

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.587 of 2012

Arising Out of PS. Case No.-245 Year-2003 Thana- GHOSI District- Jehanabad

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1. Ramanand Yadav @ Ram Nandan, S/O Late Karu Yadav, Resident Of Village- Gidarpur, Police Station- Hulasganuj, District- Jehanabad
 2. Brij Nandan Yadav, S/O Karu Yadav, Resident Of Village- Gidarpur, Police Station- Hulasganuj, District- Jehanabad
 3. Ranu Yadav @ Randhir Kumar S/O Jaynandan Yadav Resident Of Village- Gidarpur, Police Station- Hulasganuj, District- Jehanabad

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Binay Kumar Singh, Advocate Mr. Kumar Rajeev, Advocate
For the State	:	Mr. A.K.Sinha, A.P.P.
For the Informant	:	Mr. Sheel Bhadra Jha, Advocate Mr. Ashok Kumar, Advocate

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 12-04-2018

We have heard learned counsel for the appellants, the State and the informant and also perused the records of the case.

The appellants have filed this appeal assailing the judgment of conviction dated 28.05.2012 and order of sentence dated 01.06.2012 passed by Ad-hoc Additional Sessions Judge-II, Jehanabad in two sessions trials bearing (I) Sessions Trial No. 49 of 2005 (D.J.)/197 of 2006/ 141 of 2011 and (ii) Sessions Trial No.



319/2004 (D.J.)/140 of 2011 (FTC II) arising out of Ghosi (Hulasganj) P.S. Case No.245/2003 by which the appellant no.1 in Sessions Trial No. 49 of 2005 (D.J.)/197 of 2006/ 141 of 2011, namely, Ramanand Yadav @ Ram Nandan has been convicted for the offence punishable under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act and has been sentenced to undergo rigorous imprisonment for life under Section 302/34 of the Indian Penal Code and three years with a fine of Rs.2000/- under Section 27 of the Arms Act and in default of payment of fine, he has been sentenced to undergo simple imprisonment for six months. The appellant nos. 2 and 3,v.i.z, Brij Nandan Yadav and Ranu Yadav @ Randhir Kumar in Sessions Trial No. 319/2004 (D.J.)/140 of 2011 (FTC II) have been convicted under Sections 302/34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life under Sections 302/34 of the Indian Penal Code. The appellant no.3, Renu Yadav @ Randhir Yadav has also been convicted under Section 27 of the Arms Act and he has been sentenced to undergo rigorous imprisonment for three years with a fine of Rs.2000/- under Section 27 of the Arms Act and in default of payment of fine, he has further been sentenced to undergo simple imprisonment for six months. The appellant no.2, namely, Brijnandan Yadav has



been convicted under Section 323 of the Indian Penal Code and he has been sentenced to undergo simple imprisonment for six months with a fine of Rs.500/- and in default of payment of fine, he has further been sentenced to undergo simple imprisonment for one month. However, all the sentences were directed to run concurrently.

The prosecution case, in brief, is that on 25.08.2003 at about 7.00 A.M. in the morning towards east of village-Gidarpur, Barhamasthan, the informant Shyam Narayan Yadav along with his brother Ram Narain Yadav @ Narayan Yadav, Dhananjay Yadav had gone for ploughing his field. It is further stated that his villagers Ram Nandan Yadav (appellant no.1), Brijnandan Yadav (appellant no.2), Vijay Yadav and Ranu Yadav (appellant no.3) had grown the paddy in the same field. In the meantime, the accused persons came over there armed with lathi and asked the informant to stop the ploughing work else he would be killed. It is further stated that the informant claimed the field being owner of it and there was adamant to plough the same. Upon which accused Ram Nandan Yadav (appellant no.1) and Brij Nandan Yadav (appellant no.2) assaulted the informant with lathi. It is further alleged that one Raj Nath Yadav, a relative of the informant, who had gone to attend the natural call tried to pacify the matter upon which Ranu



Yadav (appellant no.3) and Ram Nandan Yadav (appellant no.1) fired upon him. However, he received injury due to the firing by Ranu Yadav, as a result of which, he fell down. After seeing this, the informant and his companion fled away leaving the bullocks. It is further alleged that every year the accused persons used to plough his field forcibly.

On the basis of aforesaid fardbeyan of the informant, the FIR was registered under Sections 302, 323, 325, 504, 34 of the Indian Penal Code and Section 27 of the Arms Act vide Ghosi P.S. Case No.245 of 2003.

The police took up the investigation of the case. After investigation, the police submitted charge sheet no.78 of 2003 dated 20.11.2003 against Ramanand Yadav (appellant no.1) showing pending investigation against rest accused persons. Thereafter, the Chief Judicial Magistrate took cognizance on 7.01.2004 and committed the case to the court of sessions on 10.08.2005 where on receipt of the record in the office of D.J. it was numbered as Sessions Trial No. 49 of 2005 (D.J.) and the D.J. Office transferred the case to the court of FTC V, Jehanabad. The trial separately proceeded in the case and ultimately after transfer from one court to another, the record was received in the court of



Ad-hoc Additional District and Sessions Judge, Jehanabad on 8.09.2011 as Sessions Trial No. 141/2011.

Thereafter, the police again submitted supplementary charge sheet no.21/04 dated 24.05.2004 against the accused Brijnandan Yadav and Ranu @ Randhir Yadav showing the accused Vijay Yadav died. Upon which, the Chief Judicial Magistrate took cognizance and committed the case of both the accused persons to the court of sessions on 26.08.2004 where on receipt of the records, it was numbered as Sessions Trial No.319/04 (DJ)/140/2011. The case was transferred to the court of A.D.J.II, Jehanabad on 9.09.2004, as such, trial of both Sessions Trial Nos. 49/2005/197/06/ 141/11 and Sessions Trial Nos. 319/04/149/04/182/ 05/140/2011 proceeded separately and witnesses produced by the prosecution in both the trials were in separate manner. However, at the stage of defence evidence, the records of both the trials were received in the trial court on 8.02.2011 and as the case originated from the same FIR and same set of witnesses examined, a common judgment has been passed.

During trial of Sessions Trial No. 49/2005/197/06/ 141/11, the prosecution has examined altogether nine witnesses in support of its case. P.W. 1 is Fulmati Devi, P.W. 2 is Bilash Yadav @ Ram Bilash Yadav, P.W. 3 is Kamta Yadav, P.W. 4 is Laljee Yadav, P.W.



5 is Dr. Ramkeshwar Pd. Sinha, P.W. 6 is Gayatri Devi, P.W. 7 is Hari Mohan Prasad, P.W. 8 is Jai Prakash Choudhary and P.W. 9 is Dr. Deopak Kumar.

During trial of Sessions Trial No. 319/04/149/04/182/05/140/2011, the prosecution has examined altogether eight witnesses in support of its case. P.W. 1 is Hari Mohan Prasad, P.W. 2 is Gayatri Devi, P.W. 3 is Fulmati Devi, P.W. 4 is Bilash Yadav @ Ram Bilash Yadav, P.W. 5 is Kamta Yadav, P.W. 6 is Laljee Yadav, P.W. 7 is Dr. Ramkeshwar Pd. Sinha and P.W. 8 is Dr. Deopak Kumar.

The defence has not been examined any witness on its behalf.

The trial court after hearing learned counsel for the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charges against the appellants and, as such, the judgment of conviction and order of sentence has been passed.

Now this Court is required to reappraise the prosecution evidence to see as to whether the prosecution has been able to substantiate its case beyond shadow of all reasonable doubts or not?

As would be apparent from the aforementioned discussions that two sets of sessions trials originating from the FIR being



Ghosi (Hulasganj) P.S. Case No. 245/2003, the appellant no.1 Ram Nandan Yadav has faced trial in Sessions Trial No. 49/2005/197/2006/141/2011, whereas the other appellants Ranu Yadav @ Randhir Yadav and Brij Nandan Yadav have faced trial in Sessions Trial No. 319/04/182/05/140/2011. Obviously, there are two sets of witnesses who have been examined separately in both the sessions trials. In Sessions Trial No. 49/2005/197/2006/141/2011, there are nine witnesses, out of which, three, i.e., P.W.2 Bilash Yadav @ Ram Bilash Yadav, P.W. 3 Kamta Yadav and P.W. 4 Laljee Yadav have been declared hostile by the prosecution. P.W. 1 Fulmati Devi is sister of the deceased Raj Nath Yadav, whereas, P.W. 6 Gayatri Devi is her 'Gotani' (sister-in-law). P.W. 5, Dr. Ramkeshwar Pd. Sinha, is the doctor, who had conducted medical examination of the informant as the informant claimed that he also got injured in the occurrence. P.W. 8 Jai Prakash Choudhary is the main Investigating Officer in this matter, who had done the investigation and thereafter P.W. 7 Hari Mohan Prasad is the second Investigating Officer who had submitted the charge sheet. P.W. 9, Dr. Deopak Kumar, is the doctor who had done the autopsy upon the dead body of the deceased.



If it is compared to the another Sessions Trial bearing Sessions Trial No. 319/04/182/05/140/2011 which has been faced by the appellant nos. 2 and 3, only one Investigating Officer, who has submitted the charge sheet, namely, Hari Mohan Prasad, has been examined as P.W. 1, who has been examined in other Sessions Trial as P.W.7. P.W. 4 Bilash Yadav @ Ram Bilash Yadav, P.W. 5 Kamta Yadav and P.W. 6 Laljee Yadav, who have been declared hostile by the prosecution in Sessions Trial Nos. 49/2005/197/2006/141/2011, have also been declared hostile in this Sessions Trial Nos. 319/04/182/05/140/2011 having been examined as P.Ws. 4, 5 and 6 respectively.

It is also apparent from the plain reading of the depositions in both the sessions trials that they are almost identical.

On appreciation of the aforementioned facts, as discussed above, we have no hesitation in coming to the conclusion that the prosecution case suffers from various fatal flaws. The first and the foremost is the non-examination of the informant or any of the FIR witnesses as well as witness of the inquest report. It is apparent from the FIR that Shyam Narayan Yadav, who is the first informant, has named his brother Ram Narayan Yadav @ Nam Narayan Yadav, Dhananjay Yadav to be present at the place of occurrence when the occurrence took place, however, neither



Shyam Narayan Yadav nor his brothers Ram Narayan Yadav or Dhananjay Yadav have been examined as prosecution witnesses.

Now, it would be pertinent to mention here itself that the deposition of the doctor, namely, Dr. Ramkeshwar Prasad Sinha, who had examined the informant for the injury sustained by him as stated in the FIR would be not of much relevance for the reason that the informant has not come up as a witness to claim that he has sustained such injury.

In the aforesaid background of the matter, a prudent person would come to the conclusion that, since none of the eye witnesses including the first informant as claimed in the FIR, have been examined the so-called claim of the prosecution regarding the genesis of the occurrence as well as the fact that three persons have seen it, would fall flat. We would also note here itself that though it is claimed by the eye witnesses, namely, Fulmati Devi and Gayatri Devi that several persons of the adjacent from the agricultural field assembled there but none of them have been examined and the three witnesses, namely, P.Ws. 2, 3 and 4 in Sessions Trial No. 49/2005/197/2006/141/2011, who have also been examined as P.Ws. 4, 5 and 6 in Sessions Trial No. 319/04/182/05/140/2011, have been declared hostile by the prosecution.



Now it is to be tested as to whether the witnesses, who have been portrayed as eye witnesses by the prosecution, namely, P.W. 1 Fulmati Devi and P.W. 6 Gayatri Devi in Sessions Trial No. 49/2005/197/2006/141/2011 and having been examined as P.Ws. 3 and 2 respectively in Sessions Trial No. 319/04/182/05/140/2011 have been able to withhold the test of cross-examination and have been able to prove that they are actually the eye witnesses? It is admitted position that the allegation of firing on the deceased, Raj Nath Yadav, is upon appellant no.3, Renu Yadav @ Randhir Kumar.

P.W.1, Fulmati Devi, who is the wife of Dhananjay Yadav and full brother of the informant, has stated in her evidence that she was at her home at about 7 a.m. in the morning at the time when Namnarayan Yadav and Narayan Yadav were ploughing their agricultural field and that time one Brajnandan Yadav, Ram Nandan Yadav, Renu Yadav and Vijay Yadav reached there and started quarreling with them. They stopped the aforesaid two persons from ploughing the field resulting in altercation then Renu Yadav drew his pistol from his waist and fired at the deceased Raj Nath Yadav which hit him and there was instantaneous death. However, at the same time she says that she reached there on alarm being raised and she has also stated that Brajnandan Yadav



had assaulted her 'Bhaisur' (brother-in-law). Later on, in her cross-examination, she had stated that on hearing alarm about altercation, she reached at the place of occurrence and saw the occurrence. She along with her Gotni (P.W.6) reached there and both of them saw the occurrence. In her cross-examination, she has also stated that her husband Dhanjay Yadav was missing since last three years though he was an accused in the counter case being Ghoshi P.S. Case No.244 of 2003. At the time of hearing, it has been informed that now he has been arrested and is facing trial separately in the matter. However, it is startling that she reached at the place of occurrence along with her Gotni, Gayatri Devi but the same has not been supported by P.W.6 (Gayatri Devi) as she has categorically stated that she reached at the place of occurrence alone. She did not support that she came to the place of occurrence with her Gotni, P.W. 1. She has categorically stated that she was cooking food at that point of time but at the same time, she claims to be the eye witness having seen Renu Yadav fired at the deceased. Thus, her testimony if read conjointly with the testimony of P.W. 1, raises serious doubt regarding both of them being eye witnesses to the occurrence.

Another reason for coming to the aforesaid conclusion would be the fact that they are the family members being wives of the



informant and his brother, thus, had they been present at the time of occurrence, there is no explanation as to why their names have not found place in the F.I.R. Further fact which gives a fatal flaw is that P.W. 1 claims to have seen the occurrence as she claims that her statement was recorded by the police at the time of the investigation but the Investigating Officer in his evidence has not said that her statement was ever recorded by him that means that she has come first time to depose before the court at the time of trial and claimed to be an eye witness. It is true that a witness even come and say regarding the occurrence even for the first time in the court but all the aforesaid facts and circumstances being considered conjointly with the further fact, as stated above, that even Gotnis, both claiming to be eye witnesses, have not supported each others' case, raises serious doubt.

Further, it is apparent from the testimony of the Investigating Officer (P.W.8) that two dead bodies of Rajnath Yadav and Vijay Yadav were found in the field of Ram Babu Yadav and Bisheshwar Mahto. He has given the boundary of place of occurrence also. Though the body of the deceased Vijay Yadav (in the counter case) has been found in the agricultural field of Bisheshwar Mahto in its eastern boundary but the informant's agricultural field has neither found in the boundary of such plots nor were the dead bodies



recovered from it. Even in the F.I.R. it has been stated that the other side has already planted the paddy seedling and that field was tried to be ploughed by them. So admittedly, there was some dispute with respect to the land also.

The story further appears to be incredible that from about more than 1 (one) kilometer one would hear the alarm raised and they would reach at the place of occurrence at the time when shot was being fired and would claim to be eye witness as the Investigating Officer has stated that distance between village and place of occurrence is at about 1000 yards.

The Investigating Officer has further said that both the persons namely, Raj Nath Yadav as well as Vijay Yadav had died in the same occurrence and their dead bodies were found at the said place. The other case was registered earlier whereas it is stated by the Investigating Officer that nobody from the informant's side came for an hour before him at the place of occurrence but later on the informant came in the police station then his fardebyan was recorded.

Thus, the question would be why the informant's side, in the First Information Report as well as in their respective examination-in-chief suppressed this fact that there were two deaths though they could not withstand the test of cross-



examination and what would be the impact of this suppression in determining as to who was the actual aggressor. It is to be noted here that the deceased Raj Nath Yadav did not belong to the village where the place of occurrence is situated rather he is resident of a different village being brother of P.W.1 (Fulmati Devi). It was stated that he came for her Vidagari, whereas suggestions have been given by the other side that he came as aggressor to help the informant's side and there was altercation between both the sides. This raises a serious doubt and raises a question whether the occurrence was in a different manner than the one which has been alleged in the FIR?

The witness of inquest report has also not been examined whose names are common in the first information report.

Now, we would have to consider as to whether from the evidence which has been led by the prosecution does it stand establish as to whether appellant no.3, Ranu Yadav @ Randhir Kumar had fired the fatal shot upon the deceased?

In our considered opinion, in view of the fact that neither the informant nor the F.I.R. witnesses have been examined in the trial and the P.W.1 and P.W.6 could not establish themselves to be the eye witness, it does not seem so. Of course, there is such short of allegation in the F.I.R., but there is no evidence to



support of it and P.Ws.1 and 6, as stated above, had already been discarded by us to be the eye witnesses of the case as serious doubt stands created regarding them.

Further, the factum of the another death has been suppressed by the prosecution witnesses in their examination-in-chief but in the cross-examination, they had to accept that another dead body of the Vijay Yadav was also found at the place of occurrence which is fully supported by the Investigating Officer who has further gone to say to the extent that it was the informant's side who had called upon the persons from outside for altercation with the accused side.

He has also stated that in fact the accused side has planted the seedling in the agricultural field which was tried to be ploughed by the informant side.

He has further indicated in his evidence that statements of Ram Swarup Yadav(not examined), Gayatri Devi (P.W. 6), Vilash Yadav (not examined), Kamta Yadav (P.W.3 and declared hostile), Laljee Yadav (P.W.4 and declared hostile) as well as Biltu Yadav (not examined) were recorded by him. Now it leaves only P.W.6. P.Ws. 2, 3 and 4 have been declared hostile and others were not examined and for the reasons mentioned above, the evidence of P.W. 6 (Gayatri Devi) does not inspire confidence.



Mr. Ajay Kumar Thakur, learned counsel for the appellants has placed reliance upon few decisions of the Apex Court. In ***Lakshmi Singh and Ors. Vs. State of Bihar (AIR 1976 Supreme Court 2263)***, the Apex Court has reversed the conviction finding that there is no explanation of injury sustained by the accused, whereas, in the present case, there has been death on the side of the accused persons which was suppressed in the FIR and examination-in- chief as there is no whisper regarding that. In ***Bhagwan Sahai & Anr. Vs. State of Rajasthan (2016) 13 Supreme Court Cases 171***, the Hon'ble Supreme Court, while reversing the order passed by the High Court, has held that once the Court came to a finding that prosecution has suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused including the death of one of the accused, the only possible and probable course left open was to grant benefit of doubt to the appellants.

Taking clue from the aforesaid judicial pronouncements, a prudent person has to come to the conclusion in the present case also that the prosecution, by not stating regarding the actual genesis of the occurrence suppressing the fact regarding vital injuries of the side of accused in which a person was killed and his dead-body was lying besides the dead body of the informant side,



and also for the reasons aforesaid that even the first informant and FIR witnesses have not come to support their case, it has to be held that they did not come with clean hand in the present case and, as such, the benefit of doubt must accrue on the part of the accused side.

Having regards to the aforementioned facts and circumstances and discussions, we are of the view that this appeal has to succeed as the prosecution has completely failed to bring home the charges.

As a result, this appeal stands allowed. The judgment of conviction and order of sentence are set aside. The appellants are acquitted of the charges levelled against them. Since the appellant no.3 Ranu Yadav @ Randhir Yadav is in jail custody, he would be required to be released forthwith, if not wanted in any other case. Since the appellant nos. 1 and 2 are on bail, they are discharged from the liabilities of their respective bail bonds.

(Dr. Ravi Ranjan, J)

(Prakash Chandra Jaiswal, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
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