

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.476 of 2003

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

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1. Kari Yadav, son of Anirudh Yadav
2. Anirudh Yadav, son of Late Babujan Yadav, both are residents of village
Khamouti, P.S. Simari, Bakhtiyarpur, District Saharsa

..... Appellants

Versus

The State of Bihar

..... Respondent

with

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Criminal Appeal (SJ) No. 487 of 2003

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

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1. Wakil Yadav, son of Sri Narsingh Yadav
2. Brahamdeo Yadav, son of Upendra Yadav
3. Vidyanand Yadav @ Vidyanand Prasad Yadav, son of Sri Mahavir Yadav
4. Bala Yadav, son of Upendra Yadav
5. Dilip Yadav, son of Yogendra Yadav
6. Sikandar Yadav @ Sikendra Yadav, son of Siyacharan Yadav @ Siyasharan
Yadav, all residents of village Khamuti, P.S. Simari Bakhtiyarpur, District
Saharsa

..... Appellants

Versus

The State of Bihar

..... Respondent

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Appearance :

(In CR. APP (SJ) No.476 of 2003)

For the Appellant/s : Mr. Rishit Deo Kr. Singh with
Ms. Kalpana Kusum, Advocates

For the Respondent/s : Mr. Binod Bihari Singh, APP

(In CR. APP (SJ) No.487 of 2003)

For the Appellant/s : Mrs. Rina Sinha, Advocate (amicus curiae)

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 15-03-2018

Since both the appeals arise out of the common judgment
and order, they have been heard together and are being disposed of by



this common judgment.

2. Nobody appears on behalf of appellants in Cr.Appeal (SJ) No. 487 of 2003 on repeated calls, as such, Mrs. Rina Sinha, Advocate, who is present in Court, has been appointed by this Court as amicus curiae to assist this Court.

3. Appellants in both the appeals have been convicted under Sections 307/149 of the Indian Penal Code, further appellant Kari Yadav has separately been convicted under Sections 148, 307, 326 IPC and 27 of the Arms Act and appellant Sikandar Yadav has not been found guilty for the offence under Sections 148 IPC and 27 of the Arms Act and sentenced all the appellants to undergo rigorous imprisonment for seven years for the offences under Sections 307/149 IPC. Appellant Kari Yadav has also been sentenced to undergo R.I. for three years for the offence under Section 148 IPC, seven years R.I. for the offence under Section 307 IPC, five years R.I. for the offence under Section 326 IPC and further R.I. for three years for the offence under Section 27 of the Arms Act and all the sentences were directed to run concurrently vide judgment and order dated 16.9.2003 and 17.9.2003 respectively passed by Sri A.K.M.M. Qureshi, the then 3rd Additional Sessions Judge, Saharsa in Sessions Trial No. 37 of 1999.

4. Prosecution case, which has been initiated on the basis of



fardbeyan of Chandeshwari Pd. Yadav (PW 6), in short, is that on 21.12.1997 at about 12 hours dispute took place with respect to cutting ridge in between Anirudh Yadav and Ram Charitra Yadav and on the basis of the aforesaid dispute at about 5 P.M. in village Khamouti all the accused persons, nine in numbers, and other unknown persons came at the house of Ram Charitra Yadav and started committing loot pat. By that time the informant (PW.6) was sowing seeds in the field and Ramcharitar Yadav was not present in his house and the female members of the house started crying, on which informant (PW 6) came running and tried to stop loot pat on which appellant Kari Yadav fired at him with .303 katta and he received fire arm injury on his left thigh and appellant Sikandar Yadav also fired at him, which hit Shyamal Yadav. In the meantime witnesses arrived at the spot and the accused persons fled away along with a box and also carrying Shyamal Yadav with them. Shyamal was not sent up for trial as he died later on and all the accused persons were armed with .303 katta, Bhala, Farsa, etc. in their hands.

5. On the basis of aforesaid fardbeyan Bakhtiarpur P.S.Case No. 138 of 1997 was registered under Sections 447, 449, 380, 326, 307/34 IPC and 27 of the Arms Act and post investigation police submitted charge sheet under Sections 147, 148, 149, 447, 307 IPC



and 27 of the Arms Act, cognizance of the offence has been taken and after commitment the case ultimately came to the file of learned trial judgment for trial and disposal as the offence was exclusively triable by the Court of Sessions.

6. During trial in order to substantiate its case prosecution has examined altogether nine witnesses, they are PW 1 Manraj Kumar, PW 2 Medani Yadav, PW 3 Shiv Nandan Pd. Yadav, PW 4 Devendra Kumar Yadav, PW 5 Sudhir Yadav, PW 6 Chandeshwari Pd. Yadav (informant), PW 7 Harendra Singh (I.O.), PW 8 Dr. Arjun Pd. Sahu (Doctor) and PW 9 Kushumlal Yadav.

7. Apart from that, the prosecution has brought on record the following documents as documentary evidence, they are Ext.1-requisition for injury of informant Chandeshwari Pd. Yadav, Ext.2-requisition of injury report of Chandeshwari Pd. Yadav (informant), Ext.3- fardbeyan, Ext.3/1-endorsement of fardbeyan, Ext.4-formal FIR, Ext.5-injury report of Chandeshwari Yadav issued by Dr. A.P.Sinha, Ext.6-injury report of Chandeshwari Pd. Yadav issued by Dr. H.N.Singh. Photostat copy of bed-head ticket is marked "X" for identification.

8. On behalf of defence also two witnesses have been examined, they are DW 1 Shashidhar Pd. Karn and DW 2 Arvind



Kumar, both are formal witnesses.

9. Besides the ocular evidence the defence has also brought on record the following documents as exhibits, they are Ext.A- certified copy of the charge sheet, Ext.B- certified copy of the evidence of Anirudh Pd. Rai, Ext.C- certified copy of the charge, Ext.D- signature of Sanjeev Kumar on protest petition, Ext.E- sale-deed and Ext.F is rent receipt.

10. Learned trial court after conclusion of trial has partly disbelieved the prosecution story considering the documents produced by the defence, i.e., Exts. A to D and come to the conclusion that murder of Shyamal Yadav took place on the land belonged to Anirudh Pd. Rai and there was case and counter case between the parties. Learned trial court has further come to a finding in para-23 of the judgment as follows :

“So receiving of bullet injury by the fire of Sikandar Yadav to Shyam Kumar Rai appears to have been deliberately added by the informant of this case to make a counter version to save their skin from the case filed by the informant of Bakhtiarapur P.S.Case No. 137/97, namely, Anirudh Rai. According to him Shyam Kumar Rai was killed by Umesh Yadav at the field of Anirudh Rai at about 2.30 to 3 P.M.”

And in para-24 learned trial court has come to a finding as follows :

“Hence, the story of receiving of gun-shot injury on



the person of Shyam Kumar Rai is not appeared to be genuine and proper allegation, rather, it appears that the prosecution has very cleverly tagged the factum of receiving gun-shot injury on Shyam Kumar Rai not in the field of Anurudh Pd. Ray, rather at village Jagir tola near the house of Shivo Yadav in a GALI i.e. why the I.O. has found only some droplets of blood on the spot and it is possible because Chandeshwari Yadav received gun-shot injury on his thigh and naturally from the thigh blood will not ooze out in profused way. Hence, some blood will be found hither and thither and it is found by the I.O. which reveals the truth and makes the allegation of the informant side of the instant case that Shyam Kumar Rai received gun-shot injury in village Jagir tola near the house of Shivo Yadav in a GALI is quite false.”

In spite of above findings, by which the prosecution story was found not believable, the learned trial court has convicted the appellants under Sections 307/149 IPC and also convicted the appellant Kari Yadav under Sections 326, 148 IPC and 27 of the Arms Act for causing injury to Chandeshwari Yadav, which is found to be grievous in nature.

11. Contention of learned counsel for the appellants is that learned trial court has itself disbelieved the prosecution story and, as such, the conviction of the appellants on the same prosecution story does not appear to be proper in absence of any other story and learned trial court has come to a third story, which is not prosecution story and convicted the appellants for the same. Further submission is that



learned trial court has failed to consider that Shyamal Kumar Rai was killed by prosecution party on the land of Anirudh Yadav and in such a situation, story of loot pat by the accused persons of the house of Ramcharitar Yadav does not look probable. It is further submitted by learned counsel for the appellants that learned trial court has failed to consider that no specific allegation has been attributed in the FIR against any of the accused persons except Kari Yadav and Sikandar Yadav and there is general allegation that they were variously armed and so far allegation against Sikandar Yadav is concerned, allegation that he fired at the Chandeshwari Yadav which hit Shyamal Kumar Rai is disbelieved by the learned trial court. In such a situation, there shall not be any application of Section 149 IPC and conviction of appellants under Sections 307/149 IPC does not appear to be just and proper and is not sustainable in the eye of law.

12. On the other hand, learned counsel for the State has submitted that there is consistent evidence available on record that accused persons committed loot pat in the house of Ramcharitar Yadav and when informant protested, he was shot at, causing injury on his thigh and he was further shot at but that hit Shyamal Kumar Rai but no doubt that story has been disbelieved by learned trial court and further it recorded finding that Kari Yadav fired causing injury to



Chandeshwari Yadav (informant) as common intention of the accused persons was to kill Chandeshwari and others, as such, conviction of appellants under Sections 307/149 IPC and conviction of appellant Kari Yadav under Sections 326, 148 IPC and 27 of the Arms Act is just and proper which does not require any interference by this Court.

13. Heard both sides and on perusal of evidence it appears that Chandeshwari Pd. Yadav is the informant in this case and he has supported the prosecution story as stated in the fardbeyan. So far genesis and manner of occurrence are concerned, he has also stated Ramcharitra Yadav was not present at the time of occurrence and when he protested accused Kari Yadav fired at him which caused injury to his thigh and thereafter Sikandar Yadav fired shot at him which hit Shyamal Yadav and that prosecution story has been disbelieved by learned trial court. The evidence of PW 6 (informant) has been found corroboration by the evidence of other PWs 1, 2, 4 & 5. However, PW 3 has been declared hostile. From perusal of FIR it appears that none of the prosecution witnesses have been named in the FIR though they are charge sheeted witnesses.

14. As discussed above, learned trial court has disbelieved the prosecution story so far the death of Shyamal Yadav at the fire shot by Sikandar Yadav is concerned, learned trial court has also



found that the land on which Shyamal Yadav was killed is of Anirudh Pd. Rai and for the death of Shyamal Yadav, Anirudh Pd. Rai lodged a case against prosecution party and in order to save their skin, allegation of Sikandar Yadav fired causing injury to Shyamal Yadav has been developed. Finding of learned trial court also shows that prosecution party is the aggressor and they first kill Shyamal Yadav and learned trial court has come to the story that in retaliation, present occurrence took place, no doubt it is not the prosecution story. It also appears that though several accused persons have been named and it is stated that Shyamal Yadav was running with the box after committing loot pat and they were armed with fire arms but no specific allegation has been made as to who were lashed with by which weapon and further there is no allegation of assault attributed against them except appellant Kari Yadav and Sikandar Yadav. Considering the evidence in the background of contention of learned counsel for the parties, the prosecution party appears to be aggressor and, as such, to my opinion, conviction is not sustainable for the offence with the aid of Section 149 IPC rather appellants may be held liable for their individual act. As discussed above, there is no allegation of assault against any of the appellants except Kari Yadav and Sikandar Yadav and prosecution story of firing by Sikandar Yadav has been disbelieved by trial court.



15. Considering the fact that at best Kari Yadav may be made liable for the injury caused to Chandeshwari Pd. Yadav (PW 6). It further appears from the impugned judgment itself that intention of the appellants was in order to retaliate and there is evidence that firing was made, causing injuries on the thigh of Chandeshwari Pd. Yadav and evidence of second firing has not been believed by trial court. No doubt, injury was found grievous by PW 8 Dr. Arjun Prasad Sahu, as such, inference can be drawn that intention was not to kill anyone and, as such, there shall not application of Section 307 IPC. Learned trial court has not considered the aforesaid aspects of the matter though disbelieved major part of the story and come to a finding also that prosecution party is the aggressor. In such a situation, conviction of the appellants under Sections 307/149 IPC does not appear to be sustainable. However, so far conviction of appellant Kari Yadav under Section 326 IPC is concerned, it appears that there is ample evidence available on record that he fired at Chandeshwari Pd. Yadav (PW 6) causing injury to his thigh, which is grievous in nature. It further appears that in such a situation at best appellant Kari Yadav may be convicted under Section 326 IPC and 27 of the Arms Act.

16. Considering the entire discussions made above, so far conviction of appellant Kari Yadav under Section 326 IPC and 27 of



the Arms Act is concerned, the same is affirmed. However, conviction of all the appellants under Sections 307/149 IPC and conviction of appellant Kari Yadav under Sections 307 & 148 IPC are set aside.

17. Learned counsel for the appellants, however, has submitted that considering the fact that the case is quite old and appellant Kari Yadav has remained in custody for a long period and, as such, the period of sentence may be modified to the period already undergone in custody. I find force in the submission of learned counsel for the appellants.

18. This is an old case and appellants have suffered a lot for long 20 years and appellant Kari Yadav has remained in custody for a long period of time but considering the fact that he has been convicted under Section 326 IPC and under Section 27 of the Arms Act, sentence of Kari Yadav is reduced to the period of R.I. for three years under Section 326 IPC and 27 of the Arms Act. Both the sentences are directed to run concurrently.

19. Accordingly, with the aforesaid modification in the order of sentence, Cr.Appeal (SJ) No. 476 of 2003 is partly allowed and Cr.Appeal (SJ) No. 487 of 2003 is allowed and impugned judgment of conviction and order of sentence with respect to appellant Anirudh Yadav (appellant No.2 in Cr.Appeal No. 476 of 2003) and appellants



Wakil Yadav, Brahamdeo Yadav, Vidyanand Yadav @ Vidyanand Prasad Yadav, Bala Yadav, Dilip Yadav and Sikandar Yadav @ Sikendra Yadav (appellants in Cr.Appeal No. 487 of 2003) are set aside, as they are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spa/-

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