

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.301 of 2015

Arising Out of PS.Case No. -145 Year- 1986 Thana -DHAMDAHA District- PURNIA

- =====
1. Umesh Yadav Son of Late Navi Yadav.
 2. Indra Nand Yadav Son of Late Mishri Yadav.
 3. Raghunandan Yadav Son of Late Kameshwar Yadav.
 4. Laxman Prasad Yadav @ Laxman Yadav Son of Late Bachchi Yadav.
 5. Guna Nand Yadav Son of Late Khudar Yadav.
 6. Harihar Yadav Son of Late Mahadeo Yadav. All are resident of Village-Bajraha P.S.-Dhamdaha, District--Purnea.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bhola Prasad, Adv.
Mr. Mukesh Kr. Jha, Adv.
For the Respondent/s : Mr. Sujit Kr. Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 13-03-2018

Appellants, Umesh Yadav, Indra Nand Yadav, Raghunandan Yadav, Laxman Prasad Yadav @ Laxman Yadav, Guna Nand Yadav and Harihar Yadav have been found guilty for an offence punishable under Section 148 IPC and each one has been sentenced to undergo SI for two years, under Section 307/34 IPC, each one has been sentenced to undergo RI for six years as well as to pay fine of Rs. 1000/- in default thereof, to undergo SI for two months additionally, under Section 27 of the Arms Act and each one has been sentenced to undergo SI for three years and further, directed to run the sentences concurrently, vide judgment of conviction dated 19.05.2015 and order of sentence dated 21.05.2015 passed by 2nd Additional



Sessions Judge, Purnea in Sessions Trial No. 172/1991/883/2014.

2. PW-9, Ram Narayan Singh gave his Fard-e-beyan on 14.09.1986 at Sadar Hospital, Purnea where his son, Gopal Singh (PW 10) was admitted in an injured condition disclosing therein that on 13.09.1986 at about 6.00 PM while he along with his son, Gopal were returning from their field where they had gone to see paddy crop and as soon as reached west to Musahri Tola, all of a sudden, 8-9 persons armed with Lathi, Bhala, Farsa and pistol came from the side of the road, out of whom, Guna Nand Yadav ordered to encircle whereupon his son was encircled by them. He had identified Umesh Yadav, Ramesh Yadav, Harihar Yadav, Jai Krishna Yadav, Indra Nand Yadav, Laxman Yadav Raghunandan Yadav. While they were about to assault his son whereupon Jai Krishna Yadav forbade them and said that he will survive in case is assaulted by Lathi, Farsa, so he be shot at and for that, he directed Ramesh to shoot whereupon Ramesh shot at causing injury over his jaw. Then thereafter, they have lifted Gopal to his Darwaza and then to hospital. Chhathu, Pashupati, Jagarnath, Satto and others were named as witness who had seen the occurrence.

3. On the basis of aforesaid Fard-e-beyan, Dhamdaha PS Case No. 145/86 was registered followed with an investigation as well as submission of charge-sheet, facilitating the trial meeting with



ultimate result, subject matter of instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial of the occurrence. Furthermore, DW-1 has also been examined in order to suggest that the case has been compromised amongst the parties.

5. In order to substantiate its case, prosecution had examined altogether 11 PWs, those are, PW-1, Dr. Thakur Krishna Kumar Singh, PW-2, Sudhir Singh, PW-3, Gopal Singh, PW-4, Ram Narayan Singh, PW-5, Mahendra Mandal, PW-6, Medo Rishideo, PW-7, Rameshwar Ram, PW-8, Jagarnath Singh, PW-9, Chhotu Munni, PW-10, Gunesh Kumar, and PW-11, Ganesh Kumar, formal in the background of non examination of Investigating Officer. Side by side had also exhibited Ext-1, Injury report, Ext-2, Fard-e-beyan, As stated above, DW-1 has been examined in order to substantiate the theme of compromise.

6. From the evidence available on the record, it is evident that PWs, 2, 3, 4, 5, 6, 7, and 8 were declared hostile as they have not supported the case of the prosecution, although, PW-1 during course of his examination-in-chief had stated that after hearing sound of firing, when he reached at Kurji Mor, he had found 4-5 persons fleeing therefrom but he failed to identify them. After going to village,



he came to know that Gopal has been shot at. PW-3 had reiterated with regard to the occurrence admitting Gopal having been shot at, at Bankatta Mor but he had not seen the assailant. PW-4 had also reiterated the same. In likewise manner, PW-7, PW-8 have substantiated the occurrence.

7. PW-1 is the doctor who had examined the victim, Gopal Singh and found following injuries:-

1. A penetrating wound (i.e. wound of entry) with inverted margin through piercing into the lower lip and coming out (i.e. wound of exit) with inverted margin on chin. Wound of entry size $\frac{3}{4}$ " diameter and wound of exit size was $1 \frac{1}{2}$ " in diameter with fracture of mandible in three pieces as shown in X-ray and broken right 18th incisor teeth.
2. The nature of injury was grievous and caused by fire arm weapon.
3. On whole face multiple burnt spots by carbon particles of fire



arm was present.

4. Conjunctivitis with keratitis in both eyes were found due to carbon particles burn injuries.

5. The age of injury was within 12 hours at the time of examination.

6. The injuries were caused from short distance i.e. less than 8 feet.

8. During cross-examination nothing has been elicited from his mouth in order to discredit his finding.

9. Now remains the evidence of informant PW-9 and Gopal Singh, the injured PW-10. PW-9, during his examination-in-chief had deposed that on 13.09.1986 at about 6:00 PM while he along with his son, Gopal was returning from his field and as soon as reached near Bankatta Mor, Gopal was surrounded by 8-9 persons out of whom, he identified, Umesh Yadav, Ramesh Yadav, Harihar Yadav, Jai Krishna Yadav, Indra Nand Yadav, Laxman Yadav Raghunandan Yadav. Ramesh was armed with 3-not while rest were armed with Lathi. Jai Krishna had ordered to kill whereupon Ramesh fired from 3-not causing injury over mouth of Gopal as a result of which he fell down and became unconscious. After firing, all of them escaped. On hue and cry, Chhathu, Pashupati, Jagarnath, Satto and others came and



then thereafter Gopal was lifted to his house and then to hospital. Police had come on the following day before whom he gave his Fard-e-beyan (exhibited). At that very time, Gopal was unconscious. Subsequently thereof, police had come to his place where Gopal gave written statement with his signature as was unable to speak. It has further been disclosed that on account of grazing of crop, a Panchayati was convened. It has also been disclosed that both the parties were on litigating terms since before. Claimed identification of the accused. During cross-examination, he had stated that at the time of occurrence, he was 10-12 Rassi away from his son. He had further stated that it was evening hour. Darkness had fallen. He heard sound of firing from the west where he was standing. Who fired, he does not know. Then again disclosed that after regaining sense Gopal had disclosed name of assailant. In para-13, he had further stated that all the persons including he himself ran away hearing sound of firing. He had further stated that police had recorded his Fard-e-beyan but was not read over to him.

10. PW-10 is the victim. He had stated that on the alleged date and time of occurrence, he was returning from his field. His father was at some distance. When he reached at Bankatta Mor, 8-9 persons came out whom he identified as Umesh Yadav, Ramesh Yadav, Harihar Yadav, Jai Krishna Yadav, Indra Nand Yadav,



Laxman Yadav Raghunandan Yadav. Ramesh was armed with 3-not while rest were armed with Lathi, Farsa. They encircled him. They wanted to assault but on a discloser made by Jai Krishna that he may remain alive in case he is assaulted so, he be shot at whereupon, Ramesh fired causing injury over his mouth. He became unconscious and fell down. After regaining sense he found himself admitted at Purnea Hospital. He remained there for two months. All the accused persons are of his village. After returning to his house, police came and interrogated over occurrence. As he was unable to speak so, he furnished written statement having his signature ('X' for identification). Then had disclosed that a Panchayati was scheduled and in the aforesaid background this occurrence has been committed. Identified the accused.

11. During cross-examination, he had stated that it was not sunset rather about to. The accused persons came out from the jute field and then encircled him. After sustaining fire-arm injury he became unconscious, whereupon he was unable to say what has happened after the occurrence.

12. From the evidence available on record, it is apparent that irrespective of nature of the evidence having deposed by the witnesses, they have not denied regarding commission of occurrence. Furthermore, from the evidence of PW-1, Doctor, it is



crystal clear that wound of entry, wound of exit was found and the firing as is evident completely smashed mandible of the victim which was made from close range. It is further evident that PW-9 and 10 who are father and son have supported the occurrence but they were not at all tested on the point of occurrence nor over place of occurrence. There happens to be contradiction in the evidence of the PWs as they have not supported the case of the prosecution in its entirety, though half heartedly. So, non examination of Investigating Officer is not at all found adverse to the interest of the prosecution. It is also evident from the nature of the evidence inconsonance with the evidence of DW-1 that the matter has been compromised but, for that an effort was expected at the end of the prosecution as well as defence to disgrace the allegation to such an extent that it could be compoundable in terms of Section 320 CrPC whereunder they both failed.

13. Now, one pertinent question has arisen in the trial and that happens to be with regard to some sort of deficiency at the end of prosecution. The sole assailant, Ramesh Yadav was not sent up for trial. Vide order dated 15.11.89, the learned lower court had taken cognizance, had not summoned Ramesh. That means to say, in the aforesaid background, now one has to see the impact having over finding recorded by the learned lower court on that score. It is



evident from the format of charge that accused persons have been charged for an offence punishable under Section 148, 307/34, 341, 27 read with Section 34 of the IPC.

14. As per prosecution, there was an unlawful assembly sharing common object to eliminate PW-10, Gopal Singh and one of the members of unlawful assembly namely, Ramesh had shot at causing injury over the person of PW-10. Ramesh was not sent up for trial. Though PW-9 and 10 had named him to be assailant but, prosecution failed to pray and in likewise manner the court also failed to summon him. That means to say, presence of Ramesh being member of an unlawful assembly having common object to eliminate PW-10, during course thereof, shot at PW 10 found negatived. That means to say, PW-10 had not been assaulted by the persons who were members of unlawful assembly. For proper appreciation, it looks better to see Section 149 IPC which reads as follows:-

Section 149 in The Indian Penal Code

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

15. From plain reading of Section 149 IPC, it is



evident that sharing common object amongst themselves for commission of an occurrence is the crux of the Section 149 of the IPC. Specific part having been played by each of the members of the unlawful assembly is not warranted but, when the assailant, has not been identified as one of the members of the unlawful assembly then in that circumstance, the other members of aforesaid assembly would not be held liable moreover, nothing has been attributed against them.

16. Therefore, considering the infirmity persisting on the record inconsonance with the overall situation that appellants have not been properly arrayed with any part having been played at their end coupled with the fact of subsequent development which is found visualizing from mode of evidence though, some sort of deficiency has been perceived at the end of the defence, at least, benefit of doubt should be given to the appellants and that being so, the judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed. Appellants are on bail, hence are discharged from the liability of bail bond.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	15.03.2018
Transmission Date	15.03.2018

