) No. 835 of 2015, Ramesh Yadav @ Chhote Yadav @ Chhotu Yadav and Mantu Yadav in Cr. Appeal (D.B.) No. 889 of 2015 have been convicted for the offence punishable under section 302/34 of the I.P.C. and has been sentenced to undergo rigorous imprisonment for life with fine of Rs. 5000/- and in default of payment of fine, further sentenced to undergo rigorous imprisonment for one year. The appellant Mauli Yadav (Cr. Appeal (D.B) No. 795 of 2015 has further been convicted for the offence under section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years with fine of Rs. 5000/- and in default of paying fine, he has further been sentenced to undergo simple imprisonment for two years.

2. The facts of the case, in brief, is that one Ramvaran



Yadav gave his fardbeyan alleging therein that on 17.06.2010 at about 10:00 P.M. after having meal, he was taking rest. At about 12:00 to 12:15 A.M. he heard *hulla* towards South of his house then he along with his neighbours came with torch and in the light of torch, he saw Mauli Yadav, Mantu Yadav, Jaipal Yadav, son-in-law of Bacchu Yadav and Bacchu Yadav along with 3-4 persons were dragging his nephew (*Bhagina*) namely, Mukesh Kumar. On that, he along with other villagers started crying then Mauli Yadav shot fire upon his nephew resultantly he fell down in the field. Thereafter, the villagers chased them but they managed to flee away. After returning back, he found that his nephew was dead. Reason of the occurrence is that a case was running in between his nephew and Mauli Yadav and Bacchu Yadav in connection with land dispute. Mantu Yadav had earlier threatened to kill his nephew.

3. On the basis of the aforesaid *fardbeyan* of the informant/P.W. 4, Harnaut (Chero) P.S. Case No.131 of 2010 was registered on 18.06.2010 for the offence under sections 302/34 of the I.P.C. and section 27 of the Arms Act. After investigation, the Police submitted charge-sheet on 28.10.2010 and thereafter, cognizance has been taken for the offence under sections 302/34 of the I.P.C. and 27 of the Arms Act and the case was committed to the Court of Sessions for trial on 16.03.2011. On 16.04.2011, charges were framed under



the aforesaid sections against Mauli Yadav, Bacchu Yadav, Mantu Yadav and Chhotu Yadav @ Ramesh Yadav and on 22.07.2011, charges were also framed against Jaipal Yadav. Bacchu Yadav died during the trial, as such, his trial stand abated.

4. During trial, the prosecution has examined altogether 7 witnesses. P.W. 1/Ashok Yadav (F.I.R. witness), not the eye witness of the alleged occurrence, P.W. 2/Rajeev Kumar, son of the informant and the *Fuphera* brother of the deceased, P.W. 3/Tunni Devi, Mother of the deceased. P.W. 4/Ramvaran Yadav, the informant, P.W. 5/Ganga Bishun Yadav, neighbour, not the eye witness of the occurrence, P.W. 6/Binod Kumar Pandey, who is the investigating officer of this case and P.W. 7/Dr. S.K.P. Singh, who conducted the *postmortem* of the deceased.

5. In order to establish the charges, the prosecution has proved the following documents as exhibits :-

Signature of the informant on the fardbeyan (Exhibit-1), Signature of Ashok Kumar Yadav on the fardbeyan (Exhibit-1/1), Fardbeyan (Exhibit-2), Forwarding of the fardbeyan (Exhibit 2/1), Signature of Dinesh Chandra Srivastava, Officer-in-charge of Harnaut P.S., on the fardbeyan (Exhibit-2/2), Formal F.I.R. (Exhibit-3) and Postmortem Report (Exhibir-4).

6. The statements under section 313 Cr. P.C. were



recorded, in which appellants have denied the occurrence and claimed to be innocent.

7. In the present appeal, the impugned judgment of conviction and the order of sentence have been challenged on the following grounds:-

I) The trial Court has not appreciated that the instant case is a case of false implication and the appellants have falsely been implicated due to enmity, which is admitted by the witnesses.

II) No independent witness has been examined in the instant case by the prosecution. Only interested witnesses have been examined. Further P.W. 1 and P.W. 5, neighbours of the deceased, did not claim to have seen the occurrence.

III) The means of identification is doubtful and contradictory statements have been given by the witnesses and

IV) The Investigating Officer has not conducted the investigation in fair manner, thus, the case has caused prejudice to the appellants.

8. Mr. Yogesh Chandra Verma, learned Sr. Counsel appearing on behalf of the appellants, submits that P.W. 1/Ashok



Yadav (F.I.R. witness) stated that on *hulla*, he went towards South along with torch. In the meantime, he heard the sound of firing and paused for a while, thereafter, moved further and then saw Mukesh Yadav was lying dead, where Tunni Devi (mother of the deceased) and Ramvaran Yadav (informant) were saying that the deceased was killed by villagers of Chhanda and Bangacchha. They also stated that there was dispute in between the accused persons and the deceased with regard to *patta* of the field. It is relevant to mention here that the deceased was a relative of the accused persons and the mother of the deceased and the informant know them by their names, but in stead of taking their names, they say that the accused persons were of villages Chhanda and Bangacchha.

9. Learned Sr. counsel further submits that P.W. 3/Tunni Devi, mother of the deceased, is an eye witness of the alleged occurrence. She stated that the accused Bacchu Yadav is brother-in-law of this witness and accused Mauli Yadav and Jaipal Yadav are the sons of Bacchu Yadav. (Bacchu Yadav died in course of trial) According to this witness, all the accused persons searched for her son and then dragged him from the *Kotheri*, having no doors, to the field of Naresh Yadav where appellant Mauli Yadav shot him dead. During this period, this witness kept only crying. The reason of occurrence as told by this witness that the accused persons wanted to take her land



on Rs. 5000/- on *patta*, for which she was not ready because at the relevant time, the cost of *patta* was Rs. 6000/-. It means the murder has been committed only for the difference amount of Rs. 1000/-.

If the evidence of this witness is considered in its entirety, then it does not appear to be natural. According to this witness, one of the accused is her *Bhaisur* and other two are sons of her *Bhaisur*, but they for only a meager difference amount, without concealing their identification, come to murder the deceased. They went inside the room and instead of shooting the deceased there, dragged him to the field and shot him dead there, where villagers could have identified them in the light of torch. The deceased was the only son of this witness and he was being killed only for a meager difference amount, but this witness did not ask the accused, who are her relatives, to leave her son, as she is ready to give the *patta* in Rs. 5000/- only. Such conduct of a mother is unnatural.

10. Mr. Verma further contends that out of the five witnesses, three are family members and two are independent witnesses. The witnesses, who are family members, are only the eye witnesses whereas independent witnesses are only hearsay witnesses.

11. He also submits that the investigation of the case has been done in a very lackadaisical manner. P.W. 6, the Investigating Officer, has said that the mother of the deceased was very shocked



(informant is the maternal uncle of the deceased), whereas P.Ws. 1 and 5 have said that they got information about the occurrence from the mother of the deceased. Not only this, she also told them in detail about the reason of the occurrence. Further, all the witnesses identified the accused persons in the torch light but Investigating Officer has neither seized even a single torch, nor it was produced before the Court.

12. Apart from the above, neither the blood stained soil from the place of occurrence, the blood stained cloths, the deceased's T-shirt, having hole caused by firing, was seized, nor it was produced before the Court. When the evidence came to the effect that the deceased was not a man of good character and due to that her wife deserted him, the Investigating Officer did not try to take the evidence of his wife.

13. Learned Senior counsel lastly contends that the claim of the prosecution is that the alleged occurrence took place at 12:00 A.M. and the postmortem was done at 6:55 A.M. on the same day. The doctor noticed that *rigor mortis* were present on all the four limbs of the deceased. It is well known fact that *rigor mortis* starts after 3-4 hours of the death and completely takes place after minimum 18-36 hours but in the present case, the postmortem was done after 6-7 hours of death of the deceased and surprisingly, the *rigor mortis* on four



limbs of the dead body was found present, which creates doubt even about timing of the alleged occurrence.

14. In the background of the aforesaid submissions, learned Sr. counsel submits that the judgment of conviction and order of sentence is fit to be set aside.

15. Learned Additional Public Prosecutors appearing on behalf of the State oppose the prayer of the appellants.

16. Considering the aforesaid facts and circumstances of the case, the materials available on record and submissions advanced on behalf of the parties, this Court finds that the submissions advanced on behalf of the appellants have substance and agrees with the same. In the present case, out of the five witnesses, three are family members and two are independent witnesses. The witnesses, who are family members, are only the eye witnesses whereas independent witnesses are only hearsay witnesses. When all the witnesses in their evidence have stated the reason for the occurrence to be dispute regarding *patta*, it is quite probable that due to the aforesaid dispute, the names of the accused persons have wrongly been given to implicate them in the present false case.

17. For the reasons stated above, this Court is of the considered opinion that the benefit of doubt has to be given to the accused persons and accordingly, they are given the benefit of doubt.



18. In view of the facts and circumstances of the case and the discussions made, this Court finds that the order of conviction of the appellants is not sustainable in the eye of law. Accordingly, the judgment of conviction dated 14.08.2015 and the order of sentence dated 20.08.2015 passed by learned Additional District and Sessions Judge-VI, Nalanda at Biharsharif in Sessions Case No. 185 of 2011 arising out of Harnauth (Chero) P.S. Case No. 131 of 2010, is, hereby, set aside and the appeals are allowed.

19. Since the appellants are in custody and the judgment of their conviction and sentence has been set aside, it is directed to release them forthwith, if not wanted in any other case.

(Arvind Srivastava, J)

(Rakesh Kumar, J) I agree

(Rakesh Kumar, J)

Shailendra/-

AFR/NAFR	NAFR
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